

153 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Jeffers South, LLC

v.

Docket No. EL10-86-004

Midwest Independent Transmission
System Operator, Inc.

ORDER DENYING REHEARING AND PROVIDING GUIDANCE

(Issued November 19, 2015)

1. On July 18, 2013, the Commission issued an order reversing the April 16, 2012 Initial Decision¹ in this proceeding and denying rehearing of an order on rehearing.² The Commission found that the Midwest Independent Transmission System Operator, Inc. (MISO)³ had violated its obligations regarding the study of network upgrades that are required to accommodate the interconnection of the Jeffers South, LLC (Jeffers South)

¹ *Jeffers South, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 63,002 (2012) (Initial Decision).

² *Jeffers South, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,033 (2013) (Order on Initial Decision). The rehearing issue dealt with in the Order on Initial Decision concerned *Jeffers South, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,013 (2011) (Order on Complaint), *reh'g granted in part and denied in part*, 138 FERC ¶ 61,149 (2012) (Rehearing Order).

³ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

generation facility (Jeffers South Project) when MISO concluded that Jeffers South was obligated to fund construction of a facility referred to below as the Dotson-New Ulm Line. On August 19, 2013, MISO filed a request for rehearing of the Order on Initial Decision (MISO Rehearing Request) or, in the event rehearing is denied, guidance regarding the appropriate next steps in processing the Jeffers South Project. In this order, we deny MISO's request for rehearing of the Order on Initial Decision and provide guidance.

I. Background

2. In May 2005, Summit Wind LLC (Summit Wind), the predecessor in interest to Jeffers South⁴ and sometimes referred to in this litigation by the name of its representative, Wind Energy Developers,⁵ submitted an interconnection request to MISO. Summit Wind sought to interconnect its wind powered generation facility to transmission facilities that at the time were owned by Interstate Power and Light Company (IP&L).⁶

3. MISO evaluated the interconnection request as part of its 2006 Group 4 System Impact Study. Wind Energy Developers and IP&L rejected this study. Wind Energy Developers then commissioned its own study, which the transmission owners whose systems were impacted by the interconnection request rejected. The transmission owners then commissioned their own study, the 2006 Transmission Owners Joint Study, which included a new 161 kV line running from a new Cottonwood Substation to an existing substation owned by Great River Energy (Great River) near Dotson, Minnesota (Dotson Substation). It was anticipated that this line would interconnect with a new transmission line planned by Great River, a 161 kV line running from the Dotson Substation to New Ulm, Minnesota (Dotson-New Ulm Line).

4. On September 14, 2007, following the completion of the required interconnection studies and extensive negotiations, MISO filed in Docket No. ER07-1375-000 an unexecuted Large Generator Interconnection Agreement among Summit Wind as interconnection customer, IP&L as transmission owner, and itself as transmission

⁴ On July 1, 2009, Summit Wind transferred all of its interests in the underlying generation project to Jeffers South.

⁵ Initial Decision, 139 FERC ¶ 63,002 at P 38.

⁶ ITC Midwest acquired the transmission facilities of IP&L on December 20, 2007. *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007).

provider (Interconnection Agreement). The Interconnection Agreement identified network upgrades designed to provide two outlets for the Jeffers South Project. The Interconnection Agreement provided for the upgrade of existing IP&L transmission facilities and the construction of a new Cottonwood Substation to the south of the Jeffers South Project in order to provide a southern outlet. It also provided for facilities to create a northern outlet for the output of the Jeffers South Project.⁷

5. In addition, on December 10, 2007, MISO filed in Docket No. ER08-320-000 an unexecuted Facilities Construction Agreement among Summit Wind, Great River, and MISO. The Facilities Construction Agreement provided for the construction of certain network upgrades on Great River's system to accommodate the requested interconnection of the Jeffers South Project. The Facilities Construction Agreement identified an upgrade to the Dotson Substation from a 69 kV substation to a 69/161 kV substation, which was allegedly necessary to accommodate a new Cottonwood County to Dotson Corner 161 kV transmission line. The 2006 Transmission Owners Joint Study, which included the Dotson-New Ulm Line, formed the basis for the upgrades and facilities contemplated by the Interconnection Agreement and the Facilities Construction Agreement.⁸

6. MISO filed the Interconnection Agreement and the Facilities Construction Agreement unexecuted because Summit Wind contested its cost responsibility for the network upgrades under both agreements. On February 8, 2008, the Commission issued an order consolidating Docket Nos. ER07-1375-000 and ER08-320-000 and setting the Interconnection Agreement and Facilities Construction Agreement for hearing and settlement judge procedures.⁹

7. In 2009, Summit Wind, ITC Midwest LLC (ITC Midwest) (the successor to IP&L), Great River, and MISO jointly filed a settlement agreement (Settlement Agreement) to resolve all issues in dispute in the proceeding. The Commission approved the uncontested Settlement Agreement.¹⁰ Soon after this approval of the Settlement Agreement, Great River announced that it no longer intended to construct the Dotson-New Ulm Line. Jeffers South and MISO executed a restudy agreement on

⁷ Order on Complaint, 134 FERC ¶ 61,013 at P 4.

⁸ *Id.* n.27, PP 51, 125, 128.

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,113 (2008).

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,121 (2009).

October 19, 2009 (Restudy Agreement), and Excel Engineering Inc. performed two restudies of the Jeffers South Project, one commissioned by Jeffers South and the other commissioned by MISO (2010 MISO Restudy).¹¹

8. The 2010 MISO Restudy considered three different outlet studies for the Jeffers South Project. MISO ultimately chose an option that included the Dotson-New Ulm Line and a single 161 kV line from Cottonwood to Heron Lake. On September 1, 2010, Jeffers South filed a complaint in Docket No. EL10-86-000. Jeffers South argued that MISO violated its obligation under the “but for” standard, as interpreted in *Community Wind*,¹² to identify and quantify the least-cost option when determining the network upgrades necessary to interconnect the Jeffers South Project. Jeffers South explained that Great River’s decision not to construct the Dotson-New Ulm Line prompted restudy of the Jeffers South Project. Jeffers South stated that the study that it commissioned identified a number of alternative options costing approximately \$14 million or less that do not involve construction of the Dotson-New Ulm Line.¹³

9. Jeffers South stated that the 2010 MISO Restudy retains the previous two-outlet interconnection plan and assigns the costs of the Dotson-New Ulm Line (approximately \$43 million) to Jeffers South. Jeffers South argued that MISO was not necessarily required to select the least-cost option when determining what network upgrades should be constructed to accommodate a requested interconnection, but the least-cost option must nevertheless be identified and quantified during the study process to establish the maximum costs that may be allocated to the interconnection customer.¹⁴

10. On January 7, 2011, the Commission issued an order finding that MISO had not violated the “but for” standard by failing to identify and quantify the least-cost option to interconnect the Jeffers South Project. The Commission stated that it clarified in *Community Wind II* that in the context of MISO’s Tariff, the “but for” standard is a cost

¹¹ Order on Complaint, 134 FERC ¶ 61,013 at P 8.

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009), *order on reh’g*, 131 FERC ¶ 61,165 (*Community Wind II*), *order on reh’g*, 133 FERC ¶ 61,011 (2010) (together, *Community Wind*).

¹³ Order on Complaint, 134 FERC ¶ 61,013 at P 9.

¹⁴ *Id.* PP 9, 11.

allocation principle that limits the cost responsibility of an interconnection customer, but the Commission had never stated that MISO must identify and quantify the least-cost option during the study process. The Commission found that Jeffers South's complaint otherwise raised issues of material fact, and the Commission therefore established hearing and settlement judge procedures.¹⁵ A hearing took place on December 12, 2011. The Presiding Judge issued the Initial Decision on April 16, 2012.

11. In the Initial Decision,¹⁶ the Presiding Judge found that Jeffers South had not shown that MISO's actions in this matter were unjust, unreasonable, unduly discriminatory or preferential. The Presiding Judge found that Jeffers South did not prove, among other things, that MISO's use of the 2006 Transmission Owners Joint Study to develop the facilities study for the Jeffers South Project was not consistent with provisions of the Interconnection Procedures.¹⁷ The Presiding Judge stated that the 2010 MISO Restudy and other aspects of the processing of the Jeffers South Project interconnection request were consistent with governing rules and procedure.¹⁸

12. The Presiding Judge also found that Jeffers South did not prove that MISO failed to follow the requirements of the Interconnection Procedures, the Settlement Agreement, or the Restudy Agreement in conducting the 2010 MISO Restudy.¹⁹ The Presiding Judge stated that despite Jeffers South's objections to use of the 2006 Transmission Owners Joint Study, which includes the Dotson-to-New Ulm Line, as the basis for the Jeffers South Project facilities study, its predecessor Wind Energy Developers had no such objections. The Presiding Judge concluded that Jeffers South is bound by the decisions of its predecessor(s).²⁰

¹⁵ *Id.* PP 33-34.

¹⁶ This description of the Initial Decision is limited to a discussion of those matters that are relevant to the rehearing request in this subdocket. For a more detailed description of the Initial Decision, *see* Order on Initial Decision, 144 FERC ¶ 61,033 at PP 21-29.

¹⁷ Initial Decision, 139 FERC ¶ 63,002 at P 125.

¹⁸ *Id.* P 125.

¹⁹ *Id.* P 126.

²⁰ *Id.* P 128.

13. The Presiding Judge stated that MISO's Tariff affords it a measure of discretion when determining facilities needed to interconnect a generator. The Presiding Judge found that the choice does not have to be the "least cost" alternative, but it does have to be reasonable. The Presiding Judge stated that Jeffers South's cost responsibility for network upgrades is limited to the portion of the network upgrades that would not be needed but for the interconnection of that interconnection customer's generator. The Presiding Judge stated that the evidence here is that the Jeffers South Project would tax the system unless the upgrades set forth in the 2006 Transmission Owners Joint Study were added to the system. The Presiding Judge stated that to connect the Jeffers South Project reliably and efficiently, as MISO is required to do, the upgrades in the 2010 MISO Restudy are required. The Presiding Judge stated that those upgrades are the upgrades Jeffers South's predecessor, Wind Energy Developers, requested in order to interconnect the Jeffers South Project.²¹

14. The Commission reversed the Initial Decision in the Order on Initial Decision. The Commission found that the Jeffers South Project was only one of a number of considerations used to justify construction of the Dotson-New Ulm Line, and as a result it is not possible to conclude that the line would be unnecessary but for the Jeffers South interconnection request.²² The Commission found that while the Jeffers South Project created a need for network upgrades, there was no basis in the record to conclude that the Jeffers South Project would trigger a need for *all* the upgrades described in the 2010 MISO Restudy, which in turn relied upon assumptions in the 2006 Transmission Owners Joint Study. The Commission stated that the 2006 Transmission Owners Joint Study shows that the transmission owners, in particular Great River, affirmatively sought construction of the Dotson-New Ulm Line and the benefits it would provide and that the line was part of their own comprehensive transmission system plan.²³ In addition, the Commission noted that MISO had acknowledged that this was the case.²⁴

²¹ *Id.* P 131.

²² Order on Initial Decision, 144 FERC ¶ 61,033 at P 47.

²³ *Id.* P 51.

²⁴ *Id.* (citing MISO Answer to Complaint at 18 n.32, which referred to "[t]he upgrades on the [Great River] system" as "part of the overall coordinated plan. . .").

15. The Commission found that the 2006 Transmission Owners Joint Study was considerably more than a system impact study done for the Jeffers South Project. It was commissioned as part of a larger “[Great River] sponsored vision study.”²⁵ The Commission noted that the study states that it was “developed based on the plans developed in the vision study performed by Excel Engineering for a large wind generator near Storden [i.e., the Jeffers South Project]”²⁶ and that it was also undertaken to pursue other goals, viz., to “facilitate better overall system performance,” and to address “other deficiencies in the region including providing the City of New Ulm network transmission service and Mankato area load serving issues.”²⁷ The Commission thus found that one could not conclude that the Dotson-New Ulm Line would not be necessary but for the interconnection of the Jeffers South Project; rather, the 2006 Transmission Owners Joint Study indicates that the Dotson-New Ulm Line would not be necessary but for a number of other significant developments. The Commission found that other evidence in the record confirms this point, including a number of provisions of the Facilities Construction Agreement among Summit Wind, Great River, and MISO.²⁸ The Commission thus found that there was more than sufficient evidence to demonstrate that assigning responsibility for the Dotson-New Ulm Line to Jeffers South does not satisfy the “but for” standard.

II. Request for Rehearing, or in the Alternative, Guidance, and Responsive Pleadings

16. In its request for rehearing, or in the alternative, guidance, MISO maintains that there are two errors in the Order on Initial Decision: (1) the Order on Initial Decision violates the Federal Power Act and is arbitrary and capricious under the Administrative Procedure Act because it finds that Jeffers South is not bound by the actions of its predecessor in interest, Summit Wind; and (2) the Order on Initial Decision erred in not specifying the remedy granted to Jeffers South and MISO requests guidance regarding the appropriate next steps in processing the Jeffers South Project.²⁹

²⁵ *Id.* P 52 (internal citations omitted).

²⁶ *Id.* (internal citations omitted).

²⁷ *Id.* (internal citations omitted).

²⁸ *Id.* P 54.

²⁹ MISO Rehearing Request at 5 (internal citations omitted).

17. To support rehearing MISO argues that the Commission erred in finding that Summit Wind, Jeffers South's predecessor in interest, did not consent to be responsible for the costs determined by the results of the 2006 Transmission Owners Joint Study and that Summit Wind's consent does not apply to Jeffers South because of the limitations created by the "but for" standard.³⁰ MISO maintains that evidence in the record demonstrates that Summit Wind and its representative, Wind Energy Developers, affirmatively suggested the interconnection alternative that led to the study that MISO maintains Jeffers South later repudiated. MISO also alleges that the "but for" standard was not violated.³¹

18. As record evidence in support of its position, MISO points to a number of statements in the Initial Decision. First, MISO notes that the Presiding Judge found that the interconnection of the Jeffers South Project presented a number of challenges, including:

using an alternative proposal based on the suggestion of Jeffers South predecessor, Wind Energy Developers; having transmission owners develop a follow-up plan based on the alternative proposal; having

³⁰ *Id.* at 6.

³¹ *Id.* at 7 (citing Initial Decision, 139 FERC ¶ 63,002 at PP 127-128 and record evidence cited therein).

an earlier interconnection customer's decisions repudiated by a successor. . . .³²

19. Next, MISO notes that the Presiding Judge found that while Jeffers South objects to the use of the 2006 Transmission Owners Joint Study, which includes the Dotson-New Ulm Line, "its predecessor Wind Energy Developers had no such objections," and "Jeffers South is bound by the decisions of its predecessor(s)."³³

20. As record evidence regarding the upgrades contained in the 2010 Midwest ISO Restudy, MISO notes that the Presiding Judge found that those upgrades "are required," and that they are "upgrades Jeffers South's predecessor, Wind Energy Developers, asked Midwest ISO to link to [the Jeffers South Project]."³⁴ MISO also notes that the Presiding Judge found that "[t]he network upgrades identified in the 2010 Midwest ISO Restudy, including the Dotson-to-New Ulm Line comport with the 'but for' rule and will reliably and efficiently interconnect [the Jeffers South Project]."³⁵

21. Finally, MISO notes that the Presiding Judge found that "Jeffers South did not carry its burden of proving" that the 2010 Midwest ISO restudy did not comply with the governing rules and procedures or that the processing of the Jeffers South interconnection request was not otherwise in accord with the law, that MISO did not violate its Tariff in performing the restudy, including application of the "but for" test, and that Jeffers South is not entitled to any relief.³⁶ MISO argues that "[t]his record evidence contradicts the Commission's determination that Jeffers South should not be bound by the decisions of its predecessor in interest."³⁷

³² *Id.* at 7 (emphasis removed) (quoting Initial Decision, 139 FERC ¶ 63,002 at P 127).

³³ *Id.* at 7 (emphasis removed) (quoting Initial Decision, 139 FERC ¶ 63,002 at P 128).

³⁴ *Id.* at 8 (emphasis removed) (quoting Initial Decision, 139 FERC ¶ 63,002 at P 139).

³⁵ *Id.* (emphasis removed) (quoting Initial Decision, 139 FERC ¶ 63,002 at P 128).

³⁶ *Id.* (citing Order on Initial Decision, 139 FERC ¶ 63,002 at PP 143-145).

³⁷ *Id.*

22. MISO also argues that the Commission ignored evidence of Jeffers South's consent to assignment, which requires that Jeffers South abide by the terms of the Large Generator Interconnection Agreement and Facilities Construction Agreement following assignment of those agreements to Jeffers South as Summit Wind's successor in interest. MISO maintains that Jeffers South should not be entitled to avoid the impact of Summit Wind's decision simply because Summit Wind assigned its interest in the Jeffers South Project to Jeffers South.

23. In addition, MISO argues that the Commission erred in finding that Jeffers South's predecessor consented to MISO's use of the 2006 Transmission Owners Joint Study for purposes of a system impact study for the Jeffers South Project, but then found that the MISO study process did not satisfy the "but for" standard. MISO states that the Commission's Order on Complaint addressed the "but for" standard and explained that the standard is not whether a "least cost" alternative exists, and that MISO should use its study process to identify network upgrades that both ensure that an interconnection customer or a group of interconnection customers can reliably connect to the transmission system and that the network upgrades chosen promote efficiency. MISO states that in the Initial Decision the Presiding Judge found that the MISO process was appropriate and that the "network upgrades identified in the 2010 Midwest ISO Restudy, including the Dotson-to-New Ulm Line comport with the "but for" rule and will reliably and efficiently interconnect [the Jeffers South Project]."³⁸ MISO maintains that this demonstrates that these upgrades identified in the MISO study process satisfy the "but for" test.

24. In its request for guidance, MISO proposes a series of steps for processing the Jeffers South interconnection request going forward in the event that the Commission denies rehearing, and requests that the Commission acknowledge that this process is consistent with the Order on Initial Decision. First, MISO proposes to use the current version of Attachment X (Generator Interconnection Procedures (GIP)), which includes changes made during the third phase of MISO's queue reform proceeding while the

³⁸ *Id.* (citing Order on Initial Decision, 139 FERC ¶ 63,002 at P 139).

Jeffers South litigation was ongoing before the Commission.³⁹ MISO states that while the Order on Initial Decision specifies that any necessary restudy for the interconnection request must follow the procedures and timeline defined in Attachment X of the MISO Tariff, the Commission did not specify which version of Attachment X should apply. MISO notes that the Commission held in the Queue Reform III Rehearing Order that it is just and reasonable to apply the version of the GIP that is in effect at the time a restudy notice is given to existing projects. MISO states that it is not proposing unilateral amendment to agreements under the GIP, but rather would be applying the Revised GIP to the restudy in accordance with the Commission's Queue Reform III Rehearing Order.

25. MISO argues that using the Revised GIP is just and reasonable because restudy of the Jeffers South Project would have to be done as part of the ongoing group studies in the Definitive Planning Phase,⁴⁰ and it is impractical to use the procedures that were in place at the time the Jeffers South agreements were filed in 2008. MISO states that the size of the interconnection queue has significantly reduced since that time, and this changes generation assumptions. MISO states that restudying the Jeffers South Project under the outdated Large Generator Interconnection Procedures would raise uncertainty for numerous other projects and could trickle down to the latest study cycle due to redistributions of upgrades that could happen across lower-queued cycles.

26. MISO also argues that if, as Jeffers South argued, moving Jeffers South's Point of Interconnection to Heron Lake would not affect the rest of the queue, then the Jeffers South Project will not be harmed by being studied as a Definitive Planning Phase

³⁹ In the queue reform proceeding, MISO revised its GIP to make improvements to address backlogs in the interconnection queue and late-stage terminations of generator interconnection agreements. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233 (2012) (Queue Reform III Order), *order on reh'g and compliance filing*, 139 FERC ¶61,253 (2012) (Queue Reform III Rehearing Order), *order on clarification*, 150 FERC ¶ 61,035 (2015). We refer to the version of the GIP that was accepted in the queue reform proceeding as the "Revised GIP".

⁴⁰ The Definitive Planning Phase is the last phase of the MISO interconnection process prior to negotiation of an interconnection agreement. Under the Revised GIP, a project may elect to proceed through the interconnection process to the Definitive Planning Phase if it is prepared to proceed or remain in its new lower-queue position in the preceding phase, the System Planning and Analysis Phase. *See* Queue Reform III Order, 138 FERC ¶ 61,233 at PP 12-14 (describing the Revised GIP).

project.⁴¹ MISO maintains that this could even provide efficiency benefits while, in contrast, one-time use of the superseded Large Generator Interconnection Procedures for the Jeffers South Project would require MISO to divert resources used for the Revised GIP.

27. MISO further states that if the Jeffers South Project entered the Definitive Planning Phase, it would be subject to “readiness” milestones under the Revised GIP, but the Jeffers South Project could elect to remain in the System Planning and Analysis Phase at a minimal cost. MISO states that it would treat the Jeffers South Project as an “outstanding request” and would provide up to 90 calendar days for the project to transition to the Revised GIP. MISO also would consider the Jeffers South Project to be an Interconnection Request, subject to study or restudy, for which an Interconnection Agreement has been executed but the generating facility has not yet commenced commercial operation. MISO states that as a result, because the Jeffers South Project has not met the milestones under the Interconnection Agreement and Facilities Construction Agreement, it would need to meet the requirements of section 8.2 of the GIP at the end of the 90 day transition period, including payment of a study deposit and providing the Definitive Planning Phase entry milestone. According to MISO, this will demonstrate that the Jeffers South project is ready to proceed if it chooses to enter the Definitive Planning Phase.

28. Second, MISO proposes to restudy using one Point of Interconnection. MISO states that in the Order on Initial Decision the Commission did not clearly address Jeffers South’s request to move its Point of Interconnection to Heron Lake. MISO states that it reads the Order on Initial Decision as permitting restudy at the Heron Lake Point of Interconnection that Jeffers South requested absent a finding that the change would harm any lower-queued project. MISO states that under the Revised GIP, a change in the Point of Interconnection must happen before the Definitive Planning Phase, and under the Revised GIP, a change would be permissible. MISO states that ITC Midwest, the transmission owner to which the Jeffers South Project would interconnect at Heron Lake, has authorized MISO to state that ITC Midwest does not object to restudy at the new Heron Lake Point of Interconnection.

⁴¹ Request for Rehearing at 16 (citing Order on Initial Decision, 144 FERC ¶ 61,033 at P 21 & 26).

29. MISO states that it would perform the restudy using the process in the Revised GIP for a single Point of Interconnection (either the current Point of Interconnection or the Heron Lake Point of Interconnection later requested by Jeffers South), and it would not extend the restudy to review multiple Points of Interconnection, to consider the impact of other projects in hypothetical scenarios, or proceed with the restudy until Jeffers South funds it. MISO states that the Revised GIP requires that a project entering the Definitive Planning Phase provide a “definitive Point of Interconnection.” MISO states that the GIP also states that MISO will provide a notice of restudy if a restudy is required, and that the GIP in effect at the time that notice is given will apply. MISO asks that the Commission acknowledge that providing the Jeffers South Project with the option to change its Point of Interconnection to Heron Lake is consistent with the Order on Initial Decision, but that the Commission did not grant Jeffers South any alternative relief, but only the relief requested in Jeffers South’s complaint (i.e., guidance on a restudy) as discussed in the Order on Initial Decision.⁴² MISO states that if the Jeffers South Project wishes consideration of multiple possible Points of Interconnection, the best course of action under the Revised GIP would be to enter the System Planning and Analysis Phase. MISO states that once those studies allow Jeffers South to select a single Point of Interconnection, it can enter the Definitive Planning Phase.

30. Third, MISO proposes that Jeffers South retain Generator Interconnection Agreement suspension rights under the Interconnection Agreement and the Facilities Construction Agreement, but must use them prior to the restudy under the Revised GIP. MISO states that the Order on Initial Decision specified that the Jeffers South Project had a certain amount of suspension time remaining under its Interconnection Agreement and Facilities Construction Agreement. However, MISO argues that the project should either move forward under the MISO process or suspend. According to MISO, because suspension is incompatible with the Revised GIP, the Jeffers South Project must exercise these rights prior to entering the Definitive Planning Phase for a restudy. MISO states that permitting an interconnection customer to linger in the Definitive Planning Phase stage is contrary to the GIP procedure limiting suspension rights under the Interconnection Agreement to ensure the certainty that once a customer executes an interconnection agreement, the network upgrades will be built, and is incompatible with effective processing of the queue.

⁴² *Id.* at 22 (citing Order on Initial Decision, 144 FERC ¶ 61,033 at P 1).

31. MISO states that alternatively, if Jeffers South asks that its project be placed in suspension now, MISO will suspend work on it (i.e., MISO would not proceed with a restudy or seek milestone payments or a payment to fund a restudy at this time) and the suspension time for the Jeffers South Project will count down. MISO states that it revised its Tariff to limit suspension rights due to the uncertainty that the old suspension process caused, and these rights must be applied in a way so as not to harm other projects in the queue. According to MISO, applying the Revised GIP and allowing the Jeffers South Project to exercise suspension rights only prior to entering the Definitive Planning Phase for a restudy will prevent the Jeffers South Project from lingering in the queue indefinitely.

32. Finally, MISO asks that the Commission acknowledge that it is consistent with the Order on Initial Decision to apply to the Jeffers South Project the 100 percent reimbursement policy that applies to Network Upgrades on the ITC Midwest transmission system. MISO states that while the Commission has found that the 100 percent reimbursement policy for generator interconnection projects will not apply to projects connecting to the ITC Midwest transmission system going forward,⁴³ the Settlement Agreement and the Commission's order originally accepting ITC Midwest's 100 percent reimbursement proposal provide for the application of the 100 percent reimbursement methodology to the Jeffers South Project.⁴⁴ MISO states that ITC Midwest has authorized it to state that ITC Midwest does not object to applying that methodology based on the unique facts and orders in this case. MISO states that if Network Upgrades on the transmission system of another Transmission Owner are found to be needed, then the reimbursement policies in Attachment FF of the MISO Tariff (Transmission Expansion Planning Protocol) applicable to that transmission owner would apply, and if the Network Upgrades are on a non-MISO transmission owner's transmission system, then that non-MISO transmission owner's refund rules would apply.

33. In its answer to MISO's request for guidance, Jeffers South states that there has been no dispute regarding which version of Attachment X governed the Jeffers South interconnection. It states that the parties to this proceeding have stipulated that the version of Attachment X that applies to Jeffers South for all purposes is the Large

⁴³ *Id.* at 24 (citing *Interstate Power and Light Co. v. ITC Midwest, LLC*, 144 FERC ¶ 61,052 (2013)).

⁴⁴ *Id.* (citing *ITC Midwest, LLC and Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,150, at P 30 (2008)).

Generator Interconnection Procedures consistent with the Settlement Agreement. Jeffers South argues that MISO is proposing to change the parties' agreement on this matter unilaterally. Jeffers South argues that it would be unjust and unreasonable to apply the current GIP to it because MISO has caused whatever uncertainty there has been for existing projects.⁴⁵

34. Jeffers South argues that MISO is attempting to introduce facts into this proceeding and that MISO is making arguments about the effect of the Jeffers South Project on other projects that have not been identified. Jeffers South also states that the only justification that MISO provides for its request is that the one-time use of the LGIP for the Jeffers South Project would require MISO to divert resources used for the current GIP and attempt to apply the older LGIP processes that were superseded six years ago. Jeffers South states that MISO "simply does not want to spend the extra few hours" to provide the proper process to which Jeffers South is entitled.⁴⁶

35. Jeffers South states that sitting in the System Planning and Analysis is no different than filing a new interconnection application, which would be tantamount to forcing Jeffers South out of its proper place in the queue. Jeffers South argues that the many differences between the GIP the agreed version of Attachment X illustrate the unfairness of what MISO is proposing.⁴⁷

36. Finally, Jeffers South argues that MISO is raising other issues that do not require further guidance at this time or are improper, specifically issues regarding the point of interconnection, what Jeffers South characterizes as MISO's proposed substantive changes to its GIP that would apply only to Jeffers South, and the reimbursement policy for upgrades to a transmission owner's system other than ITC Midwest LLC.⁴⁸

⁴⁵ Jeffers South Answer at 5-6.

⁴⁶ *Id.* at 6-7.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 8-9.

III. Discussion

A. Procedural Matters

37. On September 3, 2013, Jeffers South filed an answer to MISO's request for rehearing or, in the alternative, guidance. On September 17, 2013, MISO filed an answer to Jeffers South's answer.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept MISO's answer to Jeffers South's answer to MISO's request for guidance and will, therefore, reject it.

39. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits answers to requests for rehearing. Accordingly, we reject Jeffers South's answer to MISO's request for rehearing and MISO's answer to that answer by Jeffers South.

B. Substantive Matters

40. We deny rehearing and provide guidance. With regard to MISO's request for rehearing, we reject MISO's argument that the Commission erred when it acknowledged that Jeffers South's predecessor in interest, Summit Wind, agreed to a certain study process but then determined that Jeffers South is not responsible for the choices that Summit Wind made. MISO maintains that "record evidence" contradicts the Commission's determinations,⁴⁹ including the determination that Summit Wind did not consent to broad cost responsibility. However, the "evidence" on which MISO relies consists of a series of findings that the Presiding Judge made in the Initial Decision and that the Commission reversed in the Order on Initial Decision. When the Commission reversed these findings, it provided an extensive explanation of its reasons for doing so, but MISO does not discuss or cite to the explanations that the Commission provided in the Order on Initial Decision. While MISO asserts that the Commission erred in reversing the Initial Decision, it does not identify or explain any specific errors that the Commission made. As a result, we will reiterate briefly why the statements from the Initial Decision on which MISO relies do not support its request for rehearing.

⁴⁹ MISO Rehearing Request at 8.

41. MISO states that the Commission acknowledged that Summit Wind, Jeffers South's predecessor in interest, agreed to a certain study process, but the Commission then determined that Jeffers South is not responsible for the choices made by Summit Wind. We reject this characterization of the Commission's findings in the Order on Initial Decision. There, the Commission rejected MISO's contention that when Summit Wind consented to MISO's use of the 2006 Transmission Owners Joint Study for purposes of a system impact study for the Jeffers South Project it consented to be potentially responsible for all the system upgrades proposed in that study and thus responsible for the Dotson-New Ulm Line once Great River decided not to construct it. As a result, we also reject MISO's contention that Jeffers South became responsible for these upgrades as Summit Wind's successor in interest. In its rehearing request, MISO gives two reasons why it concludes that the Commission erred when it found that Summit Wind did not agree to such broad potential cost responsibility.

42. The first of these reasons is that the Presiding Judge found in the Initial Decision that the "network upgrades identified in the 2010 Midwest ISO Restudy, including the Dotson-to-New Ulm Line," i.e., the same upgrades as were set forth in the 2006 Transmission Owners Joint Study, "comport with the 'but for' rule. . . ."⁵⁰ However, the Commission provided an extensive analysis in the Order on Initial Decision explaining why all of these upgrades, in particular the Dotson-New Ulm Line, would not be unnecessary but for the need to interconnect the Jeffers South Project.⁵¹ For instance, the Commission noted that the 2006 Transmission Owners Joint Study shows that the transmission owners, in particular Great River, affirmatively sought construction of the Dotson-New Ulm Line and the benefits it would provide and that the line was part of their own comprehensive transmission system plan.⁵² The Commission also noted that MISO has acknowledged that this was the case.⁵³ The Commission found that the 2006 Transmission Owners Joint Study "was considerably more than a system impact study done for the Jeffers South Project" and that "it was also undertaken to pursue other goals, viz., to 'facilitate better overall system performance,' and to address 'other deficiencies in the region including providing the City of New Ulm network transmission service and

⁵⁰ *Id.* at 10 (quoting Initial Decision at P 139).

⁵¹ Order on Initial Decision, 144 FERC ¶ 61,033 at PP 50-56.

⁵² *Id.* P 51.

⁵³ *Id.*

Mankato area load serving issues.”⁵⁴ MISO does not discuss these or any of the Commission’s other reasons for finding that the “but for” standard had not been met in this case. We therefore reject MISO’s argument that the findings of the Initial Decision support MISO’s conclusion that the “but for” standard has been satisfied.

43. Second, MISO argues that the Commission’s finding on the “but for” standard in the Order on Initial Decision is inconsistent with the Commission’s discussion of that standard in the Order on Complaint. The Commission found in the Order on Complaint that the “but for” standard did not require MISO to identify and quantify the least-cost option during the study process.⁵⁵ Instead, MISO has “discretion when determining what facilities should be built in order to accommodate the interconnection of a project or group of projects.”⁵⁶ MISO argues here that it used its study process in this way, and the Presiding Judge found in the Initial Decision that this was the case.⁵⁷

44. However, the Commission explained in its order on rehearing of the Order on Complaint that MISO does not have “unfettered discretion when determining what upgrades should be built and when assigning the costs of the chosen upgrades to the interconnection customer.”⁵⁸ The Commission pointed out in the Order on Initial Decision that MISO itself had acknowledged that the upgrades to the Great River transmission system contained in the 2006 Transmission Owners Joint Study, which included the Dotson-New Ulm Line, were part of an “overall coordinated plan” that covered much more than the interconnection of the Jeffers South Project. The fact that the Dotson-New Ulm Line was part of an overall coordinated plan that concerned much more than the interconnection of the Jeffers South Project makes clear that this facility was not deemed to be unnecessary but for the need to interconnect the Jeffers South Project. MISO does not have discretion to determine that facilities that were planned for purposes other than to interconnect the Jeffers South Project have become unnecessary but for the need to interconnect that project once it had been decided not to implement the

⁵⁴ *Id.* P 52 (quoting Ex. JS-11, Ex. 2 at 5).

⁵⁵ Order on Complaint, 134 FERC ¶ 61,013 at P 33.

⁵⁶ *Id.*

⁵⁷ MISO Rehearing Request at 9-10.

⁵⁸ Rehearing Order, 138 FERC ¶ 61,149 at P 17.

overall coordinated plan of which those facilities were originally a part.⁵⁹ We therefore reject MISO's contention that the Order on Initial Decision is inconsistent with the Commission's discussion of the "but for" standard in the Order on Complaint and deny rehearing.

45. With regard to MISO's request for guidance, we find that the Revised GIP applies. MISO states that the Jeffers South Project is an Interconnection Request, subject to study or restudy. Where Interconnection Requests require further study or restudy, MISO's Tariff at Section 5.1.2 "Transition Period" of Attachment X defines such requests as "outstanding" and requires that outstanding requests transition to the Revised GIP in 90 calendar days.⁶⁰ Inasmuch as MISO has sought guidance on this matter, we find that the 90 calendar days should start with the date of issuance of this order.

46. We also affirm that Jeffers South retained suspension rights that it could exercise as of the date of the Order on Initial Decision. However, we believe that that suspension time (360 days for the GIA) has expired. Regarding Jeffers South's status during a 90 calendar day Transition Period, we disagree with MISO that Jeffers South should revert to the System Planning and Analysis Phase. Here we note that Jeffers South's interconnection request was the subject of a Commission approved settlement and that its request is being processed again by MISO pursuant to the Commission's directive in the Order on Initial Decision. As explained below, we believe that assuming Jeffers South to

⁵⁹ In fact, in the 2010 MISO Restudy, MISO selected the option for interconnecting the Jeffers South Project that included the Dotson-New Ulm Line not through an exercise of what it considered to be its discretion under the "but for" standard, but rather because it asserted that not to do so would lead to an impermissible material modification under the MISO Tariff. The Commission rejected this argument in the Order on Initial Decision, and MISO has not sought rehearing in that connection. *See* Order on Initial Decision, 144 FERC ¶ 61,033 at PP 57-73.

⁶⁰ Section 5.1.2 of Attachment X in the MISO Tariff defines "outstanding request" to include any interconnection request on the effective date of the Revised GIP ... (iv) where any of the relevant Interconnection Studies, including restudies, are in process but not yet completed.

already be in the Definitive Planning Phase during the transition period is consistent with the unique history of this case.⁶¹

47. We further note that in order for MISO to determine appropriate cost responsibility, Jeffers South must request a single definitive Point of Interconnection. Section 4.4 of the Revised GIP provides that during the course and 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 (including reliability) of the interconnection, and the ability of the proposed change to accommodate the interconnection request. To the extent the identified changes are acceptable to the parties, section 4.4 provides that the transmission provider shall modify the Point of Interconnection. We expect all of the parties to endeavor to perform their obligations pursuant to the Tariff and in a cooperative manner going forward. MISO, in its request for rehearing, concedes that a change in Point of Interconnection would be permissible and does not object to restudy at the new Heron Lake Point of Interconnection. Thus, Jeffers South is required to specify its Point of Interconnection for purposes of the restudy and may request the Point of Interconnection when it proceeds to fund a restudy in the Definitive Planning Phase, consistent with section 8.2 of the Revised GIP.

48. Finally, with regard to crediting, in the Settlement Agreement, Summit Wind, ITC Midwest, and MISO agreed that Summit Wind “shall be entitled to receive 100% reimbursement for the network upgrade costs it funds under the LGIA.”⁶² While the Commission has ruled that ITC Midwest’s 100 percent reimbursement policy for generator interconnection projects will no longer apply to projects connecting to the ITC Midwest transmission system,⁶³ the Jeffers South Project would be grandfathered pursuant to the Settlement Agreement. Accordingly, the application of the 100 percent reimbursement methodology to the Jeffers South Project is indeed consistent with the language of the Settlement Agreement and is the method that should be used with respect to the Jeffers South Project.

⁶¹ See *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the Commission’s breadth of discretion is “at its zenith” when fashioning remedies).

⁶² Settlement Agreement at 6.

⁶³ See *Interstate Power and Light Co. v. ITC Midwest, LLC*, 144 FERC ¶ 61,052 at PP 40-41.

The Commission orders:

The request for rehearing is hereby denied and the request for guidance is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.