108 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER04-458-000 ER04-458-001

ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE FILINGS TO ORDER NOS. 2003 AND 2003-A

(Issued July 8, 2004)

1. In this order, the Commission accepts in part and rejects in part Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to the *pro forma* tariff sheets filed in compliance with Order Nos. 2003 and 2003-A,[1] to be effective as of the date of this order. The Commission finds that Midwest ISO's proposed revisions to the *pro forma* tariff sheets generally comply with the requirements of these orders, as discussed below. However, the Commission finds certain of Midwest ISO's proposed revisions inconsistent with Order Nos. 2003 and Order 2003-A, and rejects those revisions. The Commission also directs a further compliance filing from Midwest ISO regarding certain issues raised by its filings in the instant proceeding. This action benefits Midwest ISO customers because it ensures that the rates, terms, and conditions for interconnection service are just and reasonable.

[1] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (2004) (Order No. 2003-A), *reh'g pending; see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

Background

2. In Order No. 2003, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)[2] to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their Open Access Transmission Tariffs (OATT) a *pro forma* Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA). In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the *pro forma* LGIP and LGIA included in Order No. 2003 by January 20, 2004.[3] Order No. 2003-A, issued on rehearing, made certain revisions to the *pro forma* LGIP and LGIA.

3. The Commission, however, permitted independent transmission providers, *e.g.*, regional transmission organizations (RTOs), the flexibility to deviate from the *pro forma* LGIP and LGIA to meet their regional needs.[4] An independent transmission provider (*e.g.*, a regional transmission organization) could either file: (a) a notice that it intends to adopt the Order No. 2003 *pro forma* LGIP and LGIA; or (b) new standard interconnection procedures and agreements developed under an "independent entity variation" standard.[5] For independent transmission providers filing under option (b), the Commission would solicit comments on that filing before acting, and the independent transmission provider's existing, Commission-approved standards and procedures would continue to apply pending Commission action. After submitting its compliance filing, an independent transmission provider would continue to have the right to propose changes to its LGIP and LGIA using the "independent entity variation" standard.[6]

4. Midwest ISO proposes certain variations from the *pro forma* Final Rule LGIP and LGIA that it asserts are based on its operating requirements and are consistent with the flexibility provided to RTOs by the Commission in Order No. 2003.[7] Midwest ISO's specific proposed variations to the LGIP and LGIA are discussed below.

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[2] 16 U.S.C. §§ 824d-e (2000).

[3] *See* Notice Clarifying Compliance Procedures, *supra* note 1.

[4] *See, e.g.*, Order No. 2003 at P 26, 28, 32, 34, 92, 698-703 and 822-24.

[5] Order No. 2003 at P 827.

[6] *See* Notice Clarifying Compliance Procedures, *supra* note 1.

[7] Transmittal Letter to January 20 Filing at 5.

Description of Applicant

5. The Commission conditionally approved Midwest ISO as the nation's first RTO on December 20, 2001.[8] Midwest ISO has functional control over approximately 85,097 miles of transmission lines in 15 states and one Canadian province, and approximately 96,800 MWs of generation capacity participates in Midwest ISO. Midwest ISO explains that upon completion of the contemplated transactions with Ameren Service Company and Illinois Power Company,[9] an estimated 96,530 transmission line miles will be functionally controlled by Midwest ISO, and approximately 109,837 MWs of generation capacity covering over 931,000 square miles will participate in Midwest ISO.

6. Midwest ISO has approximately 65 members, consisting of: 24 transmission owners that have signed Transmission Owner's Agreements; one transmission owner (Manitoba Hydro) that has signed a Coordination Agreement; and more than 40 non-transmission owning members, including power marketers, municipals, cooperatives, the power marketing affiliates of public utilities owning and operating transmission assets that have not chosen to participate as transmission owners in Midwest ISO, industrial-end users, and independent power producers.[10]

Midwest ISO's Order No. 2003 and Order No. 2003-A Compliance Filings

7. In its initial Order No. 2003 compliance filing, submitted in Docket No. ER04-458-000 on January 20, 2004 (hereinafter referred to as January 20 Filing), Midwest ISO proposes to incorporate a modified LGIP and LGIA as a new Attachment X to the Midwest ISO OATT. Midwest ISO states that Attachment X generally follows the *pro forma* LGIP and LGIA provided in Order No. 2003, but that Midwest ISO has developed certain variations which it believes are necessary and appropriate based on its operational requirements as an independent RTO, and to provide greater efficiency to the generator interconnection process in response to regional circumstances. Midwest ISO notes that a majority of its proposed deviations from the *pro forma* LGIA will customize the agreement to accommodate the Transmission Owner as an additional signatory.[11]

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[8] *See* Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001) (December 2001 Order).

[9] *See* Docket Nos. ER04-673-000 & EC04-81-000 (the Ameren Service Company and Illinois Power Company merger filing).

[10] Transmittal Letter to January 20 Filing at 2.

[11] Transmittal Letter to January 20 Filing at 9-10. Unless otherwise determined in this order, proposed variations to accommodate the Transmission Owner as a third signatory to the LGIA are accepted. *See* Order No. 2003 at P 909.

8. Contemplating that its stakeholders would not universally approve the proposed revisions in spite of the extensive stakeholder process it engaged in prior to filing the proposals, Midwest ISO states that it believes that the proposals submitted provide a "fair approach to generator interconnections" by balancing the economic risks between interconnection customers and transmission owners, and among interconnection customers.[12]

9. Midwest ISO also files revised tariff sheets to: 1) clarify that upon effectiveness of Attachment X, the provisions of Attachment R will apply only to generators equal to or smaller than 20 MW; 2) modify the requirements of section 11 regarding the circumstances under which studies may be expedited; and 3) reduce the refundable deposits to be paid under Attachment R-1 from $10,000 to $5,000, consistent with current requirements for small generating facilities under Attachment R.[13]

10. On April 26, 2004, Midwest ISO submitted an additional compliance filing (hereinafter referred to as April 26 Filing) amending its proposed LGIP and LIGA to reflect both the guidance provided by Order No. 2003-A and certain suggestions and comments by intervenors in this proceeding.[14]

Notice of Filing, Interventions, Protests and Answers

11. Notice of Midwest ISO's Order No. 2003 compliance filing was published in the *Federal Register*[15] with comments, interventions and protests due on or before February 10, 2004. In response to a joint request by the Organization of MISO States (OMS) for an extension of time to submit interventions and protests, the Commission extended the comment period to February 27, 2004. Entities that filed motions to intervene are listed in Attachment A to this order.

12. On March 11, 2004, Consumers Energy Company submitted an answer to the comments of (OMS). On March 15, 2004, Midwest ISO filed an answer to the comments and protests. On April 26, 2004, WPS Companies filed an answer to Midwest ISO's answer.

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[12] Transmittal Letter to January 20 Filing at 6.

[13] *Id.* at 5-6, 34.

[14] Transmittal Letter to April 26 Filing at 3.

[15] 69 Fed. Reg. 5851 (2004).

13. Notice of Midwest ISO's April 26 Filing was published in the *Federal Register*[16] with comments, interventions and protests due on or before May 17, 2004. Midwest TDU's, The WPS Companies, Midwest ISO Transmission Owners, PPM Energy, Inc., Consumers Energy Company (Consumers Energy), and Constellation Generation Group, LLC (Constellation) filed motions to intervene, protests and/or comments directed to the April 26 Filing.

14. Midwest ISO filed an answer to the protests and comments regarding the April 26 Filing on June 1, 2004. On June 16, 2004, Midwest TDUs filed an answer to Midwest ISO's answer.

Discussion and Commission Conclusions

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure[17] the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[18] prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Pricing-Related Issues

Facility Operation Above Study Limit (Article 9.4.1 of the LGIA)

i. Midwest ISO Proposal

17. Midwest ISO proposes, in a new article 9.4.1, to assess a charge of (1) $100.00/MW, or (2) 115 percent of the price associated with the sale to any third-party purchaser of such excess Generating Facility output, plus any charges, penalties or fees that may be imposed on an entity other than an Interconnection Customer that are the result of the Generating Facility operating above its Maximum Output. Midwest ISO states that its proposed new article 9.4.1 attempts to provide a disincentive to the

[16] 69 Fed. Reg. 25,382 (2004).

[17] 18 C.F.R. § 385.214 (2003).

[18] 18 C.F.R. § 385.213(a)(2) (2003).

Interconnection Customer to operate at an output level above the level studied until such time as the Interconnection Customer submits an Interconnection Request related to the higher output level. Midwest ISO also states that notwithstanding that the Generating Facility's operation above its maximum confirmed output level may not harm the Transmission System in a particular circumstance, the potential for harm exists. Such operation above the studied limits may shorten the life of transmission and interconnection related facilities, overload such facilities, increase the likelihood of instability and equipment outages, and cause unnecessary transmission constraints.[19] Midwest ISO also commits to amend its Operating Protocol for Existing Generators to provide Midwest ISO authority to assess existing generators a similar charge.[20]

ii. Intervenor Comments

18. Consumers Energy states that requiring a generator to pay penalties whenever it goes above its studied maximum generation level fails to recognize the realities of operating a generating unit and the variables affecting the actual MW output of a generating facility operating at maximum capacity. Consumers Energy proposes a modification, such that Midwest ISO could impose penalties for exceeding the maximum output only when the actual output exceeds the maximum by more than three percent.[21]

19. Mirant Wyandotte, LLC (Mirant) argues that Midwest ISO should clarify that new article 9.4.1 does not apply when a generator is directed to exceed its studied maximum output level by either Midwest ISO or the control area operator, such as during an emergency. Mirant also states that the interconnection application submitted by the customer should list "maximum output" under several scenarios (*e.g.*, summer and winter) and that the penalty should be applied pursuant to the maximum output from the relevant scenario.[22]

20. WPS Companies seek recognition that forecasting the capacity of a generating unit well before the unit's in-service date cannot always be accomplished with precision, and that consequently some flexibility in the process of establishing generation limits is necessary. Additionally, they contend that the limits which are established must distinguish between periods of normal and emergency operations.[23] Further, WPS

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[19] Transmittal Letter to January 20 Filing at 22-24.

[20] Transmittal Letter to January 20 Filing at 21.

[21] Motion to Intervene and Comments of Consumers Energy (Feb. 10, 2004) at 4-7.

[22] Protest of Mirant at 4-5.

[23] Protest, Motion to Intervene, and Alternative Requests for Rejection or Hearing

Companies argue that new article 9.4.1 should be rejected because it does not apply to existing generators. While Midwest ISO has pledged to amend current operating protocols to include a similar provision for existing generators, they contend that Midwest ISO should not impose any penalties until they are in force for all generators. WPS Companies state that these penalties should be included in tariffs that are filed and approved by the Commission. WPS Companies request that, if the Commission doesn't reject new article 9.4.1, Midwest ISO be directed to work with stakeholders to draft a revised Tariff provision which provides for normal and emergency capacity limitations.[24]

21. Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (Duke Energy) states that Midwest ISO should be directed to amend article 9.4.1 to clarify how penalties will be imposed and to ensure that they are assessed in a manner consistent with the maximum output levels used for study purposes. For example, the form of interconnection request requires maximum output for summer and winter at specified temperatures. However, if actual temperatures are different than the two used for study purposes, the output of the generator will change accordingly. Duke Energy explains that this is not due to any inappropriate operating practice, but due to characteristics of the unit. Duke Energy also states that the proposal is unclear as to how it relates to penalties that may be imposed for unauthorized usage of transmission service or generator imbalance penalties.[25]

iii. Midwest ISO Answer

22. Midwest ISO answers that it can only study the output level reflected in the generator's valid interconnection request using information provided by the generator, and that it is upon the generator's own estimate of its maximum output of its facility that System Impact Studies are performed and necessary Network Upgrades are determined. If a generator believes that its constructed facility may generate additional electricity, it should request that Midwest ISO study the facility's impact on the grid at that contemplated maximum output. Midwest ISO submits that it is appropriate to place the burden on the generator to accurately estimate the projected output of its facility because the generator is the party able to accurately gauge the projected output of its facility.[26]

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of WPS Companies (Feb. 27, 2004) at 4-10.

[24] *Id.* at 10-12, 17-18.

[25] Motion to Intervene and Protest of Duke Energy at 15-16.

[26] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 8-9.

23. According to Midwest ISO, system reliability should not be placed at risk to accommodate over-generation, and a generator should be at risk for additional costs to the system if the generator chooses to generate at a level that exceeds the limit shown through the study to be safe. Regarding concerns that generators not face penalties for over-generation resulting from Midwest ISO directives or by virtue of a grid emergency, Midwest ISO clarifies that it will not impose such disincentives where over-generation is required in order to address system emergencies. Midwest ISO states that it will propose appropriate revisions to article 9.4.1, to reflect this clarification, in its Order No. 2003-A compliance filing.[27]

iv. Midwest ISO's April 26 Filing

24. Midwest ISO specifies in the April 26 Filing that a penalty would not be imposed when the Interconnection Customer is "directed by the Midwest ISO or Transmission Owner during an Emergency Condition" to operate above the studied maximum.[28]

v. Intervenor Comments on April 26 Filing

25. WPS Companies reiterates its opposition to article 9.4.1, and states that Midwest ISO's proposed revision in the April 26 Filing does not address many of the issues it raised.

vi. Commission Conclusion

26. We find some merit in Midwest ISO's proposal to impose a charge on generators that operate above the limits specified in the final Facilities Study report, but will reject the proposal without prejudice to Midwest ISO submitting a revised proposal with appropriate support in a future section 205 filing. Generators operating above the output limits, which the generators themselves provide, can compromise system reliability. The charge for output above the stated study limit provides a strong incentive to generators to operate in a manner consistent with the maximum output numbers provided to Midwest ISO for study. It also gives generators an incentive to provide an accurate assessment of output levels to Midwest ISO, and properly places the burden of generating above the maximum output levels on the generators who provide those levels.

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[27] *Id.* at 9-10.

[28] *See* Midwest ISO's proposed article 9.4.1 of the LGIA, contained in April 26 Filing.

27. Nevertheless, we are persuaded by commenters' concerns regarding the proposal's failure to recognize output variations at different temperatures and the need for an allowance band for a certain level of generation over the limits stated in the study report. Giving generators greater flexibility to respond to system conditions will help ensure that Midwest ISO penalizes the conduct it seeks to discourage. We are also concerned that the relationship between this proposed penalty and other proposed penalties in Midwest ISO's OATT, particularly those for unauthorized use of the transmission system, has not been addressed. If Midwest ISO wishes to pursue this proposal it should review these and other concerns expressed by stakeholders in the instant proceeding and address whether it believes such revisions are necessary, and file a proposal with such supporting analysis and any revisions in a future section 205 filing.

Adoption of *Pro Forma* Crediting Proposal (Article 11 of the LGIA)

i. Midwest ISO Proposal

28. Based on its evaluation of the various pricing proposals discussed with OMS, OMS Pricing Working Group, and those participating in the stakeholder process, Midwest ISO states that the "default" transmission credit pricing provisions established in article 11.4 of the standard LGIA, with certain variations, is appropriate for it to implement at this time. Midwest ISO believes its proposal is consistent with the requirements of Order No. 2003 and best serves the interests of Midwest ISO and its stakeholders as an interim price proposal. Midwest ISO emphasizes that it will continue to work with its stakeholders and OMS in evaluating alternative pricing proposals, specifically a "beneficiary-based" methodology. Midwest ISO has established a task force on this issue with the goal of making an October 1, 2004 tariff filing with the Commission with a requested December 1, 2004 effective date.[29]

29. Midwest ISO acknowledges, however, that the default pricing provisions established in Order No. 2003 may result in certain inequities when applied by an RTO, and particularly Midwest ISO. For example, Midwest ISO states that the default crediting proposal may not adequately address situations where an interconnection customer intends to sell its output off-system or out of state. In addition, Midwest ISO contends that some states may not allow network upgrade costs to be rolled into the base rates of local customers that are not beneficiaries of the upgrades. Furthermore, adoption of the default pricing methodology is not fully compatible with the existing transmission revenue allocation process within Midwest ISO – the default transmission service credit mechanisms may require certain transmission owners to provide credits for network

[29] Transmittal Letter to January 20 Filing at 28-29.

upgrades despite the fact that, under the existing transmission revenue allocation process, such transmission owners may receive little or no revenue related to transmission over the network upgrade.[30]

30. Midwest ISO also recognizes that the proposal will not necessarily be met by universal approval from its stakeholders, notwithstanding the extensive stakeholder process followed prior to submitting this filing. Midwest ISO believes, however, that the proposal provides a fair approach to generator interconnections that balances the economic risks between interconnection customers and transmission owners, and among interconnection customers.[31] It states that it has independently determined that the default pricing proposal, as modified, is the most appropriate approach pending development and implementation of a Commission-approved beneficiary-based cost allocation methodology.[32]

ii. Intervenor Comments

31. Midwest ISO Transmission Owners and Otter Tail Power Company (Otter Tail) argue that Midwest ISO essentially admits in the transmittal letter that its proposal is unjust and unreasonable when it states that the proposal may result in certain inequities and that payments will not correlate to benefits and that transmission owners may not have a reasonable opportunity to recover their costs.[33] Both protesters believe that the problems associated with the default pricing proposal could be avoided if Midwest ISO extends, for the interim period, the already approved provisions of Attachment N to the Midwest ISO OATT, which covers interconnection requests as part of the transmission service request process.[34]

32. OMS supports Midwest ISO's proposal based on the default proposal of Order No. 2003 as an interim measure because, taken as a whole, it constitutes an improvement in overall generator interconnection terms and conditions as compared to current procedures.[35] However, OMS believes the Commission should require Midwest ISO, in

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[30] Transmittal Letter to January 20 Filing at 29.

[31] *Id.* at 6.

[32] *Id.* at 29-30.

[33] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 9-10; Protest of Otter Tail at 6.

[34] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 13-14; Protest of Otter Tail at 10-11.

[35] Comments of OMS at 12.

coordination with stakeholders and the OMS, to establish a schedule and a set of milestones to meet the goal of developing a permanent generator interconnection cost allocation policy that can be filed with the Commission and be made effective no later than December 1, 2004.[36] OMS also argues that the "refund" concept in Midwest ISO's proposed pricing proposal should be replaced with a "credit" concept now used in Midwest ISO's Attachment R, where credits are given only for transmission service actually purchased from the transmission owner.

iii. Midwest ISO Answer

33. In response, Midwest ISO contends that criticisms of the adoption of the default pricing methodology represent a collateral attack on Order No. 2003. Regarding commenters' preference for Attachment N to the Midwest ISO OATT, Midwest ISO states that Attachment N would have to be revised because it does not address network upgrades driven by requests for generator interconnections.[37] In any event, according to Midwest ISO, its existing interconnection provisions in Attachment R effectively replaced the provisions in Attachment N with regard to allocation of the costs of generator interconnection-related facilities, and Midwest ISO's administration of the transmission crediting provisions of Attachment R is consistent with the default pricing provisions in Order No. 2003.[38]

34. Midwest ISO states that it will submit amended tariff sheets changing references to "refunds" in its proposal to "credits," as requested by OMS and supported in Order No. 2003-A.[39]

35. Finally, Midwest ISO notes, the Commission has stated that regional state committees, such as OMS, may establish criteria that an independent entity would use to determine which network upgrades, including those required for generator

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[36] Comments of OMS at 13-14.

[37] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 7. Midwest ISO notes that it discussed with stakeholders, including OMS, proposed modifications to Attachment N to accommodate generator interconnections, but could not reach consensus on modifications that would be superior to the default provisions of Order No. 2003. *Id.*

[38] *Id.* at 6, n. 9.

[39] Midwest ISO's April 26 Filing incorporates this element of Order No. 2003-A. *See* Transmittal Letter to April 26 Filing at 4.

interconnections, should be participant funded.[40] Midwest ISO states that it greatly values OMS' input and believes that its approach is consistent with OMS' position.[41]

iv. Midwest ISO's April 26 Filing

36. In Order No. 2003-A, we further allowed that a Transmission Provider may choose, no later than five years from the Commercial Operation Date of a Generating Facility, either of two options: (1) return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that the Transmission Provider or Affected Systems Operator will continue to provide payments until all amounts advanced for Network Upgrades have been repaid, plus interest. Midwest ISO states that its LGIA has been modified to comply with the Commission's finding to permit the Transmission Owner this flexibility.[42]

v. Intervenor Comments on April 26 Filing

37. Midwest ISO Transmission Owners reiterate the concerns they raised in their initial protest, especially with regard to what they characterize as the potential lack of additional revenue to offset the credits required in Midwest ISO's proposal.

vi. Commission Conclusion

38. We accept Midwest ISO's general proposal to implement the "default" pricing proposal of Order No. 2003,[43] as revised in the April 26 Filing. We note that Midwest ISO states its intent that the default pricing proposal will remain in effect only until a pricing policy based on the OMS principle of payment for upgrades by those that cause and benefit from the upgrades can be established by Midwest ISO and its stakeholders.[44] This is a goal supported by many intervenors in this proceeding, and we encourage

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[40] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 8, *citing* Order No. 2003 at P 698.

[41] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 6-8.

[42] Transmittal Letter to April 26 Filing at 4.

[43] Midwest ISO proposes some changes to the pricing provisions in Order No. 2003, which we discuss in other parts of this order.

[44] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 4.

Midwest ISO to continue to work with stakeholders in considering such a pricing policy. Midwest ISO outlines the actions it is taking to develop such a proposal,[45] and while we will not impose a deadline for filing the proposal at this time, we expect Midwest ISO to work with stakeholders to meet its goal of having a permanent pricing policy in effect by December 1, 2004.

39. Turning specifically to protests on this issue, we reject as a collateral attack on Order No. 2003 the Midwest ISO Transmission Owners' and Otter Tail's insistence that Midwest ISO immediately adopt an allocation method other than the one outlined in Order No. 2003. While Order No. 2003 allows independent Transmission Providers to propose innovative cost-recovery methods, it does not require them to make such proposals. However, as discussed above, we encourage Midwest ISO to work with its stakeholders to develop such proposals. Also, as Midwest ISO points out in its answer, Midwest ISO Transmission Owners' and Otter Tail's reliance on Attachment N as a replacement for the default proposal is misplaced because Attachment R is the currently effective, Commission-approved tariff that succeeded the provisions in Attachment N with regard to cost recovery of generator-related facilities. In any event, Midwest ISO's proposal is only an interim measure that will be superseded by the alternate, long-term proposal that Midwest ISO has committed to file later this year.

Deferral of Transmission Credits (Article 11.4.1 of the LGIA)

i. Midwest ISO Proposal

40. Midwest ISO proposes to add language to article 11.4.1 to deny the payment of credits due to an Interconnection Customer for Network Upgrades if the Generating Facility's output at the Commercial Operation Date is five percent below the threshold level at which Network Upgrades would not have been required but for the Interconnection Request. Repayment, plus interest, would commence when the Network Upgrades are actually needed to accommodate the demonstrated capacity of the Generating Facility and other firm uses of the Transmission or Distribution System.

41. Midwest ISO states that this change appropriately reduces the risk that the Transmission Owner will be required to pay credits to the interconnection customer for facilities before they are needed. Moreover, Midwest ISO believes that its proposal recognizes the regulatory risk faced by Transmission Owners that might otherwise be required to provide credits for the costs of Network Upgrades that will not be deemed to be "used and useful" by a state regulatory authority, or otherwise not approved for pass-through in rates. Midwest ISO explains that its proposal also would ensure that the generating facility receives repayment for the cost of Network Upgrades it incurs, with

[45] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 5.

interest, when the Network Upgrades are needed.[46] Midwest ISO states that the intent of these provisions is not to be a "penalty" on the generators, but to ensure the safe and reliable operation of the transmission system and to ensure that such operation is conducted with the best information available.[47]

ii. Intervenor Comments

42. Tenaska, Inc. (Tenaska) argues that the Commission should reject the proposal to limit credits because it would likely lead to future disputes and because little purpose would be served, since the credits do not disappear and are only deferred. As a practical matter, Tenaska argues, different Network Upgrades will be required at different outputs, and thus there is unlikely to be a single cut-off for determining when Network Upgrades are needed. This may require each Network Upgrade to have a specific cut-off point, which, besides being cumbersome, could result in disputes over the level of transmission credits a generator is entitled to at any one time. Midwest ISO's proposal will also unfairly delay credits to which the interconnection customer is entitled.[48]

43. Constellation states that the new credit policy appears to be arbitrary and would create a new risk with respect to transmission credits. Constellation argues that due to the inherent uncertainty of modeling efforts and system conditions, the interconnecting generator should not be put at risk for non-recovery of the costs of required network upgrades should they turn out to be unnecessary after the fact. Constellation believes that, at a minimum, the threshold capacity margin should be widened above five percent to some reasonable bandwidth that better integrates the lumpiness of transmission investments, study error and the dynamic and evolving nature of the transmission system.[49]

44. Duke Energy contends that Midwest ISO's premise for its proposal to defer credits is in direct opposition to Commission policy, which it asserts acknowledges that the transmission grid is a cohesive network and that grid upgrades are used by and benefit all users due to the integrated nature of the grid. Duke Energy also argues that Midwest ISO's presumption that interconnecting generators do not have incentives to minimize interconnection upgrade costs is misplaced, because generators fund network upgrades in

[46] Transmittal Letter to January 20 Filing at 31.

[47] *Id.* at 31-32.

[48] Motion to Intervene and Comments of Tenaska at 6-7.

[49] Motion to Intervene and Comments of Constellation (Feb. 10, 2004) at 3.

advance at a significant cost. Midwest ISO has also not demonstrated, according to Duke Energy, that the construction of transmission capacity that exceeds the amount needed is a problem in Midwest ISO, or that system planning would have been affected by the amount of divergence.[50]

45. OMS supports the credit-limiting mechanism as an interim measure and views it as an improvement over the credit mechanism in effect in Attachment R.[51]

iii. Midwest ISO Answer

46. Midwest ISO argues that generators are in the best position to assess the likely output of their facilities, and the burden should be on the generators to provide an accurate assessment of the output of their facilities when system impact studies are being performed. Moreover, Midwest ISO believes that this proposal is consistent with Order No. 2003-A's clarification that generators are entitled to credits only when transmission service is taken over the transmission provider's system for the generation source in question.[52]

iv. Midwest ISO's April 26 Filing

47. Midwest ISO revised the proposal such that interest would not accrue during periods when either the Network Upgrades have been determined not to be needed pursuant to article 11.4.1 or the Interconnection Customer has suspended construction pursuant to article 11. Midwest ISO claims that the Commission's clarification in Order No. 2003-A that costs related to customer requested suspension of construction of interconnection and Network Upgrades are not eligible for credits supports this revision.[53]

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[50] Motion to Intervene and Protest of Duke Energy at 10-13.

[51] Comments of OMS at 13.

[52] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 10-11, *citing* Order No. 2003-A, at P 614-15.

[53] Transmittal Letter to April 26 Filing at 9-10; *see also* Order No. 2003-A at P 321.

v. Commission Conclusion

48. We will accept Midwest ISO's proposal to defer credits in certain circumstances until the Network Upgrades built for an interconnection customer are actually needed or used. We find that Midwest ISO, as an independent entity, should be able to determine the required type and amount of Network Upgrades on a transparent and non-discriminatory basis. Midwest ISO commits to provide Interconnection Customers with all required information about various Network Upgrade costs and options, including a matrix that lists the threshold capacity levels and associated Network Upgrades. Therefore, Interconnection Customers will know throughout the interconnection process exactly what Network Upgrades are required for what capacity level, and will be able to plan accordingly. We also note that if the output of the generator is below a certain level beyond the five percent band, credits for certain Network Upgrades to the Interconnection Customer will only be delayed, and not forfeited.

49. We will also conditionally accept Midwest ISO's revision to the proposal such that interest will not accrue during the deferral period. This approach is appropriate because no service is being taken over the unneeded facilities, either by the interconnecting generator or Midwest ISO, and Midwest ISO is not charging the Interconnection Customer for service over the facilities in question. The credits being deferred only relate to interconnection and Network Upgrades that are built at the Interconnection Customer's request using generation output data provided by the Interconnection Customer, but turn out not to be needed to accommodate the interconnecting generator's revised, lower, output or for other firm uses of Midwest ISO's system. Therefore, interest need not accrue on the cost of those facilities until such time that they begin to be used. Interest should begin to accrue once the interconnecting generator produces at the output which it originally submitted to the Midwest ISO for study or when the Midwest ISO determines the facilities are necessary for other uses of the system. However, we are concerned that, with the deferral of such credits without interest once the network upgrades are in service, the Transmission Owner will over-recover the cost of such facilities through the formula rate in Attachment O of the Midwest ISO OATT. Therefore, we will require Midwest ISO to address this concern and propose appropriate modifications to the Attachment O formula rate in a compliance filing within 60 days of the date of this order.

50. We accept the proposed modification in this case because the timing of the refunds will rely on the analysis performed by Midwest ISO, an independent entity. As we stated in Order No. 2003-A, since RTOs and ISOs are independent, and neither own nor have affiliates that own generating facilities, we are less concerned that existing utility-owned

generating facilities will be favored over new generating facilities or that utilities will "gold plate" their systems at the Interconnection Customer's expense. The Commission gives deference to RTOs and ISOs in certain areas, not just interconnection, because they have no incentive to administer the transmission system in a discriminatory manner.[54]

Midwest ISO as an Affected System (Article 11.4.2 of the LGIA)

i. Midwest ISO Proposal

51. Article 11.4.2 of the LGIA establishes procedures for coordinating Interconnection Studies and determining whether any Network Upgrades will be required on the Midwest ISO Transmission System as the result of a generator interconnection on another system (*i.e.*, where Midwest ISO's Transmission System is an Affected System). Midwest ISO proposes that where Midwest ISO is an Affected System, repayment of Network Upgrade costs incurred by a Generating Facility located on a different system will commence only: (1) after such facility achieves commercial operation; (2) based on the demonstrated output capability of the facility (in accordance with Midwest ISO's proposed pricing policy); and (3) to the extent that such facility takes Transmission Service under the Midwest ISO OATT.[55]

52. Midwest ISO states that it understands that it may be appropriate that a non-independent Transmission Provider that is an Affected System be required to pay credits for Network Upgrades funded by an Interconnection Customer, regardless of whether transmission service is ever taken on that Affected System. As an independent Transmission Provider, however, Midwest ISO states that it has no incentive to blur the issue of whether a Network Upgrade is truly a "but for" facility or whether it was otherwise needed to meet other existing commitments, including load growth. Midwest ISO explains that the cost burden of Network Upgrades on the Midwest ISO Transmission System that would not have been required "but for" the externally located generating facility should not be unconditionally borne by Midwest ISO loads and Transmission Owners. Rather, Midwest ISO states, the obligation to repay such costs should be limited to the extent the remote generator serves load or otherwise takes transmission service on the Midwest ISO system.[56]

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[54] Order No. 2003-A at P 691.

[55] Transmittal Letter to January 20 Filing at 32-33.

[56] *Id.* at 33-34.

ii. Intervenor Comments

53. Tenaska states that Midwest ISO has not justified its deviation from Order No. 2003 and should not be able to require generators on other systems to fund upgrades on the Midwest ISO system without being reimbursed.[57]

54. Duke Energy states that Midwest ISO's proposal is a collateral attack on the Commission's ruling in Order No. 2003 that provides for a five-year payback of Affected System Network Upgrade costs. Midwest ISO's reliance on the fact that it is independent is misplaced, according to Duke Energy, because the Commission's ruling did not reflect concerns that Affected Systems were more likely to overstate the upgrades required to interconnect a generator to a remote transmission system. Further, the proposal will create unreasonable differences between situations where Midwest ISO is the Affected System, and where a neighboring system is the Affected System due to a Midwest ISO interconnection request.[58]

iii. Midwest ISO Answer

55. Midwest ISO notes that the Commission clarified in Order No. 2003-A that crediting of Network Upgrade costs is appropriate only to the extent that transmission service on the Transmission Provider's system is taken for the generator's output, and asserts that its proposal is consistent with this clarification.[59]

iv. Commission Conclusion

56. We accept Midwest ISO's proposal to credit costs of Network Upgrades built on Midwest ISO's system to interconnection customers on neighboring systems only to the extent that those customers take transmission service on Midwest ISO's system, which is consistent with Order No. 2003-A.[60] Therefore, Midwest ISO's proposal is not a variation from the *pro forma* LGIA.

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[57] Motion to Intervene and Comments of Tenaska at 5-6.

[58] Motion to Intervene and Protest of Duke Energy at 13-14.

[59] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 11-12, *citing* Order No. 2003-A at P 614-15.

[60] Order No. 2003-A at P 10.

Interest Rate

i. Midwest ISO Proposal

57. Midwest ISO proposes to establish the appropriate interest rate, where specified, pursuant to 18 C.F.R. § 35.19a(a)(2)(iii) (2000), instead of applying the nine percent rate derived from 18 C.F.R. § 35.19a(a)(2)(ii), as directed in Order No. 2003. Midwest ISO argues, generally, that a fixed interest rate of nine percent is inappropriate and that clause (ii) is inapplicable on a plain reading of the regulation.[61]

ii. Commission Conclusion

58. References in Order Nos. 2003 and 2003-A to the interest rate pursuant to C.F.R § 35.19a(a)(2)(ii) were made inadvertently. We will conditionally accept Midwest ISO's proposal, subject to the corrections to the interest rate references that will appear in Order No. 2003-B.

Payment for Reactive Power (Article 9.6.3)

i. Midwest ISO Proposal

59. Midwest ISO proposes to revise article 9.6.3 of the LGIA to reference and apply a compensation schedule that will be filed by Midwest ISO as a revision to its current Schedule 2 under the Midwest ISO OATT. Midwest ISO states that it is currently working with its stakeholders to revise the compensation schedule for the provision of reactive power.[62]

60. Midwest ISO also proposes to revise article 9.6.1 to clarify that the Large Generating Facility must be able to operate throughout the specified power factor range of 0.95 lag to 0.95 lead as measured at the interconnection point. The proposed added language states: "The Generating Facility shall be capable of continuous dynamic operation throughout the power factor design range as measured at the Point of Interconnection. Such operation shall account for the net affect of all energy production

[61] Transmittal Letter to January 20 Filing at 26-27.

[62] Transmittal Letter to January 20 Filing at 24, *citing* Troy Energy, L.L.C., 105 FERC ¶ 61,259 at P 21 (2003). In *Troy Energy*, the Commission discussed Midwest ISO's stakeholder process to establish a mechanism to compensate independent generators for providing reactive power and encouraged Midwest ISO to establish a comprehensive compensation methodology. Midwest ISO stated that it was currently engaged in such a stakeholder process and expects to file modifications to Schedule 2 within 120 days. Midwest ISO has not filed such modifications.

devices on the Interconnection Customer's side of the Point of Interconnection." Midwest ISO contends that the generating facility must have the capability to follow voltage schedules, pursuant to article 9.6.2, to absorb or supply reactive power in accordance with system needs. Midwest ISO also notes that article 9.6.1 already allows Midwest ISO to follow different power factor criteria currently applied to generators in the Mid-Continent Area Power Pool (MAPP) region.

ii. Intervenor Comments

61. Mirant points out that Midwest ISO has not committed to a deadline for filing the appropriate OATT language to implement article 9.6.3. Mirant believes that without a hard deadline for filing tariff language, the stakeholder negotiations could take several months or years before a filing is made to compensate generators for these services.[63]

62. Consumers Energy characterizes article 9.6.1 as allowing "different control areas to set their own power factor design criteria as long as those criteria 'apply to all generators in the control area on a comparable basis.'"[64] Consumers Energy asserts that while Midwest ISO took this language from Order No. 2003's *pro forma* LGIA, the Commission should reassess allowing control areas to set their own power factor criteria. Consumers Energy argues that generators who operate at higher required standards, such as those proposed by Midwest ISO, will lose reactive output to nearby generators and control areas with lower standards, thereby effectively subsidizing the neighboring generators and control area.[65]

iii. Commission Conclusion

63. We agree with Mirant that an appropriate compensation schedule should be in place at the earliest possible time for the provision of reactive power. We therefore direct Midwest ISO to file an amended Schedule 2 within 60 days of the date of this order.

64. We will accept Midwest ISO's revision to article 9.6 which, among other things, clarifies that a generating facility must be capable of operating over the entire range specified (0.95 lag to 0.95 lead). Thus, a facility must be capable of following voltage schedules pursuant to article 9.6.2, which requires generators to absorb or supply reactive power in accordance with system needs. Regarding Consumers Energy's concerns, in Order No. 2003 we stated that if a transmission provider wants to adopt a different power

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[63] Protest of Mirant at 5-6.

[64] Motion to Intervene and Comments of Consumers Energy (Feb. 10, 2003) at 7.

[65] *Id.* at 7-8.

factor requirement for the interconnection of generators, article 9.6.1 permits it to do so as long as the power factor requirement applies to all generators in the control area on a comparable basis.[66] Therefore, we will not require Midwest ISO to amend its tariff to adopt a more stringent requirement mandating identical power factor requirements among control areas. With regard to the potential subsidization of reactive power from one area to another, we believe that Transmission Providers are in the best position to identify such situations as they exist, and suggest that these entities attempt to work with their stakeholders to develop a regional solution to such situations. Additionally, we view Consumers Energy's suggestion that we "rethink allowing Control Areas to set their own power factor design criteria" as a prohibited collateral attack on Order No. 2003.

Compensation for Rescheduling Outages and Providing Emergency Redispatch (Articles 9.7.1.2 and 11.6)

i. Midwest ISO Proposal

a. Rescheduling Outages

65. Midwest ISO proposes to revise article 9.7.1.2 to provide that an Interconnection Customer will be compensated for altering its maintenance schedule at Midwest ISO's request, pursuant to the applicable Midwest ISO tariff or rate schedule. Midwest ISO states that this approach would apply to all generators, regardless of ownership, and parallels its current policies regarding generator compensation for emergency redispatch service under the Operating Protocol for Existing Generators and reactive power under Schedule 2 of the OATT.[67] Midwest ISO anticipates submitting the issue of compensating generators for rescheduling maintenance to the Midwest ISO stakeholder process, similar to the approach taken with compensation for reactive power.

66. Until the issue is resolved, Midwest ISO proposes to add to article 9.7.1.2 a requirement that such rescheduling costs be determined by negotiation "between the Transmission Provider and Generating Facility Operator prior to implementation of the voluntary change in outage schedules, or if such request is made by or on behalf of a Transmission Customer requesting firm service,… costs shall be determined through a bilateral agreement between the Transmission Customer and the Generating Facility Operator." Midwest ISO also adds language distinguishing these voluntary changes from actions and compensation required under article 13 - Emergencies.

[66] Order No. 2003 at P 542.

[67] Transmittal Letter to January 20 Filing at 24.

b. Providing Emergency Redispatch

67. Similarly, Midwest ISO inserts placeholder language in article 11.6 providing for compensation to a generator for responding to an emergency (under LGIA article 13.5) in accordance with "any tariff or rate schedule filed by the Transmission Provider and approved by the FERC."

ii. Intervenor Comments

68. Mirant states that the Commission directed Midwest ISO to continue to negotiate with its stakeholders to determine what steps Midwest ISO must take to provide adequate assurance of payment when generators are called upon to provide mandatory redispatch services.[68] Mirant points out that negotiations have been underway on this issue for about 2 years. Mirant contends that absent a hard deadline for filing tariff language, the negotiations could languish for several more months or even years.[69]

iii. Commission Conclusion

69. As with our determination concerning emergency redispatch, we direct Midwest ISO to file an amended schedule for compensating generators for rescheduling equipment outages and for actions during emergency conditions within 60 days of the date of this order. We accept the proposed language directing the use of negotiations to determine rescheduling costs in article 9.7.1.2, and the place holding language in article 11.6, on an interim basis only.

Operating and Maintenance Expenses (Article 10.5 of the LGIA)

i. Midwest ISO Proposal

70. Article 10.5 of the *pro forma* LGIA requires interconnection customers to be responsible for all reasonable operating and maintenance expenses, including overheads associated with, among other things, operation, maintenance, repair and replacement of the Transmission Provider's Interconnection Facilities.[70] Midwest ISO proposes new

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[68] Protest of Mirant at 5-6, *citing* Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,262 at P 15 (2002).

[69] Protest of Mirant at 6.

[70] Midwest ISO proposes to change Transmission Provider to Transmission Owner. *See supra* note 11. This change is accepted because it accommodates the Transmission Owner in the Midwest ISO's LGIA.

language in article 10.5 to condition recovery of operating and maintenance expenses "to the extent required by the Transmission Owner on a comparable basis."

ii. Intervenor Comments

71. Midwest ISO Transmission Owners argue that this change would allow a generator to withhold funds without a Commission determination that the costs at issue were improper. As a result, they contend, the change contradicts the FPA, which allows a public utility to recover these out-of-pocket costs until the Commission determines they are unreasonable. Midwest ISO Transmission Owners also assert that Midwest ISO has not shown why this change is warranted or satisfies the requirements of Order No. 2003, and that it is unclear how the change will be implemented or interpreted, which could lead to disputes.[71]

iii. Midwest ISO Answer

72. Midwest ISO acknowledges that the Commission has previously accepted agreements and formulas for the reimbursement by Interconnection Customers of appropriate operation and maintenance costs. However, Midwest ISO clarifies that the proposed language imposes the requirement that the Transmission Owner treat all Interconnection Customers the same with regard to the recovery of actual out-of-pocket costs, whether affiliated or non-affiliated.[72]

iv. Commission Conclusion

73. A major goal of Order No. 2003 is to "limit opportunities for Transmission Providers to favor their own generation."[73] Midwest ISO has taken a step toward that goal by developing language to limit recovery of costs by transmission owners on a comparable basis. We disagree with Midwest ISO Transmission Owners' assertion that the proposal places a condition on the ability of a Transmission Owner to collect its costs, in violation of the FPA. While under the FPA, all rates are set initially by the public utility, and can only be modified upon a finding by the Commission that the rates are unlawful under the statute (i.e., unjust, unreasonable or unduly discriminatory), the instant proceeding involves the setting of an initial rate formula by a public utility, in

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[71] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 15.

[72] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 31.

[73] *See* Order No. 2003 at P 12.

which the Commission can approve proposals that are consistent with the FPA.[74] Midwest ISO's proposed language in article 10.5 of the LGIA, by conditioning the ability of a Transmission Owner to collect operation and maintenance expenses not only on the reasonableness of such expenses, but also on their being assigned to interconnection customers on a comparable (i.e., not unduly discriminatory) basis, is entirely consistent with this statutory scheme. Therefore, we will accept the proposed revision.

II. Definitions and Character of Services

Definitions of Affected System, Distribution System, Distribution Upgrades, Transmission Owner, Transmission System, and Interconnection Facilities Study

i. Midwest ISO Proposal

74. Midwest ISO is proposing revisions to various definitions to conform the provisions of the LGIP and LGIA to the corresponding provisions in the Midwest ISO Tariff. Midwest ISO states that these modifications are required to ensure consistency between the roles, rights and obligations of Midwest ISO and its transmission-owning members. The proposed additions are underlined.

a. Affected System

75. Midwest ISO proposes to expand Affected System to include the various types of electric systems that may be affected, and on which equipment upgrades may be required, by a proposed generator interconnection. Specifically, Midwest ISO has added language stating that "Affected System" shall mean an "electric *transmission or distribution system on the electric system associated with an existing generating facility or of a higher queued generating facility, which is an electric* system other than the Transmission System that may be affected by the Interconnection Request." Midwest ISO also adds that an Affected System may or may not be subject to FERC jurisdiction. Midwest ISO contends that the revised definition more clearly identifies those electric systems with which equipment upgrades may be required.[75]

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[74] Atlantic City Electric Co. *et al.* v. Federal Energy Regulatory Commission, 295 F.3d 1, 10 (D.C. Cir. 2003).

[75] Transmittal Letter to January 20 Filing at 11, and proposed definition of Affected System (emphasis added).

b. Distribution System and Distribution Upgrades

76. Midwest ISO proposes to change Distribution System to mean "the Transmission *Owner's* facilities and equipment*, if any, that are connected to the Transmission System and* used to transmit electricity to ultimate usage points." Also, references to "areas" within several definitions are revised to "Control Areas." Midwest ISO contends that this revision demonstrates that a control area within the Midwest ISO footprint, which may not be the same entity as the transmission owner or load-serving entity, may also follow different voltage criteria in classifying transmission and distribution facilities.[76]

77. Midwest ISO also modifies the definition of Distribution Upgrades such that the Interconnection Customer may take Wholesale Distribution Service over such distribution facilities and/or Transmission Service over transmission facilities.

c. Transmission Owner and Transmission System

78. Midwest ISO proposes to revise the definition of Transmission Owner. As revised, that definition would refer to the definition shown in Midwest ISO's Tariff, which includes an entity that "owns, leases, or otherwise possesses an interest in the portion of the Transmission System… *at which the Interconnection Customer proposes to interconnect… the Generating Facility*. *Transmission Owner should be read to include… as applicable, the owner and/or operator of distribution facilities interconnected to the Transmission System and to which the Interconnection Customer has requested interconnection.*"

79. Midwest ISO contends that the definition of Transmission Owner in the Standard LGIP and LGIA presumes that the Transmission Owner owns or operates a Distribution System in all cases. Midwest ISO explains that this is not the case with regard to all Midwest ISO transmission-owning members. A load serving entity (LSE) within Midwest ISO's footprint may own Generating Facilities, in addition to its Distribution System, and may operate as a Control Area, while not owning transmission facilities. Midwest ISO argues that this revision is necessary because the LGIP applies to generators proposing to interconnect to distribution facilities of non-transmission-owning load-serving entities.[77]

[76] Transmittal Letter to January 20 Filing at 11.

[77] Transmittal Letter to January 20 Filing at 11.

80. Midwest ISO modifies the definition of Transmission System to include facilities used to provide wholesale distribution service under its OATT.

d. Interconnections Facility Study

81. Among other things, Midwest ISO modifies the definition of Interconnection Facility Study to include a requirement that Midwest ISO develop a list of Distribution Upgrades and the cost of those facilities required to interconnect the Generating Facility with the Transmission System.

ii. Intervenor Comments

82. OMS questions the revisions to the definitions of Transmission Owner, Distribution System, Interconnection Facilities Study, and Distribution Upgrades.[78] OMS contends that while the proposed definition of Transmission Owner may facilitate Midwest ISO's role in allocating distribution upgrade costs, Midwest ISO's role in this regard is in question. OMS recommends that the Commission direct that a technical conference be held on the treatment of distribution upgrades in order to explore Midwest ISO's authority with respect to distribution upgrades and their technical capability to perform the role that is ultimately agreed upon concerning distribution upgrades.[79]

83. Consumers Energy supports OMS' request for a technical conference but states that the conference should include all distribution upgrades and how they can be coordinated with needed Transmission Upgrades. Consumers Energy argues that Midwest ISO's proposed language for Transmission Owner could include far more entities than Order No. 888, Order No. 2003, or the current OATT definitions of "Transmission Owner" provide. Consumers Energy states that Midwest ISO should make clear that it is not expanding the scope of Transmission Owner.[80]

84. Tenaska states that Midwest ISO's proposed modification to Affected System to include existing or higher-queued generators is unclear. Specifically, they argue that the proposed modification could conceivably result in an existing generator having to pay for upgrades to accommodate new interconnection requests. Tenaska contends that if the existing generator is required to pay for upgrades, the provision would be inconsistent

[78] Comments of OMS at 18, n. 43 and n. 44.

[79] *Id.* at 17-19.

[80] Consumers Energy Answer to Comments of OMS at 3-4.

with the use of a queue for establishing priority to transmission system interconnection capacity and would create uncertainty regarding the interconnection customer's obligation to pay for transmission system upgrades.[81]

iii. Midwest ISO Answer

85. Midwest ISO states that diverse electric systems may be affected by a proposed generator interconnection. Therefore, it asserts that the proposed change to Affected System will clarify what systems constitute or are classified as "an electric system other than the Transmission System." In addition, Midwest ISO states that the revised definition does not alter the analysis followed in interconnection studies or affect the responsibility of entities to fund network upgrades.[82]

86. Midwest ISO also states that it is not attempting, through the LGIA and LGIP definition of Transmission Owner, to usurp the authority of electric system operators or to expand the scope of interconnections and generating facilities under its purview beyond the authority and scope of Order No. 2003. Midwest ISO explains that Transmission Owner includes an owner and/or operator of distribution facilities interconnected to the transmission system when the Interconnection Customer is interconnecting its generating facility to either transmit or sell electric energy at wholesale in interstate commerce. Also, Midwest ISO states, if an interconnection customer proposes to connect to a distribution system in either a behind-the-fence or load displacement application, the LGIP and LGIA do not apply and Midwest ISO is not otherwise involved in the evaluation of the interconnection service.[83]

iv. Commission Conclusion

87. In Order Nos. 2003 and 2003-A, we addressed applicability of the rules to "distribution" facilities.[84] The Commission stated that the *pro forma* LGIP and LGIA apply to "distribution" facilities only under certain circumstances. We stated that "where

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[81] Motion to Intervene and Comments of Tenaska at 3.

[82] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 13–14.

[83] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 15.

[84] In Order No. 2003, the Commission noted that "'[d]istribution' is an unfortunately vague term," and can refer to either lower-voltage facilities used only for local distribution and not subject to Commission jurisdiction, or lower-voltage facilities used for "jurisdictional service such as carrying power to a wholesale power customer for resale." *See* Order No. 2003 at P 803.

the 'distribution' facilities have a dual use, i.e., the facilities are used for both wholesale sales and retail sales, the Final Rule applies to interconnections to these facilities *only for the purpose of making sales of electric energy for resale in interstate commerce*."[85] Also, we noted that the *pro forma* LGIP and LGIA apply to interconnections to a "distribution" facility when the facility is included in a public utility's Commission-filed OATT at the time the Interconnection Request is made and the interconnection is for the purpose of facilitating a jurisdictional wholesale sale.[86] We conclude that Midwest ISO has proposed changes to the definitions of Distribution System, Transmission Owner and Transmission System that are inconsistent with the Commission's statements in Order Nos. 2003 and 2003-A. Specifically, the revised definition of Transmission Owner should not allow the LGIP to apply to distribution facilities unless those facilities are available for Commission-jurisdictional transmission service under Midwest ISO's OATT at the time the Interconnection Request is made. We therefore direct Midwest ISO to revise the definition of Transmission Owner, and to make any other necessary changes to its OATT to clarify the applicability of its LGIP and LGIA. In addition, Midwest ISO's proposed definition of Transmission System includes only facilities that are "controlled or operated by the Transmission Provider and Transmission Owner that are used to provide transmission service or Wholesale Distribution Service under the Tariff." This definition is unduly restrictive because Midwest ISO does not generally operate or control facilities operating at voltages below 100 kV, while service over such facilities is provided under the Midwest ISO OATT. Rather, the definition of Transmission System should include facilities that are "controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service or Wholesale Distribution Service under the Tariff."

88. Some commenters express concerns regarding the technical ability of Midwest ISO to undertake both the review and management of both transmission upgrades and upgrades to "distribution" facilities when used for wholesale sales. Since Midwest ISO has provided no response to these commenters, we will require Midwest ISO to answer their concerns in a compliance filing within 60 days of the date of this order. As part of its response, Midwest ISO should compare the volume and type of work that MISO anticipates performing under the LGIP and LGIA versus the work it currently performs under Attachment R, and explain how it will meet its responsibilities if there are any differences.

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[85] Order No. 2003 at P 804 (emphasis in original); *see also* Order No. 2003-A at P 6, affirming Commission jurisdiction over dual use facilities "if the facilities are subject to an OATT on file with the Commission when the Interconnection Request is submitted" (footnote omitted).

[86] Order No. 2003-A at P 730-43 (footnote omitted).

89. Also, we accept Midwest ISO's amended definition of Affected System. Considering Midwest ISO's vast footprint, studies of all Affected Systems are required to ultimately determine interconnection costs. Midwest ISO's proposed change merely clarifies those electric systems with which Midwest ISO must coordinate to study a proposed interconnection, and does not assign cost responsibilities to the involved parties. Regarding Tenaska's concern that including existing or higher-queued generators in the definition of "Affected System" might require existing generators to pay for upgrades needed as the result of an interconnection request, we note Midwest ISO's justification for this change, which is that an existing or planned (higher-queued) generator's system may need to improve, replace or upgrade its protective devices or control systems because of the presence of another generator.[87] In Order No. 2003-A, we held that the Interconnection Customer must pay upfront for any Network Upgrades needed on the Affected System, but is entitled to credits for transmission service taken on the Affected System.[88] Thus, an existing or higher-queued generator as an Affected System is not harmed financially by the proposed revision. Rather, the generator benefits by protecting its interconnection to the grid despite changed circumstances, and by receiving transmission credits for service it takes on the Affected System.

Energy Resource Interconnection Service (ERIS) Studies (Section 3.2.1.1 of the LGIP and Article 4.1.1.1 of the LGIA)

i. Midwest ISO Proposal

90. In response to reliability issues that have previously resulted from generator interconnections to the Midwest ISO Transmission System, Midwest ISO proposes additions to section 3.2.1.1 and article 4.1.1.1. Under the current Attachment R of Midwest ISO, generator interconnections are connected as Energy Resources (ER) (*i.e.*, as interconnection customers with ERIS), and development of any upgrades needed for delivery of output from the generator is not required until a separate request for delivery service is made. Thus, the generator is permitted to use the transmission system on an "as available" basis as evaluated through separate requests for delivery service, and only stability and short-circuit related reliability upgrades are mandated for interconnection.[89]

91. Midwest ISO states that before delivery service is requested by the generator, other delivery service requests may be granted. Subsequently, delivery service may be requested from the ER that is of a short-term or non-firm nature. This poses a problem, because short-term and non-firm requests are processed using tools suitable for

[87] Transmittal Letter to January 20 Filing at 11.

[88] Order No. 2003-A at P 10.

[89] Transmittal Letter to January 20 Filing at 12-13.

evaluating large numbers of requests in a short time and are not always submitted to a detailed, off-line planning study (as are long-term firm delivery requests). Midwest ISO states that because the generator is interconnected with ERIS and has no delivery capacity held for future use, when the ER is evaluated for short-term and non-firm delivery subsequent to other short-term and non-firm delivery service that may have been granted, the Transmission System could exceed reliability limits in constrained areas and that such potential violations could go undetected by the evaluation tools for short-term and non-firm delivery service.[90]

92. Midwest ISO proposes that until the date that the Commission makes effective the Midwest ISO's Energy Market Tariff filed in Docket No. ER04-691-000, Midwest ISO will perform an initial Operating Study for each generator seeking ERIS within six months of the generator's Commercial Operating Date.[91] The results of this Operating Study, and subsequent routine Operating Studies performed periodically to ensure ongoing reliability of the Transmission System, will be used in conjunction with delivery service evaluation results to determine transmission system capacity available for delivery from the ER generator.[92]

93. Regarding delivery service implications for the ERIS customer, Midwest ISO proposes to clarify that the ability for the "Interconnection Customer to place a bid to sell into the market up to the maximum identified . . . output," and for the facility to be dispatched accordingly, will not be available until after the date the Commission makes effective the Midwest ISO's Energy Market Tariff filed in Docket No. ER04-691-000.

ii. Intervenor Comments

94. American Municipal Power-Ohio, Inc. (AMP-Ohio) questions the following language added by Midwest ISO: "Transmission Provider will determine existing delivery service capacity available from a Generating Facility that has been interconnected with the ERIS when a request is made for delivery service associated with the Generating Facility Output." AMP-Ohio states that the language appears to authorize Midwest ISO to determine if there is adequate distribution capacity at any given time. AMP-Ohio states that while this may be acceptable when the distribution owner is

[90] *Id.* at 13.

[91] Midwest ISO states that "it is quite possible that a generator may request interconnection, and have interconnection studies years in advance of the actual Commercial Operation Date." *Id.* at 13, n. 24.

[92] Transmittal Letter to January 20 Filing at 13.

affiliated with a transmission owner that is a signatory to the Midwest ISO Agreement, Midwest ISO should be required to coordinate with an unaffiliated distribution owner to ensure that there is in fact capacity available.[93]

95. Midwest TDUs argue that Midwest ISO's proposed changes to article 4.1.1.2 – Delivery Implications for the ER Interconnection Resource Customer, are unclear and could serve to restrict or eliminate the ability of customers to use ERISfor network resources, contrary to the Commission's directives in Order No. 2003-A. Midwest TDUs assert that the language should either be rejected or modified to make clear that generators taking ER Interconnection Service are eligible for network resource designation if they satisfy the requirements of the OATT. Additionally, Midwest TDUs contend that Midwest ISO should make clear that a customer with ERIS and Network Integration Transmission Service shall be treated at least equally, if not better, than resources that receive Network Resource Interconnection Service (NRIS) based on aggregate deliverability.[94]

iii. Midwest ISO Answer

96. Midwest ISO responds that it is responsible for determining the available delivery capacity of facilities under Midwest ISO's functional control to which a generating facility with ERIS is interconnected. However, it is the responsibility of the distribution-owning entity that is not under the Midwest ISO's functional control or which has not acceded to Midwest ISO but is providing wholesale distribution service over its facilities, to determine the availability of capacity on its facilities to provide wholesale distribution service. In any event, states Midwest ISO, availability of delivery service is not otherwise addressed by Attachment X.[95]

iv. Commission Conclusion

97. We reject the proposed changes pertaining to the use of additional operating studies in section 3.2.2.1 in the LGIP and article 4.1.1.1 of the LGIA.[96] The proposed operating limits pertain to transmission delivery service, and are beyond the scope of this compliance proceeding.

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[93] Motion for Leave to Intervene and Protest of AMP-Ohio at 6-7.

[94] Joint Protest of Midwest TDUs (May 17, 2004) at 6.

[95] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 19-20.

[96] Also rejected is the added definition of "Operating Study" in the LGIP.

98. We accept Midwest ISO's proposed revisions to article 4.1.1.2 of the LGIA. Midwest ISO's proposed modifications do not detract from the Interconnection Customer's ability to designate network resources by requesting ERIS and at the same time requesting Network Integration Transmission Service under the Transmission Provider's OATT.[97] It is an option discussed in Order No. 2003-A, and no further clarification is necessary in Midwest ISO's LGIA.[98] Additionally, we conclude that Midwest ISO's proposed revisions to article 4.1.1.2, among other very minor clarifications, merely state that Midwest ISO's Energy Markets Tariff is not yet effective, and thus generators are not yet able to bid to sell into a market that is not currently operational. These variations are accepted.

Scope, and NRIS (Sections 2.1, 3.2.2.1, and 3.2.2.2 of the LGIP and Articles 4.1.2.1 and 4.1.2.2 of the LGIA)

i. Midwest ISO Proposal

99. In section 2.1, Midwest ISO proposes to apply the LGIP to interconnections to distribution systems either where the large generating facility plans to engage in sales for resale in interstate commerce or where the distribution system or a portion thereof has been determined to be under the authority of the transmission provider. Midwest ISO explains that the scope of the LGIP will include interconnections to distribution systems by large generating facilities that plan to engage in sales for resale in interstate commerce or to transmit electric energy in interstate commerce over facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, and used to provide transmission service under the Midwest ISO OATT at the time the interconnection request is made.[99]

100. Midwest ISO also specifies that the LGIP will apply when one of the following is proposed: "(i) a new Large Generating Facility with aggregated net output exceeding 20 MW at a new Point of Interconnection, (ii) additional generation exceeding an aggregated net output of 20 MW at an existing Point of Interconnection, (iii) an increase in the capacity of an existing Large Generating Facility, (iv) a Material Modification to the

[97] *See* Order No. 2003-A at 535.

[98] *Id.*

[99] Transmittal Letter to January 20 Filing at 12.

operating characteristics of an of an existing Large Generating Facility." Midwest ISO states that such interconnections and/or modifications can affect the reliability of the transmission system, and should thus fall within the scope of its interconnection procedures.[100]

101. Sections 3.2.2.1 and 3.2.2.2 of the *pro forma* LGIP and Articles 4.1.2.1 and 4.1.2.2 of the *pro forma* LGIA allow the Generating Facility to be designated as a Network Resource, up to the Generating Facility's full output, on the same basis as other Network Resources that are interconnected to the Transmission or Distribution System and to be studied as a Network Resource on the assumption that such a designation will occur. Midwest ISO proposes revisions such that a Network Resource designation may require additional studies and upgrades that would be associated with a request for delivery of service under the Tariff. Midwest ISO states that cost responsibility for such additional studies and upgrades would be in accordance with the Commission's policy for pricing transmission delivery services. Under this proposal, the Transmission Provider will determine existing delivery service capacity available from a Generating Facility that has been interconnected with the NRIS when a request is made for delivery associated with the Generating Facility Output. Such delivery service evaluations will include firm capacity commitments in place at the time of the request evaluation. The Transmission Provider will perform an Operating Study using Applicable Reliability Standards to establish operating limits, if any, to delivery service associated with such output that are not observable in the transmission service request study process. Midwest ISO proposes that the Transmission Provider will rely on such Operating Studies for subsequent transmission service requests to establish the available delivery capacity for the Generating Facility taking NRIS. The Transmission Provider will perform an Operating Study within six months of the Commercial Operating date of the generator taking NRIS and periodically thereafter. These revisions would be in effect until the date that the Commission makes effective the Midwest ISO's Energy Market Tariff filed in Docket No. ER04-691-000.[101]

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[100] *Id.*

[101] After the Commission makes effective the Midwest ISO's Energy Market Tariff filed in Docket No. ER04-691-000 and once an Interconnection Customer satisfies the requirements for NRIS, any future transmission service request for delivery from the Generating Facility within the Transmission System up to the amount initially studied will not require any additional studies be performed.

102. Midwest ISO also proposes to modify sections 3.2.2.1 and Article 4.1.2.1, NRIS – the Product, to require that transmission owners "cause the construction of the network upgrades, system protection facilities, distribution upgrades, or generator upgrades, subject to approval of governmental authorities, needed to integrate the generating facility."

ii. Intervenor Comments on Adoption of *Pro Forma* Order No. 2003-A Language

103. Consumers Energy objects to Midwest ISO's adoption of the *pro forma* language in section 3.2.2.2 wherein the NR Interconnection Study assumes that some portion of existing Network Resources is displaced by the output of the Generating Facility. Consumers Energy instead suggests the following modification: "assume[] that some portion of existing Network Resources *outside of the local area* is displaced by the output of the Generating Facility."[102]

104. In a similar vein, Midwest TDUs complain that Midwest ISO removed the previous proposal to allow customers taking NRIS to have their resource studied on a customer-specific deliverability basis.[103] Midwest TDUs protest the aggregate deliverability test[104] of section 3.2.2.2 of the *pro forma* LGIP as being unfair because a customer that takes NRIS for a new network resource could face both a requirement that it pay for the Network Upgrades necessary to deliver the output of the generator to the loads of the surrounding Control Area plus potentially hefty congestion charges to deliver the output of the generator to its own specific loads. Midwest TDUs also believe that the test is unwise if Midwest ISO is allowing Network Resources to count for resource adequacy purposes; that is, even if the Network Resources are not deliverable to the customer's load, they might count for resource adequacy purposes so long as they are deliverable to the aggregate Midwest ISO load.[105] In any case, say Midwest TDUs, the

[102] Comments of Consumers Energy (May 17, 2004) at 4.

[103] Joint Protest of Midwest TDUs (May 17, 2004) at 4.

[104] Section 3.2.2.2 of the *pro forma* LGIP requires that the Interconnection Study for NRIS "determine whether, with the Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission System consistent with… reliability criteria and procedures."

[105] Joint Protest of Midwest TDUs (May 17, 2004) at 9, referring to the April 26 Filing and Midwest ISO's OATT, section 69.2(b), as filed in Docket No. ER04-691-000.

Midwest ISO Energy Market Tariff proceeding in Docket No. ER04-691-000 is the proper place to resolve the issue.[106]

iii. Midwest ISO Answer on Adoption of *Pro Forma* Order No. 2003-A Language

105. Midwest ISO believes that the provisions in its proposed Attachment X are consistent with Order No. 2003-A, and that Consumers Energy, Midwest TDUs, and other Interconnection Customers are not disadvantaged by the approach to these matters proposed by Midwest ISO.

106. Regarding Consumers Energy's desire to have any existing generators in the local area dispatched in the NRIS of a proposed generating facility, Midwest ISO answers that if the dispatch of all generators in the proximity of the proposed facility is the worst case dispatch, which is of sufficiently low probability, then the interconnection studies for the proposed facility are unlikely to dispatch all existing generators at full output. Rather, such studies will address only those existing generators reasonably anticipated to contribute to any overloading of the interconnection and transmission facilities that may be affected by the proposed generating facility.[107]

107. Regarding Midwest TDUs' complaint, Midwest ISO states that Order No. 2003-A requires that if the Interconnection Customer wishes to avoid congestion costs, the applicable OATT will require additional studies of the proposed Network Resource to determine the deliverability of the Network Resource's output.[108] Regarding the argument that the aggregate deliverability test is unfair, Midwest ISO states that an Interconnection Customer in the situation described by the Midwest TDUs has the ability to make a concurrent request for Network Service, thereby minimizing its exposure to Network Upgrades that may be required to deliver its generating output.[109]

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[106] Joint Protest of Midwest TDUs at 4, 7-10.

[107] Motion for Leave to Answer and Answer of Midwest ISO (June 1, 2004) at 3-4.

[108] *Id.* at 4.

[109] *Id.* at 5.

iv. Commission Conclusion on Adoption of *Pro Forma* Order No. 2003-A Language

108. The protests of Consumers Energy and Midwest TDUs are collateral attacks on our determinations in Order No. 2003-A, where we have addressed many of these concerns, which we will not address here. Regarding Midwest TDUs' questions regarding the effect of Midwest ISO's adoption of *pro forma* Order No. 2003-A language in this filing given language in Midwest ISO's Energy Market Tariff (e.g., pertaining to resource adequacy), we will not prejudice the outcome of the proceeding in Docket No. ER04-691-000. Midwest TDUs should seek resolution of their concerns in that proceeding.[110]

109. The Commission will reject Midwest ISO's proposal to adopt the operating studies and limits mentioned previously under ERIS because we find that they would result in discriminatory treatment as between existing and new generators. Furthermore, Midwest ISO has also not explained why the proposed operating limits which pertain to transmission delivery service are being proposed here for its LGIA and LGIP.

v. Intervenor Comments – Control of Distribution Upgrades

110. Midwest ISO Transmission Owners refer to the proposed deviations to the definition of Transmission System, sections 2.1 and 3.2.2.1 and 7.3, and to Article 4.1.2.1, and argue that they entail: (1) Midwest ISO controlling interconnections to distribution facilities and construction of those distribution facilities; (2) Transmission Owners being required to construct distribution upgrades; and, (3) Midwest ISO studying what distribution upgrades to require. Midwest ISO Transmission Owners contend that Midwest ISO has no legal basis under its governing documents or under applicable laws to include distribution facilities as facilities that Midwest ISO can control or require its member transmission owners to construct.[111] AMP-Ohio protests the added language to section 2.1 as expanding the reach of the Midwest ISO's tariff beyond that authorized by the Commission.[112]

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[110] Joint Protest of Midwest TDUs (May 17, 2004) at 4-7, 10.

[111] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 6.

[112] Motion for Leave to Intervene and Protest of AMP-Ohio at 4-5.

vi. Midwest ISO Answer – Control of Distribution Upgrades

111. Midwest ISO states that its revisions to section 2.1 constitute clarification, not expansion, of its interconnection authority in its footprint. In addition, Midwest ISO contends that to the extent that AMP-Ohio believes that Midwest ISO represented that behind-the-meter or onsite generation would fall under the purview of Attachment X, the provisions of Midwest ISO's tariff do not require such generation to adhere to the Attachment X process.[113]

vii. Commission Conclusion – Control of Distribution Upgrades

112. The Commission will reject, in part, Midwest ISO's proposed revisions to section 2.1. As discussed in other portions of this order, in Order No. 2003 the Commission carefully outlined its jurisdiction over "distribution" facilities. There, we concluded that the Final Rule applies generally where "an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made."[114] More specifically, we held that the Final Rule "applies to a request to interconnect to a public utility's 'distribution' facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT."[115] Therefore, in order for Midwest ISO's LGIP and LGIA to apply to an interconnection to "distribution" facilities, the facilities must be subject to the Midwest ISO OATT, and the Interconnection Customer must intend to make a wholesale sale in interstate commerce. Midwest ISO's proposed language in section 2.1 appears to improperly apply its LGIP and LGIA where there is only an intent to make a wholesale sale or transmit electric energy in interstate commerce, even if the distribution facilities in question are not under the Midwest ISO OATT. Thus, we reject the proposed revisions to section 2.1 to the extent they allow for this unauthorized application of the LGIP and LGIA. We will, however, accept the remaining modifications by this independent entity to section 2.1 because we find that they will

[113] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 17.

[114] Order No. 2003 at P 804.

[115] *Id.*

benefit interconnection customers by summarizing the circumstances that require application of Midwest ISO's LGIP and LGIA without changing the application of the *pro forma* LGIP and LGIA.[116]

113. Additionally, the Commission accepts the language in section 3.2.2.1, and similar language in article 4.1.2.1, wherein the "Transmission Owner must cause the construction of… Distribution Upgrades… subject to the approval of Governmental Authorities, needed to integrate the Generating Facility in the same manner as for any Large Generating Facility being designated as a Network Resource." Further, we will accept language in section 7.3 providing that the interconnection system impact study "shall evaluate the impact of the proposed interconnection the reliability and safety of the . . . Distribution System, if applicable." As noted above, Order No. 2003 will apply to interconnections to a "distribution" facility when the facility is included in a public utility's Commission-filed OATT and the interconnection is for the purpose of facilitating a jurisdictional wholesale sale of electric energy.[117] These remaining proposed changes by Midwest ISO do not conflict with the Commission's jurisdiction.

114. Regarding the claims that the obligations with respect to distribution facilities exceed Midwest ISO's authority in its governing documents, we do not agree. The Midwest ISO Agreement[118] provides that "each Transmission Owner shall provide such service on its distribution facilities as is necessary to effectuate transmission transactions administered to eligible customers under the [Midwest ISO OATT] by the Midwest ISO at approved rates."[119]

viii. Intervenor Comments – Midwest ISO Agreement

115. Midwest ISO Transmission Owners fault Midwest ISO's proposed section 3.2.2.1 and Article 4.1.2.1 for not referring to the Midwest ISO Agreement, and specifically for not referring to Appendix B, section VI of the Midwest ISO Agreement, which details the

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[116] *See* existing language in section 2.1; sections 4.4 and 4.4.3 pertaining to Material Modification requiring a new queue position (interconnection request); and definitions for Interconnection Request, Large Generating Facility and Generating Facility Capacity.

[117] Order No. 2003 at P 804; Order No. 2003-A at P 730-43 (footnotes omitted).

[118] *See* "Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation." (Midwest ISO Agreement).

[119] Midwest ISO Agreement at Article Four, section 1.E.

construction obligations of transmission owners within Midwest ISO. Midwest ISO Transmission Owners contend that the principle limit in that agreement is:

> "[i]f the designated Owner is financially incapable of carrying out its construction responsibilities or would suffer demonstrable harm from such construction, alternate construction arrangements shall be identified."[120]

Midwest ISO Transmission Owners also state that if an owner is expected to suffer such financial harm, it can elect not to construct the facility. At that point, third parties may participate in the construction and ownership. As a final backstop, all owners are required to construct the facility subject "to the Owners being satisfied that they will be compensated fully for their investments."[121] Midwest ISO Transmission Owners also say that the Commission has accepted these limits on transmission owner construction obligations on two occasions: first, as part of the initial Midwest ISO filing,[122] and second, as part of the RTO filing.[123] Midwest ISO Transmission Owners also state that if Midwest ISO did not intend to modify the Midwest ISO Agreement limitations on construction, then it should clarify that point.[124]

116. In addition to failing to address the limitations in the Midwest ISO Agreement, Midwest ISO Transmission Owners argue that the proposal is flawed because Midwest ISO has no legal ability or right to require transmission owners to build facilities beyond the provisions in the Midwest ISO Agreement. They argue that under the Federal Power Act, public utilities cannot be required to construct facilities except in very limited circumstances involving emergency interconnections, for example.[125] This, say Midwest ISO Transmission Owners, is particularly true in the case where requiring an owner to

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[120] Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 1, First Revised Sheet No. 112.

[121] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 3.

[122] *See* Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 ("September 1998 Order"), *order on reconsideration and clarification*, 85 FERC ¶ 61,250, *order on reh'g*, 85 FERC ¶ 61,372 (1998).

[123] *See* Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 at 62,520 (2001) ("December 2001 Order").

[124] Protest and Motion to Intervene of Midwest ISO Transmission Owners at 3-4.

[125] *See* 16 U.S.C. § 824a(d) (2000).

build causes financial harm. According to Midwest ISO Transmission Owners, "[t]here would be a Constitutional problem in requiring the construction of transmission facilities when there is no reasonable opportunity to recover revenue requirements."[126]

ix.. Commission Conclusion – Midwest ISO Agreement

117. As Midwest ISO Transmission Owners note, the *pro forma* LGIP and LGIA language in section 3.2.2.1 and 4.1.2.1 does not address limitations in the Midwest ISO Agreement. Midwest ISO Transmission Owners also contend that Midwest ISO has no legal ability to require transmission owners to build facilities beyond the provisions in the Midwest ISO Agreement. We understand Midwest ISO Transmission Owners' concerns – the LGIP and LGIA assume that the Transmission Owner with which the Generating Facility connects will be responsible for building facilities, while the Midwest ISO Agreement contemplates that such responsibility may be shared more broadly among all the Transmission Owners in certain limited circumstances. However, rather than require Midwest ISO to modify its *pro forma* LGIP and LGIA to accommodate such a circumstance, Midwest ISO may propose revisions to the LGIP and LGIA on a case-by-case basis, if such provisions of the Midwest ISO Agreement are legally invoked (e.g., to protect a transmission owner from financial harm).

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[126] Protest and Motion to Intervene of Midwest ISO Transmission Owners at 5. The Midwest ISO Transmission Owners provided the following citation as support for their argument:

> U.S. Const. amend. V.; *see also Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 970 (1986) ("When FERC sets a rate between a seller of power and a wholesaler-as-buyer, a State may not . . . prevent the wholesaler-as-seller from recovering the costs of paying the FERC-approved rate. (citation omitted) Such a 'trapping' of costs is prohibited."); *Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 372 (1988) (explaining that a state commission may not enter an order "trapping" the costs a utility is mandated to pay under a FERC order); *see also FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) ("just and reasonable" rates must be "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital").

Id. at 5, n. 11.

Interconnection Requests (Section 3.1 of the LGIP)

i. Midwest ISO Proposal

118. Midwest ISO proposes to add the following language to section 3.1 of the LGIP: "Interconnection Customer's selection of the Point(s) of Interconnection shall be subject to the acceptance by the Transmission Provider and Transmission Owner, such acceptance not to be unreasonably withheld." Midwest ISO states that the additional language emphasizes that only reasonable suggestions for points of interconnection should be studied.

ii. Intervenor Comments

119. Mirant believes that the proposed language grants the Transmission Owner veto power over a proposed interconnection point even if the proposed point of interconnection is reasonable. Mirant also contends that under the proposed language, acceptance by a Transmission Owner could arguably be withheld if the Transmission Owner concludes that the proposed point of interconnection could put the Transmission Owner's generation at a competitive disadvantage.[127]

iii. Midwest ISO Answer

120. Midwest ISO notes that an interconnection point may not be reasonable for the physical location, and may not be the least costly alternative for either the expansion of the transmission system or mitigation of adverse impacts on the facilities of existing Interconnection Customers. Midwest ISO recognizes that the scoping meeting is specifically designed to discuss the proposed interconnection points and to rule out any wholly unreasonable choices, and asserts that the additional sentence is meant to "instill the obligation of reasonableness of site selection on all parties to the interconnection."[128]

iv. Commission Conclusion

121. We reject the proposed modification. In Order No. 2003-A, we responded to concerns arising from the ability of Interconnection Customers to select the Interconnection Points under the LGIP of an RTO.[129] There we encouraged RTOs to conduct transmission planning studies and growth planning to help inform an

[127] Protest of Mirant at 6.

[128] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 18-19.

[129] *See* Order No. 2003-A at P 95.

Interconnection Customer's siting decision. The Commission also chose not to deny Interconnection Customers the option to choose a point of interconnection to be studied in the Interconnection Feasibility Study.[130] The Commission believes that the RTO should not be able to prejudge what is a reasonable point of interconnection, and that the Interconnection Feasibility Study, together with the cost estimates for interconnection that will be produced during the study process, will inform the Interconnection Customer and allow it to make reasonable siting decisions. Therefore, we reject this proposal, because it unnecessarily limits the options available to Interconnection Customers to select Interconnection Points to be studied in the Interconnection Feasibility Study.

III. Studies

Out-of-Queue Order Studies and Group Studies (Sections 4.1, 4.2, 7.3 and 7.4 of the LGIP)

i. Midwest ISO Proposal

a. Out-of-Queue Order Studies

122. Midwest ISO proposes to perform studies out-of-queue order based upon: (1) the electrical remoteness of the generating facility; or (2) the request of the Interconnection Customer, when Midwest ISO concurs with the request and has the resources to perform the study, if the Interconnection Customer accepts the financial risk of restudy and reassignment of upgrades when the Interconnection Request becomes the next in the queue.[131] An Interconnection Customer may request Midwest ISO's concurrence in connection with: (1) a state-sanctioned resource solicitation process, (2) a proposal to replace equipment due to catastrophic failure, when such replacement constitutes a material modification under section 4.4, and (3) reasons specific to the Interconnection Customer.

b. Group Studies

123. Midwest ISO proposes a "group study" approach to queue processing instead of the cluster study approach in Order No. 2003. Midwest ISO believes that the geographic expanse of its footprint makes it inefficient to process Interconnection Requests together as a group (or cluster) according to time of receipt (*i.e.*, with a specific open and closed date to enter the queue), without regard for geography. Midwest ISO believes that if one area has a light queue, Interconnection Customers in such an area should not be required

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[130] Order No. 2003-A at P 97.

[131] Transmittal Letter to January 20 Filing at 15 and 16.

to wait for a formal system-wide queue window to close before interconnection studies begin. However, in other more congested areas, several Interconnection Requests would benefit from being grouped for study.[132]

124. Midwest ISO describes its group study as a single study, albeit a more complex one, that provides for the evaluation of all of the projects in the group where the entire group proceeds through the interconnection process together. The process continues to determine, for each Interconnection Customer in the group, the incremental upgrades driven by each project, but also allows the transmission provider to consider a more efficient set of expansions that would accommodate the entire group. If such a set is identified, individual project costs are reduced and common element upgrade costs are allocated based on pro rata effects.[133] Because Interconnection Customers are not given the choice of whether they will be in a group study, Midwest ISO proposes to limit the cost of Network Upgrades for a particular request to the amount that that request might bear if it was evaluated individually.[134]

125. Midwest ISO proposes to conduct group studies under the following circumstances: (1) when a backlog of Interconnection Requests that electrically affect one another develops[135]; (2) upon request of the affected Interconnection Customers; (3) in connection with a state-sanctioned resource solicitation process with the concurrence of the Transmission Provider; or (4) to perform a coordinated study with an Affected System operator involving Interconnection Requests on an Affected System that may have an electrical effect on the Transmission Provider and on requests in the Transmission Provider's queue. In connection with circumstance (3) above, the solicitor must, among other things, be authorized by the Interconnection Customers participating in the solicitation to act as the agent for all Interconnection Requests, and must withdraw those Interconnection Requests not included in the selected portfolio, unless the Transmission Provider determines otherwise. Midwest ISO states that this requirement is necessary because projects that are not in the selected portfolio, and that were studied in mutually exclusive portfolios, could change the required upgrades in the selected portfolios.

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[132] *Id.* at 16.

[133] *Id.* at 17.

[134] *Id*.

[135] The April 26 Filing further refines this language to specify that the Transmission Provider in its sole judgment may implement Grouping when a backlog develops of two or more Interconnection Requests that are waiting in the queue in an area, that electrically affect one another. Transmittal Letter to April 26 Filing at 7.

126. Midwest ISO also proposes to revise the time period for completing a System Impact Study, if the study is to be a group study, from 90 days after the close of the study window, to 180 calendar days after the receipt of the last such agreement or notification to proceed, study payment and technical data.

ii. Intervenor Comments

127. Tenaska states that while it does not oppose the use of a group study method for reviewing Interconnection Requests, it objects to Midwest ISO's requirement that the Interconnection Customer may have only one queue position and must withdraw its request if it is not selected in a state solicitation process. Tenaska argues that the Interconnection Customer should not be forced to risk its position in the queue in order to have its project studied as part of the group of projects bidding into a power purchase solicitation.[136]

128. Consumers Energy states that it does not oppose group studies, but argues that the instant proposal puts no requirement on when Midwest ISO must start performing such a group study, and provides generators no knowledge of when a group study will be completed. Consumers Energy recommends adding the following language at the end of the first paragraph in section 7.4:

> ", but no later than 240 days after receipt of any Agreement or notification to proceed, study payment and technical data, without the consent of the Interconnection Customer."[137]

iii. Midwest ISO Answer

129. Midwest ISO explains that in its footprint, group studies would be performed in specific circumstances, including in the event of a state-sanctioned resource solicitation process. Regarding Tenaska's protest, Midwest ISO states that its experience is that developers of prospective power supply resources will respond to the LSE with proposals, and also submit Interconnection Requests to initiate the interconnection evaluation process for their prospective resources. According to Midwest ISO, the timing and location of such Interconnection Requests and the certainty that a percentage of the

[136] Motion to Intervene and Comments of Tenaska at 4.

[137] Motion to Intervene and Comments of Consumers Energy (Feb. 10, 2004) at 3-4.

Interconnection Requests will not be selected serve to artificially inflate the interconnection queue, which aggravates the effective administration and management of the interconnection queue.[138]

iv. Midwest ISO's April 26 Filing

130. In the April 26 Filing, Midwest ISO amended its proposal such that the determination of cost responsibility of the Parties for common facilities may depend on factors other than queue position. Midwest ISO states that it based this modification on the Commission's clarification in Order No. 2003-A that the Transmission Provider may allocate the cost of Network Upgrades common to more than one Interconnection Request on a basis other than queue position. Midwest ISO also amended its proposal to add that the Transmission Provider, in performing the System Impact Study, will consider, along with the Base Case, any Generating Facilities that are part of a System Impact Group Study pursuant to section 4.2.[139]

v. Commission Conclusion

131. The Commission has stated that there "must be a single integrated queue per geographic region," but has permitted "an RTO or ISO the flexibility to propose queues and queuing rules designed to meet its regional needs."[140] We reject Midwest ISO's proposal to perform Group Studies (*i.e.*, studies of multiple Interconnection Requests without established windows) and its proposed deletion of an established 180-day window for clustering should Midwest ISO use clusters.[141] Queue windows with regular, fixed opening and closing dates are essential to an orderly process.[142] We also believe that if Midwest ISO proposes to adopt more than one queue for its footprint and also uses clusters, then Midwest ISO must use the same start and stop date for its queues in order to adequately assess outcomes among the queues. Also, given the coordination that could be required to manage multiple queues, we believe that an established and uniform 180-day window is appropriate if clustering is used.

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[138] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 22-24.

[139] Transmittal Letter to April 26 Filing at 7.

[140] Order No. 2003 at P 147.

[141] Transmittal Letter to January 26 Filing at 16.

[142] Order No. 2003 at P 150-55. Also, the 180-day window reduces the potential for discrimination and allows the Transmission Provider the benefits of clustering.

132. We also reject Midwest ISO's proposal to perform studies out of queue order, other than as already provided in Order No. 2003.[143] We are concerned that the proposed language requiring losing bidders of state resource planning programs to drop out of the queue denies the Interconnection Customer the certainty with respect to its queue position necessary to properly develop its business strategy.[144] As discussed in the previous section, the Commission does not let Transmission Providers pre-judge what a reasonable Point of Interconnection is for an Interconnection Customer, leaving this business decision to the Interconnection Customer. Similarly, we will not allow a Transmission Provider to pre-judge the commercial viability of a proposed Generating Facility based on its failure to be selected in response to one solicitation. We believe that accommodating state resource planning programs is possible while observing the first-come, first-serve nature of the queue.

133. We reject revisions in sections 7.3 and 7.4 of the LGIP, as these modifications are related to the Group Study concept, which we reject.

Study Process Details (Sections 6.2, 7.3 and 8.2 of the LGIP)

i. Midwest ISO Proposal

134. Midwest ISO proposes to refine the scope of interconnection studies, provide additional information on the steps to be followed, and, with respect to restudies, outline the factors that support the need to restudy. In sections 6.2, 7.3 and 8.2, Midwest ISO proposes to differentiate the descriptions pertaining to results from various studies.[145]

ii. Intervenor Comments

135. No comments were filed to the revisions described here.[146]

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[143] Section 4.2 of the *pro forma* LGIP allows a transmission provider to study projects separately "to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Large Generating Facility."

[144] *See* Xcel Energy Operating Companies,107 FERC ¶ 61,313 (2004).

[145] Transmittal Letter to January 20 Filing at 18-19.

[146] Midwest ISO Transmission Owners protest the Midwest ISO's intention to study needed distribution upgrades in section 7.3. *See* Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 6. Please see our previous Commission Conclusion in this order.

iii. Commission Conclusion

136. Midwest ISO's proposed changes provide: 1) detail on the steps to be followed in the interconnection studies; 2) the factors that support the need to restudy, to provide clarity for its Interconnection Customers; and 3) descriptions regarding the results of various studies. The Commission finds that these described modifications by this independent entity will benefit all parties, and will accept them.

Restudy Process Details (Sections 6.4, 7.6 and 8.5 of the LGIP)

i. Midwest ISO Proposal

137. Midwest ISO proposes to revise the restudy provisions in sections 6.4, 7.6 and 8.5 to set forth the process that it will follow and the information that will be provided to customers when Interconnection Requests become subject to restudy. Midwest ISO states that the changes clarify queue administration and provide the Interconnection Customer with objective criteria for determining when and why its network upgrades are affected as a consequence of actions by higher-queued Interconnection Requests or Agreements.[147]

138. The *pro forma* LGIP requires that restudy costs be borne by the Interconnection Customer. Midwest ISO's proposal, however, would add language to section 8.5 providing that the restudy costs would be borne by the Interconnection Customer "unless the Transmission Owner, with the concurrence of the Transmission Provider agrees to perform the Restudy at the Transmission Owner's expense for all Interconnection Customers, indiscriminately." Through this language, Midwest ISO proposes to allow Transmission Providers to agree to bear the costs of restudy, but only if they do so for all Interconnection Customers on a non-discriminatory basis. Midwest ISO further proposes to add language stating that "[t]he Transmission Provider may elect to perform any Interconnection Facilities Restudy as a Group Study, which may include lower queued Interconnection Requests that also require a Restudy."

ii. Intervenor Comments

139. No protests were received on these proposed modifications.

[147] Transmittal Letter to January 20 Filing at 19-20.

iii. Commission Conclusion

140. Midwest ISO's revisions, on balance, will benefit Interconnection Customers by providing objective criteria for when a project may be affected by a higher-queued project or agreement. Therefore, the Commission will accept the proposed changes with one exception. We will reject the following proposed language appearing in sections 6.4, 7.6 and 8.5: "The Transmission Provider may elect to perform any Interconnection… Restudy as a Group Study, which may include lower queued Interconnection Requests that also require Restudy." The proposed language is unnecessary in light of our rejection of Midwest ISO's group study proposal. If Midwest ISO uses clusters, customers in need of restudy of their Interconnection System Impact Studies, due to the same change in circumstance and from the same original cluster, may be re-studied as a mini-cluster and any additional costs may be allocated among the restudied customers, as appropriate.[148]

Study Deposits (Section 6.1, 7.2 and 8.1 of the LGIP)

i. Midwest ISO Proposal

141. Midwest ISO proposes to modify sections 6.1, 7.2 and 8.1 to state that it will provide "good faith estimates" of the total cost to Interconnection Customers for Interconnection Feasibility Studies, Interconnection System Impact Studies, and Interconnection Facility Studies. Interconnection Customers would be required to make deposits equal to the "good faith estimates" of the study cost in lieu of the deposit amounts of $10,000, $50,000 and $100,000 specified in Order No. 2003. Midwest ISO contends that such estimates provide the Interconnection Customer realistic expectations of the cost to perform the customer's studies, taking into consideration the situation presented by the proposed interconnection. Midwest ISO states that the diversity of conditions existing on its transmission system supports a wider range of study costs. Midwest ISO asserts that when deposits closely match actual study costs, there is less need to request additional funds to proceed with studies, and less need to refund excess, unused deposits, with interest.[149]

[148] Interconnection Feasibility Studies or Interconnection Facilities Studies, because these studies are not studied in clusters or groups whether for initial study or restudy.

[149] Transmittal Letter to January 20 Filing at 20.

ii. Intervenor Comments

142. Tenaska states that Midwest ISO has not justified the proposal to increase the deposits required for interconnection studies. It points out that requiring an Interconnection Customer to initially pay more money increases borrowing costs and increases the expense of connecting to the transmission grid. Also, Tenaska contends, as long as Midwest ISO is assured that it will be paid the entire costs of the studies, there is no need to collect the entire study cost in the beginning.[150]

iii. Midwest ISO Answer

143. Midwest ISO notes that its proposal includes the current requirements under Attachment R, and that given the dynamics of the marketplace, there is no assurance Midwest ISO will collect the additional funds owed after interconnection studies are complete, particularly since some projects under study are speculative. According to Midwest ISO, if the Interconnection Customer pays Midwest ISO a fixed deposit amount but fails to pay the remainder upon completion of the study, the Midwest ISO's transmission customers must make up the difference of the study's cost owed but not paid.

iv. Commission Conclusion

144. The Commission rejects these proposed revisions. While Midwest ISO argues that good faith estimates provide the Interconnection Customer with realistic expectations of the cost to perform the customer's studies, sections 6.1, 7.1 and 8.1 of the *pro forma* LGIP already require the Transmission Provider to provide good faith estimates. Also, we are not persuaded by Midwest ISO's argument that its study deposits are necessary because there is no assurance that it will collect the additional funds owed after interconnection studies are complete. Section 13.3 of the *pro forma* LGIP provides that the Transmission Provider is not obliged to perform or continue to perform any studies unless the Interconnection Customer has paid all undisputed amounts within thirty calendar days. This protects the Transmission Provider from uncompensated costs for performing facilities Studies, because the actual costs for Facilities Studies are invoiced on monthly basis. With respect to Feasibility Studies and System Impact Studies, we are not persuaded that uncompensated costs should be a problem because the study deposits in the *pro forma* LGIP should cover the costs of the study in most instances.[151] Thus, we disagree that the Midwest ISO or its members are at risk of paying excessive amounts that are owed, but not paid, by Interconnection Customers.

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[150] Motion to Intervene and Comments of Tenaska at 4-5.

[151] *See* Order No. 2003-A at P 165.

Contingencies Affecting Network Upgrade Responsibility and Agreement to Restudy (Article 11.3.1 and 11.3.2 of the LGIA)

i. Midwest ISO Proposal

145. Midwest ISO proposes to add new articles 11.3.1 and 11.3.2 to the LGIA in order to specify contingencies[152] that may modify the network upgrades to which the Interconnection Customer has committed to fund and for which it will receive credits. Midwest ISO contends that the proposed revisions provide the Interconnection Customer with more certainty regarding the possibility that an interconnection request will be restudied.

146. Specifically, proposed article 11.3.1 provides that Appendix A of the LGIA will list those higher queued Interconnection Requests and their associated upgrades for which the Interconnection Customer may be subject to review, restudy, and reassignment of its upgrade responsibility when warranted by a change in those Interconnection Requests. Midwest ISO argues that the Commission, in Order No. 2003, recognized that circumstances may arise after the parties execute an LGIA that change the Network Upgrade responsibilities of the Interconnection Customer.[153] If a contingency occurs, the Interconnection Customer would be obligated under article 11.3.2 to enter into an agreement to restudy its Generating Facility to determine whether its commitments regarding Network Upgrades will change.[154]

ii. Intervenor Comments

147. Duke Energy contends that the proposal will create an open-ended cost increase risk by subjecting the Interconnection Customer to an indefinite financial exposure for restudy. Duke Energy argues that the Commission rejected proposals that would make the lower-queued generator responsible for such network upgrade costs because it "'would subject the [lower-queued] interconnection customers to significant financial

[152] The specific contingencies are withdrawal of a higher queued Interconnection Request; termination of a higher queued Interconnection Request prior to the project's in service date; the commercial Operation Date for a higher queued interconnection is delayed; the queue position is reinstated for a higher queued Interconnection Request whose queue position was subject to dispute resolution; changes occur in Transmission Provider's or Owner's equipment design standards or reliability criteria; or the facilities required to accommodate a higher-queued Interconnection Request were modified constituting a Material Modification pursuant to section 4.4 of the LGIP.

[153] *Citing* Order No. 2003 at P 409.

[154] Transmittal Letter to January 20 Filing at 33.

risk' and determined that, if there are known contingencies, the LGIA should identify these contingencies 'in the customer's LGIA and address the effect of such contingencies on [the Parties'] financial obligations.'"[155] In addition, Duke Energy states that the Commission added that if no such contingencies were included in the LGIA, the Commission would leave it to the parties to revisit the negotiated terms of the executed LGIA because "the costs of network upgrades may influence an Interconnection Customer's decision whether it can enter into an Interconnection Agreement."[156] Duke Energy asserts that Midwest ISO's proposal essentially requires the Interconnection Customer to agree in advance to amend the LGIA to reflect unknown cost increases that may be advanced in restudies. Duke Energy states that it would support a mechanism to incorporate into Midwest ISO's LGIA a list of contingencies known at the time that the LGIA is executed, and a good faith estimate of the related financial consequences, because it would provide notice to the customer of the potential for increased facility costs before the agreement is executed, allowing the customer to assess its risk before proceeding.

iii. Midwest ISO Answer

148. Midwest ISO states that it modified article 11.3 to reduce the uncertainty presented to an Interconnection Customer by an open-ended restudy provision and to delineate the circumstances giving rise to the need for a restudy. Midwest ISO notes that "the heart" of its proposal is to provide a lower-queued Interconnection Request with information regarding the Interconnection Customer's cost responsibility should a higher queued Interconnection Request not proceed or otherwise withdraw from the interconnection queue, making the Interconnection Customer responsible for a Network Upgrade associated with the higher-queued project.[157]

iv. Commission Conclusion

149. We conditionally accept the proposed modifications. In Order No. 2003-A, the Commission recognized the uncertainty resulting from the Interconnection Customer's responsibility for funding the cost of Network Upgrades that were originally the responsibility of a higher queued customer that subsequently dropped out of the queue,

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[155] Motion to Intervene and Protest of Duke Energy at 8-9, *citing* Order 2003-A at P 409.

[156] Motion to Intervene and Protest of Duke Energy at 9, *citing* Order 2003-A at P 409.

[157] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 31-32.

where the upgrades are necessary to support the Interconnection Customer's request.[158] While we noted that these costs are simply a business risk that Interconnection Customers face, we did attempt to provide some certainty for Interconnection Customers by directing the Transmission Provider "to provide an estimate of the Interconnection Customer's maximum possible funding exposure, if higher queued generating facilities drop out."[159] We further required the Transmission Provider to "provide an estimate of the costs of any Network Upgrades that were assumed in the Interconnection Studies for the Interconnection Customer that are an obligation of an entity other than the Interconnection Customer and that have not yet been constructed."[160] While Midwest ISO's proposed revisions will benefit Interconnection Customers by providing some of the certainty the Commission sought in Order No. 2003-A, the proposed revisions do not comply with these directives in Order No. 2003-A. Therefore, we require Midwest ISO, in its compliance filing filed within 60 days of the date of this order, to amend its proposed language in compliance with Order No. 2003-A.

IV. Business and Administration

Termination Upon Three Years of No Operation (Article 2.3.1 of the LGIA)

i. Midwest ISO Proposal

150. Order No. 2003-A provides that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider ninety days notice, or the Transmission Provider may terminate upon notifying the Commission after the Generating Facility permanently ceases Commercial Operation.[161]

151. Midwest ISO proposes to revise article 2.3.1 of the LGIA so that the Transmission Provider may terminate the LGIA "if the Generating Facility has ceased Commercial Operation for three (3) consecutive years, beginning with the last date of Commercial Operation for the Generating Facility, after giving the Interconnection Customer ninety (90) Calendar Days advance written notice."[162] Midwest ISO states that interconnection

[158] Order No. 2003-A at P 320.

[159] *Id*.

[160] Order No. 2003-A at P 320.

[161] *See pro forma* LGIA at article 2.3.1; Order No. 2003-A at P 197.

[162] *See* Transmittal Letter to April 26 Filing at 8.

and transmission capacity should not be held indefinitely, in furtherance of competitive wholesale markets. It notes that if, after an extended dormant period, the Interconnection Customer wishes to again operate its Large Generating Facility, system conditions may have changed, making a review of the Facility's operation by way of an Interconnection Request appropriate. Midwest ISO argues that the proposed three-year period corresponds with the maximum time that a developer may suspend interconnection facility construction without being required to re-examine system conditions. Midwest ISO asserts that "[i]n both instances the Generating Facility should not be allowed to impede commerce if it has not achieved commercial operation or subsequently ceases commercial operation for three years."[163] Midwest ISO additionally contends that its proposal is consistent with the approach taken by PJM Interconnection, LLC (PJM) with respect to capacity interconnection rights.[164]

ii. Intervenor Comments

152. Consumers Energy, while noting its agreement with Midwest ISO that in most instances such a long cessation of commercial operation would indicate that a plant is essentially retired, objects to the use of a specific time period to determine effective retirement as arbitrary. It notes that in some circumstances, a long plant outage might not signal a retirement. As a result, Consumers Energy argues that Midwest ISO's proposed language should also include provisions to allow a generator to rebut the presumption that a three-year cessation of commercial operation is an effective retirement. Specifically, it proposes that the following additional language be added:

> A Generating Facility will not be deemed to have ceased commercial operations for purposes of this paragraph if the Interconnection Customer can document that it has continued to operate unit auxiliary equipment or taken other significant steps to maintain or restore operational readiness of the Generating Facility for the purpose of returning the Generating Facility to commercial operation as soon as practicable.[165]

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[163] Transmittal Letter to April 26 Filing at 8.

[164] Transmittal Letter to April 26 Filing at 8, *citing* PJM Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1, section 45.3.2.

[165] Comments of Consumers Energy (May 17, 2004) at 4-5.

iii. Midwest ISO Answer

153. In its June 1 answer, Midwest ISO states that it is receptive to Consumers Energy's proposal to allow a generator to rebut the presumption that it has retired after three-years without commercial operation. It proposes the following additional language, which is somewhat different from Consumers proposal:

> A Generating Facility will not be deemed to have ceased commercial operations for purposes of this paragraph if the Interconnection Customer can document that it has taken other significant steps to maintain or restore operational readiness of the Generating Facility for the purpose of returning the Generating Facility to commercial operation as soon as possible.[166]

iv. Commission Conclusion

154. The Commission will accept Midwest ISO's proposed revisions to article 2.3.1 of the LGIA, as amended in its June 1 answer. In its compliance filing to be submitted with 60 days of the date of this order, Midwest ISO must include this language in a revised article 2.3.1.

Interconnection Facilities Engineering, Procurement and Construction: Liquidated Damages (Article 5.3 of the LGIA)

i. Midwest ISO Proposal

155. Order No. 2003 provides for liquidated damages in situations where the Transmission Provider agrees to certain milestones for completion of various stages of the interconnection and then fails to meet them. Liquidated damages come into play only if the Interconnection Customer foregoes article 5.1.1 (Standard Option), in which the Transmission Provider contracts the facilities on a schedule, set by the Transmission Provider, in favor of article 5.1.2 (Alternate Option). Under the Alternate Option, the Interconnection Customer proposes enforceable milestones that the Transmission Provider is free to accept or reject. If the Transmission Provider accepts the proposed milestones, it faces liquidated damages if it fails to meet the milestones. If the Transmission Provider rejects the proposed milestones, the Interconnection Customer can then either build the facilities itself under article 5.1.3 (Option to Build), or negotiate with the Transmission Provider to develop milestones agreeable to the Parties under article 5.1.4 (Negotiated Option). Under the Negotiated Option, the Parties may include, but are not required to include, a liquidated damages provision. If the Parties, after negotiating

[166] Motion for Leave to Answer and Answer of Midwest ISO (June 1, 2004) at 6.

in good faith, are unable to reach a negotiated agreement under article 5.1.4, the Transmission Provider assumes responsibility for establishing the milestones and the interconnection proceeds under article 5.1.1 (Standard Option).

156. Midwest ISO proposes to modify article 5.3 to provide that no liquidated damages will be paid if "the delay is due to the inability of the Transmission Owner to obtain all required approvals from Governmental Authorities in a timely manner for the construction of any element of the Interconnection Facilities… and Transmission Owner has exercised Reasonable Efforts in procuring such approvals, permits, rights or authorizations."

ii. Intervenor Comments

157. In its protest, AMP-Ohio argues that in Order No. 2003, the Commission held that generating units connected to non-jurisdictional distribution systems were not subject to the generator interconnection provisions in the Final Order. They contend that "with this filing and statements made by MISO staff concerning its intent," MISO would violate this holding by imposing its generator interconnection provisions to "any large generator interconnection within its footprint."[167] Specifically, AMP-Ohio notes that "MISO staff has made plain" that it will apply its generator interconnection tariff requirements to "any sufficiently sized addition by AMP-Ohio or its members to any distribution system in the MISO footprint, irrespective of whether or not the generation owner intends to make sales in interstate commerce."[168] It argues that the Commission did not intend to grant RTOs flexibility to enlarge the Commission's jurisdiction when proposing modifications to the *pro forma* Final Rule LGIP and LGIA. Flowing from this position, AMP-Ohio contends that under section 5.1 of the LGIA, when the interconnection in question is to a non-jurisdictional entity that is not a signatory to the MISO Agreement, the owner of the distribution system should establish the construction schedule and have the final authority to select a contractor for the interconnection facilities. Further, AMP-Ohio asserts that the liquidated damages provisions of section 5.3 of the LGIA should not apply in this circumstance.

[167] Motion for Leave to Intervene and Protest of AMP-Ohio at 3.

[168] *Id.* at 5.

iii. Midwest ISO Answer

158. Midwest ISO characterizes AMP-Ohio's arguments as "raising a jurisdictional issue regarding implementation of article 5.1."[169] Further, Midwest ISO notes that it operates under the Commission's jurisdiction, and seeks Commission guidance "on how such cross-jurisdictional issues should be addressed."[170]

iv. Midwest ISO's April 26 Filing

159. In the April 26 Filing, Midwest ISO amended its proposed LGIA to state, "[l]iquidated damages, when the parties agree to them, are the exclusive remedy for the Transmission Owner's failure to meet its schedule."

v. Commission Conclusion

160. As explained previously,[171] Midwest ISO may apply the interconnection procedures in its OATT to "distribution" facilities only when the "Interconnection Customer . . . plans to engage in a sale for resale in interstate commerce or to transmit electricity in interstate commerce," and the distribution facilities in question are "owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, [and] are used to provide transmission service" under the Midwest ISO OATT.[172] If a non-jurisdictional utility (for example, a municipal utility) seeks to interconnect generation to its own facilities, and the facilities are not operated or controlled by the Midwest ISO and available for transmission service under Midwest ISO's OATT, the interconnection procedures do not apply. As we noted in Order No. 2003-A, Order No. 2003 in no way forces non-jurisdictional entities to assume jurisdictional status.[173]

161. We accept Midwest ISO's proposed revisions to section 5.3 because, by further clarifying factors beyond the Transmission Owner's control, for which the Transmission Owner should not be liable for liquidated damages, and the total liability of the Transmission Owner for failure to meet the construction schedule under the Alternate and Negotiated Options, they are consistent with the intent of these provisions in the *pro forma* LGIA.

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[169] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 30.

[170] *Id.* at 31.

[171] *See supra,* P 87.

[172] Order No. 2003 at P 804.

[173] Order No. 2003-A at P 740.

Consequential Damages and Insurance Provisions (Articles 18.2 and 18.3 of the LGIA)

i. Midwest ISO Proposal

162. Midwest ISO proposes "clarifications" to articles 18.2 and 18.3 of the LGIA, which deal respectively with consequential damages and insurance. In article 18.2, Midwest ISO proposes to insert language stating that its provisions limiting consequential and other damages apply only between the parties to the LGIA. In article 18.3, Midwest ISO proposes several revisions that it states provide more detail and update the required insurance coverage. For example, Midwest ISO revises article 18.3 to specify that the Interconnection Customer and the Transmission Owner are the parties responsible for maintaining the required minimum insurances coverages. Midwest ISO's proposed revisions also include deleting the minimum limits for Employer's Liability insurance, raising the Commercial General Liability (CGL) insurance minimum limit for general aggregate to $2 million, and allowing Excess Liability insurance to be procured and maintained in lieu of a CGL policy. Additionally, Midwest ISO proposes a new article 18.3.11, not included in the *pro forma* LGIA, which would require all insurance to be in a form reasonably satisfactory to all parties, written with an insurance company satisfying a minimum AM Best Rating, and authorized to do business in the state where the Point of Interconnection is located. Midwest ISO states that its proposed revisions to article 18.3 comport with the changes submitted by Southwest Power Pool (SPP) in its Order No. 2003 compliance filing, and with PJM's unchanged insurance requirements.[174]

ii. Intervenor Comments

163. Consumers Energy notes that Midwest ISO's proposed revision to article 18.3 of the LGIA could be interpreted to allow self-insurance for each type of required insurance except for worker's compensation. It states, however, that Order No. 2003-A indicated that state law governs worker's compensation requirements, and that worker's compensation insurance could be self-insured where state law allows. Consumers Energy asks the Commission to clarify that the relevant sections of Order No. 2003-A should be considered when interpreting Midwest ISO's insurance provisions. Further, Consumers Energy comments that Order No. 2003-A recognized the potential variations in insurance coverage, and requests that the Commission "explicitly state" in its order in this proceeding that Midwest ISO may "negotiate terms different from the terms in the LGIA where the different terms provide a measurable benefit to the Party providing the insurance without significantly reducing the insurance protection to be provided."[175]

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[174] *See* Transmittal Letter to April 26 Filing at 10, *citing* Southwest Power Pool, Inc., 106 FERC ¶ 61,254 (2004).

[175] Comments of Consumers Energy (May 17, 2004) at 8-9.

Finally, with regard to the proposed new article 18.3.11, Consumers Energy notes that in some states, "authorized to do business" refers to a specific level of state recognition applying to some types of insurance. It asserts that the Commission should require Midwest ISO to change "authorized" to a more neutral term, or clarify that article 18.3.11 does not require any specific level of state recognition.

iii. Midwest ISO Answer

164. Midwest ISO did not respond to these comments.

iv. Commission Conclusion

165. With regard to Midwest ISO's proposed changes to article 18.2, concerning liability for consequential and other damages, we note that in Order No. 2003, the Commission stated that this provision "protects either Party from liability" for such damages.[176] This passage makes clear that the article is intended to apply only to the parties to the LGIA. Therefore, we reject Midwest ISO's proposed revision as unnecessary.

166. The Commission will reject Midwest ISO's proposed revisions to Article 18.3, regarding insurance coverage. Midwest ISO does not provide support to justify why such changes are necessary or how the changes meet the independent entity standard. The only explanation Midwest ISO offers is to refer to similar changes in SPP's Order No. 2003 compliance filing and to the current insurance provisions in PJM 's OATT. We note that the SPP order on which Midwest ISO relies in part to justify its revisions did not accept the similar revisions proposed by SPP on their merits. Instead, in that order we accepted and suspended SPP's proposed revisions to Article 18.3, subject to a further order addressing their merits.[177] Thus, that order provides no support for Midwest ISO's proposal. Similarly, PJM's existing OATT provisions are currently subject to review in its Order Nos. 2003 and 2003-A compliance filings,[178] and therefore provide no support for Midwest ISO's proposal. If Midwest ISO wishes to pursue its proposed revisions to Article 18.3, it may re-file them in a new section 205 filing providing appropriate justification, including a response to Consumers Energy's concern regarding self-insurance.

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[176] Order No. 2003 at P 906.

[177] *See* Southwest Power Pool, Inc., 106 FERC ¶ 61,254 at P 12.

[178] In an order being issued concurrently in Docket Nos. ER04-457-000, addressing PJM's Order No. 2003 compliance filing, the Commission directs PJM to file additional information to justify continued use of its existing insurance provisions instead of the provisions in the *pro forma* LGIA.

167. We will deny Consumers Energy's request for us to require an explicit statement in the LGIA that the Midwest ISO may negotiate insurance terms different than those in the LGIA, but we will consider such negotiated variations to the insurance requirements on a case-by-case basis. Consumers also requests that we require Midwest ISO to change the *pro forma* language "authorized to do business" to a more neutral phrase, but does not provide a suggestion of what it finds more appropriate. We will deny this request as a collateral attack on the *pro forma* language of Order No. 2003, but note that our intention is simply to require that insurers be lawfully able to provide insurance coverage where the Point of Interconnection is located.

Emergencies – Notice and Immediate Action (Articles 13.3 and 13.4 of the LGIA)

i. Midwest ISO Proposal

168. Midwest ISO proposes to apply both articles 13.3 and 13.4 to Distribution Systems, as applicable.

ii. Intervenor Comments

169. Regarding article 13.3, AMP-Ohio argues that when the interconnection is to a distribution utility, the Interconnection Customer should be required first to notify the distribution operator and second to inform the Transmission Provider. According to AMP-Ohio, Midwest ISO does not have the overall responsibility for the distribution system operation where the entity is not a Midwest ISO transmission owner, and Midwest ISO appears to have provided for its own indemnification should it fail to notify a distribution system operator.[179]

170. Regarding article 13.4, Midwest ISO Transmission Owners point out that this provision provides that generators need only the approval of Midwest ISO to perform manual switching in emergencies. Midwest ISO Transmission Owners argue that approval should be required of them as well, to the extent that it affects distribution systems, which Midwest ISO does not control.[180]

[179] Motion for Leave to Intervene and Protest of AMP-Ohio at 9.

[180] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 17.

iii. Midwest ISO Answer

171. Midwest ISO states that it will amend article 13.3 to require notification to all involved parties when the Interconnection Customer first determines that an emergency exists. Midwest ISO concurs with Midwest ISO Transmission Owners that article 13.4 may restrict the ability of the Transmission Owner, particularly if the Transmission Owner operates a distribution system, to perform manual switching in emergencies. Midwest ISO proposed to include revisions responding to both concerns in its Order No. 2003-A compliance filing.[181]

iv. Commission Conclusion

172. Midwest ISO proposes amending article 13.3 and article 13.4, in the April 26 Filing, to provide that the Interconnection Customers shall notify the Transmission Owner, including the operator of a distribution system when it becomes aware of an emergency condition that affects the generating facility or the Interconnection Customer's Interconnection Facilities and may be reasonably expected to affect the transmission or distribution system. In addition, the April 26 Filing provides that, if in a party's judgment immediate action is required, the party exercising such judgment shall notify and obtain the consent of the other parties before performing any manual switching operations at the Generating Facility or the Interconnection Customer's facilities in connection with an emergency. Such communication will promote safe and reliable operation of the interconnected electrical system. As Midwest ISO has responded to commenters' concerns, we will accept Midwest ISO's latest modifications.

Provision of Security (Article 11.5 of the LGIA) and Tender (Section 11.1 of the LGIP)

i. Midwest ISO Proposal

a. Provision of Security

173. In article 11.5 of the LGIA, Midwest ISO proposes to clarify the activities and equipment for which the Interconnection Customer may be required to provide security.

[181] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 33-34. These revisions were included in the April 26 Filing.

b. Tender

174. In section 11.1 of the LGIP, Midwest ISO proposes to clarify the "preliminary" nature of the reports to be provided to the Interconnection Customer that trigger certain Midwest ISO actions, such as tendering to the Interconnection Customer a draft of the LGIA together with draft appendices completed to the extent practicable.

ii. Intervenor Comments

175. Regarding Midwest ISO's modification to article 11.5, Midwest ISO Transmission Owners state that clarification is needed to ensure that security is required before design for all facilities to be constructed, not just Network Upgrades. Midwest ISO Transmission Owners allow that application of the security requirements to all facilities to be constructed is apparently the intent, but contend that the first part of the provision does not refer to all of the facilities that could be built, including Distribution Upgrades and System Protection Facilities.[182] Regarding Midwest ISO's modification to section 11.1, Midwest ISO Transmission Owners argue that because the Transmission Owner will be a party to the three-party agreement, the draft agreement should be provided to the Transmission Owner at the same time as it is sent to the interconnecting generator.[183]

iii. Midwest ISO Answer and April 26 Filing

176. In its answer, Midwest ISO concurs with the commenters' remarks regarding article 11.5 and section 11.1,[184] and in the April 26 Filing, proposes modifications to address Midwest ISO Transmission Owners' concerns. Midwest ISO proposes in article 11.5 to apply the security requirement to Interconnection Facilities, System Protection Facilities, Network Upgrades, Distribution Upgrades or Stand-Alone Network Upgrades to be constructed. The amended language in section 11.1 states that the Interconnection Customer shall return comments on the draft Interconnection Facilities Study Report within thirty days. The Transmission Provider then tenders a draft LGIA to the Parties, with draft appendices completed to the extent practicable. The Interconnection Customer then must return the completed draft appendices with thirty days.

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[182] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 16.

[183] *Id*. at 15.

[184] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 27, 33.

iv. Commission Conclusion

177. Midwest ISO's amendments in the April 26 Filing appear to satisfy the Midwest ISO Transmission Owners' concerns. We will accept the proposed revisions because they clarify the types of facilities to be constructed, for which security is required, in the context of Midwest ISO's three-party agreement.

Final Invoice (Article 12.2 of the LGIA)

i. Midwest ISO Proposal

178. In article 12.2, Midwest ISO proposes to require interest to be paid by the Transmission Owner on the difference between the estimated costs and actual costs of construction.

ii. Intervenor Comments

179. Midwest ISO Transmission Owners contend that Midwest ISO has not justified this revision, and that it is inequitable. They state that if the Transmission Owner expends monies on the generator's behalf before it receives monies from the generator (or in instances when the estimated amount is too low), the Transmission Owner should be allowed to recover interest pertaining to that difference as well.[185]

iii. Midwest ISO Answer

180. Midwest ISO replies that interest earned on funds provided by the Interconnection Customer should be provided to the Interconnection Customer. It also contends that there is no comparable requirement applied to the Interconnection Customer because there is no comparable requirement for the Transmission Owner to make unfunded expenditures on behalf of the Interconnection Customer.[186]

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[185] Protest and Motion to Intervene of Midwest ISO Transmission Owners (Feb. 10, 2004) at 16.

[186] Motion for Leave to Answer and Answer of Midwest ISO (Mar. 24, 2004) at 33.

iv. Commission Conclusion

181. We accept the proposed revision. The interest costs associated with the difference between estimated and actual construction costs could be significant.[187] We also agree that there is no comparable requirement for a Transmission Owner to make unfunded expenditures on behalf of an Interconnection Customer, and thus no need to allow the Transmission Owner to recover interest as well.

Dispute Resolution (Section 13.5 of the LGIP and Article 27 of the LGIA)

i. Midwest ISO Proposal

182. Midwest ISO proposes to revise section 13.5 and article 27 to apply the dispute resolution procedures that are currently in effect under its OATT.[188] Midwest ISO states that this revision of the *pro forma* LGIP and LGIA dispute resolution is necessary to make tariff administration more effective and consistent with the established dispute resolution procedures already in place.[189]

ii. Intervenor Comments

183. No comments were filed on this revision.

iii. Commission Conclusion

184. While we are sympathetic to Midwest ISO's desire to achieve greater consistency with the procedures in its OATT, it does not support the proposed modification in terms of improving parties' performances of their responsibilities under Order Nos. 2003 and 2003-A or in terms of benefits to customers. We reject the proposed modification without prejudice to Midwest ISO providing additional support in a future filing. In the meantime, Midwest ISO should adopt the dispute resolution procedure in the *pro forma* LGIP and LGIA.

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[187] *See* Order No. 2003 at P 279. We expect that interest costs associated with the difference between actual and estimated construction costs would be much larger than interest costs associated with the difference between study deposits and actual study costs or the interest associated with unpaid study costs.

[188] Transmittal Letter to January 20 Filing at 20.

[189] *Id*.

Other Regulatory Filings (Article 3.2 of the LGIA)

i. Midwest ISO Proposal

185. Midwest ISO proposes to add article 3.2 to its LGIA to provide for regulatory filings that Governmental Authorities other than the Commission may require for the construction of facilities and installation of equipment related to the interconnection.[190] Midwest ISO explains that certain states and many local jurisdictions require such construction to be submitted and approved by regulatory bodies before construction may begin. These proceedings, Midwest ISO contends, may require the participation of the Transmission Owner and Interconnection Customer, and thus the proposed article 3.2 requires the parties to the LGIA to use Reasonable Efforts in gaining regulatory approval.[191]

ii. Intervenor Comments

186. No comments were filed on this revision.

iii. Commission Conclusion

187. The proposed article would impose on the parties the obligation to use Reasonable Efforts to seek, and cooperate in obtaining, such regulatory approval as necessary from state and local jurisdictions. However, Midwest ISO does not explain why the additional article is necessary given that article 5.14 of the *pro forma* LGIA requires cooperation by parties to obtain necessary permits, licenses and authorizations required to accomplish the interconnection. We reject this proposed modification without prejudice to Midwest ISO providing additional support for its proposal in a future filing.

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[190] *Id.*

[191] *Id*.

V. Regional Reliability Variations

188. Midwest ISO proposes specific variations to either comply with existing MAPP or North American Electric Reliability Council (NERC) requirements.[192] These variations were unprotested. We will accept these proposed deviations as being necessary to accommodate existing regional reliability standards.[193]

VI. Miscellaneous Variations

Generator Imbalance Agreement (Former Article 4.3 of the LGIA)

i. Midwest ISO Proposal

189. In Order No. 2003-A, the Commission deleted article 4.3 from the LGIA, thereby removing the Interconnection Customer's obligation to make generator balancing service arrangements before submitting any schedules for delivery service that identify the Generating Facility as the point of receipt for the scheduled delivery.[194]

190. Midwest ISO requests in the April 26 Filing that it be permitted to retain article 4.3 in its LGIA until arrangements for and compensation regarding generator imbalances can be addressed elsewhere in its OATT, or are addressed pursuant to requirements that are generally applicable. Midwest ISO notes that it has historically distinguished

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[192] Midwest ISO: (1) adds definitions for "Special Protection System," and "Transmission Control Devices;" (2) modifies section 3.2.2.2 of the LGIP to provide that a facility is studied with the Transmission System at both off-peak and peak loads; (3) modifies section 3.3.4 of the LGIP to specify additional technical data that will be brought to the scoping meeting; (4) modifies section 7.3 of the LGIP and Appendix 3, section 5 to state that the Transmission Provider may determine that certain specific analyses will be performed when it performs the stability analysis under the System Impact Study (SIS) and that the SIS report will include that information; (5) modifies Page 2, Attachment A to Appendix 1 to require information if the Generating Facility uses non-linear devices; (6) modifies Page 4, Attachment A to identify any required or planned special equipment; and (7) modifies Page 5, Attachment A to describe the type of wind generator, to provide voltage flicker data if available, and to provide completed generator, exciter and governor data sheets as specified.

[193] Order No. 2003 at P 698.

[194] *Id.* at P 667.

between generator balancing service and Energy Imbalance Service,[195] under Schedule 4 to the Midwest ISO OATT. Midwest ISO states that it believes that the Commission's original rationale in Order No. 888, which posited that generator imbalances are properly the subject of agreements regarding generator interconnection and operation, is correct. Further, Midwest ISO notes that the Commission, in Order No. 888, expected that interconnection agreements would specify requirements for the generator to meet its schedule, and consequences for persistent failure to meet its schedule.[196]

ii. Intervenor Comments

191. Midwest TDUs state that the Midwest ISO OATT already requires Energy Imbalance Service, by addressing differences between the energy scheduled by load and the hourly energy actually consumed by load. As a result, they contend that for Interconnection Customers whose load is in the applicable control area, generator imbalances should be "netted" against that customer's load imbalance when calculating the Generator Balancing Service charge.[197] Constellation contends that Midwest ISO's request to retain article 4.3 should be rejected as unjustified. Specifically, Constellation argues that energy imbalance should be addressed in other provisions of the Midwest ISO OATT, and that allowing article 4.3 to remain in the LGIA in the short term will lead to conflict and confusion. Additionally, Constellation notes that in Order No. 2003-A, "the Commission recognized that this service was more closely related to delivery rather than interconnection services and thus 'should not appear in the LGIA.'"[198]

iii. Midwest ISO Answer

192. In its June 1 answer, Midwest ISO states that the comments confuse generator imbalance and energy imbalance, which is already addressed in the Midwest ISO OATT.

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[195] Midwest ISO describes generator imbalance as the mismatch between energy scheduled for delivery at the *point of receipt*, that is, the generator's control area, and the amount of energy actually generated and injected to the Transmission System in any hour. Midwest ISO defines energy imbalance is the mismatch between energy scheduled by *load* (or the seller of electricity to the load, in either case, the transmission customer) to be received *at the point of delivery* and the actual hourly energy consumed by the *load*.

[196] Transmittal Letter to April 26 Filing at 6-7, *citing* Order No. 888-A at 30,230.

[197] Joint Protest of Midwest TDUs (May 17, 2004) at 2, 11.

[198] Comments of Constellation (May 19, 2004) at 3.

iv. Commission Conclusion

193. In Order 2003-A, the Commission removed the generator balancing service requirement in article 4.3 of the *pro forma* LGIA, partially in response to concerns that the requirement essentially created a new Ancillary Service under the OATT.[199] In removing this provision, we noted that the original intent of the article "was not to establish a new requirement for balancing service or to preclude any options currently available to the Interconnection Customer."[200] As noted by Constellation, however, we recognized that a balancing requirement is more closely related to delivery service, and because such services are addressed elsewhere in the OATT, we held that "balancing service requirement[s], and requirements related to Ancillary Services generally, should not appear in the LGIA."[201]

194. As a result of these conclusions in Order No. 2003-A, the Commission will reject Midwest ISO's proposal to retain article 4.3 in its LGIA. Generator balancing requirements should be addressed elsewhere in the Midwest ISO OATT and in other tariffs applicable to the provision of ancillary services to transmission customers under the Midwest ISO OATT. Additionally, we agree with Constellation that permitting article 4.3 to remain in the LGIA until such requirements can be addressed elsewhere in the OATT could lead to unnecessary confusion.

Application to Induction Generators (Articles 5.4 and 9.6.1 of the LGIA)

i. Midwest ISO Proposal

195. Order No. 2003-A exempted wind generators from the requirements of article 5.4 of the LGIA, dealing with Power System Stabilizers. As a result of this exemption, an Interconnection Customer that is a wind generator is not required to procure, install, maintain and operate power system stabilizers.[202]

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[199] Order No. 2003-A at P 665, 667.

[200] *Id.* at P 667.

[201] *Id.*

[202] *Id.* at P 280.

196. Midwest ISO proposes to exempt induction generators from the requirements of article 5.4, which it states would include both wind generators and generators installed at hydroelectric facilities.[203] Midwest ISO notes that hydroelectric facilities, like wind generators, rely on inductive generator technology.

197. Order No. 2003-A exempted wind generators from article 9.6.1, Power Factor Design Criteria, which requires the Interconnection Customer to design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection within the range of 0.95 leading to 0.95 lag, unless the Transmission Provider establishes different requirements that apply to all generators in the Control Area on a comparable basis.[204]

198. Midwest ISO proposes not to exempt wind (or inductive) generators from the requirements of article 9.6.1 as a permitted deviation subject to the independent entity standard. Midwest ISO argues that: (1) such exemption may competitively disadvantage other generation technologies, and (2) a Large Generating Facility consisting (in whole or in part) of induction generators should not be permitted to absorb reactive power when the Transmission System needs reactive supply, and vice versa. Midwest ISO contends that while many induction generators are not able to dynamically supply or absorb reactive power, it is possible to design a Large Generating Facility consisting of induction generators to mimic synchronous generators at the Point of Interconnection. Midwest ISO also states that where system topology does not allow a Large Generating Facility consisting of induction generators to mimic the entire operating range of a synchronous generator, the parties can reach an agreement to defer certain static and/or dynamic reactive facilities until they are needed.[205] Midwest ISO additionally contends generally that inductive generators can be held to reactive power supply requirements, and that the ability to supply or absorb reactive power in response to system operations "should be a critical feature for inductive generators."[206]

ii. Intervenor Comments

199. Consumers Energy states that it supports Midwest ISO's proposal to not exempt wind (or inductive) generators from the reactive power requirements in article 9.6.1, for the reasons stated by Midwest ISO.

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[203] Transmittal Letter to April 26 Filing at 9.

[204] Order No. 2003-A at P 405-407.

[205] Transmittal Letter to April 26 Filing at 9.

[206] *Id.* at 9.

iii. Commission Conclusion

200. In exempting wind generators from the requirements of articles 5.4 and 5.10.3, the Commission noted that "power system stabilizers, excitation systems, and automatic voltage regulators may not be appropriate for non-synchronous technologies such as wind generators."[207] Additionally, the Commission generally recognized in Order No. 2003-A that generators relying on non-synchronous generation technology may require certain exemptions or modification to the requirements and approaches in the *pro forma* LGIA and LGIP.[208] Midwest ISO's proposal to also exempt other induction generators from the power system stabilizer requirements is consistent with our revisions to the *pro forma* LGIA in Order No. 2003-A, and thus we will accept the proposed revision to article 5.4.

201. The Commission will not accept Midwest ISO's proposed revisions to article 9.6.1 at this time. At an appropriate time, we intend to address the issues surrounding the application of reactive power requirements and policies to newer generation technologies, including non-synchronous generation technologies and induction generators, in a generic proceeding. In our view, it is not appropriate to consider such issues here, and thus we reject Midwest ISO's proposal.

Remaining Modifications Rejected as Unsupported

202. The following proposed modifications are rejected as unsupported: 1) deletion of Clustering definition and 2) addition of Generator Balancing Service Arrangement definition.

The Commission orders:

(A) Midwest ISO's proposed modifications to the *pro forma* LGIP and LGIA are accepted in part and rejected in part, effective on the date of this order, as discussed in the body of this order.

[207] Order No. 2003-A at P 280.

[208] *Id*. at P 407, n. 85.

(B) Midwest ISO is directed to submit further information and a compliance filing, as directed in this order, within 60 days from the date of this order

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX A

INTERVENORS

American Municipal Power-Ohio, Inc. (AMP-Ohio)
American Transmission Company, LLC (ATCLLC), International Transmission Company (International Transmission), and Michigan Electric Transmission Company, LLC (METC) (collectively, Midwest Stand-Alone Transmission Companies)
Constellation Generation Group, LLC (Constellation)
Consumers Energy Company (Consumers Energy)
The Crescent Moon Group (*i.e.* Basin Electric Power Cooperative, Heartland Consumers Power District, Minnkota Power Cooperative, Inc., NorthWestern Energy, Sunflower Electric Power Corporation, and the Upper Great Plains Region of the Western Area Power Administration) (collectively, Crescent Moon)
Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (collectively, Duke Energy)
Illinois Commerce Commission (Illinois Commission)
Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Missouri River Energy Services, and Wisconsin Public Power, Inc. (collectively, Midwest TDUs)
The Kentucky Public Service Commission (Kentucky Commission)
Midwest ISO Transmission Owners (Midwest ISO Transmission Owners) [209]

[209] Midwest ISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, and Central Illinois Light Co. d/b/a AmerenCilco; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); Cinergy Services, Inc. (for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co.); City Water, Light & Power (Springfield, IL); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; LG&E Energy Corporation (for Louisville Gas and Electric Co. and Kentucky Utilities Co.); Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

Mirant Wyandotte, LLC (Mirant)
Montana-Dakota Utilities Co. (Montana-Dakota Utilities)
North Dakota Public Service Commission (North Dakota Commission)
NRG Power Marketing, Inc. and NRG Audrain LLC (NRG Companies)
Otter Tail Power Company (Otter Tail)
Organization of Midwest ISO States (OMS)[210]
PPM Energy, Inc. (PPM Energy)
Reliant Resources, Inc. (Reliant)
Tenaska, Inc. (Tenaska)
The Public Service Commission of Wisconsin (Wisconsin Commission)
Wisconsin Public Power, Inc. (Wisconsin Public Power)
WPD Resources (WPSR), Wisconsin Public Service Corporation (WPSC), Upper Peninsula Power Company (UPPCO), WPS Power Development Inc. (PDI), and WPS Energy Services Inc. (ESI) (collectively, WPS Companies)

[210] Members supporting OMS' comments include: Indiana Utility Regulatory Commission Iowa Utilities Board, Kentucky Public Service Commission; Michigan Public Service Commission; Minnesota Public Utilities Commission; Missouri Public Service Commission; Montana Public Service Commission; North Dakota Public Service Commission; Ohio Public Utilities Commission; South Dakota Public Utilities Commission; Wisconsin Public Service Commission. The Minnesota Department of Commerce, an associate member of OMS, also supports OMS' comments.

Members that have not expressed a formal position include: Illinois Commerce Commission; Nebraska Power Review Board.

Members not participating in OMS' comments include: Manitoba Public Utilities Board; Pennsylvania Public Utility Commission.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent System Operator, Inc.	Docket Nos. ER04-458-000, ER04-458-001

(Issued July 8, 2004)

KELLY, Commissioner, concurring:

This order appropriately rejects the Midwest ISO's proposal to perform Group Studies in circumstances that include the presence of a state-sanctioned resource solicitation process.[1] I concur with the majority's finding that the Midwest ISO's proposal should be rejected on the basis that it allows studies to be performed out of queue order. [2] For the reasons I have previously set forth in Xcel Energy Operating Companies, 107 FERC ¶ 61,313 (2004), however, I believe that, absent such defects, the Commission should look favorably on proposals to accommodate state resource solicitation programs.

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Suedeen G. Kelly

[1] *See* P 133.

[2] *See* Xcel Energy Operating Companies, 106 FERC ¶ 61,260 at P 27 (March 19, 2004) (rejecting the Xcel proposal that would have allowed "queue jumping.")