154 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.
and
The Midwest ISO Transmission Owners

Docket Nos. ER09-1431-001
ER09-1431-002

ORDER DENYING REHEARING AND CLARIFICATION AND ACCEPTING COMPLIANCE

(Issued February 2, 2016)

1. On November 23, 2009, American Wind Energy Association and Wind on the Wires (AWEA-WOW), Edison Mission Energy (Edison Mission),[1] and NextEra Energy Resources, LLC (NextEra) (collectively, Rehearing Parties) filed requests for rehearing and clarification in Docket No. ER09-1431-002 of the Commission's order issued on October 23, 2009,[2] conditionally accepting a proposed interim cost allocation methodology filed by the Midwest Independent Transmission System Operator, Inc. (MISO)[3] and the Midwest ISO Transmission Owners (MISO TOs)[4] (Filing Parties). On

[1] On November 24, 2009, Edison Mission filed an errata to its November 23, 2009 request.

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009) (Interim Cost Allocation Order).

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

[4] For purposes of this proceeding, the MISO TOs are Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central

(continued ...)

November 20, 2009, MISO submitted a filing in Docket No. ER09-1431-001 to comply with the Commission's directive in the Interim Cost Allocation Order to provide tariff revisions regarding the demonstration of purchase commitments in the pricing zones of ITC Transmission/Michigan Electric Transmission Company (ITC/METC) and ITC Midwest.[5] In this order, we deny the requests for rehearing and clarification of the Interim Cost Allocation Order and accept MISO's November 20, 2009 Compliance Filing, as discussed below.

## I. Background

### A. Interim Cost Allocation Filing for Phase I

2. On July 9, 2009, as supplemented on September 17, 2009 and on September 18, 2009, pursuant to section 205 of the Federal Power Act (FPA),[6] the Filing Parties filed proposed amendments to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to revise the method for allocating the cost of network upgrades for generation interconnection projects during Phase I[7] that previously met

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Illinois Light Co., and Illinois Power Company; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Business Services, LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co. (MDU); Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company (Otter Tail); Southern Illinois Power Cooperative; Southern Indiana Gas and Electric Company; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

[5] MISO November 20, 2009 Compliance Filing, Docket No. ER09-1431-001 (November 20, 2009 Compliance Filing).

[6] 16 U.S.C. § 824d (2012).

[7] MISO noted that in Phase I, stakeholders addressed near-term issues while Phase II would involve a comprehensive look at transmission cost allocation.

MISO's regional expansion criteria and benefits (RECB) standards[8] to qualify for cost sharing.[9]

3. The Filing Parties stated that the Interim Cost Allocation Filing was submitted to address unanticipated and inequitable consequences of application of the Line Outage Distribution Factor (LODF) analysis that was allocating a large share of generator interconnection-related network upgrade costs to the pricing zone where a new generator interconnects.[10] The LODF approach, asserted Filing Parties, was imposing disproportionate costs on loads in the pricing zones where new generation locates, when the pricing zone in question has high levels of new generation concentration relative to its load. The Interim Cost Allocation Filing: (1) eliminated the LODF allocation of generator interconnection-related network upgrades to load in most pricing zones in MISO;[11] (2) assigned, to interconnection customers, the share of costs previously allocated to loads on an LODF basis; and (3) eliminated the previous requirement that interconnection customers (outside of American Transmission Company, LLC (ATC), ITC/METC, and ITC Midwest) show designation as a MISO network resource or a one-year power purchase agreement with a network customer to be eligible for cost sharing.[12] As a result, the Interim Cost Allocation Filing assigned to interconnection customers 100 percent of the costs of network upgrades rated below 345 kilovolts (kV) and 90 percent of the network upgrades rated at 345 kV and above, with the remaining 10 percent of the costs being recovered on a system-wide basis. The Filing Parties noted that this approach

[8] The RECB standards can be found in *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).

[9] Filing Parties, Docket No. ER09-1431-000, Transmittal Letter at 7 (Interim Cost Allocation Filing).

[10] The Filing Parties stated that the LODF method considers the flow effects of a given facility's outage on transmission facilities in each pricing zone, also taking into account the length of each affected transmission facility. Interim Cost Allocation Filing, Transmittal Letter at 5.

[11] Filing Parties did not seek to make changes to the cost allocation methodology for generator interconnection purposes in the pricing zones of ATC, ITC/METC, and ITC Midwest.

[12] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 8.

was consistent with the participant funding methodologies in PJM Interconnection, LLC (PJM) and New York Independent System Operator, Inc. (NYISO).[13]

4. Filing Parties noted that a Phase II stakeholder process would focus on the integration of location-constrained resources and include a new category of cost sharing for transmission projects driven primarily by the need to integrate large quantities of remote generation resources. Filing Parties explained that Phase II would involve "a comprehensive look at transmission upgrade cost allocation in light of possible major 'superhighway' transmission projects to facilitate regional or inter-regional movement of large quantities of power from remote areas."[14] In addition, Filing Parties indicated that Phase II would include a consideration of additional improvements to the Phase I revisions to the generator interconnection project cost allocation methodology.[15]

### B. Interim Cost Allocation Order for Phase I

5. In the Interim Cost Allocation Order, the Commission conditionally accepted the Interim Cost Allocation Filing effective July 10, 2009, as requested,[16] and provided guidance to help inform the ongoing discussions related to Filing Parties' Phase II cost allocation evaluation. The Commission also directed Filing Parties to make a compliance filing (1) to fulfill their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010 and (2) to reflect certain conforming changes to the Tariff. In addition, the Commission accepted Filing Parties' offer to provide the Commission with reports on the status of the Phase II stakeholder process, and directed that those informational reports be submitted on November 20, 2009, February 26, 2010 and May 28, 2010.

6. The Commission found that given the significant unanticipated cost allocations resulting from the application of the LODF methodology, the Interim Cost Allocation Filing will reasonably address for the interim period the balance between costs and

[13] Interim Cost Allocation Filing, Transmittal Letter at 19.

[14] *Id*. at 7.

[15] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 12.

[16] The Commission found that the Filing Parties made a sufficient showing of good cause for waiver of the 60-day prior notice requirement, because absent waiver of notice, the unanticipated consequences of application of the LODF allocation methodology, described by Filing Parties, would be borne by the load in the Otter Tail and MDU zones. *See Id*. P 73.

benefits in MISO pricing zones due to the concentration of generator interconnection projects in pricing zones with low load densities, including in the Otter Tail and MDU zones. The Commission noted that given the facts and circumstances of this proceeding and consistent with the flexibility afforded to "independent entities" in Order No. 2003,[17] it accepted the interim proposal, conditioned upon the Filing Parties fulfilling their commitment to file superseding Tariff revisions regarding the Phase II cost allocation methodology on or before July 15, 2010, as just and reasonable and not unduly discriminatory or preferential. The Commission emphasized that it fully expected that all methodologies would be evaluated in the Phase II stakeholder process. The Commission also noted that under Order No. 2003, independent entities, such as MISO, have discretion to propose an appropriate cost allocation for interconnection-related network upgrades, including providing interconnection customers with capacity rights or financial transmission rights (FTRs) made feasible by such projects in exchange for funding the projects, and rejected arguments concerning the value of FTRs.[18]

7. The Commission rejected arguments that the Interim Cost Allocation Filing should apply only to Otter Tail/MDU because these are the only zones currently impacted by the problem, as it agreed with the Filing Parties that there were actually six zones in which pending generator interconnections exceeded the load in the zone, and therefore, the issue addressed by the interim proposal may arise in other zones. Accordingly, the Commission conditionally accepted the Interim Cost Allocation Filing to apply the proposed cost allocation methodology across the entire MISO region (except for the ATC, ITC/METC, and ITC Midwest pricing zones), as proposed by Filing Parties.[19]

8. In response to protestors' arguments that the Interim Cost Allocation Filing does not properly allocate the costs of network upgrades for generator interconnections to beneficiaries as well as to cost causers, the Commission stated that alternative cost allocation methodologies are more appropriately considered in the Phase II stakeholder process and that having conditionally accepted the Interim Cost Allocation Filing, it

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

[18] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at PP 48-50, n.104.

[19] *Id*. P 51.

would not address the merits of the alternative methodologies at that time.[20] For Phase II, the Commission noted that cost allocation proposals for interconnection-related upgrades should, among other things, pay attention to cost-causation principles and identify the full array of benefits to generators, load, and other entities in the region from enhanced transmission infrastructure.[21]

9. The Commission also noted the Filing Parties' statement that the Phase II stakeholder process will focus on the integration of location-constrained resources and will include a new category of cost sharing for transmission projects driven primarily by the need to integrate large quantities of remote generation resources. The Commission also noted its prior recognition that location-constrained resources present unique challenges that other resources do not present, and acknowledged that stakeholders may seek to plan for transmission projects on a region-wide basis to address region-wide concerns as opposed to planning merely for specific generators or load growth.[22]

10. Regarding arguments that the Interim Cost Allocation Filing should not apply permanently to an agreement that is executed, or filed unexecuted, during the interim period, the Commission found that this would be inconsistent with how the Commission treated earlier changes to the method for allocating the costs of network upgrades in MISO.[23] Moreover, the Commission found that this would lead to unnecessary uncertainty for all parties involved. As to the trigger date, the Commission reiterated its previous finding that the tariff that should apply is the one that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted.[24]

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[20] *Id*. P 61.

[21] *Id*. PP 53-56.

[22] *Id*. PP 57-60.

[23] *Id*. P 62 (citing RECB I Order, 114 FERC ¶ 61,106 at P 64).

[24] *Id*. (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,277, at P 10 (2008) (*MISO*) (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). *See also* 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).

11. Finally, the Commission required MISO to submit an additional compliance filing providing Tariff revisions reflecting that MISO as the transmission provider will evaluate and determine, in all cases involving ITC/METC and ITC Midwest, whether an interconnection customer has adequately demonstrated that it has been designated a network resource or whether a contractual arrangement for capacity to serve MISO load for a period of at least one year exists.[25]

### C. Multi-Value Project (MVP) for Phase II

12. After the stakeholder process, on July 15, 2010 in Docket No. ER10-1791-000, pursuant to section 205 of the FPA, and in accordance with the Interim Cost Allocation Order, MISO and the MISO TOs (MVP Filing Parties)[26] filed proposed revisions to the Tariff in order to fulfill their commitment to file Tariff revisions regarding a Phase II cost allocation methodology (MVP Filing).

13. In the MVP Filing, the MVP Filing Parties sought to establish a new category of transmission projects that would "…enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple transmission zones."[27] In recognizing the regional orientation of such projects, the MVP Filing Parties proposed that the costs of the MVPs be allocated to all load in, and exports from, MISO on a postage-stamp basis. MVP Filing Parties also proposed to make permanent the interim cost allocation methodology for generator interconnection upgrades conditionally approved in the Interim Cost Allocation Order but proposed revisions to narrow the cost burden faced by an initial generator interconnection customer that funds a network upgrade by requiring subsequent interconnection customers that benefit from the same upgrade to contribute to the costs of such upgrade

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[25] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 81.

[26] For purposes of the MVP Filing, the MISO TOs include Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; ATC; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Minnesota Power (and its subsidiary Superior Water, L&P); MDU; Northern Indiana Public Service Company; Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail; Southern Indiana Gas and Electric Company; and Southern Minnesota Municipal Power Agency.

[27] MVP Filing, Transmittal Letter at 2.

through the creation of a new class of interconnection projects call Shared Network Upgrades.[28]

### D. MVP Orders for Phase II

14. On December 16, 2010, the Commission conditionally accepted the MVP Filing, effective July 16, 2010; and on October 21, 2011, the Commission granted in part and denied in part requests for rehearing and conditionally accepted MVP Filing Parties' compliance filing made in response to directives in the MVP Order.[29]

## II. Discussion

### A. Procedural Matters

15. NoCapX 2020 and United Citizens Action Network filed an out-of-time limited intervention in Docket No. ER09-1431-002 on May 20, 2010. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. NoCapX 2020 and United Citizens Action Network have not met this higher burden of justifying their late interventions, and thus we reject their motions to intervene.[30]

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[28] *Id.*

[29] *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order), *order on reh'g and compliance*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order)*, aff'd in part and remanded in part sub nom. Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7th Cir. 2013). The partial remand has no bearing on the issues raised in this proceeding.

[30] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

## B. Substantive Matters

### 1. Interim Nature of the Proposal

#### a. Requests for Rehearing

16. The Rehearing Parties argue that the Interim Cost Allocation Order improperly relied on the interim nature of the Interim Cost Allocation Filing.[31] They argue that regardless of the interim nature of the Interim Cost Allocation Filing, the Commission was still required, but failed, to determine that the Interim Cost Allocation Filing was just and reasonable. For example, NextEra argues that a proposal must be just and reasonable on its own merits.[32] Edison Mission and AWEA-WOW argue that there are no assurances that the Filing Parties' future filing to propose a Phase II solution will be just and reasonable.[33] Edison Mission also concludes that "the Commission's decision to approve the [Interim Cost Allocation Filing] based on a belief that the proposal would be implemented only on an interim basis exceeds the Commission's discretion to approve rates for which there is not substantial evidence in the record."[34]

#### b. Commission Determination

17. The interim nature of the Interim Cost Allocation Filing was not the basis for the Commission's acceptance of the proposal; rather, the Commission accepted the Interim Cost Allocation Filing as just and reasonable based on a determination that it was on balance a reasonable solution to the significant unanticipated cost allocations resulting from the application of the LODF methodology, as well as consistent with the flexibility afforded to "independent entities," such as MISO, in Order No. 2003. Rehearing Parties mischaracterize the reference to the term "interim" as used in the Commission's determination in the Interim Cost Allocation Order. Rather than indicating that the basis for the acceptance was the interim nature of the proposal, the Commission was simply acknowledging the fact that the proposal as described by MISO was of limited duration.

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[31] NextEra Request for Rehearing and Clarification at 8; AWEA-WOW Request for Rehearing at 6-8; Edison Mission Request for Rehearing at 7-10.

[32] NextEra Request for Rehearing and Clarification at 8 (citing *ISO New England, Inc.*, 124 FERC ¶ 61,235, at P 25 (2008)).

[33] AWEA-WOW Request for Rehearing at 8; Edison Mission Request for Rehearing at 8.

[34] Edison Mission Request for Rehearing at 9.

The Commission has previously recognized its ability to accept an interim proposal as just and reasonable.[35]

## 2. Cost Causation

### a. Requests for Rehearing or Clarification

18. The Rehearing Parties argue that the Interim Cost Allocation Filing is inconsistent with Commission policy regarding cost allocation based on cost causation. They argue that the Interim Cost Allocation Order fails to acknowledge that network upgrades benefit all transmission users. They further argue that there is no analysis of how the Interim Cost Allocation Filing properly aligns costs with benefits. Edison Mission and AWEA-WOW argue that the notion that a generator who is the immediate cause of an upgrade is also its chief "beneficiary" and should pay most of its costs is not consistent with the reality of an integrated transmission system. Edison Mission and AWEA-WOW contend that the Commission must look at the benefits over the projected life span of the transmission assets.[36] NextEra argues that the Interim Cost Allocation Order ignored the immediate and significant benefits on the transmission system from network upgrades developed to integrate location-constrained resources.[37] NextEra argues that requiring the funding of network upgrade costs by transmission owners is not an improper subsidy of generators, but instead is justified by the broad benefits from network upgrades. NextEra contends that the Interim Cost Allocation Order's determination is inconsistent with the Commission's decision in a 2009 order where Ameren Services Company was required to repay 100 percent of the network upgrades of an interconnection customer for an interconnection prior to the RECB 50 percent allocation scheme.[38] NextEra argues that in order to increase the cost responsibility to renewable wind generators and other

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[35] *Westar Energy, Inc.* 137 FERC ¶ 61,142, at P 30 (2011) (finding that the Commission's recognition of the potentially temporary nature of the need for the proposal should not be misconstrued as the Commission using a lower standard for evaluating the proposal).

[36] Edison Mission Request for Rehearing at 12-13; AWEA-WOW Request for Rehearing at 10-11.

[37] NextEra Request for Rehearing and Clarification at 5 & n.6 (citing Joint Protesters' Protest, Docket No. ER09-1431-000, Stoddard Affidavit at ¶ 2 (filed Aug. 13, 2009)).

[38] *Id.* at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,109 (2009)).

interconnection customers from 50 percent to 90 percent or 100 percent, Filing Parties should have the burden to demonstrate – even on an interim basis – that reimbursements to generators provide an improper subsidy and that load does not benefit in any way from the network upgrades.[39]

19. The Rehearing Parties argue that the Interim Cost Allocation Order's determination was not a reasonable implementation of the flexibility allowed to independent entities under Order No. 2003. Edison Mission asserts that the Commission's reliance on the flexibility given to independent entities is misplaced because MISO was faced with the loss of members, no longer allowing MISO to remain a disinterested party.[40] NextEra argues that PJM and NYISO are distinguishable from MISO with regard to accommodation of location-constrained resources. NextEra contends that while PJM and NYISO have similar methodologies, neither of them has the wind-energy potential of MISO. According to NextEra, the cost allocation rules in PJM and NYISO were not tailored to address the needs of how to accommodate location-constrained resources such as exist in the MISO region, and may make sense in those regions given that loads are not nearly as remotely located from wind generation resources compared to the Upper Midwest.[41]

20. Edison Mission argues that the Interim Cost Allocation Order overstates the value of FTRs to interconnection customers.[42] NextEra, in its request for clarification, argues that the return value on FTRs is inadequate compensation. NextEra argues that the Commission should direct the Filing Parties in the compliance filing to include a study on the value under section 46 of the Tariff[43] of the capacity rights if the Filing Parties want to rely on them as justification for their proposal.[44]

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

[40] Edison Mission Request for Rehearing at 10-11.

[41] NextEra Request for Rehearing and Clarification at 9-10.

[42] Edison Mission Request for Rehearing at 15.

[43] Under section 46 of the Tariff, market participants that fund network upgrades can receive FTRs and long-term transmission rights. MISO, FERC Electric Tariff, § 46.

[44] NextEra Request for Rehearing and Clarification at 15-16.

### b. **Commission Determination**

21. We disagree that the Commission's acceptance of the Interim Cost Allocation Filing is inconsistent with the Commission's cost causation principles and deny the rehearing arguments on cost causation.

22. In its Interim Cost Allocation Filing, MISO demonstrated that, as a result of significant increases in generation pending in their pricing zones, Otter Tail and MDU would be forced to unfairly bear significant costs associated with this generation due to the current cost allocation policy's LODF methodology. According to MISO, "It has become increasingly clear that the current LODF approach will impose disproportionate costs on loads in the pricing zones where new generators choose to locate…Under the LODF methodology, a zone's attractiveness to generators exposes loads in the zone to transmission upgrade costs, regardless of whether the loads need or want that generation, regardless of whether the generation is intended to serve other [MISO] zones or even non-[MISO] loads, and regardless of whether the Transmission Owner and loads can expect to see any revenues for transmission service provided to deliver the power from that generator."[45] Specifically, MISO's analysis revealed "that Otter Tail faces a 5,200% increase in its RECB charges, while MDU faces an 826% increase in its RECB charges. Notably, these cost increases are associated with new generation that will not be serving Otter Tail and MDU customers."[46]

23. In order to remedy this inequity in the allocation of costs, MISO engaged in a stakeholder-driven process to develop an alternative cost allocation methodology. As was recognized by the Commission in the Interim Cost Allocation Order,[47] the Interim Cost Allocation Filing removed the LODF methodology that was creating the issues identified above and replaced it with a cost allocation methodology that better aligned costs and benefits.

24. Additionally, in response to arguments that the value of FTRs is overstated, we reiterate the Commission's finding in the Interim Cost Allocation Order that the Interim Cost Allocation Filing does not alter the Tariff provision regarding an interconnection customer's entitlement to FTRs. We also reiterate the Commission's determination in the

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[45] Interim Cost Allocation Filing, Transmittal Letter at 9-10.

[46] *Id.* at 12 (citing Testimony of Eric Laverty at 7).

[47] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 49.

RECB I Order, in which it rejected similar arguments to those raised here that FTRs lack value to interconnection customers.[48]

25. The Interim Cost Allocation Filing is also a reasonable implementation of the flexibility allowed by Order No. 2003 for "independent entities."[49] The Commission explained in Order No. 2003 that independent system operators, like MISO, have significant discretion to propose an appropriate cost allocation methodology for interconnection-related network upgrades, including proposing participant funding where the Tariff also provides interconnection customers with capacity rights made feasible by such projects.

26. We disagree with Edison Mission's argument that the Interim Cost Allocation Filing should not have been afforded flexibility under Order No. 2003 because MISO was no longer a disinterested party once members threatened to leave. Edison Mission's suggestion here is speculative and would require the Commission to ignore the evidence presented in the filing, i.e., of the unanticipated and inequitable consequences of the LODF analysis that was allocating a large share of generator interconnection-related network upgrade costs to the pricing zone where a new generator interconnects that was the basis for the filing. That certain Transmission Owners were then considering leaving MISO *followed* from the aforementioned unanticipated and inequitable consequences of the then-existing methodology.

27. We disagree with arguments stating that Filing Parties' reliance on NYISO and PJM precedent was misplaced in terms of the treatment of location-constrained resources, and reiterate that the Commission found the Interim Cost Allocation Filing to be just and reasonable on its own merits.

### 3. Whether the Interim Cost Allocation Filing is Overly Broad and Unnecessary

#### a. Requests for Rehearing

28. The Rehearing Parties argue that the Interim Cost Allocation Filing is overly broad and unnecessary. Edison Mission and AWEA-WOW argue that a truly interim solution should have been narrowly tailored to address the problems faced by Otter Tail and MDU

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[48] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 50 & n.104 (citing RECB I Order, 114 FERC ¶ 61,106 at PP 65-67).

[49] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 49 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 28).

(and any other similarly affected zones) where there was sufficient evidence of problems that needed to be addressed. Edison Mission and AWEA-WOW argue that protestors presented more narrowly tailored alternatives to the Interim Cost Allocation Filing.[50] NextEra argues that the Interim Cost Allocation Filing discourages wind development in the Upper Midwest. NextEra also contends that the alleged harm to Otter Tail and MDU is overstated.[51]

**b. Commission Determination**

29. We deny rehearing and affirm the determination in the Interim Cost Allocation Order that the problem arising in Otter Tail/MDU was occurring to some extent elsewhere in MISO, and therefore, a MISO-wide solution is a reasonable approach.[52] Further, as MISO noted in its answer in that proceeding, the flaw was inherent in the RECB rules generally and thus could occur in additional zones.[53]

**4. Undue Discrimination**

**a. Requests for Rehearing**

30. Edison Mission and AWEA-WOW argue that the Interim Cost Allocation Order is unduly discriminatory and preferential because it failed to recognize the special challenges faced by location-constrained resources. They argue that location-constrained resources, such as wind generation facilities, often require lengthy and expensive high-voltage transmission lines to interconnect those resources from the remote, sparsely populated areas where they are often located to load centers where the energy will be consumed; therefore, by imposing virtually all of the costs of network upgrades on the developers of such resources, the Interim Cost Allocation Filing is unduly discriminatory and preferential.[54]

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[50] Edison Mission Request for Rehearing at 19-20; AWEA-WOW Request for Rehearing at 15-16.

[51] NextEra Request for Rehearing and Clarification at 11-12.

[52] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 51.

[53] MISO Answer, Docket No. ER09-1431-000, at 5 (filed Aug. 26, 2009).

[54] Edison Mission Request for Rehearing at 20-23; AWEA-WOW Request for Rehearing at 16-17.

31. Edison Mission and AWEA-WOW further note that when it comes to location-constrained resources, the Commission has recognized that treating dissimilarly situated generators differently does not necessarily constitute undue discrimination. However, Edison Mission and AWEA-WOW contend that treating dissimilarly situated generators the same, as the Interim Cost Allocation Order did by failing to recognize the realities that distinguish location-constrained resources from other resources that can be sited near load centers, is equivalent to treating similarly situated generators differently and would constitute undue discrimination.[55]

**b. Commission Determination**

32. We deny rehearing arguments that the Interim Cost Allocation Filing results in undue discrimination against location-constrained resources. The record in this proceeding reflects that the unique circumstances associated with location-constrained resources were considered in developing this proposal. In its testimony supporting the Interim Cost Allocation Filing, MISO's witness, Mr. Moeller, stated that the Interim Cost Allocation Filing will not significantly interfere with the development of renewable energy, and he describes the unique features of the MISO footprint that justify the proposed allocation of costs.[56] For example, Mr. Moeller explained that wind resources located in the western part of MISO would likely operate at a higher capacity factor since there is more wind there, leading to a reduced cost of these facilities on a per MWh basis; however, significant transmission expansion would be necessary. He continued that, on the other hand, if wind resources locate in less windy areas closer to load, the capacity factor would be lower resulting in higher facility costs, but they would require less transmission expansion.[57] According to Mr. Moeller,

> Ultimately, however, the consumer must be provided with the most optimal overall cost solution, which will likely include a combination of both low capacity factor wind resources and high capacity factor wind resources, coupled with prudent transmission expansion. In order to ensure the right decisions are made to optimize the balance between local low capacity factor wind resources versus remote high capacity factor wind resources, the cost allocation method must provide appropriate price signals that include the cost of any transmission expansion required to

[55] Edison Mission Request for Rehearing at 20-21; AWEA-WOW Request for Rehearing at 16-17.

[56] Interim Cost Allocation Filing, Testimony of Claire Moeller at 13-15.

[57] *Id*. at 13-14.

> facilitate the installation of new wind resources to meet the requirements of state renewable portfolio standards. The cost allocation method being proposed in this filing addresses this issue in a just and reasonable manner, and allows adequate time for the processes…to complete the study of alternative long-term solutions.[58]

### 5. <u>Group 5 Projects</u>[59]

#### a. <u>Material Factual Issue Concerning Impact on Group 5 Projects</u>

##### i. <u>Requests for Rehearing</u>

33. Edison Mission argues that the impact of the Interim Cost Allocation Filing on Group 5 projects is an issue of material fact that should have been set for hearing. Edison Mission disputes the notion that increases in the costs of Group 5 projects would be modest, and it contends that the proposal would have a profound and detrimental impact on the development of wind generation in the MISO.[60]

##### ii. <u>Commission Determination</u>

34. We reject the argument that the cost impact on Group 5 projects was an issue of material fact requiring a hearing, and affirm the Commission's determination in the Interim Cost Allocation Order declining to set this matter for hearing and settlement judge proceedings because the Interim Cost Allocation Filing is consistent with Order No. 2003.[61]

35. Moreover, we note that ultimately the costs of certain transmission projects developed after implementation of Phase II that qualified for MVP treatment were not allocated to interconnection customers in Group 5, but rather, these costs were allocation

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[58] *Id.* at 14.

[59] Group 5 is a collection of interconnection customers in southwest Minnesota, northwest Iowa, and eastern South Dakota that, pursuant to MISO's generator interconnection procedures, was studied as a group for the purpose of conducting interconnection studies.

[60] Edison Mission Request for Rehearing at 17-19.

[61] Interim Cost Allocation Order, 129 FERC ¶ 61,060 at P 49.

regionally pursuant to the MVP cost allocation provisions, thereby mitigating the cost impacts to the Group 5 projects.[62]

### b. Unduly Discriminatory Toward Group 5 Projects

#### i. Requests for Rehearing

36. Edison Mission also argues that waiving prior notice and accepting the Interim Cost Allocation Filing effective July 10, 2009 is unduly discriminatory toward Group 5 projects that were in the final stages of the interconnection process. Edison Mission argues that the effect of the proposal, as accepted by the Commission, is to create three different methodologies for interconnection customers whose interconnection agreements are executed or filed unexecuted within a 13-month period: 50-50 cost sharing for interconnection agreements executed or filed unexecuted prior to July 10, 2009; allocation to generators of 90-100 percent of network upgrades for interconnection agreements executed or filed unexecuted between July 10, 2009 and July 15, 2010 (the date MISO was required to file the Phase II proposal); and a yet to be determined cost allocation methodology for interconnection agreements executed or filed unexecuted after July 15, 2010. Edison Mission also asserts that the Interim Cost Allocation Filing is not interim with respect to many of the Group 5 projects with interconnection agreements that will be executed (or filed unexecuted) between July 10, 2009 and July 15, 2010. According to Edison Mission, the Filing Parties deliberately carved out the Group 5 projects for differential treatment, and it contends that this is the very essence of undue discrimination.[63]

37. If the Commission does not grant rehearing, Edison Mission requests that the Commission grant the developers of the Group 5 projects the discretion when to execute, or have MISO file unexecuted, a generator interconnection agreement for their projects. Otherwise, Edison Mission argues, MISO and the transmission owners will have every incentive to try to lock the Group 5 projects into the Interim Cost Allocation Filing by requiring that they execute or file unexecuted generation interconnection agreements before July 15, 2010. Absent relief, Edison Mission contends that the Group 5 projects

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[62] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,068 (2012), *order on rehearing and compliance*, 146 FERC ¶ 61,013 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,064 (2013).

[63] Edison Mission Request for Rehearing at 22-23.

will be at a significant competitive disadvantage as compared to other generation projects earlier or later in the interconnection queue.[64]

**ii. <u>Commission Determination</u>**

38. We deny rehearing and clarification. In doing so, we note that the impact of the Interim Cost Allocation Order on the Group 5 projects is consistent with Commission precedent that requires that the cost allocation provisions applicable to a particular agreement will be the ones in effect at the time an agreement is executed or filed unexecuted with the Commission.[65] Additionally, we find Edison Mission's argument regarding alleged undue discrimination against Group 5 projects, as well as its concern that MISO and the transmission owners would have every incentive to try to lock the Group 5 projects into the Interim Cost Allocation Filing by requiring that they execute or file unexecuted generation interconnection agreements before July 15, 2010, to be unsupported because the Interim Cost Allocation Filing applies more broadly than to Group 5 projects alone.

**c. <u>Retroactive Application to Group 5 Projects</u>**

**i. <u>Requests for Rehearing</u>**

39. Edison Mission argues that the application of the Interim Cost Allocation Filing to interconnection agreements executed or filed unexecuted on and after July 10, 2009 is an improper retroactive application of the Interim Cost Allocation Filing to Group 5 interconnection customers in the final stages of the interconnection process. It asserts that this was arbitrary and capricious because it deviated from Commission precedent, i.e., flaws in an RTO process should be remedied prospectively because of parties' reliance on the pre-existing process.[66]

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[64] *Id.* at 23.

[65] *See, e.g.*, *MISO*, 125 FERC ¶ 61,277 at P 10 (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).

[66] Edison Mission Request for Rehearing at 23-25 (citing *Me. Pub. Utils. Comm'n, v. ISO New England, Inc.*, 97 FERC ¶ 61,322 at P 29 (2001) (*Maine Public Utilities*), *reh'g denied*, 99 FERC ¶ 61,029 (2002); *Bangor Hydro-Elec. Co. v. ISO New England,*

(continued ...)

### ii. Commission Determination

40. We reject the argument that the application of the Interim Cost Allocation Filing to interconnection agreements executed or filed unexecuted on and after July 10, 2009 is an improper retroactive application of the Interim Cost Allocation Filing to Group 5 interconnection customers in the final stages of the interconnection process. Parties were on notice that if the cost allocation provisions changed before they executed or filed an agreement unexecuted with the Commission, they would be bound by the new provisions. Thus, there can be no improper retroactive application where the parties have not yet either executed an agreement or filed an agreement unexecuted with the Commission. The legal precedent cited by Edison Mission is also inapposite. In *Maine Public Utilities,* for example, the prospective application of changes to address flaws in market design was required by the ISO-NE Market Rules, not Commission precedent.[67] In *Bangor,* the Commission rejected requests to retroactively change market clearing prices because, among other things, the rate had already been charged and the ISO-NE Market Rules prohibit adjustments after the fact.[68] Finally, in *CAISO*, the rate treatment at issue was discussed within the context of *existing* generators, and in the instant case, the Group 5 projects had yet to execute or file unexecuted agreements with the Commission.[69]

### d. Cost Allocation Methodology Applicable to Community Wind Project

### i. Requests for Clarification

41. If the Commission denies its request for rehearing, Edison Mission requests that the Commission clarify what cost allocation methodology applies to Edison Mission's Group 5 project with Community Wind North LLC (Community Wind).[70] It contends that there are several possible dates applicable to the execution of a generator interconnection agreement. But, Edison Mission requests clarification that the cost

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*Inc.*, 97 FERC ¶ 61,339 (2001) (*Bangor*); *Cal. Indep. Sys. Operator Corp*., 119 FERC ¶61,061 (*CAISO*), *reh'g denied*, 120 FERC ¶ 61,244 (2007)).

[67] *Maine Public Utilities*, 97 FERC ¶ 61,322 at P 29.

[68] *Bangor*, 97 FERC at 62,590.

[69] *CAISO*, 119 FERC ¶ 61,061 at P 85.

[70] Edison Mission references a compliance filing by MISO in Docket No. ER09-1581-001.

allocation methodology applicable to Community Wind is the methodology effective under the Tariff when Community Wind executed a temporary generator interconnection agreement on December 8, 2008 (i.e., the 50-50 cost sharing methodology). It states that this is the date when a generator interconnection agreement was first executed in accordance with the Tariff.

**ii. Commission Determination**

42. This issue is moot. The Commission clarified the cost allocation methodology applicable to Community Wind in a May 20, 2010 order issued in Docket No. ER09-1581 involving Edison Mission and Community Wind.[71]

**e. Stakeholder Process for Phase II**

**i. Requests for Rehearing**

43. In the Phase II stakeholder deliberations, NextEra argues that votes by the Interconnection Procedures Task Force should be based on sector voting, not just a majority vote. It argues that the Commission should direct MISO not only to provide the percentage voting in favor of various proposals, but also to provide an accounting of votes by sector at the meetings. NextEra also states that the Commission should urge stakeholders to reach consensus on key issues.

**ii. Commission Determination**

44. We deny rehearing. In the MVP Rehearing Order, the Commission found that: (1) MISO's MVP Filing was the result of a thorough, in-depth and rigorous stakeholder process; (2) there were numerous votes taken throughout the stakeholder process at both the RECB Task Force and a working group of the Organization of MISO States (OMS);[72] (3) the sector-weighted MISO Advisory Committee voted on each of the three alternative cost-allocation proposals; and (4) the record illustrated thorough consideration of issues by MISO and its stakeholders and demonstrated that the MVP Filing was the result of negotiation and compromise.[73]

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[71] *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165, at P 32 (2010).

[72] In OMS's Cost Allocation and Regional Planning working group, there was one commissioner from each of the MISO member states, and there was one vote per state.

[73] MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 175-178.

#### f. Requirement to Make Phase II Filing

##### i. Requests for Clarification

45. As noted above, the Commission conditioned its acceptance of the Interim Cost Allocation Filing on Filing Parties fulfilling their commitment to file, on or before July 15, 2010, tariff sheets reflecting a Phase II solution to supersede the Interim Cost Allocation Filing. AWEA-WOW and NextEra request clarification regarding what the Commission would do if Filing Parties did not file their superseding cost allocation proposal by July 15, 2010.

##### ii. Commission Determination

46. This issue is moot as Filing Parties fulfilled their commitment to file their proposal by July 15, 2010 when they submitted the MVP Filing on that date.

## III. November 20, 2009 Compliance Filing

### A. Description of November 20, 2009 Compliance Filing

47. In the Interim Cost Allocation Order, the Commission required MISO to submit a compliance filing providing Tariff revisions to Attachment FF of the Tariff reflecting that MISO as the transmission provider, will evaluate and determine whether an interconnection customer in the pricing zones of ITC/METC and ITC Midwest has adequately demonstrated that it has been designated a network resource or whether a contractual arrangement for capacity to serve MISO load for a period of at least one year exists. In compliance with this directive, MISO revised its Tariff as follows:

> If the Interconnection Customer is unable to demonstrate to the satisfaction of the Transmission ~~Owner~~ Provider at the time of Commercial Operation of the Generating Facility that the Generating Facility has met ~~this~~ the repayment obligations set forth in Attachment FF Sections III.A.2.d.3.b.i, or III.A.2.d.3.b.ii [concerning the network resource designation and one year requirement], the Interconnection Customer shall be directly assigned 100% of the costs of the Generation Interconnection Project.[74]

[74] MISO, November 20, 2009 Compliance Filing , Tab A revising MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Substitute Original Sheet No. 3472A.

### B. Notice of Filing

48. Notice of MISO's November 20, 2009 Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 64,069 (2009), with comments due on or before December 11, 2009. None were filed.

### C. Commission Determination

49. We accept MISO's proposed Tariff revisions effective July 10, 2009 as they are responsive to the directives ordered by the Commission.[75]

The Commission orders:

(A) We deny Rehearing Parties' requests for rehearing and clarification, as discussed in the body of this order.

(B) We accept MISO's November 20, 2009 Compliance Filing, effective July 10, 2009, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[75] We note that this provision has been superseded as to ITC Midwest by the Commission's decision in *Interstate Power and Light Company v. ITC Midwest LLC*, 144 FERC ¶ 61,052, at P 42 (2013), *on reh'g and clarification*, 146 FERC ¶ 61,113 (2014), *reh'g denied*, 153 FERC ¶ 61,160 (2015).