

143 FERC ¶ 61,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER11-3326-001 ER11-3326-002
Midwest Independent Transmission System Operator, Inc.	ER11-3327-001 ER11-3327-002
Midwest Independent Transmission System Operator, Inc.	ER11-3330-001 ER11-3330-002 (Not Consolidated)

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 18, 2013)

1. This order addresses two requests for rehearing of the Commission's June 10, 2011 order (June 10 Order) in the captioned proceedings.<sup>1</sup> One request for rehearing was filed jointly by Gamesa Energy USA, LLC, Iberdrola Renewables, Inc., Pioneer Trail Wind Farm, LLC and Settlers Trail Wind Farm, LLC (Generation Movants). A second request for rehearing was filed by the American Wind Energy Association (AWEA). We deny the requests for the reasons set forth herein.
2. Additionally, we conditionally accept the compliance filing made by Midwest Independent Transmission System Operator, Inc. (MISO) in response to the June 10 Order, and direct MISO to make a further compliance filing to reflect the Commission's decision in a separate docket as required by the June 10 Order.

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,222 (2011) (June 10 Order).

## I. Background

### A. MISO's Filing

3. On February 5, 2010, MISO, as Transmission Provider, and Ameren Services Company, as agent for Ameren Illinois Company (Ameren Illinois), the Transmission Owner, executed generator interconnection agreements (Original GIAs) with Settlers Trail Wind Farm, LLC (Settlers Trail) and Pioneer Trail Wind Farm, LLC (Pioneer Trail).<sup>2</sup> Both the Settlers Trail GIA and the Pioneer Trail GIA conformed to the then effective MISO *pro forma* GIA, and were not filed with the Commission but were reported in MISO's Electric Quarterly Report (EQR). In April 2010, California Ridge Wind Energy, LLC (California Ridge) signed a tendered GIA, but it was not countersigned by MISO and Ameren Illinois.

4. On April 29, 2010, MISO informed Settlers Trail, Pioneer Trail, and California Ridge of a modeling input error in the system impact study (SIS) that was performed by MISO and others<sup>3</sup> to determine the transmission system upgrades required for the interconnection of their respective wind generation projects. Specifically, the error occurred when the combined generating capacity of two higher-queued interconnection requests on the NIPSCO system was incorrectly understated in the model.<sup>4</sup> That flawed

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<sup>2</sup> Settlers Trail's interconnection request was designated No. G931 by MISO, and Pioneer Trail's was designated No. G996.

<sup>3</sup> MISO contracted with Ameren Illinois for study services, and Ameren Illinois characterized its job as acting as a consultant to provide engineering services. Ameren Illinois denies that it is responsible for the modeling error. Ameren Illinois claims that the model was for a cluster of six projects, and was circulated and vetted by the "Ad Hoc" study group, which included MISO, Ameren Illinois, Duke Energy Company, Northern Indiana Public Service Company (NIPSCO), PJM Interconnection, L.L.C., American Electric Power Company transmission subsidiaries, Invenergy LLC, and E.ON Climate and Renewables. Ameren Illinois May 16, 2011 Answer at 4-6.

<sup>4</sup> The two higher-queued interconnection requests related to the Benton County Wind Farm (Benton County). The original interconnection request for Benton County was based on output of 100 MW, but was later increased in a separate interconnection request by 30 MW. However, the model used in the SIS for the projects in the instant proceeding was based only on the original 100 MW of output associated with the Benton County project. *See* MISO May 16, 2011 Answer at 3.

SIS formed the basis for the costs of necessary network upgrades estimated in the Original GIAs that MISO had tendered to the Interconnection Customers.<sup>5</sup>

5. When the SIS was corrected to include the omitted 30 MW that should have been attributed to the higher-queued interconnection request, MISO determined that \$10.26 million in additional network upgrades (Additional Network Upgrades) would be needed for the interconnection of Settlers Trail in order to mitigate overloads on the transmission system that would otherwise occur.<sup>6</sup> In addition, MISO identified the need for a Common Use Upgrade<sup>7</sup> totaling \$1.485 million to interconnect the three Interconnection Customers. MISO tendered to the Interconnection Customers Amended and Restated Generator Interconnection Agreements (Amended GIAs) and a Multi-Party Facility Construction Agreement (MPFCA) reflecting these cost changes.<sup>8</sup>

6. The Interconnection Customers objected to paying for the proposed Additional Network Upgrades and to the delayed interconnection service caused by the need for additional construction. Instead, Settlers Trail and Pioneer Trail requested that MISO file with the Commission the unexecuted Amended GIAs pursuant to Section 11.3 of the GIP. California Ridge executed a revised GIA on April 5, 2011.<sup>9</sup> All three projects

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<sup>5</sup> The term “Interconnection Customers” is used herein to mean Settlers Trail, Pioneer Trail, and California Ridge.

<sup>6</sup> The majority of the new costs are associated with the Gilman South-Paxton East 138 kV line and the Watseka-G931 Sub 138kV line reconductor. MISO May 16, 2011 Answer at 4.

<sup>7</sup> The Common Use Upgrade identified for the three Interconnection Customers was the Paxton East-Rantoul 138 kV line clearance. Under Attachment X to MISO’s Tariff, Generator Interconnection Procedures (GIP), Common Use Upgrade means an Interconnection Facility, Network Upgrade, System Protection Facility, or any other classified addition, alteration, or improvement on the Transmission System or the transmission system of an Affected System that are needed for the interconnection of multiple Interconnection Customers’ Generating Facilities and which are the shared responsibility of such Interconnection Customers.

<sup>8</sup> Under MISO’s Tariff, an MPFCA provides the terms for sharing cost responsibility for Common Use Upgrades.

<sup>9</sup> MISO stated that the California Ridge GIA would be reported as a conforming agreement in its next EQR. Docket No. ER11-3330-000, Transmittal Letter at 2. California Ridge was not subject to Additional Network Upgrade costs, but was subject to a share of the Common Use Upgrade. California Ridge did not execute the MPFCA

(continued...)

asked MISO to file an unexecuted MPFCA that governs cost sharing by the three projects for the additional Common Use Upgrade.

7. Accordingly, on April 8, 2011, pursuant to section 205 of the Federal Power Act (FPA),<sup>10</sup> MISO submitted for filing an Amended GIA for Settlers Trail in Docket No. ER11-3326-000. This Amended GIA contained an estimate for network upgrade costs that was approximately \$10.26 million higher than the estimate that was in the Original Settlers Trail GIA, and additionally noted the need for the Common Use Upgrade under the separate MPFCA. MISO filed an Amended GIA for Pioneer Trail in Docket No. ER11-3327-000 that also referenced the need for the Common Use Upgrade. Under both Amended GIAs, the counterparties were MISO and Ameren Illinois.

8. On April 11, 2011, MISO filed, in Docket No. ER11-3330-000, the unexecuted MPFCA to which Ameren Illinois, Settlers Trail, Pioneer Trail, California Ridge, and MISO were parties.

#### **B. Protests to the Filing and Answers**

9. Settlers Trail and Pioneer Trail (referred to jointly herein as “Settlers/Pioneer”) filed a joint protest to all three filings challenging the imposition of additional costs and the delay in timing for full interconnection service that would result from amending the GIAs and the MPFCA. Settlers/Pioneer argued, among other things, that they can not be held responsible for the cost of network upgrades that were not included in the original SIS, and there is no basis under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to charge them for any network upgrades other than those identified in the interconnection studies and Original GIAs. Settlers/Pioneer asserted that while it is appropriate to show the Additional Network Upgrade facilities in the Amended GIAs and the Common Use Upgrade facilities in the MPFCA, the costs for the Additional Network Upgrades and the Common Use Upgrade should not be assigned to them, but would appropriately be assigned to Ameren Illinois to roll into its transmission rate base.<sup>11</sup>

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and asked that MISO file it, and, while it offered comments in support of the Settlers Trail and Pioneer Trail protest herein, California Ridge did not individually protest the MPFCA.

<sup>10</sup> 16 U.S.C § 824d (2006).

<sup>11</sup> Settlers Trail and Pioneer Trail April 29, 2011 Protest at n.133.

10. According to Settlers Trail and Pioneer Trail, the need for the additional upgrades was expected to delay full interconnection service for Settlers Trail by two years beyond that provided in the Original Settlers Trail GIA, i.e., from March 2012 to March 2014, and full interconnection service for Pioneer Trail was expected to be delayed until March 2014 as well (due to the Common Use Upgrade), two and a half years beyond that provided in the Original Pioneer Trail GIA.<sup>12</sup>

11. California Ridge<sup>13</sup> filed comments in support of the Settlers/Pioneer protest. AWEA and other wind industry interests<sup>14</sup> intervened and commented that interconnection customers in general need to be able to rely on the financial obligations and in-service dates in executed generator interconnection agreements, and allowing errors to be corrected after a GIA is executed could create undesirable uncertainty for developers.

### C. The June 10 Order

12. In the June 10 Order, the Commission conditionally accepted the Amended GIAs and MPFCA with the additional upgrade costs assigned to the Interconnection Customers, finding that the Amended GIAs accurately reflected the network upgrades and effective dates required to reliably interconnect these generators. The Commission held that granting Settlers/Pioneer's requested relief regarding cost responsibility, i.e., that these costs be born by Ameren Illinois' transmission customers rather than by these Interconnection Customers, was not supported by the record in this proceeding, and that the Interconnection Customers' cost responsibility is reasonable and consistent with Commission precedent. The Commission stated that the suggestion that its decision would "chill" development of other interconnection projects was unsupported and that it expected that the situation presented in this case would be rare.<sup>15</sup>

13. With regard to reliability, the Commission held that granting Settlers/Pioneer's requested relief regarding the amount and timing of interconnection service would violate

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<sup>12</sup> *Id.* at 18.

<sup>13</sup> California Ridge affiliates Invenergy Wind Development LLC and Invenergy Thermal Development LLC also joined in its comments.

<sup>14</sup> The other wind industry interests were Wind on the Wires, NextEra Energy Resources, LLC, and Gamesa Energy USA, LLC (Gamesa). The Electric Power Supply Association intervened without making substantive comments.

<sup>15</sup> June 10 Order, 135 FERC ¶ 61,222 at P 24.

North American Electric Reliability Corporation (NERC) reliability standards, and that Article 5.1.1 of the *pro forma* GIA contemplates that construction milestones may need to be modified consistent with Good Utility Practice to address reliability concerns.<sup>16</sup>

14. The Commission disagreed with the assertion that the execution of the Original GIAs precluded further amendment, because that would be inconsistent with MISO's unilateral filing rights under section 205 of the FPA as described in Article 30.11 of the *pro forma* GIA. Further, the Commission found that there are no parties which are more equitably assessed the costs of the error. Since the error results in real costs for network upgrades that must be constructed before the generators can receive the requested full interconnection service consistent with reliability requirements, the most appropriate parties to pay these costs under these circumstances are the generators that will benefit from the upgrades.<sup>17</sup>

15. The Commission did, however, find other aspects of MISO's GIA filings unsupported or not consistent with Commission policy. With regard to a reimbursement mechanism for the refundable portion of network upgrade costs, Ameren Illinois chose Option 1 of the two options then allowed under MISO's Tariff. Settlers/Pioneer pointed to the fact that in Docket No. EL11-30-000, a complaint had been filed alleging that Option 1 was unjust, unreasonable, and unduly discriminatory in violation of the FPA and should be removed from the MISO Tariff. The Commission held that because the issue of the justness and reasonableness of Option 1 was then pending in the EL11-30-000 docket, Ameren Illinois' proposed use of Option 1 would be accepted for filing, subject to the outcome of Docket No. EL11-30-000.<sup>18</sup>

16. The Commission also agreed with Settlers/Pioneer that certain costs should not have been included in the calculation of the upgrade costs.<sup>19</sup> The June 10 Order required

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<sup>16</sup> *Id.* PP 25-27.

<sup>17</sup> *Id.* PP 31-32.

<sup>18</sup> *Id.* P 37. *See* discussion at section IV of this order, *infra*.

<sup>19</sup> *Id.* PP 45, 48 and 52. The Commission found that the inclusion of tax gross up payments and separate line items for contingencies in Ameren Illinois' cost estimates for certain of the Additional Network Upgrades and the Common Use Upgrade is unsupported, and directed MISO to delete the tax gross up and contingency line items. The Commission also agreed with Settlers/Pioneer that there was no just and reasonable basis for Ameren Illinois to require these interconnection customers to pay for interest during construction or Allowance for Funds Used During Construction (AFUDC) on the upgrade costs, and directed MISO to delete it.

MISO to make a compliance filing to reflect the changes to the Amended GIAs as directed in the order.<sup>20</sup>

## II. Requests For Rehearing

17. Two requests for rehearing of the June 10 Order were filed. One was filed by Generation Movants. The other request was filed by AWEA.<sup>21</sup>

18. Generation Movants make most of the same arguments that Settlers/Pioneer made in their protest in this proceeding. Many of the arguments made by Generation Movants concern the potential effect that the June 10 Order could have on future generator interconnections, rather than the effect the June 10 Order has actually had upon the specific generators who are parties to the GIAs at issue in this case. Generation Movants assert that Order No. 2003<sup>22</sup> interconnection procedures established business certainty for interconnection customers by requiring that the transmission provider conduct the system impact studies and identify facility upgrades, and then the interconnection customer could rely on the results of such studies to finance their projects.<sup>23</sup>

19. Specifically, Generation Movants argue that the June 10 Order allows the transmission owner/provider to “escape all accountability for the important reliability assessment” that only it can perform, and that the June 10 Order informs the transmission provider/owner that if it does not run a proper SIS, it can simply redo it even after the

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<sup>20</sup> See discussion at section III of this order, *infra*.

<sup>21</sup> It is not apparent that Gamesa, and Iberdrola Renewables, Inc. (Iberdrola) (who are parties joining in the Generation Movants’ Rehearing) and AWEA have any interest in this case other than their concern that it might be precedential. We make no determination here as to whether these parties are aggrieved under section 313(a) of the FPA. 16 U.S.C. § 8251 (2006).

<sup>22</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,146, *order on reh'g*, Order No. 2003-A, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,160 (2003), *order on reh'g*, Order No. 2003-B, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

<sup>23</sup> Generation Movants Rehearing at 8-12.

GIA has been executed and financial decisions have been made based on the initial SIS.<sup>24</sup> Further, Generation Movants assert that MISO's Tariff and business practice manuals require the transmission owner/provider to "detail" system impacts and "determine" the costs for network upgrades, but the June 10 Order diminishes the importance of reliability and accountability in these determinations.<sup>25</sup>

20. Generation Movants state that the interconnection customer has no involvement in performing the SIS, but the June 10 Order shifts the cost responsibility of the transmission provider/owner's failure to perform a proper SIS to the interconnection customer. Further, they assert that the interconnection customer relies on the SIS and GIA to make financial investments in the project, but the June 10 Order tells the interconnection customers to do so at their own peril.<sup>26</sup>

21. Generation Movants dispute the Commission's statement that the unusual circumstances of this case would be rare, and argue that the June 10 Order would not have a narrow application. As a result of the order, they assert that any transmission provider/owner can disclaim responsibility for its errors and pass the financial consequences on to the interconnection customer.<sup>27</sup>

22. Generation Movants argue that the June 10 Order departs from Commission precedent, which, it alleges, holds that an interconnection customer's cost responsibility is locked in once the SIS is completed and the GIA executed. Generation Movants base this argument in part on the same cases cited to the Commission in the Settlers/Pioneer Protest and discussed in the June 10 Order.

23. Generation Movants allege that MISO and Ameren Illinois violated Good Utility Practice as defined in MISO's Tariff with regard to the error in the SIS, and also violated mandatory NERC reliability standards because of an improper reliability analysis.<sup>28</sup> According to Generation Movants, the June 10 Order absolves transmission

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<sup>24</sup> *Id.* at 13.

<sup>25</sup> *Id.* at 14.

<sup>26</sup> *Id.* at 15-17.

<sup>27</sup> *Id.* at 18.

<sup>28</sup> *Id.* at 25-28.

providers/owners of responsibility and accountability for complying with reliability standards.<sup>29</sup>

24. Generation Movants also argue that the June 10 Order is inconsistent with the filed rate doctrine. Generation Movants claim that because the MISO Tariff is a filed rate, and because the Tariff allegedly locks in the extent of an interconnection customer's cost responsibility after the SIS is performed, it would violate the filed rate doctrine if transmission providers/owners could correct mistakes after the SIS is completed.<sup>30</sup>

25. Generation Movants claim that the June 10 Order is not consistent with the substantial evidence in the record. Generation Movants state that the record shows that MISO and Ameren Illinois are not blameless with respect to the error, but that the Interconnection Customers were. Generation Movants challenge the June 10 Order's finding that it was equitable to assign the additional costs to the Interconnection Customers under these circumstances.<sup>31</sup>

26. Generation Movants argue that the Commission erred when it stated that assigning the additional costs to Ameren Illinois' ratepayers was not supported, because, they claim, Settlers/Pioneer did not advocate that Ameren Illinois' ratepayers bear the costs, but rather that Ameren Illinois as a company be assigned the costs as the party that made the error.<sup>32</sup>

27. Generation Movants contend that the Commission erred by not directing Ameren Illinois to install a Special Protection Scheme to bridge the timing gap between the in-service dates reflected in the Original GIAs and the delayed in-service dates reflected in the Amended GIAs and MPFCA. Generation Movants state that the record evidence shows that Ameren Illinois' Transmission Planning Criteria and Guidelines provide that a Special Protection Scheme may be used to address reliability standards.<sup>33</sup>

28. Generation Movants also argue that the Commission erred by characterizing Benton County as a higher-queued generator when it was operational when the SIS was conducted; by finding that Article 5.1.1. of the Original GIAs allowed MISO to extend

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<sup>29</sup> *Id.* at 30.

<sup>30</sup> *Id.* at 31-37.

<sup>31</sup> *Id.* at 37-42.

<sup>32</sup> *Id.* at 42-43.

<sup>33</sup> *Id.* at 43.

the date of interconnection; by finding that MISO had a right to file the Amended GIAs pursuant to the filing right in Article 30.11 of the GIA; and by suggesting that the “true-up” provisions in the Tariff could be relied on to justify the imposition of the additional costs.

29. In its request for rehearing, AWEA states that the June 10 Order inserts significant uncertainty into the generation interconnection process, and that it could have broad implications for all generation interconnection processes across the country. AWEA states its belief that the additional uncertainty created by the June 10 Order will increase costs for new resource development across the country because of the increased risk to developers and financiers, and create an additional and unnecessary barrier to generation development.

### **III. Discussion**

#### **A. Procedural Matters**

30. On July 27, 2011, MISO and Ameren Illinois each filed answers to the requests for rehearing. On August 17, 2011, Settlers/Pioneer filed an answer to MISO’s and Ameren Illinois’ answers. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2012), prohibits an answer to a request for rehearing. Accordingly, we will reject the MISO and Ameren Illinois answers, and Settlers/Pioneer’s answer to those answers.

31. On April 20, 2012, Settlers/Pioneer filed a Motion for Expedited Consideration (Motion), which MISO and Ameren Illinois each answered on May 5, 2012. On May 17, 2012, Settlers/Pioneer filed an answer to the answers. In their Motion, Settlers/Pioneer make substantive arguments rather than justify the need for expedition. Because these arguments on substantive issues represent a supplemental rehearing request filed beyond the statutory deadline for filing rehearing requests, we reject that portion of the Motion making substantive arguments. For the same reason, we also reject the portions of MISO’s and Ameren Illinois’ Answers to the Motion that respond to the substantive arguments in the Motion. Finally we reject Settlers/Pioneer’s May 17, 2012 Answer because Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority, and we are not persuaded to accept that Answer here. The Motion did not demonstrate that expedition was necessary in this case and is denied.

#### **B. Requests for Rehearing**

32. We deny the requests for rehearing of the June 10 Order. As discussed below, the June 10 Order does not establish a broad policy that will create uncertainty for future interconnection customers, but only addresses the specific facts of this case. Further, there is no Commission policy or precedent that prohibits correction of interconnection

study errors under the facts presented. Finally, we reaffirm that under the facts presented here, the Interconnection Customers' cost responsibility is reasonable and consistent with MISO's *pro forma* GIA.<sup>34</sup>

1. **The June 10 Order Does Not Establish Broad Policy That Adds Uncertainty to the Interconnection Process**

33. We reject the arguments made by Generation Movants and AWEA that the June 10 Order is a broad policy statement that will create uncertainty for future interconnection customers. The June 10 Order only finds the correction of the error in the SIS to be just and reasonable based on the specific facts presented in this case, and we continue to expect that such situations will be rare. Notably, the parties agree that the additional network upgrades are needed in order to reliably provide for the requested levels of interconnection service.<sup>35</sup> The dispute here concerns MISO's ability to revise the GIAs so that the interconnection customers causing the need for these admittedly necessary upgrades bear cost responsibility for them.

34. Generation Movants' assertions that the June 10 Order allows the transmission owner/provider to "escape all accountability for the important reliability assessment" that only it can perform, and that the June 10 Order informs the transmission provider/owner that it can simply redo an SIS even after the GIA has been executed, are incorrect. All entities that are responsible for preparing all or parts of an SIS have an obligation to perform their studies carefully and in accordance with industry standards for such analyses, and will be held accountable for failure to do so when circumstances warrant.<sup>36</sup> Under the totality of circumstances of this case, however, allowing MISO to correct this mistake through the Amended GIAs is the just and reasonable result.

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<sup>34</sup> June 10 Order, 135 FERC ¶ 61,222 at P 28 and n.35.

<sup>35</sup> Generation Movants Rehearing Request at 30.

<sup>36</sup> There is no clear evidence in the record of how the error occurred, who caused it, or who could have detected it before the Original GIAs were executed. We cannot find on the basis of the record that the Interconnection Customers were "blameless," as Generation Movants allege, because there is no evidence of whether or not they could have or should have detected the error as the components of the study were circulated to them for review. The exhibits submitted by Settlers/Pioneer in their protest show that MISO frequently asked Interconnection Customers and other entities with interests in the Cycle 1 Group of clustered projects for comments on engineering studies, reports, and the proposed study model during the study process.

35. Generation Movants assert that the June 10 Order adds uncertainty to the generation interconnection procedures “where none existed before.”<sup>37</sup> AWEA echoes these concerns. We disagree with this premise. While we fully recognize the value of regulatory certainty for financing new projects, business risks and a degree of uncertainty are always present when an entity proposes to construct a new generating facility and connect it to the grid. In Order No. 2003-A, the Commission discussed the *pro forma* tariff provision that makes interconnection customers responsible for additional Network Upgrades if required after a higher-queued interconnection customer dropped out of the queue. The Commission recognized that this possibility “creates uncertainty for the Interconnection Customer,” but “[t]his is simply a business risk that Interconnection Customers must face; the Commission cannot protect them from all uncertainty.”<sup>38</sup> The risk that the factual circumstances in this case will occur again for a future interconnection customer is small and no greater than the risks that interconnection customers already must factor into their decision making.<sup>39</sup>

## 2. Commission Precedent Does Not Prohibit Correcting the Modeling Input Errors under These Circumstances

36. Generation Movants argue that, based upon Commission precedent and policy, mistakes such as those that occurred in this case may not be corrected after execution of a GIA. Generation Movants rely upon several cases for this proposition, and take issue with the June 10 Order’s discussion of them.

37. Generation Movants first cite to *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*<sup>40</sup> for the proposition that after an SIS is completed, the facilities required for the upgrades are identified and the costs of those facilities are

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<sup>37</sup> *Id.* at 6, 16.

<sup>38</sup> Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 320.

<sup>39</sup> *See, e.g.*, Article 11.3.1 of MISO’s *pro forma* GIA which contains a list of contingencies that might occur after GIA execution and affect the costs of an interconnection customer’s Network Upgrades. Moreover, we note that the exhibits submitted by Settlers/Pioneer in their protest show that MISO frequently asked Interconnection Customers and other entities with interests in the Cycle 1 Group of clustered projects for comments on engineering studies, reports, and the proposed study model during the study process.

<sup>40</sup> 110 FERC ¶ 61,098, *order on reh’g*, 111 FERC ¶ 61,455 (2005), *aff’d sub nom., Public Serv. Elec. & Gas v. FERC*, 485 F.3d 1164 (D.C. Cir. 2007) (*Neptune*).

“locked-in” such that costs of additional upgrade facilities cannot be allocated to that customer. They contend that the June 10 Order provides the opposite result.<sup>41</sup> However, Generation Movants misread *Neptune*.

38. In *Neptune*, the Commission held that an interconnection customer’s upgrade cost responsibility is based on its queue position, and it cannot be made responsible for costs arising from changes in system configuration occurring after its system impact study is completed, other than costs arising from changes that may be specified in the tariff, such as higher queued projects dropping out.<sup>42</sup> Further, the Commission held that when the interconnection customer joined the PJM queue, it became responsible for “any costs associated with its project as determined by its queue position.”<sup>43</sup>

39. In the *Neptune* rehearing order, the Commission stated that “[e]ach customer knows that cost allocations will be determined by the interconnection provider’s studies based upon circumstances existing as of the queue date.”<sup>44</sup> Thus, an interconnection customer’s cost responsibility for upgrades must be based on the “system configuration” at the time the customer joins the queue, i.e. the baseline. This baseline system ensures that an interconnection customer does not pay for “costs occurring after it joins the queue, other than for events defined by the tariff.”<sup>45</sup> Thus, in the context of the facts in *Neptune*, the Commission held that generation retirements occurring after the baseline system configuration was established by queue position could not be considered in determining the customer’s upgrade costs.

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<sup>41</sup> Generation Movants Rehearing Request at 20.

<sup>42</sup> 110 FERC ¶ 61,098 at P 23.

<sup>43</sup> *Id.* P 24.

<sup>44</sup> 111 FERC ¶ 61,455 at P 19.

<sup>45</sup> *Id.* (emphasis added). *See also* June 10 Order, 135 FERC ¶ 61,222 at n. 31 discussing *Neptune*. Generation Movants misread the June 10 Order’s reference to *Neptune* as equating the amendment in this case with true-up costs. Generation Movants Rehearing Request at 46-47. Rather, the June 10 Order was merely countering assertions made in the protest that *Neptune* stood for the proposition that costs are locked-in at the time of the SIS, when in fact, that case recognized that costs could be changed (i.e., unlocked) in at least two situations, including true-ups, pursuant to the GIA relevant there.

40. In this case, MISO did not restudy and reallocate costs to the Interconnection Customers as a result of any events that changed system configuration after the Interconnection Customers joined the queue. Rather, MISO's restudy was prompted by the need to correct an error made when MISO originally described the system configuration that would be required to interconnect the Interconnection Customers at the time they entered the queue. But for the input error in the original SIS, the Interconnection Customers' baseline would have included all of Benton County's 130 MW already in the queue, and would have identified the Additional Network Upgrades for which they were responsible.<sup>46</sup>

41. As with *Neptune*, none of the other cases cited by Generation Movants support their argument. *Marcus Hook*<sup>47</sup> presented a completely different fact scenario under a unique provision of PJM's tariff. There, the interconnection customer executed a GIA accepting cost responsibility for a new line upgrade caused by its project. Later, when a higher-queued project dropped out and the new line was no longer needed for its project, Marcus Hook filed a complaint to have PJM return the costs of the line based on the specific PJM tariff provision that allowed customers the opportunity to show that an upgrade it financed benefitted the whole system. The Commission denied the complaint based on the fact that Marcus Hook did not make its system benefits argument to PJM prior to signing the interconnection agreement, as required by the tariff. This case, therefore, stands only for the proposition that a customer cannot file a complaint under the PJM tariff to challenge its responsibility for upgrades after it signs the interconnection agreement. It does not stand for the proposition that there can never be any changes in upgrade costs after the interconnection agreement is signed. Moreover, as noted elsewhere in this order, the Interconnection Customers in this proceeding have not disputed the necessity of these network upgrades in order to receive reliable service under the tariff, unlike the interconnection customer in *Marcus Hook*.

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<sup>46</sup> Generation Movants assert that the Commission erred in the June 10 Order in referring to the Benton County interconnection requests as "higher-queued," when, they claim, the facility was operational at the time of the SIS. Rehearing Request at 44. Benton County's interconnection requests entered the MISO queue before Settlers Trail and Pioneer Trail, and thus are higher-queued regardless of its operational status. In any event, it makes no difference in our analysis whether Benton County is referred to as "higher-queued" or not; Generation Movants do not challenge that the Benton County requests had to be considered ahead of Settlers Trail and Pioneer Trail in assigning upgrade costs.

<sup>47</sup> *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 (2008) (*Marcus Hook*).

42. *PJM Interconnection, L.L.C.*, cited by Generation Movants, involved what the Commission called “a very narrow issue of queue management” in PJM’s interconnection process.<sup>48</sup> The Commission there granted PJM’s request to treat generator retirement announcements pending when an interconnection customer joins the queue as higher-queued projects, and treat reversals of these retirement announcements after the customer’s queue date the same as higher-queued projects withdrawing from the queue, thus allowing a re-study of the customer’s project and reassignment of costs.<sup>49</sup> Like *Neptune*, the Commission’s ruling in *PJM* upheld the principle that a customer’s costs must be based on circumstances existing as of its queue date and with the principle that re-studies are permitted only in response to system changes that were reasonably foreseeable at the time the customer entered the queue. As stated above, the present case does not present the situation where MISO restudied and reallocated costs to the Interconnection Customers as a result of any events that changed system configuration after the Interconnection Customers joined the queue. Rather, MISO’s restudy was based on the corrected system configuration and queue positions that existed or were reasonably foreseeable when the Interconnection Customers entered the queue, as *PJM* and *Neptune* require. This holding in *PJM* does not support Generation Movants’ broader argument that Commission precedent forbids the correction of a data input error that misstated system conditions on the date that was the baseline date for purposes of the studies..

43. Finally, Generation Movants rely on *Old Dominion Electric Cooperative v. Virginia Electric Power Co.* to support their argument.<sup>50</sup> In that case, Old Dominion Electric Cooperative (ODEC) filed a complaint alleging that its transmission provider, Dominion, had improperly included in its transmission rates costs that should be treated as generator interconnection facilities for Dominion’s Bear Garden generating project. Bear Garden was assigned the cost of one transmission line upgrade based on PJM’s interconnection process, and the parties executed a GIA based on those upgrade facilities. A year later, the state utility commission ordered Dominion to add a second line to the Bear Garden generator for reliability purposes. ODEC contended that the second line should also be treated as Dominion’s interconnection upgrades and not transmission system costs. The Commission denied the complaint, holding that because PJM had already determined the interconnection facilities necessary to interconnect Bear Garden and reflected them in the GIA, the GIA could not later be amended to add additional facilities that PJM did not require. In the present case, no one is trying to impose

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<sup>48</sup> *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,059, at P 25 (2008) (*PJM*).

<sup>49</sup> *Id.* P 22.

<sup>50</sup> 133 FERC ¶ 61,009 (2010), *order approving settlement*, 139 FERC ¶ 61,137 (2012) (*ODEC*).

upgrade costs for additional facilities that the transmission provider determined were not needed. Rather, the Additional Network Upgrades here are undisputedly required for the interconnection, but were not reflected in the Original GIAs due to a study error.

3. **There is no Evidence that MISO or Ameren Illinois Violated Good Utility Practice, the MISO Tariff, or Business Practice Manual**

44. Generation Movants repeat their arguments that the existence of an inadvertent input error in the calculations for the SIS compels the finding of a violation of Good Utility Practice as defined in MISO's Tariff and MISO's Business Practices Manual.<sup>51</sup> However, such an error does not, by itself, demonstrate a violation of Good Utility Practice.

45. There is no evidence in the record that MISO or Ameren Illinois failed to observe the requirements of Good Utility Practice in the performance of the SIS. We are not excusing errors in modeling, and we expect transmission providers to have procedures in place to prevent the occurrence of such errors. On this record, however, there is no evidence that the studies were not performed in accordance with generally accepted industry standards.

46. Likewise, the existence of the input error does not demonstrate non-compliance with MISO's Business Practices Manual. The portions of the Business Practices Manual cited by Generation Movants merely require that MISO take into account all existing and higher-queued generators when conducting system studies. Here, MISO fully intended that its SIS for the Interconnection Customers would do this, and indeed thought it had, until the error was discovered. Upon discovery of the error, MISO quickly sought to correct it. Under these circumstances, the error did not amount to a violation of MISO's Tariff or Business Practices Manual.<sup>52</sup>

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<sup>51</sup> Generation Movants Rehearing Request at 25-31 (citing Tariff, Att. X, Section 4.3, and Module A at Section 1.274).

<sup>52</sup> Generation Movants also argue that the error violated mandatory Reliability Standards, promulgated pursuant to section 215 of the FPA, that require an evaluation of reliability impacts of the addition of new facilities. Generation Movants Rehearing Request at 30. We find it unnecessary to address here whether such an error could result in a violation of Reliability Standards, as that inquiry is far afield of the question at hand, which is a determination of the justness and reasonableness of the Amended GIAs.

**4. The Filed Rate Doctrine is not Violated by Allowing MISO to Correct the Modeling Error**

47. Generation Movants correctly recite the filed rate doctrine -- that a utility may only lawfully charge, and a customer need only pay, the rate on file with and approved by the Commission – but they are incorrect about its application in this case.<sup>53</sup>

48. Generation Movants argue that the filed rate doctrine precludes the assessment of the costs of the Additional Network Upgrades to the Interconnection Customers. They first assert that the filed rate here is the “Maximum Network Upgrade Cost locked-in. . . when the SIS was completed in 2009.”<sup>54</sup> They further assert that the MISO Tariff, which they refer to as the filed rate, provides that the rate that can be charged to an interconnection customer includes:

(1) the cost estimate for the network upgrades studied and identified in the SIS and FS and listed in the executed GIA, trued-up to an actual cost that is capped at an additional 20%, plus (2) the cost of any additional network upgrades from an allowed restudy, essentially limited to the withdrawal of a higher-queued generator that is listed in the executed GIA, plus (3) the cost of any other contingencies listed in the executed GIA.<sup>55</sup>

Generation Movants argue that the assessment of the cost for the Additional Network Upgrades is not within any of these categories, and thus cannot be charged.

49. The Tariff is not as limiting as Generation Movants claim it to be. As we discussed earlier in this order, while the Tariff specifically defines the circumstances in which a change affecting the network configuration can prompt a restudy after execution of a GIA, the issue in this case does not involve a restudy based on a change in network configuration. Rather, this case is about the correction of a modeling error that resulted in an erroneous description of MISO’s system, and that erroneous description caused erroneous network upgrades to be identified in the Original GIAs. This situation was not

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<sup>53</sup> Generation Movants Rehearing Request at 31.

<sup>54</sup> *Id.* at 32.

<sup>55</sup> *Id.* at 33. We need not, and do not, address the accuracy of Generation Movants’ statements purporting to define the components of a permissible charge under the Tariff.

addressed in the Tariff or contemplated by the Commission when it established the Order No. 2003 *pro forma* GIA or approved specific GIAs for transmission providers.

50. In fact, correction of this error is required in order to implement the filed rate in the Tariff. MISO's *pro forma* GIA, which closely follows the Order No. 2003 *pro forma* GIA, defines Network Upgrade as "...those additions, modifications, and upgrades to the Transmission System *required* at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility(ies) to the Transmission System." Here, there is no dispute that the Additional Network Upgrades are required to interconnect Interconnection Customers under an analysis that is based on an accurate description of the system configuration based on when they entered the queue. Indeed, Settlers Trail and Pioneer Trail agree with identifying Additional Network Upgrades and the Additional Common Use Upgrades in the GIAs.<sup>56</sup> Thus, the Additional Network Upgrades described in the Amended GIAs and the MPFCA are consistent with the definition of "Network Upgrade" found in the Tariff and in the Original GIAs.

51. Additionally, article 30.11 of the Original GIAs reserves MISO's "right to make a unilateral filing with FERC to modify this GIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 of the Federal Power Act and any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder."<sup>57</sup> Article 30.11 also provides that each Party shall have the right to protest any such filing and to participate fully in any proceeding before the Commission in which such modifications may be considered. We have evaluated the unilateral filing by MISO to amend the Original GIA, as well as the protests to that filing, and found that the proposed revisions are just and reasonable.

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<sup>56</sup> Settlers/Pioneer April 29, 2011 Protest at n.133 ("It is appropriate that revised GIAs for Settlers Trail and Pioneer Trail reflect only the following new items: (1) the turbine change (that is not in dispute); (2) *an identification of the Additional Network Upgrades and Additional [Common Use Upgrade] noting Ameren Illinois is responsible for the cost*; and (3) the requirement that the Midwest ISO and Ameren Illinois provide full interconnection service for 150 MW by the dates provided in the Original GIA." (emphasis added)).

<sup>57</sup> Generation Movants argue that the Commission should not allow MISO to use Article 30.11 in the GIA to add costs associated with the additional upgrades. Rehearing Request at 45-46. This argument has no merit. There are no restrictions in Article 30.11 on the types of modifications that MISO may seek under section 205 of the FPA, and it is the Commission's responsibility to determine whether the proposed modifications are just and reasonable.

52. Finally, the filed rate cases discussed in Generation Movants' Rehearing Request are irrelevant to the facts of this case. They deal with situations where a change was requested to the charges that had been paid pursuant to a filed rate. Here, MISO is not seeking to charge a rate other than the filed rate in the Amended GIAs.

**5. The Commission Was Justified in Finding the Amended GIAs and MPFCA to be Just and Reasonable**

53. The factual situation presented in this case was not anticipated in Order No. 2003 and is not specifically provided for in the Commission's interconnection procedures, MISO's *pro forma* interconnection agreement, or in MISO's Tariff. Thus, our responsibility in the June 10 Order was to determine whether the Amended GIAs and MPFCA are just and reasonable under section 205 of the FPA. On the facts of this case, we found that it was just and reasonable to assign the additional upgrade costs to the Interconnection Customers.

54. As the Commission observed in the June 10 Order, no party disputed that if the original SIS had been performed without errors, the additional upgrade costs objected to in this case would have been the cost responsibility of the Interconnection Customers under MISO's Tariff. Nor did any party dispute that the identified upgrades are necessary to maintain system reliability. In other words, all parties agreed that, but for the modeling error, the Interconnection Customers would have had to bear the upgrade costs they are contesting here. This is not a situation where a transmission provider is attempting to amend a GIA because of changes in its system configuration or events occurring after the interconnection customers entered the queue. Rather, MISO is only seeking to correct a modeling error in order to properly assign costs according to queue position.

55. It is not apparent from the pleadings in this case that any of the Interconnection Customers were economically harmed solely as a result of the fact that MISO discovered the modeling error after execution of the Original GIAs rather than before such execution. Interconnection Customers have not demonstrated that because of the error, they have suffered negative financial consequences, other than having to bear costs that would have been their responsibility if no error had happened.<sup>58</sup> Therefore, approving

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<sup>58</sup> Generation Movants argue on rehearing that the June 10 Order erred by not directing Ameren Illinois to install a Special Protection Scheme to bridge the timing delay cause by construction of the additional facilities. Generation Movants Rehearing Request at 43-44. Although we do not know when the upgrades may have been completed, we take notice of the fact that all three Interconnection Customers in this case have stated that they completed or were constructing their projects in 2011 and 2012, so the projected delay to March 2014 apparently did not occur. *See Settlers Trail Wind*

the Amended GIAs does not shift the cost consequences of the error from the entity that made the error to the Interconnection Customers, as Generation Movants argue.<sup>59</sup> It only holds the Interconnection Customers responsible for costs that they should properly bear under the Tariff and Commission policy.

56. Generation Movants argue that the June 10 Order is not consistent with the substantial evidence in the record,<sup>60</sup> but the evidence they cite is not germane to resolution of the issues in this case. Generation Movants assert that the record shows that MISO and Ameren Illinois were responsible for conducting the studies intended to identify Network Upgrades; that an error was made in those studies; that none of the transmission utilities ever told the Interconnection Customers that the studies did not include all higher-queued generation as they were supposed to; and there was no way Interconnection Customers could have detected the error. Generation Movants claim that the transmission utilities were not blameless but the Interconnection Customers were, and thus, the transmission utilities should bear the costs of the upgrade.<sup>61</sup>

57. The Commission did not ignore record evidence or act inconsistently with it. The Commission's responsibility was to determine whether the Amended GIAs are just and

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*Farm, LLC*, 137 FERC ¶ 62,161 (2011) (in seeking authorization to transfer equity interests for financing purposes, Settlers Trail represented that its 150 MW wind facility began commercial operations on October 1, 2011); *Pioneer Trail Wind Farm, LLC*, 139 FERC ¶ 62,041 (2012) (in seeking authorization to transfer equity interests for financing purposes, Pioneer Trail stated on March 14, 2012 that it "owns and operates" a 150 MW wind facility); *California Ridge Wind Energy LLC*, 140 FERC ¶ 62,038 (2012) (in seeking authorization to transfer equity interests for financing purposes, California Ridge stated on June 12, 2012 that it is "constructing and intends to own and operate" a 214 MW wind facility and has a 20-year power purchase agreement for the output).

<sup>59</sup> *E.g.*, Generation Movants Rehearing Request at 15.

<sup>60</sup> *Id.*

<sup>61</sup> Generator Movants fault the Commission for describing in the June 10 Order that Settlers/Pioneer's position was that the costs should be assigned to Ameren Illinois' customers. They contend that was not accurate, despite the statement in Settlers/Pioneer's protest that Ameren Illinois could put the costs "in transmission rate base." Settlers/Pioneer April 29, 2011 Protest at 44, n.133. Regardless of what Settlers/Pioneer originally argued, the Commission found that assigning the costs to Interconnection Customers was the reasonable result. June 10 Order, 135 FERC ¶ 61,222 at P 28.

reasonable under section 205 of the FPA, not to simply make a decision based on who is to blame for the error and who is blameless.<sup>62</sup> As discussed above, the evidence the Commission considered to determine the just and reasonable result includes the following: (1) Interconnection Customers acknowledge that the Additional Network Upgrades are needed to provide for the requested amount of interconnection service;<sup>63</sup> (2) correcting the error results in the same upgrade cost assignment that would have been applied if no error had occurred;<sup>64</sup> (3) there is no indication in the record that the Interconnection Customers suffered specific commercial detriment by reliance on the original incorrect upgrade allocation; (4) there is no indication in the record that the error was anything other than an inadvertent oversight or that the studies were not conducted in accordance with industry standards; (5) the error was reported to the Interconnection Customers by MISO less than 90 days after the execution of the Original GIAs;<sup>65</sup> and (6) there are no parties to whom it would be more equitable to bear the Additional Upgrade Costs.

58. Under the circumstances in this case, it is just and reasonable to assign the Additional Network Upgrade costs to the Interconnection Customers that made them necessary, and not to impose upgrade costs as a penalty for the error made.

#### **IV. MISO's Compliance Filing**

59. On July 11, 2011, MISO submitted filings in each docket to comply with the June 10 Order's requirements that MISO: (1) remove from the MPFCA a line item of \$125,000 for "Tax Gross Up" which the Commission found impermissible because the expenditure was contained in a type of interconnection agreement; (2) delete the contingency line items in both the Amended GIA's and in the MPFCA; and (3) delete from both the Amended GIA's and the MPFCA the Interest During Construction and AFUDC line items.<sup>66</sup>

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<sup>62</sup> In any event, as we stated at note 36, *supra*, based on the record before us, we cannot determine who is to blame and who is totally blameless for the error occurring and remaining unnoticed until after the Original GIAs were executed.

<sup>63</sup> Generation Movants Rehearing Request at 30.

<sup>64</sup> *See* Ameren Illinois May 16, 2011 Answer at 7.

<sup>65</sup> MISO May 16, 2011 Answer at 3-4.

<sup>66</sup> June 10 Order, 135 FERC ¶ 61,222 at PP 44-52.

## A. Notice and Responsive Pleadings

60. Notice of MISO's compliance filing was published in the *Federal Register*, 76 Fed. Reg. 42,702 (2011), with interventions, comments, and protests due on or before August 1, 2011. Settlers/Pioneer, parties in the underlying proceeding, filed a protest on August 1, 2011. On August 16, 2011, MISO filed an Answer, and on September 2, 2011, Settlers/Pioneer filed an answer to MISO's August 16, 2011 answer.

### 1. Settlers/Pioneer's Protest

61. Settlers/Pioneer's protest to MISO's compliance filing asserts that MISO did not remove Interest During Construction and AFUDC (collectively, Interest) for three of the network upgrades consistent with its removal of Interest for five other network upgrades.<sup>67</sup> Settlers/Pioneer assert that MISO reduced the costs for five of the upgrades by 1.8 percent to 3.7 percent of the total estimated cost of the network upgrade (with contingencies and tax gross up removed, as applicable), but for the three network upgrades where MISO lumped Interest with Stores Handling & Overhead, the reduction was only 0.8 percent of the total cost. Settlers/Pioneer state that this insufficient reduction results in an overestimate of \$97,360 to \$287,740 in costs for the three network upgrades. Settlers/Pioneer ask the Commission to require that MISO demonstrate the basis for and how it derived the 0.8 percent Interest reductions, and why the Interest reduction for the three upgrades should not be in the 1.8 percent to 3.7 percent range for the five other network upgrades. If there is no satisfactory explanation for the difference, Settlers/Pioneer ask that the Commission direct MISO to remove \$287,740 from its cost estimate (\$29,110 – MPFCA; \$177,880 – G931 GIA; \$80,750 – G931 GIA).<sup>68</sup>

### 2. MISO's Answer

62. In its August 16, 2011 answer to Settlers/Pioneer protest, MISO states that it and Ameren Illinois agreed to deduct additional amounts from the cost estimates for the upgrades at issue as follows: (1) Reconductor the Watseka - G931 Interconnection Substation 138 kV line – remove \$65,000 instead of the \$21,000 in MISO's original compliance filing; (2) Reconductor the Paxton East-Gilman South 138kV line – remove \$150,000 instead of the original compliance amount of \$53,000; and (3) Re-Rating the

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<sup>67</sup> Settlers/Pioneer August 1, 2011 Protest at 2.

<sup>68</sup> *Id.* at 5.

Paxton East to Rantoul Junction 130 kV Line for 100°C Operation (MPFCA) – remove \$26,000 instead of the original compliance amount of \$9,000.<sup>69</sup>

### **3. Settlers/Pioneer’s Answer**

63. Settlers/Pioneer filed an answer to MISO’s August 16, 2011 answer stating that the Commission should accept MISO’s revised Interest reductions, even though MISO still did not justify the differing treatment it is applying to account for Interest among the eight network upgrades.<sup>70</sup>

#### **B. Commission Determination**

64. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We will accept MISO’s and Settlers/Pioneer’s answers because they provided information that assisted us in our decision-making process.

65. We find that MISO has complied with our directives, and we accept the additional adjustments to cost estimates that MISO offered in its answer to Settlers/Pioneer’s protest. The proposed Interest reductions strike an equitable balance between the Interconnection Customers and Transmission Owner, and the Interconnection Customers’ request that the Commission accept MISO’s proposed reductions as revised in their August 16, 2011 answer. We therefore direct MISO to submit a compliance filing reflecting those revisions within 30 days of the date of this order.

### **V. Network Upgrade Compensation Mechanism**

66. As discussed previously, the June 10 Order conditionally accepted Ameren Illinois’ selection of the first of two options available under MISO’s then existing Tariff for the Transmission Owner to be compensated by the interconnection customer for network upgrades.<sup>71</sup> Settlers/Pioneer protested the use of the Option 1 mechanism as

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<sup>69</sup> MISO August 16, 2011 Answer at 3-4.

<sup>70</sup> Settlers/Pioneer September 2, 2011 Answer at 3.

<sup>71</sup> Pursuant to MISO’s interconnection procedures, the interconnection customer initially funds all network upgrade costs, but may be eligible to have some of these funds refunded depending upon its assigned cost responsibility for the upgrades. Under the Option 1 procedure for allocating upgrade cost responsibility, the Transmission Owner would repay 100 percent of initial network upgrade funding to the Interconnection

(continued...)

being unjust, unreasonable, and unduly discriminatory in violation of the FPA,<sup>72</sup> and referenced a pending complaint filed in Docket No. EL11-30-000<sup>73</sup> in which a coalition of generators argued that Option 1 should be removed from MISO's Tariff.

Settlers/Pioneer contended that Ameren Illinois must be required to use the alternate Option 2 mechanism for repaying the generators.<sup>74</sup> California Ridge filed comments in support of the Settlers/Pioneer protest. The June 10 Order accepted Ameren Illinois' request to use Option 1, but made that acceptance subject to the outcome in Docket No. EL11-30-000 on the merits of Option 1.

67. On October 20, 2011, in the *E.ON Order*,<sup>75</sup> the Commission found Option 1 to be unjust, unreasonable, and unduly discriminatory, and directed MISO to remove Option 1 from its Tariff effective March 22, 2011. On January 17, 2013, the Commission denied rehearing of the *E.ON Order* and granted in part clarification about the applicability of the *E.ON Order* to existing agreements that specified Option 1. In its clarification, the Commission stated that the *E.ON Order*:

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Customer, and then require the Interconnection Customer to pay the Transmission Owner a monthly Network Upgrade Charge, including a return on rate base as well as expenses and taxes, based on the formula contained in Attachment GG. See Attachment FF to the Tariff, "Transmission Expansion Planning Protocol," at Section III.d.

<sup>72</sup> Settlers/Pioneer April 29, 2011 Protest at 54.

<sup>73</sup> *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, Docket No. EL11-30-000, filed March 22, 2011. The coalition was comprised of Clipper Windpower Development Co., Inc., E.ON Climate & Renewables North America, LLC, Horizon Wind Energy LLC, Iberdrola, Invenergy Wind Development LLC, and Invenergy Thermal Development LLC.

<sup>74</sup> Under Option 2, the Transmission Owner retained the interconnection customer's initial funding for the network upgrades as a contribution in aid of construction, but repaid in one sum to the interconnection customer any amounts for which the generator was not financially responsible under the Tariff.

<sup>75</sup> *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,076 (2011) (*E.ON Order*), order on reh'g, *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,048 (2013) (*E.ON Rehearing Order*).

did not automatically modify any existing agreement; this issue was not before the Commission. However, the Commission will clarify that its decision will not apply to agreements effective prior to March 22, 2011.<sup>76</sup>

68. Settlers/Pioneer executed their Original GIAs in February 2010, which conformed to the then effective MISO *pro forma* GIA and contained the Option 1 reimbursement mechanism. These Original GIAs were reported in MISO's Electric Quarterly Report (EQR) as having a February 5, 2010 commencement date. MISO filed the unexecuted Amended GIAs for Settlers/Pioneer on April 8, 2011, requesting an effective date of April 9, 2011 which was granted in the June 10 Order. MISO filed the unexecuted MPFCA on April 11, 2011, requesting an April 12 effective date which the Commission approved. Accordingly, the Original GIAs were effective prior to March 22, 2011 and the Amended GIAs and the MPFCA were effective after that date.

69. Consistent with our clarification in the *E.ON Rehearing Order* as to the effect of that order on previously executed agreements, the Original GIAs were not affected by the *E.ON Order's* rejection of Option 1.<sup>77</sup> Therefore, we deny the Interconnection Customers' protest as to the use of the Option 1 cost reimbursement mechanism for the network upgrades identified in the Original GIAs.

However, because the Option 1 reimbursement mechanism must be removed from MISO's Tariff effective March 22, 2011, we find that based on the facts of this case, the costs of the incremental network upgrades in the Amended GIAs and MPFCA must be governed by the Option 2 procedures.

70. Accordingly, Ameren Illinois must use Option 2 to account for the \$10.26 million in Additional Network Upgrade costs under the Settlers Trail Amended GIA, as applicable, and the \$1.485 million in Common Use Upgrade costs under the MPFCA, as applicable. Ameren Illinois may use Option 1 for the upgrade facility costs in the Original GIAs. MISO is directed to make a compliance filing within 30 days of this order to reflect the use of Option 2 procedures, instead of Option 1 procedures, for the Additional Network Upgrades and Common Use Upgrade required by the Amended GIAs and MPFCA.

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<sup>76</sup> *E.ON Rehearing Order*, 142 FERC ¶ 61,048 at P 34 (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the breadth of Commission discretion is, if anything, at its zenith when fashioning remedies)).

<sup>77</sup> *Id.*

The Commission orders:

(A) The requests for rehearing of the June 10 Order are denied, as discussed in the body of this order.

(B) MISO is directed to make a compliance filing within 30 days of issuance of this order revising the interest calculation for certain network upgrades, as discussed in the body of this order.

(C) MISO is directed to make a compliance filing within 30 days of issuance of this order revising the Amended GIAs and MPFCA to reflect the use of Option 2 procedures, instead of Option 1 procedures, for the Additional Network Upgrades and Common Use Upgrade required by the Amended GIAs and MPFCA.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.