144 FERC ¶ 61,052
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.

Interstate Power and Light Company

v. Docket No. EL12-104-000

ITC Midwest, LLC

ORDER GRANTING COMPLAINT

(Issued July 18, 2013)

1. On September 14, 2012, Interstate Power and Light Company (IPL) filed a complaint against ITC Midwest, LLC (ITCM) pursuant to section 206 of the Federal Power Act (FPA),[1] seeking to change a provision of Attachment FF of the Midwest Independent Transmission System Operator, Inc.'s (MISO)[2] Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff), under which ITCM generator interconnection customers may be able to receive reimbursement from ITCM of 100 percent of their interconnection-related network upgrade costs. As discussed below, the Commission grants the relief requested in IPL's complaint, effective as of the date of this order, and directs MISO, on behalf of ITCM, to revise Attachment FF of the MISO Tariff to conform MISO's policy for reimbursing generator interconnection customers for network upgrade costs in the ITCM zone to the generator interconnection cost recovery provisions applicable to most other MISO pricing zones, in which such customers may receive up to 10 percent reimbursement for those costs.

---

[1] 16 U.S.C. § 824e (2006).

[2] Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

I. Background

A. IPL and ITCM

2. IPL is a public utility that serves electric retail customers in Iowa and Minnesota and is a wholly-owned subsidiary of Alliant Energy Corporation, a holding company that also owns Wisconsin Power and Light Company, an electric and gas public utility in Wisconsin. ITCM is a subsidiary of ITC Holdings Corp., which also owns International Transmission Company (ITC), Michigan Electric Transmission Company, LLC (METC), and ITC Great Plains, LLC. Through its subsidiaries, ITC Holdings Corp. operates in Michigan, Iowa, Minnesota, Illinois, Missouri, Kansas and Oklahoma.

3. IPL formerly owned the transmission system now owned and operated by ITCM. In January 2007, IPL entered into an asset sale agreement with ITCM under which IPL agreed to sell its transmission system to ITCM. IPL completed the sale of its transmission system to ITCM on December 20, 2007, following Commission approval of the transaction under section 203 of the FPA[3] as well as approvals from the Illinois Commerce Commission, the Iowa Utilities Board, the Minnesota Public Utilities Commission, and the Missouri Public Service Commission, and satisfaction of other conditions.

B. Reimbursement for Network Upgrade Costs Related to Generator Interconnection Projects

4. In Order No. 2003, the Commission formalized its policy to provide 100 percent reimbursement for a generator interconnection customer's network upgrade costs, but also permitted independent transmission providers to propose to reduce such reimbursement, i.e., to propose that the generator interconnection customer be required to fund all or part of its network upgrades.[4] In its Order No. 2003 compliance filing, MISO instituted the Commission's 100 percent reimbursement policy.

---

[3] 16 U.S.C. § 824b (2006); *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007) (*ITC Holdings*). In *ITC Holdings*, the Commission also accepted the applicants' proposed rates and certain agreements under section 205 of the FPA, subject to certain conditions.

[4] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 374 U.S. App. D.C. 406 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230, 128 S. Ct. 1468, 170 L. Ed. 2d 275 (2008).

5. In 2006, the Commission accepted MISO's Regional Expansion Criteria and Benefits proposal to provide for 50 percent reimbursement to a generator interconnection customer for its network upgrade costs where such interconnection customer qualified for any reimbursement.[5] In order to receive 50 percent reimbursement, the generator interconnection customer would have to, among other things, demonstrate that it has a contractual commitment to serve load in the MISO footprint for a period of at least one year or that the generator was designated as a Network Resource.[6] If the network upgrade was classified below 345 kV, costs for the reimbursed amount were allocated to transmission delivery service customers serving load in MISO based entirely on load flow analysis (Line Outage Distribution Factor).[7] If the network upgrade was classified at or above 345 kV, costs for the reimbursed amount were allocated to transmission delivery service customers serving load in MISO based on a combination of the Line Outage Distribution Factor analysis and system-wide *pro rata* cost sharing.[8] Where a generator interconnection customer failed to qualify for reimbursement, it would be responsible for 100 percent of its network upgrade costs.

6. However, in 2008, the Commission accepted proposals by American Transmission Company, LLC (ATC), ITC/METC, and ITCM to reinstate 100 percent reimbursement for generator interconnection customers in their pricing zones,[9] with 50 percent of the reimbursement recovered from the transmission service customers in the zone where the generator interconnected.[10] Later, in 2009, the Commission accepted a

[5] *Midwest Indep. Transmission Sys. Operator*, *Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on reh'g*, 117 FERC ¶ 61,241 (2006), *aff'd sub nom. Pub. Serv. Comm'n. of Wis. v. FERC*, 545 F.3d 1058 (D.C. Cir. 2008).

[6] Defined terms in this order, unless otherwise indicated, are defined as provided in the MISO Tariff.

[7] MISO Tariff, Attachment FF § III.A.2.c.i. In practice, the Line Outage Distribution Factor methodology allocates the costs of the network upgrades largely to the customers serving load in the zone where the upgrades are located.

[8] MISO Tariff, Attachment FF § III.A.2.c.ii.

[9] *American Transmission Co., LLC*, 120 FERC ¶ 61,221 (2007) (ATC Order), *reh'g denied*, 123 FERC ¶ 61,065 (2008); *see also Int'l Transmission Co.*, 120 FERC ¶ 61,220 (2007) (ITC/METC Order), *reh'g denied*, 123 FERC ¶ 61,065 (2008); *ITC Midwest, LLC*, 124 FERC ¶ 61,150 (2008) (ITCM Order). The combined rehearing of the ATC Order and the ITC/METC Order is referred to herein as the "ATC & ITC/METC Rehearing Order."

[10] MISO Tariff, Attachment FF § III.A.2.d.4(d).

MISO proposal to reduce the degree of reimbursement in the MISO footprint—but outside of the ATC, ITC/METC and ITCM pricing zones[11]—due to location specific outcomes from applying the existing reimbursement policy in the service territories of Otter Tail Power Company (Otter Tail) and Montana-Dakota Utilities Company (Montana-Dakota Utilities).[12] Because MISO did not propose to change the 100 percent reimbursement methodology in the ATC, ITC/METC, and ITCM zones, the Commission found that requests by other parties to reduce reimbursement for generator interconnection customers in those zones were outside the scope of that proceeding.[13] Thus, outside of the ATC, ITC/METC, and ITCM pricing zones, reimbursement to generator interconnection customers was reduced from 50 percent to 10 percent for network upgrades rated at or above 345 kV, with no reimbursement for network upgrades rated less than 345 kV.

II. Notices of Filing and Responsive Pleadings

7. Notice of the complaint was published in the *Federal Register*, 77 Fed. Reg. 58,823 (2012), with interventions and protests due on or before October 4, 2012. Timely motions to intervene were filed by Central Iowa Power Cooperative; Dairyland Power Cooperative; EDP Renewables North America LLC; Geronimo Wind Energy; Great River Energy; Jo-Carroll Energy, Inc.; MISO; MISO Transmission Owners;[14] Missouri

[11] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009) (Otter Tail/MDU Order). This methodology was originally accepted on an interim basis but accepted by the Commission on a permanent basis in MISO's Multi-Value Project cost allocation proceeding. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 332 (2010).

[12] Specifically, the Commission held that the underlying assumption of the 50 percent reimbursement methodology and associated allocation based on the Line Outage Distribution Factor analysis (i.e., that generation and load are approximately equal in size and distribution and that local generation would be generally utilized to serve local load) no longer held. Otter Tail/MDU Order, 129 FERC ¶ 61,060.

[13] *Id.* PP 51, 77, 81.

[14] For purposes of this proceeding, the MISO Transmission Owners consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; ATC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power

(continued…)

River Energy Services, Inc.; National Rural Electric Cooperative Association; NextEra Energy Resources, LLC; PSEG Companies; and Southern Minnesota Municipal Power Agency.

8. Timely notices of intervention and comments in support of the complaint were filed by the Iowa Utilities Board; and jointly by the Minnesota Public Utilities Commission and the Minnesota Department of Commerce (Minnesota Agencies).[15] Timely motions to intervene and comments in support of the complaint were filed by Iowa Consumers Coalition; Iowa Office of Consumer Advocate; Northeast Missouri Electric Power Cooperative (Northeast Power); Resale Power Group of Iowa; and The Detroit Edison Company (Detroit Edison). Consumers Energy Company (Consumers Energy) timely filed its motion to intervene but submitted comments out-of-time on October 18, 2012.

9. Timely motions to intervene and comments urging the Commission to dismiss the complaint were filed jointly by American Wind Energy Association and Wind on the Wires (AWEA & WOW); and by Iberdrola Renewables, LLC (Iberdrola). EDF Renewable Energy, Inc. (EDF Renewable Energy) filed its motion to intervene one day out-of-time and submitted comments out-of-time opposing the complaint on October 19, 2012.

10. MidAmerican Energy Company (MidAmerican) timely filed a motion to intervene and comments stating that it offers no opinion on the merits of the complaint but limits its comments to the effect of the complaint on existing generator interconnection agreements (GIAs).

11. On October 4, 2012, ITCM timely filed its answer to the complaint. On October 22, 2012, IPL filed an answer to ITCM's answer; and on November 6, 2012, ITCM filed an answer to IPL's answer.

& Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[15] The Minnesota Department of Commerce filed a motion to intervene along with joint comments and the notice of intervention by the Minnesota Public Utilities Commission.

III. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that file them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), we will grant EDF Renewable Energy's out-of-time motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. 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. We are not persuaded to accept IPL's or ITCM's answers and will, therefore, reject them.

IV. Substantive Matters

A. Complaint

14. In its complaint, IPL states that it is the largest customer in the ITCM pricing zone, constituting approximately 88 percent of network load, and because ITCM reimburses its generator interconnection customers 100 percent for all generator interconnection-related network upgrades,[16] IPL paid approximately $44.7 million in generator interconnection-related network upgrade costs to ITCM from 2008 to 2011.[17] In contrast, IPL estimates that it would have been responsible for only $12.3 million in generator interconnection-related network upgrade costs during the same period if ITCM utilized the same reimbursement methodology applicable in most other MISO pricing zones.[18] As a result, IPL argues that the $32.4 million in incremental costs attributable to the difference in generator interconnection customer reimbursement policies represents

---

[16] ITCM passes these costs through formula rates to transmission service customers. IPL Complaint at 3-4.

[17] *Id.* at 4.

[18] *Id*. (citing MISO Tariff, Attachment FF §§ III.A.2.d.1 (stating that for network upgrades "above 345 kV, the Interconnection Customer shall be repaid 10 percent of the costs of the Generation Interconnection Project funded by the Interconnection Customer once Commercial Operation is achieved")).

an unfair burden on IPL and its retail customers especially in relation to the "insignificant benefits" provided by those interconnection-related network upgrades.[19]

15. In addition to the costs already incurred, IPL states that it is also facing significant cost exposure for future interconnection-related network upgrades. Specifically, IPL states that ITCM lists $153 million in new generator interconnection costs in its capital plan for the 2012 to 2016 time period.[20] IPL estimates that it and its customers will be responsible for approximately $138.1 million in costs arising from those network upgrades, compared to $18.1 million in expenses for which they would be responsible if MISO's generally applicable interconnection reimbursement policy were applied instead.[21] Simply stated, IPL claims that the effect of MISO's generator interconnection reimbursement policy in the ITCM pricing zone is to cause IPL and its customers to pay approximately $170.5 million more in incremental costs over the eight-year period between 2008 and 2016 than if MISO's generally applicable reimbursement policy applied.[22] IPL posits that if the cost of the generator interconnection-related network upgrades in the ITCM pricing zone were more modest and resulted in a smaller cost shift from ITCM's interconnection service customers to IPL and its retail customers, then the cost shift could be considered discriminatory, but not unduly discriminatory.[23]

16. IPL also challenges the assumption that it and its customers are obtaining benefits that are commensurate with the cost incurred. Specifically, IPL states it has no evidence that: (1) overall transmission system reliability has materially improved as a result of the generator interconnection-related network upgrades for which ITCM reimbursed its generator interconnection customers 100 percent of their costs; (2) it or any other generator in the ITCM pricing zone has experienced an improved ability to export power due to counterflows; (3) locational marginal prices have been materially reduced as a result of generation interconnected through reimbursable generator interconnection-related network upgrades; or (4) any other significant benefit has accrued to IPL or its

[19] *Id.* at 5.

[20] *Id.* at 8 (citing various 2012 ITC Holdings presentations, most recently "Jul 11–13, 2012 Europe Investor Meetings" at http://files.shareholder.com/downloads/ITC/1837356903x6423157x583208/622b2bf7-9a48-4d8c-b75c-907113ca6d75/Presentation_Materials_-_Europe_FINALppt.pdf, page 12).

[21] *Id.* at 8-9.

[22] IPL Complaint, Affidavit of Randy Bauer at 3.

[23] IPL Complaint at 13.

customers.[24] IPL notes that most of the network upgrades associated with generator interconnections within the ITCM footprint from 2008 to 2011 have been "breaker additions, switching stations, or line taps," which it asserts do not improve overall system reliability and only serve to allow for the interconnection of the generator with the transmission system.[25]

17. While IPL acknowledges that it has seen a general reduction in the number of sustained transmission outages since 2009, IPL does not believe it is closely correlated to the generator interconnections made since then, but rather, it arises from network improvements made by ITCM that are unrelated to generator interconnections.[26] Similarly, while noting that it has seen a reduction in locational marginal prices following the recent economic downturn, IPL states that this reduction is not related to either the interconnection of generators in the ITCM footprint or the associated network upgrades.[27] Thus, IPL states that it and its customers have not experienced benefits commensurate with the materially large cost of generator interconnection-related network upgrades they are required to pay.[28]

18. In addition, IPL argues that its complaint is not a collateral attack on the Commission's authority to accept the generator interconnection reimbursement policy in the ITCM pricing zone, but rather is directed at the outcome of this policy that as applied to IPL and its customers is unduly discriminatory.[29] IPL states that the Commission has acknowledged the right of transmission customers to file a complaint with the Commission under section 206 of the FPA if the application of a cost allocation provision under a tariff results in an unduly discriminatory outcome, and in the context of that complaint, the Commission will assess the merits of the customer's claim.[30]

---

[24] *Id.* at 14.

[25] *Id.*

[26] *Id.* at 14-15.

[27] *Id.* at 15.

[28] *Id*.

[29] *Id*. at 10-11.

[30] *Id.* at 11 (citing ITC/METC Order, 120 FERC ¶ 61,220 at P 17).

19. In conclusion, IPL requests the Commission to grant its complaint and: (1) set for investigation the justness and reasonableness of MISO Tariff Attachment FF, § III.A.2.d.4; (2) establish a refund effective date of September 14, 2012, with respect to this complaint; and (3) establish hearing procedures. IPL further requests that if the Commission determines that MISO Tariff Attachment FF, § III.A.2.d.4 is unjust and unreasonable, it should direct ITCM to file revisions to that provision to conform it with the cost recovery provisions of MISO Tariff Attachment FF applicable to most other MISO pricing zones.[31]

B. ITCM's Answer

20. In its answer, ITCM contends that IPL has not met its burden of proof under section 206 of the FPA because IPL failed to provide substantial evidence supporting its contention that the ITCM reimbursement policy is unduly discriminatory as applied to IPL and its customers. Therefore, ITCM states that the complaint should be dismissed.[32] ITCM also maintains that its generator interconnection reimbursement policy is just and reasonable and not unduly discriminatory.[33]

21. Regarding IPL's burden of proof, ITCM states that IPL asserts it has not benefitted from any reliability improvements or lower energy prices as a result of the generator interconnection-related network upgrades, but fails to provide evidence supporting these claims.[34] ITCM notes that IPL acknowledged it has experienced lower locational marginal prices, but that IPL attributed these to a downturn in the economy rather than to increases in generation supported by the reimbursement policy.[35] ITCM notes that IPL provided no study or other evidence to support this claim.[36] On the contrary, ITCM states that IPL could benefit from increased local generation because locational marginal prices would be reduced at the interconnection site.[37] ITCM also counters that IPL's argument runs contrary to the Commission's policy that looks beyond the entity that

---

[31] *Id*. at 18.

[32] ITCM Answer to Complaint at 14.

[33] *Id.* at 19.

[34] *Id*. at 15-16.

[35] *Id*. at 17.

[36] *Id.* at 17-18.

[37] *Id*.

purchases power from the new generator, and considers both reliability and competitive benefits from a stronger transmission infrastructure.[38]

22. ITCM maintains that its reimbursement policy is just and reasonable and not unduly discriminatory. ITCM argues that the Commission has upheld 100 percent reimbursement policies as a means to increase competition in bulk power markets and help ensure reliability and just and reasonable prices.[39] Specifically, ITCM states that its policy "allows new resources to compete on a level playing field with: (1) older generating facilities owned by the incumbent, vertically-integrated MISO members that included their interconnection costs in transmission rates; (2) old and new generating facilities outside of MISO that apply the Order No. 2003 policy of 100 percent reimbursement for Network Upgrade costs; (3) new generating facilities within the other MISO zones that apply the 100 percent Network Upgrade reimbursement policy; and (4) newer projects, such as those owned by IPL affiliates, that have benefited from the ITCM policy of reimbursement for Network Upgrade costs."[40] According to ITCM, its reimbursement policy also helps further Iowa's renewable portfolio by encouraging investment in transmission.[41]

23. ITCM believes that IPL does in fact benefit from transmission system upgrades. ITCM states that network upgrades required for new generators "are part and parcel to rehabilitation in the historic underinvestment in the [ITCM] transmission system."[42] ITCM also states that nearly 70 percent of the reimbursable costs (approximately $89.5 million out of a total of $129 million) have been for network upgrades that increase the capacity of the transmission system, including approximately 97 miles of lines that have

[38] *Id.* at 16 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 584). ITCM states that this approach was supported by the Court of Appeals for the D.C. Circuit, which said "[t]he Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects [the Commission's] policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest." *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 543-44 (D.C. Cir. 2003).

[39] ITCM Answer to Complaint at 20-21 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 694).

[40] *Id.* at 20.

[41] *Id.* at 21.

[42] *Id*. at 23.

been reconstructed for generator interconnection projects.[43] According to ITCM, this stands in contrast to IPL's assertion that most of the projects identified as network upgrades and associated with generator interconnection projects within the ITCM pricing zone are breaker additions, switching stations, or line taps that provide "no improvement to overall system reliability."[44] ITCM also argues that a portion of the costs allocated to IPL are directly related to IPL's own generation costs.[45]

24. ITCM maintains that IPL exaggerated some of the costs it claims to have paid under the reimbursement policy. In May 2010, ITCM calculated that $24,094,016 in rate base was due to the difference between the application of the Regional Expansion Criteria and Benefits policy if IPL had continued to own the system and what was reflected due to ITCM's reimbursement policies.[46] According to ITCM, this difference equated to a $0.17 monthly rate increase for the average residential customer served by IPL during the first year of investment, an amount that ITCM asserts is not a "huge" cost shift.[47]

25. ITCM argues that its reimbursement policy promotes a more efficient transmission planning process because it allows ITCM to plan based upon the best configuration for improvement rather than the lowest cost that would be paid by the generator

---

[43] *Id.* at 24.

[44] *Id.* at 25 (citing IPL Complaint at 14).

[45] *Id.* at 24-25. ITCM identifies projects of IPL affiliate, Wisconsin Power and Light, receiving, or eligible to receive, 100 percent reimbursement for network upgrades under the ITCM pricing zone reimbursement policy (Whispering Willow Wind Farm – $2.866 million; and Bent Tree Wind Farm – $3.516 million and $10.744 million). *Id.* (citing ITCM Answer to Complaint, Affidavit of Doug Collins at P 13). ITCM also states that under the MISO Tariff, IPL could have elected to self-fund these improvements and not have included the costs in ITCM's zonal rates under the 100 percent reimbursement policy. *Id.* at 25.

[46] *Id.* at 27.

[47] *Id.* ITCM also states, among other things, that the "incremental cost of Attachment FF for 2011 as calculated by IPL is $15,068,424, or 1 percent of IPL's most-recently approved retail revenue requirements." According to ITCM, a "retail revenue requirement impact of 1 percent cannot be considered 'huge.'" *Id*. at 27.

interconnection customer.[48] ITCM also states that, should the Commission decide to set the matter for hearing or investigation, any relief should be prospective.[49]

C. Comments

26. AWEA & WOW, EDF Renewable Energy, and Iberdrola urge the Commission to dismiss the complaint and uphold the ITCM reimbursement policy. AWEA & WOW argue that the complaint should be dismissed outright because IPL has failed to proffer substantial evidence to satisfy its burden of proof that ITCM's reimbursement policy is unjust and unreasonable.[50] AWEA & WOW also note that the 100 percent reimbursement policy is consistent with Order No. 2003 and is used by other Regional Transmission Organizations (RTOs) such as the Southwest Power Pool.[51] AWEA & WOW, EDF Renewable Energy and Iberdrola note various benefits from ITCM's policy. For example, AWEA & WOW and Iberdrola state that IPL and its customers have experienced both improvements in reliability and reduced energy prices.[52] AWEA & WOW, EDF Renewable Energy and Iberdrola also note that various policy objectives are achieved through this reimbursement policy, such as removing the disincentive to investing in new projects,[53] promoting renewables, increasing competition, and ensuring equal treatment of all interconnection customers.[54] Finally, AWEA & WOW believe the complaint constitutes a collateral attack on the Commission's prior acceptance of the 100 percent ITCM generator interconnection reimbursement policy because at the time this decision was made, MISO had different network upgrade cost allocation policies in its different pricing zones, and there have not been any material changes since that time.[55]

27. Consumers Energy, Detroit Edison, Iowa Consumers Coalition, Minnesota Agencies, and Northeast Power support the complaint and argue that IPL and its

---

[48] *Id.* at 28.

[49] *Id.* at 29.

[50] AWEA & WOW Comments at 4.

[51] *Id.* at 5.

[52] *Id.* at 5-6; Iberdrola Comments at 3.

[53] Iberdrola Comments at 2-3.

[54] AWEA & WOW Comments at 5; EDF Renewable Energy Comments at 2.

[55] AWEA & WOW Comments at 5.

customers have paid excessive costs while failing to receive commensurate benefits such as improved reliability or reduced power supply costs.[56] In particular, Minnesota Agencies and Northeast Power state that their customers are forced to bear unfair costs associated with the ITCM reimbursement policy and have not received additional benefits, whereas customers in other pricing zones pay for 10 percent of generation interconnection costs.[57] Consumers Energy states that paying increased costs without receiving commensurate benefits is inconsistent with an "important objective" of Commission policy to protect existing transmission customers from "adverse rate implications associated with Interconnection Facilities and Network Upgrades required to interconnect a new Generating Facility."[58] Minnesota Agencies assert that another negative aspect of the ITCM policy is that it leads to "the distortion in incentives as to where new facilities are located."[59]

28. Minnesota Agencies state that there are four utilities in Minnesota that have joined MISO, and three of them are located in the 10 percent generator interconnection reimbursement pricing zones, and one, IPL, is located in the ITCM pricing zone where 100 percent of generation interconnection costs are charged to load.[60] Minnesota Agencies assert that there is no reasonable justification to support this different treatment of IPL and its customers, which resulted in an estimated $32 million in additional costs to IPL and its customers for 2008 to 2011, when all of these entities are located in the MISO footprint and with no additional benefits to these IPL customers.[61]

29. Minnesota Agencies note that MISO moved from an allocation of 50 percent of cost to load and 50 percent to the interconnection customer, to an allocation of 10 percent to load for facilities that are 345 kV and higher and 90 percent to the interconnection customer. Minnesota Agencies argue that it was necessary to ensure that entities and their load in the northwestern part of the MISO footprint were not charged excessive

---

[56] Consumers Energy Comments at 3; Detroit Edison Comments at 3; Iowa Consumers Coalition Comments at 3-4; Minnesota Agencies Comments at 3; Northeast Power Comments at 4-5.

[57] Minnesota Agencies Comments at 3; Northeast Power Comments at 4-5.

[58] Consumers Energy Comments at 3-4 (citing Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 56).

[59] Minnesota Agencies Comments at 3.

[60] *Id.*

[61] *Id.*

amounts of generation interconnection costs for a significant amount of generation seeking to interconnect in that area, but destined to serve load outside the area.[62] Minnesota Agencies state that the 10 percent generator interconnection reimbursement policy was reasonable because the generator, which would bear 90 percent of the costs, "was in a better position to pass on these costs to the entities that benefitted from the generation facilities (and not simply to allocate the costs to the closest local load, which may derive little benefit from the facilities)."[63]

30. Similarly, Resale Power Group of Iowa supports the IPL complaint and expresses concern that the ITCM policy could ultimately lead to the loss of Resale Power Group of Iowa customers to other pricing zones. Resale Power Group of Iowa states that ITCM's zonal rate for network transmission service will be $7.80/kW-month in January 2013, whereas this service will be $2.06/kW-month in the MidAmerican pricing zone.[64] Resale Power Group of Iowa believes it is at risk of losing power supply municipal utility customers to neighboring non-jurisdictional electric cooperatives that have transmission facilities embedded in MISO and are insulated from paying ITCM transmission charges under grandfathered service agreements or are able to interconnect to adjacent transmission pricing zones and effectively disconnect from the ITCM zone.[65] Resale Power Group of Iowa states that these suppliers "have a competitive advantage with respect to the cost of delivered power because they are not saddled with ITCM's disproportionately high transmission charges."[66]

31. Resale Power Group of Iowa also states that the ITCM reimbursement policy is unjust and unreasonable because generation in the ITCM pricing zone largely exceeds load in that zone.[67] Resale Power Group of Iowa argues that the instant case is not unlike

---

[62] *Id.*

[63] *Id.* at 4.

[64] Resale Power Group of Iowa Comments at 3.

[65] *Id.* at 8.

[66] *Id.* at 8-9.

[67] Resale Power Group of Iowa states that "[a]s of September 28, 2012, ITCM still has more pending generator interconnections in the queue (3,442.25 MW) than zonal load (2,911 MW)." *Id*. at 7 (citing MISO, https://www.midwestiso.org/Planning/GeneratorInterconnection/Pages/InterconnectionQueue.aspx (last visited Oct. 3, 2012) and MISO, http://oasis.midwestiso.org/documents/itcm/ITCMW%202013%20Proj%20Attmnts%20O%20GG%20MM.pdf (last visited Oct. 3, 2012)).

the situation that arose with Otter Tail and Montana-Dakota Utilities in 2009.[68] There, according to Resale Power Group of Iowa, the Commission reduced the 50 percent generator interconnection reimbursement policy for all of MISO (except for independent transmission companies) because of the disparity between the amount of generation in the Otter Tail and Montana-Dakota Utilities pricing zones and the amount of load in those zones.[69] Resale Power Group of Iowa contends that "the only MISO transmission owners not to adopt the MISO Tariff Attachment FF's 10 percent default GIP [generator interconnection project] reimbursement provisions in 2009—a measure which was designed to protect load from the unintended consequences of location-constrained generation resources—were those transmission owners with no load of their own to protect."[70] According to Resale Power Group of Iowa, if the Commission found the 50 percent generator interconnection reimbursement policy to be unjust and unreasonable, especially where there is a disparity between generation and native load, Resale Power Group of Iowa believes that ITCM's 100 percent reimbursement policy should also be found unjust and unreasonable.[71]

32. MidAmerican filed comments with the Commission but declined to offer an opinion on the merits of the complaint, and it instead discussed the effect of the complaint on existing GIAs. MidAmerican states that if changes are made to ITCM's reimbursement policy, they should only apply prospectively to GIAs that are not yet effective.[72] Alternatively, if existing GIAs must be amended, the reimbursement policy should only apply to the incremental network upgrades associated with the amendment and not to network upgrades in the original GIA.[73]

D. <u>Commission Determination</u>

33. As explained below, we grant the complaint. The Commission finds that ITCM's interconnection reimbursement policy, in the context of MISO's zonal rate structure, results in an improper subsidy and is therefore unjust, unreasonable and unduly discriminatory or preferential.

---

[68] *Id.* at 2, 6.

[69] *Id.* at 6-7.

[70] *Id.* at 7.

[71] *Id.*

[72] MidAmerican Comments at 3.

[73] *Id.*

1. <u>Order No. 2003 Reimbursement Policy</u>

34. Under the Order No. 2003 reimbursement policy for transmission providers, the generator interconnection customer funds the cost of the network upgrades needed for its interconnection up-front as those upgrades are constructed.[74] The generator interconnection customer is, in turn, entitled to a cash repayment of such amounts paid to the transmission provider,[75] to be repaid to the generator interconnection customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges (i.e., the demand charges that recover fixed transmission costs), as payments of such charges are made under the transmission provider's tariff for transmission services with respect to the generating facility.[76] The generator interconnection customer and transmission provider may adopt any alternative payment schedule that is mutually agreeable,[77] provided that all amounts advanced for network upgrades must be repaid to the generator interconnection customer within 20 years from the generating facility's commercial operation date.[78]

35. In Order No. 2003-A, the Commission clarified that in recovering these network upgrade costs, transmission providers are allowed to charge the generator interconnection customer the "higher-of" either incremental costs of network upgrades under the "but

---

[74] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 676.

[75] For purposes of this discussion, the term "transmission provider" refers to the transmission owner. In the RTO context, "Transmission Provider" typically refers to the RTO itself, in this case MISO. Because Order No. 2003 applies in both RTO and non-RTO contexts, however, Order No. 2003 defines "Transmission Provider" as "[t]he entity (or entities) with which the Generating Facility is interconnecting" (*id.* n.3), and "Transmission Provider" includes the "Transmission Owner" as well (*id.* P 75). Accordingly, these provisions also refer to ITCM, which is a transmission owner in MISO and the entity with which generators interconnect in the ITCM pricing zone of MISO.

[76] *Id*. P 676. Such repayment includes interest calculated in accordance with the methodology set forth in the Commission's regulations at 18 C.F.R. 35.19a(a)(2)(ii) (2012) from the date of any payment for the network upgrades through the date on which the generator interconnection customer receives a repayment of such payment. *Id*.

[77] *Id*. P 720.

[78] Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at PP 36-37.

for" test or the embedded cost transmission charge.[79] In Order No. 2003-B, the Commission provided that transmission providers or their existing transmission customers could file on a case-by-case basis to demonstrate that this pricing policy results in an improper subsidy by the transmission provider's native load and other customers; however, the Commission stated that it could not envision that such a subsidy could ever occur because, as explained below, the "higher-of" policy was designed to avoid such a situation.[80] Therefore, as described in these orders, the two major customer protections from improper subsidy are: (1) "higher-of" pricing; and (2) the ability to demonstrate on a case-by-case basis that "higher-of" pricing results in an improper subsidy.

36. The Order No. 2003 reimbursement policy was designed to work with the transmission rate pricing policies of the *pro forma* OATT to ensure native load and other transmission customers of the transmission provider are protected from subsidizing the cost of the network upgrades built to interconnect a generator to the grid. For example, each generator, or other transmission customer, seeking to use the transmission system to deliver power from the generator must take transmission service and pay the transmission provider's transmission service rates separate from paying for any interconnection-related network upgrade costs. However, the rate ultimately paid for network upgrades for interconnection of the generator to the grid and transmission service for the output of the generator is the higher of the embedded cost rate (reflecting system average costs including the cost of the network upgrades) or the incremental cost rate (reflecting just the costs of the network upgrades). Where the transmission provider charges an average embedded cost transmission rate, it incorporates the costs of the network upgrades into its transmission rates and the revenue received for transmission service for the output of the generator is credited to the transmission revenue requirement, offsetting the costs of the network upgrades. Where the transmission provider charges an incremental cost transmission rate, the cost of the network upgrades will not be included in the transmission rates charged to other customers. Either way, both native load and other transmission customers of the transmission provider are protected from subsidizing the cost of the network upgrades built to interconnect the generator to the grid.[81]

---

[79] Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 580. Order No. 2003-A also noted that the incremental rate associated with network upgrades required to interconnect a new generator will generally be less than the embedded average cost rate. *Id*. P 581.

[80] Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 56.

[81] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 694; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 580.

37. In Order No. 2003, the Commission also discussed other related issues. The Commission denied requests to directly assign the cost of network upgrades to the generator interconnection customer in cases where the customer sells off-system, reasoning that when the generator interconnection customer chooses to sell the output of the generating facility off-system, transmission customers remain protected because the transmission provider has the assurance that it can recover from the generator interconnection customer the higher of incremental or embedded costs.[82] The Commission further explained that the Commission's interconnection reimbursement policy is reasonable because it provides efficient incentives for new generation and transmission expansion, while its "higher of" ratemaking standard prevents subsidization of merchant generation and prevents undue discrimination by native load or other transmission customers.[83]

38. The foregoing reimbursement policies apply to all public utility transmission providers. However, in Order Nos. 2003 and 2003-A, the Commission provided flexibility for independent entities to depart from this pricing structure by submitting alternatives for Commission review and approval.[84] The Commission explained that, when the transmission provider is an independent entity, it is less concerned that all generation owners will not be treated comparably.[85] At the same time, the Commission emphasized that, by allowing an independent transmission provider to adopt a reimbursement policy that differs from the Order No. 2003 pricing structure, the Commission was not abandoning the goals it has established for interconnection pricing, noted above.[86]

2. <u>ITCM's Reimbursement Policy</u>

39. In the ITCM zone, an interconnection customer pays for 100 percent of the costs of the network upgrades up-front. The interconnection customer is then reimbursed 100 percent of those network upgrade costs within 90 days of its Commercial Operation Date if it demonstrates at that time that either: (1) the generating facility has been designated as a Network Resource to serve *any* Network Load in MISO; or (2) it has entered into a

---

[82] Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 588.

[83] *Id*. P 590.

[84] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 698; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 677.

[85] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 701.

[86] *Id*. P 700.

contract with *any* MISO network customer for capacity, or in the case of an Intermittent Resource, for energy, from the generating facility for a period of one year or longer.[87]

40. The above-noted discussion in the Order No. 2003 rulemaking proceeding does not directly address the specific issue presented here – whether ITCM's reimbursement policy for network upgrades is appropriate in light of MISO's zonal rate structure. With that issue now before us, we find that the "higher of" protection on which Order No. 2003 relied is absent in the ITCM zone. As implemented within the MISO zonal rate structure, the ITCM interconnection reimbursement policy does not provide for adequate contribution to the costs of network upgrades required to interconnect a generator in the ITCM zone from either the interconnecting generator or a transmission customer taking service to access the generator's output when the generator exports to another MISO pricing zone. In this situation, where a generator exports its power between the ITCM zone and another transmission pricing zone in MISO, the embedded cost transmission rate paid is the rate of the pricing zone where the power is *delivered*, rather than where it is sourced. Thus, when an interconnection customer located in the ITCM pricing zone exports its power to another pricing zone, full reimbursement by ITCM of the cost of network upgrades required for the interconnection service occurs without adequate contribution to the embedded costs of the ITCM transmission system by the interconnection customer or transmission customer exporting the power. Instead, those network upgrade costs are largely recovered through the transmission rates within the ITCM zone that are paid by customers, such as IPL, taking transmission service to serve their loads in the ITCM zone. As such, "higher of" pricing in this situation does not, as envisioned in Order No. 2003, protect IPL and other customers in the ITCM zone against impermissibly subsidizing network upgrades required for generator interconnection.

41. We find that the interaction of the current ITCM reimbursement policy and the MISO zonal rate structure provides inadequate protection against the type of improper subsidy about which the Commission expressed concern in Order No. 2003. For this reason, we grant IPL's complaint.

3. Remedy and Effective Date

42. Because we grant IPL's complaint we also direct MISO on behalf of ITCM, as requested by IPL,[88] to revise Attachment FF of MISO's Tariff such that generator

[87] MISO Tariff, Attachment FF §§ III.A.2.d.4.b.i-ii. For the remainder of the discussion in this order, when we refer to an interconnection customer or generator, we are referring only to those interconnection customers or generators that qualify for reimbursement of their interconnection-related network costs in the ITCM zone.

[88] IPL Complaint at 2, 15.

interconnection customers in the ITCM pricing zone may receive up to 10 percent reimbursement for the cost of their interconnection-related network upgrades on a prospective basis, in conformance with the generator interconnection cost recovery provisions applicable to most other MISO pricing zones.[89]

43. We will make the directed revisions to section III.A.2.d of Attachment FF effective as of the date of this order. We find that this prospective application of our finding here balances the interests of parties to GIAs and the need for regulatory certainty.[90] We also agree with MidAmerican that, consistent with precedent, the reimbursement policy that will apply to generator interconnection customers will be the policy in effect on the date that a GIA is executed or filed with the Commission, if unexecuted.[91] Thus, this order does not modify any existing agreement executed or filed unexecuted with the Commission prior to the date of this order.

44. With respect to MidAmerican's concerns about amendments to GIAs to add additional network upgrades, we believe that such amendments are more appropriately addressed on a case-by-case basis to give consideration to the situation giving rise to the amendments.[92]

---

[89] MISO Tariff, Attachment FF § III.A.2.d.1.

[90] *See, e.g.*, *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,048, at P 34 (2013); *see also Louisiana Public Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211, at PP 55-60 (2013) (where the Commission's actions require only a cost allocation change or rate design change, the changes will only take effect prospectively); *Occidental Chem. Corp.*, 110 FERC ¶ 61,378, at P 10 (2005).

[91] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,277, at P 10 (2008) (finding that because two generator interconnection agreements had been executed after the effective date of newly revised interconnection queue rules, the interconnection agreements must be revised to conform with the new rules); RECB I Order, 114 FERC ¶ 61,106 at P 70 (finding that generator interconnection agreements filed before the effective date of a new cost allocation tariff provisions would be governed under the prior cost allocation rules).

[92] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008) (while fact-specific to the case at hand, the Commission agreed upon rehearing to allow original network upgrades to be governed by the reimbursement policy effective at the time the GIA was executed, but additional upgrades associated with a request to increase the capacity of the generation facility were subject to the new reimbursement policy effective at the time the amended GIA was executed).

<u>The Commission orders</u>:

(A) IPL's complaint is hereby granted, as discussed in the body of this order.

(B) MISO, on behalf of ITCM, is hereby required to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is concurring with a separate statement to be issued at a later date.
Commissioner Norris is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Interstate Power and Light Company v. ITC Midwest, LLC — Docket No. EL12-104-000

(Issued July 18, 2013)

NORRIS, Commissioner, *concurring*:

I agree with today's order that grants the complaint and finds that ITC Midwest's 100 percent generator interconnection reimbursement policy is unjust and unreasonable in the context of MISO's zonal rate structure. While I believe it appropriate to direct MISO to conform ITC Midwest's generator interconnection reimbursement provisions to those provisions generally applicable to other MISO pricing zones, I am concerned that this policy might not adequately recognize the benefits that interconnection-related network upgrades provide to all users of the MISO transmission system. Thus, I write separately to state that I am open to considering alternatives to this existing policy that fully account for the benefits provided by interconnection-related network upgrades in a manner that ensures just and reasonable rates.

Under MISO's zonal rate structure, ITC Midwest's 100 percent generator interconnection reimbursement policy allocates to transmission customers who deliver energy in the ITC Midwest zone the full cost for generator interconnection-related network upgrades. Many of these generators are being developed to export their energy to other zones. Those transmission customers who take energy from the exporting generators clearly benefit from the network upgrades built in the ITC Midwest zone and should be allocated a share of the upgrade costs. For this reason I support granting the complaint.

However, use of MISO's up-to-10 percent generator interconnection reimbursement policy[1] in the ITC Midwest zone will allocate most if not all of the cost for interconnection-related network upgrades to generators located in the zone and might not sufficiently recognize the benefits of the network upgrades in the ITC Midwest zone to all transmission customers. Such benefits include enhanced

[1] Under MISO's generally applicable policy, generator interconnection customers are reimbursed for 10 percent of any required network upgrades rated at or above 345 kV, and receive no reimbursement for required network upgrades rated less than 345 kV.

reliability and lower energy prices resulting from a less constrained transmission system and increase in energy supply options in the ITC Midwest zone. Nevertheless, the up-to-10 percent generator interconnection reimbursement policy is generally applicable to most MISO pricing zones and there is no evidence in the record to support a different sharing of costs at this time.

For these reasons, I respectfully concur on this order.

John R. Norris, Commissioner