

**UNITED STATES OF AMERICA BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission
System Operator, Inc.**

Docket No. ER12-309-000

**MOTION TO INTERVENE AND PROTEST OF THE AMERICAN WIND ENERGY
ASSOCIATION AND WIND ON THE WIRES**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure,¹ the American Wind Energy Association (“AWEA”) and Wind on the Wires (“WOW”) hereby move to intervene and submit this protest in the above-captioned proceeding initiated by the Midwest Independent Transmission System Operator, Inc. (“MISO”), proposing to revise Attachment X – Generator Interconnection Procedures (“Proposal”) of its Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fifth Revised Vol. No. 1 (“Tariff”).²

I. INTRODUCTION

AWEA and WOW urge the Commission to reject MISO’s queue reform Proposal because MISO has failed to demonstrate that it is just and reasonable and because it will result in an unduly discriminatory queue clearing process. The Proposal is premature and misaligned with market and project development realities. In the alternative, AWEA and WOW urge the Commission to require MISO to revise its Proposal to address the various shortcomings described in Section VI of this protest filing.

¹ 18 C.F.R. §§ 385.211, .214 (2009).

² AWEA and WOW are generally supportive of the protests filed by Invenergy Wind Development LLC, et al. (“Midwest Developers”) and Iberdrola Renewables, Inc.

II. COMMUNICATIONS

The following persons (indicated by an asterisk) should be included on the official service list in these proceedings and should be served with all communications concerning this motion:

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III. DESCRIPTION OF INTERVENORS

AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers and their advocates.

WOW represents the interests of the wind industry and environmental organizations in the Upper Midwest and holds a seat on MISO’s Advisory Committee representing the Environmental Sector. WOW members include environmental organizations, turbine manufacturers, project developers and businesses that supply goods and services to the wind industry.

IV. MOTION TO INTERVENE

AWEA and WOW request that their Motion for Leave to Intervene be granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. AWEA, WOW and their members have a vital interest in ensuring that the Commission's policies properly support generation development. AWEA and WOW thus have a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party.

V. BACKGROUND

MISO's filing marks the third round of revisions to the interconnection queue process proposed by MISO since 2008. MISO queue reforms follow the Commission's order based on a technical conference ("Technical Conference") regarding interconnection queuing practices and queue-related issues. The Technical Conference emerged after the issuance of Order No. 2003,³ which directed Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") to develop and propose their own solutions to issues related to delays and backlogs in processing queues. The Commission has accepted the two earlier phases of MISO interconnection queue reform revisions as part of MISO's continuing efforts to improve its queue process.

According to MISO, its instant filing builds upon those two earlier efforts and proposes further changes to the queue process in the Generator Interconnection Procedures ("GIP") in Attachment X to the Tariff in order to account for issues currently seen and anticipated in the MISO footprint.

The major components to this third proposed phase of queue reform include:

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, Final Rule, 104 FERC ¶ 61,103 at P 185 (2003) ("Order No. 2003"); *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 ("Order No. 2003-A"), *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).

- a. Revision of the System Planning and Analysis (“SPA”) Phase of MISO study process;
- b. Inclusion of a “cash at risk” milestone;
- c. Requirement that an Interconnection Customer (“IC”) “sign off” on the modeling assumptions used in its studies;
- d. Revisions to clarify what modifications are permitted under the GIP;
- e. Expedited payments under the pro forma Generator Interconnection Agreement (“GIA”);
- f. Elimination of interest payments on withdrawn projects;
- g. Reduced deposits on “Deliverability Only” studies; and
- h. Net Zero Interconnection Service.

VI. PROTEST

With the exception of the proposed Net Zero Interconnection Service, AWEA and WOW urge the Commission to reject the entirety of the Proposal without prejudice because MISO has failed to carry its burden to demonstrate that it is just and reasonable, or even to provide sufficient evidence of a need for its broad Proposal. Simply put, MISO has not shown that its Proposal is necessary, effective, just and reasonable, or accomplishes the purposes of Order No. 2003.⁴ Instead the Proposal will result in an unduly discriminatory queue clearing process that will unnecessarily eliminate viable projects. Furthermore, the Proposal is out of step with project development and market realities and discriminates between different classes of ICs, such as between Independent Power Producers (“IPPs”) and load serving entities, which have different

⁴ See Order No. 2003 at PP 26, 827; Federal Energy Regulatory Commission, Interconnection Queuing Practices: Order on Technical Conference, 122 FERC ¶ 61,252 at P 13 & n.10 (2008) (an RTO or ISO is considered an “independent entity” and can propose variations to Order No. 2003 as long as they are “just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003”).

business models and financing capabilities. Notably, most of the supposed IC “beneficiaries” of these changes oppose the proposal as detrimental.

In the alternative, if the Commission is not willing to reject the Proposal outright (except for the Net Zero Interconnection (“NZI”) provisions), AWEA and WOW respectfully request that the Commission require MISO to address certain issues (discussed below) with further stakeholder input and in a compliance filing to make the revisions discussed in our protest.

Specifically, the parties believe the most important issues that need to be addressed are:

- The proposed new Definitive Planning Phase (“DPP”) entry milestone creates a large financial barrier for ICs that is unnecessary and unduly discriminatory.
- The lack of a real transition process or grandfathering provisions for existing ICs does not honor the time and financial commitments ICs have invested in the current queue system.
- The Proposal includes significant new requirements for ICs but does not balance those with reasonable accountability measures for MISO and Transmission Owners (“TOs”), which could bring additional certainty to ICs if the timeliness and accuracy of interconnection studies were ensured.

Since the Midwest ISO has not provided any evidence that the current procedures will not effectively work in tandem with the soon-to-be-implemented Multi-Value Project (“MVP”) process to address queue issues, if the Commission determines changes might be needed to the current procedures in the future, it could direct the Midwest ISO to submit quarterly informational filings for the next calendar year detailing its progress in resolving the Group 5 Project backlog. After the processing of the Group 5 Projects is completed, all parties will be able to evaluate the interplay of the current queue process and the cost allocation procedures in

order to better determine if reforms to the queue process are needed and what those reforms should look like.

A. The Proposal Is Premature

In the instant filing,⁵ as well as in its informational compliance filing, MISO has indicated that the queue challenges it is experiencing exist almost exclusively in the western part of its footprint (Minnesota, Iowa, and North and South Dakota). AWEA and WOW believe these western area challenges arise from two primary factors that have not been allowed enough time for resolution since the last queue reform effort. First, the “Group 5” projects, a set of interconnection requests in these western states, predate the time when the last queue process changes became effective in 2008, and there have been numerous Group 5 studies and restudies due to errors on the part of MISO and to a lesser extent changes in the ICs in Group 5. The fact that the restudies, facilities studies and GIAs from Group 5 still have not been completed has resulted in a backlog for ICs and other stalled DPP groups in the western part of MISO footprint. Therefore, we believe that resolution of the Group 5 issues, which we expect to happen over the next several months, should provide more clarity for all ICs in the Western MISO footprint, and will begin to relieve the current backlog in the West.

Second, MISO’s new cost allocation approach for MVPs will likely result in cost-sharing approval for a number of transmission projects that will support the interconnection requests of many parties in the queue today. This is especially true in the western part of the MISO footprint where the queue congestion challenges exist. As we have stated in previous comments,⁶ true relief for the interconnection queue will come not from process changes, but from building new

⁵ Lavery testimony at P 9.

⁶ Motion to Intervene and Comments of Wind on the Wires and the American Wind Energy Association, Docket No. ER08-1169, page 2 (“[W]e believe that queue process reform alone will not result in significant improvement of the queue backlog, as it does not address the underlying problem with the interconnection queue; the need for new transmission capacity.”).

transmission capacity in areas of the grid with no available capacity. To that end, the MVP process is finally going to help address this issue. The MISO Board of Directors is soon expected to approve a portfolio of MVP transmission upgrades across the MISO footprint. While these projects will take some time to come online, the Board's approval will provide ICs with much more certainty regarding which transmission upgrades will be cost-assigned to them as Network Upgrades. AWEA and WOW believe this increased certainty will allow customers to move forward in the interconnection process and, therefore, will provide relief to the existing queue backlog.

The last significant queue reform effort at the Midwest ISO became effective on August 25, 2008, and given the transition process that occurs with such a change, there has not been much time for those changes to become effective due to the delays in processing Study Group 5. But resolution of the studies for this group within the DPP is likely expected in the next few months. Based on the interconnection process tariff currently in place, an IC should be able to move through the process in 12 to 18 months. Without the delays from Group 5, as well as general study delays, the process as detailed in the tariff could be more effective. It is critical that studies be done without errors and that sufficient staff or outside consultant be assigned to meet these tariff timelines.

In light of the fact that the processes mentioned above have not had sufficient time necessary to move forward, the MISO Proposal is premature and lacks evidence that reform is truly necessary at this time. As noted, resolution of the Group 5 issues and restudies, as well as a decision from the MISO Board on the MVP projects, are expected in the next several months. When those actions occur, they will provide ICs with greater information as well as certainty about which Network Upgrades are necessary for their interconnection and which costs will be

directly assigned to them. This information would help parties make decisions about their projects and, therefore, should result in parties moving forward toward GIAs, or dropping out of the queue upon the understanding that the interconnection costs would make their projects too costly. Not until that time will it be possible to reasonably ascertain which changes to the interconnection process are needed and will be effective.

In short, the MISO Proposal fails to explain precisely what needs it addresses. Instead, it primarily puts forth revisions that might make the interconnection *process* more efficient for MISO but will result in an ineffective process for ICs. Although MISO has offered a problem (the queue backlog) and proposed reforms, apart from broad generalities, it has not demonstrated how the reforms will improve upon the current process nor how they will address the queue challenges in a just and reasonable manner. In fact, it is AWEA and WOW's belief that the Proposal instead will result in a burdensome and unnecessary queue clearing exercise that will create significant new barriers to entry for new generators. The Proposal is out of line with the realities of the development process for new generation resources and will discriminate against ICs who have viable projects but do not have readily-available funds to meet the premature and high-risk cost burdens proposed by MISO. For these reasons, AWEA and WOW are requesting that the Commission reject MISO's proposal (with the exception of the NZI provisions) or, in the alternative, that the Commission require MISO to make revisions in a compliance filing related to the points discussed in more detail below.

B. The New, Non-Refundable DPP Financial Entry Milestone Unreasonably Asks ICs to Put Forward Substantial Sums of Money in the Face of Greater Uncertainty and with Little Need Justification by MISO

Despite MISO's two stated primary drivers for the proposed queue reform of operational efficiency and customer service, MISO has failed to demonstrate how its proposed new Definitive Planning Phase ("DPP") "entry" milestone would achieve either goal. In order to stay in or enter the DPP under MISO's new Proposal, a project developer must provide a substantial new cash deposit. The DPP entry milestone outlined in Proposal Section 8.2 is based on the number of constraints in the project's Feasibility Study and the related voltage level⁷ in a formula derived to be roughly 10% of the expected transmission costs.⁸ If a developer does not pay the milestone amount, the project will be moved back to the SPA Phase and will lose its DPP Queue Position.⁹ MISO asserts that a capital contribution is a better indicia of the readiness of a project to proceed,¹⁰ but fails to explain why past financial deposit increases have not been sufficient or why the proposed non-refundable amount will be effective or just and reasonable. Instead, MISO has prematurely added yet another financial barrier – more divorced from expected cost outlays than any other – while simultaneously adding greater uncertainty for parties that would need to secure financing in order to comply with the new requirement. The Proposal ignores the chicken-and-egg problem it creates for developers and fails to explain how its application to developers with different business models would yield just and reasonable results.

⁷ Electric Tariff Filing regarding Interconnection Queuing Practices, Docket No. ER08-1169-000, Testimony of Eric Laverty at P13-14 (2008) ("We assumed in the 2008 Queue Reform effort that the front of the queue would proceed expeditiously to a GIA and ultimately to operation. That did not happen. The back-up we are seeing today stems from projects piling up behind "ready" projects whose best interest is served by not moving at this time.").

⁸ *Id.* at P 21.

⁹ *Id.* at P 14.

¹⁰ *Id.* at P 20 ("[W]hat really distinguishes projects that will go forward from ones that will not is how well they are financed and whether or not the investors believe in the business plan enough to spend capital.").

Recognizing the significant queue backlog problem in MISO and the California ISO in particular, the Commission decided to allow each region the opportunity to propose its own solution based on consensus proposals among stakeholders that vary from Order No. 2003 procedures.¹¹ In so doing, however, the Commission also directed RTOs and ISOs to first consider whether they have utilized all of the effective steps provided for by their current tariffs or as explicitly authorized in Order No. 2003.¹² If an RTO or ISO concludes that the existing options are insufficient, it can propose variations that will be reviewed under an “independent entity variation standard”¹³ and must be shown to be just and reasonable and not unduly discriminatory.

At the time, the Commission also specifically recognized that increasing the deposit amounts to more accurately reflect the cost of the necessary studies might be one suitable variation to help address queue problems.¹⁴ Accordingly, in MISO’s last queue reform filing, it revised the amounts and timing of deposits to be more in line with the historical costs of conducting interconnection studies—something it stated would give rise to diligent review and

¹¹ *Order on Technical Conference*, 122 FERC ¶ 61,252 at P 8 (2008).

¹² *Id.* at PP 10-12 (“The reforms that can be implemented most quickly from a regulatory standpoint are those that do not require any revisions to an RTO’s or ISO’s current tariff. For example, no Commission filings are needed to increase the staff available to work on interconnection studies or adopt more efficient modeling for feasibility studies or system impact studies Therefore, we urge the RTOs and ISOs when evaluating ways to improve their queue processing first to consider whether they have taken all effective steps under their current tariffs When considering tariff changes applicable to future and early-stage existing interconnection requests, the RTOs and ISOs should first consider whether their current tariffs use all of the streamlining options already explicitly sanctioned under Order No. 2003.”).

¹³ *Id.* at P 13.

¹⁴ *Id.* at PP 15-18; *see also Midwest Indep. Transmission Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions Addressing Queue Reform, 124 FERC ¶ 61,183 at P 56 (2008) (“In the Conference Order, the Commission stated that it may be appropriate to increase the requirements for getting and keeping a queue position.”).

prevent projects unlikely to achieve commercial operation from entering the queue.¹⁵ The Commission determined that the “graduated deposit schedule proposed by MISO is a reasonable approach to achieving this objective because it ties deposits to actual historical costs.”¹⁶ It found the deposit amounts were not unduly discriminatory, and thereby met the independent entity standard, because they were based on expected study and potential restudy costs, and based on generator size.¹⁷ The Commission determined that the deposit levels would help prevent speculative interconnection requests but paid particular attention to the fact that they would not unreasonably price interconnection customers out of the market because the deposits were based on expected study and potential restudy costs.¹⁸

When some developers asserted that the proposed readiness milestones may unfairly handicap independent developers, MISO explained¹⁹ and the Commission agreed that the milestones were designed with sufficient alternative methods to allow any developer the ability to select the option most suitable to its particular business interests. The Commission explained that queue reform should not result in undue discrimination between types of developers,²⁰ but that “there must be a balance between flexibility to demonstrate readiness and having a

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions Addressing Queue Reform, 124 FERC ¶ 61,183 at P 46 (“MISO’s review of historical study costs demonstrated a step function in study costs related to the size of the interconnection request such that the larger requests generally resulted in higher study costs. Thus, MISO proposes to revise both the deposit amounts and their timing so that the deposits collected are in line with the historical costs.” (footnote omitted)).

¹⁶ *Id.* at P 56.

¹⁷ *Id.* (“Moreover, we find that the deposit amounts are not unduly discriminatory because they are based on expected study and potential restudy costs, based on generator size. We approve this provision under the independent entity variation standard.”).

¹⁸ *Id.* at P 46.

¹⁹ *Id.* at P 74 (“Midwest ISO agrees that not all milestones are relevant to all applicants. It proposed multiple alternative milestones in order to address the needs of all parties and various business models.”)

²⁰ *Id.* at P 78.

functioning queue process.”²¹ Ultimately the Commission determined that the proposed readiness milestones, particularly given the multiple options available to developers seeking to comply with the milestones, adequately struck this balance.²²

By contrast to Commission direction and previously accepted MISO reforms, the currently proposed DPP entry milestone relies exclusively on a monetary deposit and now ignores other evidence of a project’s readiness to proceed. Where there once was the ability to show any two of a number of readiness milestones (*e.g.*, a power purchase agreement or turbine order), MISO now proposes to replace the options with a single demonstration of financial resources and willingness to put those resources at risk. Despite having previously asserted its belief that the existing readiness milestones provided multiple avenues for parties with different business models and that all of the milestones provide evidence of readiness to proceed,²³ the only justification MISO offers for its newly inflexible approach seems to be that providing the alternatives it previously recommended created more work for itself.²⁴ MISO now argues “there is less ambiguity when it comes to cash and MISO will not need to expend resources beyond determining whether or not an Interconnection Customer has provided a sufficient capital

²¹ *Id.* at P 79.

²² *Id.* at P 77 (“We conditionally approve the proposed milestones under the independent entity variation standard. We find that the milestones Midwest ISO proposes generally appear to strike a reasonable balance between discouraging speculative projects from entering or remaining in the queue and ensuring that those projects that are ready to proceed can do so.”).

²³ *Id.* at P 74 (“Midwest ISO states that it believes all of its proposed milestones provide evidence of readiness and should be included as options for interconnection customers.”).

²⁴ Laverty Testimony at P 19 (“Further, non-monetary milestones such as a turbine order come in many forms. This variety requires that MISO expend time and resources to judge whether or not a particular milestone submittal is sufficient evidence of a turbine order. The behavior pattern we noticed was that projects worked to reach the DPP with as minimal cash outlay as possible, apparently to better market their projects. Overtime, that has led to milestone submittals that demonstrated a lower underlying financial commitment and, consequently, a greater expenditure of time and resources by MISO to evaluate whether these submittals satisfy the milestone requirement.”).

contribution.”²⁵ Despite its stated goal to offer greater customer service, its previous recognition that there are many ways for an IC to demonstrate readiness to proceed, and Commission direction to expedite new generation, the current MISO Proposal seems far less geared toward providing a service that works well for its diverse customers than alleviating administrative burdens for MISO itself. This is also counter to Commission direction to independent entities to first show everything possible has been done under the current procedures and within the Order No. 2003 guidance to alleviate problems before recommending queue reforms that vary from Commission standards.

Moreover, the only justification for the level of entry milestone provided by MISO is that it is calculated to be approximately 10% of the expected transmission costs,²⁶ without any analysis or discussion of whether this 10% figure will allow a reasonable percentage of projects to proceed to the DPP or affect differently situated parties unfairly. Further, MISO proposes to calculate this figure based on constraints shown in the Feasibility Study despite the high likelihood of inaccurate information and without any explanation as to why this will lead to just results. Although the Commission has indicated a willingness to allow increased financial commitments as a way to eliminate projects from the queue that are not truly ready to proceed, presumably this willingness is not without limits, and the Commission should seek assurance that increased costs have been calculated to avoid unreasonably pricing some ICs with good projects out of the market.

Similarly, the MISO Proposal severely limits the circumstances in which the milestone could be refunded²⁷ without justifying why it would not produce discriminatory effects between

²⁵ *Id.* at P 20.

²⁶ *Id.* at P 21.

²⁷ *MISO Filing Letter* at P 14, Section 8.2 (only if the project eventually reaches commercial

load serving entities (“LSEs”) that have the capability of recovering expenses by rate-basing them and independent developers who have no such option. While there is no certainty that an LSE developer would be able to recover a forfeited milestone as a prudently incurred investment in a rate proceeding, advanced rate-making principles in some states suggest that it is a real possibility.²⁸ In addition, LSE customers should have access to more reliable information in the SPA phase, likely putting it in a better position than an IPP customer to evaluate expected costs and the decision on whether to front the entry milestone. As a result, LSE developers may approach projects under the new Proposal with at least modestly greater confidence than risk-averse Independent Power Producers (“IPP”) shareholders who will knowingly shoulder losses associated with forfeited milestones. MISO simply assumes this threat is overstated and asserts, without more detail, that the risks will be the same for regulated utilities and independent utilities.²⁹ The Commission has stated that queue reform should not result in differentiation between different types of developers or be unduly discriminatory³⁰ and has previously rejected MISO proposals for failure to demonstrate that it would produce just and reasonable results.³¹ Just as the Commission has previously found that the “MISO made general assertions about equity among interconnection customers, but did not explain how equity was achieved under its

operation or if certain cost estimates are above a 25% threshold).

²⁸ See, e.g., Final Decision and Order, Iowa Utilities Board Docket No. RPU-2009-0003, (Dec. 14, 2009) (authorizing the approval of a largely yet-to-be-formed plan for a utility-owned wind project that would largely supply wholesale markets under ratemaking principles).

²⁹ Lavery Testimony at P 20.

³⁰ Order No. 2003 at PP 822-27; *Order on Technical Conference*, 122 FERC ¶ 61,252 at P 13 n.10.

³¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Rejecting Proposed Tariff Revisions, 117 FERC ¶ 61,128 at P 25 (2006) (“We find that MISO has not demonstrated that applying its new cost sharing policy to all generation interconnections that meet MISO’s proposed criteria produces just and reasonable results. As recognized in Order No. 2003, under the right circumstances, a well-designed participant funding scheme can encourage efficient siting of generation and avert improper subsidy. However, MISO has not shown that the proposal here will accomplish either purpose.”).

proposal,”³² it should reject MISO’s current proposal for failure to explain why it would not lead to undue discrimination between developers with different business models.

In addition to undue discrimination between developers with different business models, MISO’s proposed formula for calculating the new DPP entry milestone would yield significantly different burdens on ICs based on the zone in which they are interconnecting. MISO has not made any showing that the varying Schedule 7 rates across zones have any relationship to interconnection costs.³³ Using an average of Schedule 7 rates would result in equal treatment of ICs located in different pricing zones. We request the Commission require this or some similar change that results in equal treatment across MISO’s pricing zones.

Lastly, the added DPP entry milestone in the context of MISO’s full Proposal creates a substantial chicken-and-egg problem for developers. It demands a significant new non-refundable deposit before MISO provides the information necessary to determine if the interconnection service will be cost-effective.³⁴ MISO explains the elements of this problem in its own filing. First, MISO acknowledges that before committing funds to satisfy the DPP entry milestone, a customer would need MISO to provide information about transmission upgrades

³² *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Denying Rehearing, 119 FERC ¶ 61,097 at P 20 (2007).

³³ We support the example included in the Midwest Developer’s protest, as submitted to MISO by WOW via stakeholder comments, of how these varying rate schedules in the proposed formula for the new DPP entry milestone can result in significantly different milestone amounts for similarly situated customers.

³⁴ MISO believes that at 10% of the transmission costs, which themselves are typically 10% of the overall project costs, the financial DPP entry milestone is a relatively small amount. It may be a small percentage of total project costs, but we believe that MISO’s proposed amount would be a significant amount of the development costs for a project (20-25%). Development costs typically are paid by the developer prior to obtaining financing for the rest of the project, including the capital costs, which are the bulk of the overall project costs. It will be very challenging for developers to absorb these increased development costs and to put this much money at risk prior to obtaining financing. We believe the information obtained in the DPP phase of the interconnection process is critical for developers to obtain financing.

needed, or, more likely, a reasonable set of bounds around those costs.³⁵ This is consistent with the general idea that getting better information to customers sooner helps achieve the overall goals of queue reform and Order No. 2003.³⁶ Unfortunately MISO goes on to suggest that it will meet this need for more information through changes to the SPA Phase that allow ICs to select the parameters it wants to have studied there.³⁷ But immediately thereafter MISO acknowledges that the results from the SPA cannot be relied upon specifically because the parameters have been chosen by the IC.³⁸

MISO says that “what really distinguishes projects that will go forward from ones that will not is how well they are financed and whether or not the investors believe in the business plan enough to spend capital.”³⁹ But in its own testimony, it indicates that ICs will not have reliable information about interconnection costs until after they have paid the DPP entry milestone. The level of risk imposed on ICs under MISO’s proposal is further exacerbated by the fact that the DPP entry milestone is nearly non-refundable. MISO has argued that allowing more opportunities for refunds to withdrawing projects would defeat the purpose of its proposed reforms.⁴⁰ But, as described above, the amount of the proposed DPP entry milestone itself

³⁵ Lavery Testimony at P 15.

³⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions Addressing Queue Reform, 124 FERC ¶ 61,183 at P 44 (“Getting better information to customers sooner will help achieve the overall goals of interconnection queue reform – discouraging speculative or unviable projects from entering the queue, getting projects that are not making progress towards commercial operation out of the queue, and helping viable projects achieve commercial operation as soon as possible.”).

³⁷ Lavery Testimony at P 16.

³⁸ *Id.* at P 17 (“Under the new proposal, the Interconnection Customer selects the assumptions for the study performed in the SPA Phase. If the Interconnection Customer chooses a set of assumptions that simply does not occur, then the Interconnection Customer can expect different results from the study performed in the DPP.”).

³⁹ *Id.* at P 19-20.

⁴⁰ *Id.* at P 24-25.

requires the IC to make a very large financial commitment even if there is a greater possibility that the money will be returned.

Securing third-party financing is as difficult as it has been at any time in recent history and will not be readily available to projects with such uncertain costs. As a result, ICs without significant ability to self-finance will be at a significant disadvantage under the Proposal. Many ICs will struggle to meet the DPP entry milestone because of the uncertainty MISO seeks to impose in its process rather than any inherent problem with their business plans. For these reasons, AWEA and WOW believe that the Proposal imposes undue discrimination on developers that cannot finance or are not willing to take the financial risk of financing such a non-refundable large deposit on their own balance sheets. Significant changes should be made to the Proposal regarding readiness milestones to enter the DPP to address the unequal burden they impose on different classes of ICs. But, at a minimum, the new proposed DPP entry milestone should be refundable if an IC's study results in the DPP indicate significantly higher interconnection costs than results obtained from the SPA.

C. The Proposal Fails to Distinguish Between Early and Late Stage Queue Requests and Even Impermissibly Proposes to Disregard Existing Contract Rights

Proposal Section 5.1, which outlines the transition provisions to the new procedures, has been substantially modified to exempt only those projects with an executed GIA *and* already in commercial operation.⁴¹ If any other project with an executed GIA requires a restudy for any reason, it will be restudied under the GIP that is in effect at the time of the restudy, will need to meet the new milestones and will be forced to execute a new GIA.⁴² This includes projects that

⁴¹ See MISO filing at P 10, Section 5.1.

⁴² *Id.* at P 10; *see also* Lavery Testimony at P 13.

are currently in suspension under executed GIAs, for example, requiring such projects to be restudied under the new procedures at the end of the suspension period.⁴³ MISO clearly desires the new GIP to apply to nearly all projects in the queue, regardless of how settled their arrangements were under the current GIP. Under the new Proposal, even projects with existing executed GIAs are not grandfathered from the new procedures despite clear Commission precedent to the contrary. However, the Commission has already determined that it is not just and reasonable for MISO to make a blanket determination that applies new procedures to already executed GIAs without taking a closer look at the individual facts and circumstances.⁴⁴ The fact that this portion of its Proposal so clearly contradicts Commission direction may also explain why MISO provided so little justification in the Proposal's defense. Further, MISO has ignored the Commission's direction to consider the impact of reforms on projects at different stages by its failure to distinguish between early- and late-stage interconnection requests.⁴⁵

MISO contends that these changes will reduce potential confusion and add certainty and reliability to its queue process. Ironically, the changes proposed may well provide *MISO more certainty* but also will saddle the very parties the Proposal is supposed to benefit – *interconnection customers – with unprecedented uncertainty*. Parties that long-ago allocated risks and costs consistent with the then-existing Tariff and have existing GIAs or signed Facilities Studies agreements would suddenly be subject to wholly unforeseen changes. MISO, for example, has asked for Commission confirmation that it can apply new study assumptions and procedures to projects coming out of suspension under existing GIAs, something that could completely change project economics. Further, these projects would be required to execute a

⁴³ MISO Filing at P 10.

⁴⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Rejecting Proposed Tariff Revisions, 117 FERC ¶ 61,128.

⁴⁵ *Order on Technical Conference*, 122 FERC ¶ 61,252 at P 18.

new GIA, eliminating the value of their existing GIAs. MISO's Proposal should be rejected in light of long-standing contract principles, existing Commission precedent directed at MISO in particular, and simply to avoid sending a dangerous signal to the marketplace that project economics are never settled but rather are subject to unbounded change at some uncertain future date and even after contracts are fully executed and filed.

In Order No. 2003, the Commission took great care to protect existing queue positions⁴⁶ and even greater care to honor the terms of existing interconnection agreements.⁴⁷ Executed or unexecuted interconnection agreements submitted for Commission approval before the effective date of the Final Rule were expressly grandfathered from the new procedures.⁴⁸ Upon rehearing, the Commission affirmed that existing, executed interconnection agreements must be honored.⁴⁹ Further, the Commission's authority to change the terms of existing agreements extends only to those agreements that are shown to be unjust and unreasonable.⁵⁰

⁴⁶ Order No. 2003 at P 185 ("The purpose of Proposed LGIP Section 5.1 was to ensure that a Generating Facility that has an established Queue Position prior to the Final Rule taking effect will continue to hold its position."); *see also id.* at 912 ("As for requests for interconnection pending when the Final Rule takes effect, Final Rule LGIP Section 5.1 ensures that an Interconnection Customer that has been assigned a Queue Position before the issuance of the Final Rule retains that Queue Position.").

⁴⁷ *Id.* at P 911 ("The Commission is not requiring retroactive changes to individual interconnection agreements filed with the Commission prior to the effective date of this Final Rule. Non-generic agreements submitted for approval by the Commission before the effective date of the Final Rule are grandfathered and will not be rejected outright for failing to conform to the Final Rule LGIA." (footnote omitted)).

⁴⁸ *Id.* at P 187 ("In response to Central Maine, we clarify that existing interconnection agreements that are filed with and accepted by the Commission prior to the effective date of this Final Rule will remain in effect. . . . Accordingly, Final Rule LGIP Section 5.1.1.3 states that an executed or unexecuted interconnection agreement submitted for approval by the Commission before the effective date of the Final Rule will be grandfathered and will not be rejected simply for failing to conform to the Final Rule LGIA.").

⁴⁹ Order No. 2003-A at PP 136-40; *see also id.* at P 348 ("Order No. 2003 does not require retroactive changes to individual interconnection agreements filed with the Commission before Order No. 2003's effective date.").

⁵⁰ Section 205 of the Federal Power Act, 12 U.S.C. § 791, *et seq.*

Despite the Commission’s reluctance to change the terms of existing agreements, MISO has already and unsuccessfully tried to broadly apply new cost-allocation principles retroactively to some existing GIAs. In an August 2006 filing, MISO attempted to apply its new 50-50 cost-sharing principle to a set of existing interconnection agreements that were entered into after MISO submitted its Order No. 2003-A compliance filing detailing the new cost-sharing proposal, but before the Cost Allocation Order made the new provisions effective.⁵¹ MISO argued that these interconnection agreements should be treated differently because they were put on notice of potential future changes by the compliance filing, the Network Upgrades were not yet in service, and the facilities were not yet in commercial operation.⁵² The Commission found this reasoning to be wholly insufficient and determined MISO had not shown that applying the cost-sharing policy to all generation interconnections that meet MISO’s proposed criteria – including those with existing GIAs – would produce just and reasonable results.⁵³

Moreover, the Commission’s policy of making difficult the unilateral retroactive modification of contracts it has accepted serves an important public purpose. The Commission notes that even contracts that can be modified under a just and reasonable standard should not be

⁵¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Rejecting Proposed Tariff Revisions, 117 FERC ¶ 61,128 at PP 3-4.

⁵² *Id.* at P 4.

⁵³ *Id.* at P 12 (“Protestors also argue that changing the pricing in existing contracts would have an anticompetitive effect. Fenton Power and Power Partners argue that if MISO’s proposal is accepted, it ‘would send a signal to potential investors that project economics are subject to change at some uncertain point in the future, even after the contracts are finally executed and filed.’ Both entities contend that the proposal thus will jeopardize the viability of projects. Likewise, MSATs suggests that changing the ‘rules of the road’ after they have been relied upon would discourage market participants and transmission customers from doing business with and within MISO. Prairie State similarly states that if the Commission establishes a principle that fully executed interconnection agreements can have their cost allocations significantly changed years later, it will have a chilling effect on project development activities.”); *id.* at P 25 (“We find that MISO has not demonstrated that applying its new cost sharing policy to all generation interconnections that meet MISO’s proposed criteria produces just and reasonable results.”).

lightly revised because “stability and predictability is crucial to the functioning of businesses and markets and to attracting investment in the utility business.”⁵⁴ Enforcing the terms of executed agreements honors parties’ settled expectations, avoids interference with allocation of business risk, and minimizes escalating costs associated with increased risks perceived by parties desiring to rely on the contract terms, such as businesses providing financing. Developers make large financial commitments relying on signed GIAs, and they cannot afford to have projects well into development phases suddenly be deemed uneconomic based on new procedures.

The Commission should reject the current MISO filing because MISO has not satisfied its burden to show that applying new interconnection procedures to existing contracts – or even requiring wholly new contracts – would produce just and reasonable results. The entity requesting changes to a contract bears the burden of showing that the changes are just and reasonable.⁵⁵ The only explanation MISO offers for this sharp departure from basic contract principles and Commission precedent is that the “MISO needs to have milestones that will require interconnection customers to demonstrate that their projects are increasingly prepared to move forward.”⁵⁶ While diverse parties can agree that there are significant queue problems that need to be resolved, the MISO proposal impermissibly contradicts settled Commission decisions on the topic and should be rejected.

Even beyond its concern that parties need to eventually be able to rely on fully negotiated and settled agreements, the Commission has also been careful to differentiate the effect of tariff reforms upon early- and late-stage interconnection requests. In its direction to RTOs and ISOs to also differentiate between the two, the Commission has cautioned that later-stage requests should

⁵⁴ *Id.* at P 26.

⁵⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Denying Rehearing, 119 FERC ¶ 61,097 at P 18 (2007).

⁵⁶ *See* MISO filing at P 11.

be handled carefully⁵⁷ and noted that reforms affecting later-stage requests “could significantly disrupt the activities of customers who may have taken action in reliance upon the existing process.”⁵⁸ The Commission, however, has not defined exactly where the line between early and late stage request should be drawn, leaving parties like MISO to propose reasonable solutions.

In MISO’s past queue reform, the Commission approved its decision not to apply the new procedures to requests that had already started a Facilities Study as a reasonable recognition that late-stage interconnection requests should be handled differently from early-stage requests.⁵⁹ Unfortunately, MISO later attempted to re-interpret its own tariff language to apply M3 milestones to generators in Group 5 that had long-ago executed Facilities Study Agreements. The Commission agreed with the developers that such an interpretation would undermine the protections granted to late-stage interconnection requests previously approved by the Commission.⁶⁰ In its reasoning, the Commission cited its past recognition that an executed Facilities Study Agreement was a reasonable distinction between early- and late-stage interconnection requests.⁶¹ Similarly, in analyzing California Independent System Operation (“CAISO”) queue reform proposals, the Commission has acknowledged that, where possible, it

⁵⁷ *Order on Technical Conference*, 122 FERC ¶ 61,252 at P 18 (“We note that reforms that would affect existing interconnection requests that are in later stages of the process create special circumstances that require careful consideration.”).

⁵⁸ *Id.*

⁵⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions Addressing Queue Reform, 124 FERC ¶ 61,183 at P 90 (“Finally, as to LS Power’s concern (expressed before MISO filed its answer) that the proposal does not comply with the Conference Order’s suggestion to distinguish between early and late state interconnection requests, we find that having started a Facilities Study is a reasonable distinction between early and late stage interconnection requests.”); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, Order on Complaint, 136 FERC ¶ 61,035 at P 46 (2011) (“[T]he Commission referenced a stage of the interconnection process – the execution of a Facilities Study Agreement – as being a reasonable distinction between early- and late-stage interconnection requests.”).

⁶⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order on Complaint, 136 FERC ¶ 61,035 at P 46.

⁶¹ *Id.*

wishes to “avoid significant disruption to the activities of later stage customers who may have taken action in reliance upon the existing process.”⁶² MISO has offered no justification as to why it is not possible to address such disruptions to late-stage ICs under its current proposal.⁶³

In its current proposal, MISO does not even attempt to differentiate between early- and later-stage requests as the Commission has directed. Instead it would apply its new procedures to every generator except those already in commercial operation. Is this MISO’s idea of a late-stage project? MISO’s Proposal does not reasonably honor the time and investments made by a late-stage project under the provisions of the existing interconnection process. A proposal that better recognizes the differences between early- and late-stage requests would be more consistent with Commission direction, though diverse parties may disagree on where this line should be properly drawn. All parties can likely agree, however, that at the very minimum any acceptable proposal must honor existing contracts, absent a case-by-case showing that so doing would be unjust and unreasonable. WOW and AWEA believe that, at minimum, it would be appropriate to establish a transition process that grandfathers late-stage interconnection requests, including ICs with executed GIAs. WOW and AWEA, however, do not take a position on precisely where the line between early- and late-stage interconnection requests should be drawn.

D. By Refusing to Pay Interest on Returned Deposits, the Proposal Departs from Widely Held Concepts of the Time Value of Money

In Section 3.6 of the GIP, MISO proposes to delete the reference to refunding interest with the return of an IC’s study deposit for a withdrawn project. The requirement to include

⁶² *Calif. Indep. Sys. Operator, Inc.*, Order on Petition for Tariff Waiver, 124 FERC ¶ 61,031 at P 78 (2008); *see also Calif. Indep. Sys. Operator, Inc.*, Order Conditionally Approving Tariff Amendment, 124 FERC ¶ 61,292 at P 61 (2008) (finding CAISO’s proposal reasonable and declining to impose newly increased financial commitments on later stage projects because such projects would be most disrupted by being transitions into CAISO’s reformed interconnection procedures).

⁶³ The justification offered by MISO for its transition provisions is a repetition of its justification for the revised milestone provisions. Lavery Testimony at P 13.

interest with the return of study deposits derives from Order No. 2003 and widely held concepts of the time value of money.⁶⁴ MISO's justification for varying this requirement is that interest refunds are no longer needed due to MISO's shift away from the "first-in, first out" paradigm contemplated in Order No. 2003.⁶⁵ Specifically, MISO argues that with the queue reform provisions it has proposed, the IC will have more control over how long it remains in the queue because it can elect to move forward into the DPP faster.

MISO is mistaken that the IC's level of control over the time it remains in the queue is the primary driver for requiring interest payments. The important factor is the time value of money. Even if MISO is correct in believing that an IC will have more control over the amount of time for which study deposits are held, there will be no change in the fact that MISO controls and enjoys the benefits of holding those deposits during that period. Moreover, MISO began its shift away to a "first-ready, first-served" paradigm in its previous queue reform efforts in 2008 and 2009 without suggesting that changing its treatment of interest on study deposits was necessary.⁶⁶ Thus, at no point has MISO explained why the time value of money is no longer relevant.

For these reasons, the Proposal and MISO's stated goals for the Proposal do not necessitate or justify removing the requirement to return study deposits with interest, and MISO has provided no other justification. As a result, this variation from Order No. 2003 does not satisfy MISO's burden as an independent entity to demonstrate that it is just and reasonable, not

⁶⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146.

⁶⁵ Lavery Testimony at P 35.

⁶⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions Addressing Queue Reform, 124 FERC ¶ 61,183 at PP 17, 44.

unduly discriminatory, and would accomplish the purposes of Order No. 2003 and this proposed revision should be rejected.

E. MISO Should Not Be Permitted to Require Construction Deposits and Security Long – Even Years – in Advance of the Need for Such Deposits and Security

The new Article 11.5 of the pro forma GIA in Appendix 6 advances the schedule by which an IC must make initial payments for network upgrades and other interconnection facility upgrades. MISO’s proposal would require an initial payment in cash or security within 30 days after the execution of a GIA or the unexecuted filing of a GIA if the initial payment is not being protested. This “initial payment” requirement is in addition to the existing security requirements in the current GIA, (currently Article 11.5, to be renumbered as Article 11.6 by the Proposal).

The payment schedule established in the new Article 11.5 is not aligned with the need to fund the actual construction of the upgrades. The initial payment or security is required potentially many years before upgrades would actually be built. Like the increased entry milestone for entering the DPP, MISO argues that this large initial post-GIA payment is needed for the IC to demonstrate that the project is viable.⁶⁷ With this reasoning, MISO is changing the purpose of providing such financial security from funding procurement and construction to serving as yet another test of project readiness. In Order No. 2003, the Commission stated that the purpose of the security provided in the existing Article 11.5 is to “fund procurement and construction” and further that “since it is uncertain when procurement and construction will begin, it is reasonable to make such activity the trigger for tendering Network Upgrades.”⁶⁸ The timing of the security requirement under the Proposal is no longer tied with the need for construction and procurement.

⁶⁷ Lavery Testimony at P 34.

⁶⁸ Order No. 2003 at P 593.

MISO is proposing to require the initial payment to be either (1) cash equal to 10-20% of the total cost of Network Upgrades, Transmission Owner Interconnection Facilities, Transmission Owner's System Protection Facilities, Distribution Upgrades and/or Generator Upgrades or (2) security equal to 100% of such costs. MISO has not provided justification for the amounts required for this new initial payment requirement other than that the amounts are sufficient to indicate a project's readiness to proceed. Nor has MISO justified why the amount posted in security should be so much higher than that required in cash. MISO must explain why the deposit amounts were selected and show how it has reached the conclusion that such deposit amounts will not be unduly discriminatory.

In Order No. 2003-A, the Commission rejected a request that ICs be required to maintain full security during the length of the interconnection process (rather than reducing it on a dollar-for-dollar basis as the IC makes payments to the Transmission Provider) because the chilling effect of such a requirement would "seriously discourage new generation."⁶⁹ In contrast, MISO is actively trying to achieve just such a chilling effect by imposing the new initial payment requirement in the instant filing. MISO has an obligation to balance the need for adequate financial security to demonstrate project viability with its burden to avoid excessive financial commitments that may discourage development.⁷⁰ MISO has provided justification for the need to increase financial security requirements as a means to improve efficiency and reduce uncertainty. However, it has provided no analysis to demonstrate that the amounts of the new requirements are reasonable and will not overly discourage development and also has not provided an adequate explanation for excluding other indicia of project readiness.

⁶⁹ Order 2003-A at P 431.

⁷⁰ Order on Section 2006 Investigation of Financial Security Deposit Provisions, 132 FERC ¶ 61,005 at P 33 (2010).

Like MISO, the CAISO has sought to address queue congestion through a series of reforms, including revisions to its financial security requirements. In 2008, the Commission approved a CAISO proposal that increased the financial security requirements for ICs as a reasonable effort to change its regime to deter speculative projects that lack a reasonable chance of achieving commercial operation. The Commission's approval rested in part on CAISO's proposal not being one-sided.⁷¹ In particular, the increased security requirements were balanced by several new benefits to ICs including more cost certainty, a cap on the cost of network upgrades, and the requirements being staggered in a way that allows ICs to obtain financing and assess the ongoing viability of their projects.⁷² As eventually revised, CAISO's proposal requires an IC to post security for its cost responsibilities in three stages. These stages approximately require the IC to post security equal to 15% of its costs within 90 days of completion of the Phase I Interconnection Study, 30% of its costs within 180 days of completion of the Phase II Interconnection Study, and the balance upon the start of construction. Opportunities for a refund of at least a portion of the security exist at each stage depending on the reason for the IC GIA termination or withdrawal.⁷³

Unlike CAISO's revisions to its financial security requirements, MISO's proposal to increase security requirements is a one-sided effort to increase barriers for ICs and is not

⁷¹ *Calif. Indep. Sys. Operator, Inc.*, Order Conditionally Approving Tariff Amendment, 124 FERC ¶ 61,292 at P 154.

⁷² *Id.* at PP 155-56.

⁷³ Even with these balancing factors, ICs continued to express concerns about the burdens of the new security requirements. CAISO addressed these concerns by reducing the security requirements and making them more gradual and flexible. See *Calif. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124 (2009). In a later proceeding, FERC found that CAISO's security deposit provisions were unjust and unreasonable for customers switching from full capacity to energy only status. For these switching customers, CAISO failed to appropriately balance the need for adequate financial security to demonstrate financial viability with the requirement to avoid excessive financial commitments that may discourage development. See Order on Section 2006 Investigation of Financial Security Deposit Provisions, 132 FERC ¶ 61,005 at P 33 (2010).

balanced with an effort to accommodate ICs' needs to obtain financing for their projects. Recognizing these financing realities, the Commission approvingly noted that CAISO's security requirements are staggered. Generally, no more than 45% of the IC's costs would be due before construction begins. In contrast, under MISO's Proposal, an IC could be required to post security in an amount equal to 100% of its costs up to years before construction begins. AWEA and WOW believe that new security burden is unjust and unreasonable and will unduly discourage new generation.

F. The Proposal Needs to Provide for Greater TO and Operator Accountability

The Proposal imposes new DPP hurdles, expectations, and risks for ICs and does not balance those with additional accountability for MISO and the TOs that could bring additional certainty to ICs. MISO and TOs continue to miss deadlines for study completion and make study errors that result in time consuming restudies and delays for ICs. These ICs have little to no recourse with respect to these delays, nor is there a point of certainty in the interconnection process (even once a GIA is signed) at which ICs would be guaranteed certainty regarding their responsibility for upgrades and costs. Accordingly, AWEA and WOW believe that new requirements and risks for ICs in the DPP need to be balanced in the Proposal with new accountability for MISO and TOs.

For example, under the Proposal, there are new study model sign-off requirements and consequences for ICs in both the SPA and the DPP.⁷⁴ Specifically, MISO revised Section 8.3 of the Tariff to require that an IC provide a completed Interconnection Study Model Review Form within 30 days from receipt of the models. Thirty days for review is too short of time for ICs who are likely to need to hire consultants to assist with this review. Utilities developing their

⁷⁴ Of greatest concern is the 30-day requirement for study model review in the DPP as detailed above. However, we note that this same requirement (in Section 7.3) should be unnecessary in the SPA, as the time spent there is determined by the interconnection customer.

own generation projects, on the other hand, are at an advantage given they can rely on their own transmission system modeling experts to complete this review. Failure to return the form is grounds for withdrawal pursuant to Section 3.6 of the GIP. AWEA and WOW do not dispute that having such a sign-off form and a process to gather input from ICs might help to reduce model changes and restudies in the future. However, we believe that the consequences for not returning the sign-off form are overly punitive and unnecessary. Other consequences, such as not allowing studies to move forward until the sign-off form has been returned, would likely be just as effective without the extreme measure of removing the IC from the queue.

Further key concerns with the sign-off form include the fact that there is no accountability for MISO and TOs, whose input into the models is as critical, if not more so, than an ICs. They are the parties most suited to correct errors in the models and are compensated for putting together accurate study models and running appropriate studies to determine what is needed to reliably support new interconnections to the grid. Errors continue to be found in study models that delay ICs' progress. Nonetheless, there are no penalties for such errors. AWEA and WOW object to the lack of accountability on the part of MISO and TOs for producing an efficient and accurate study process.

Early on in the Interconnection Process Task Force ("IPTF") stakeholder process to develop this third queue reform proposal, there were two aspects to the study model sign-off proposal. In addition to the requirement that the IC return the sign-off form within 30 days, there were consequences if the TOs did not return the sign-off form. Initially, MISO presentations on this topic indicated that "all affected parties should take on some responsibility at the onset of the study."⁷⁵ And, in discussions of this approach there seemed to be general agreement that both

⁷⁵ MISO presentation, IPTF meeting (Jan. 27, 2011).

TOs and ICs should have consequences if they do not respond to provide input on the study models or do not provide accurate information.⁷⁶ In fact, further discussions and presentations on this topic did include a proposal for such consequences for both TOs and ICs.⁷⁷ Nevertheless, the instant Proposal does not include any such balance, even though the TOs voiced no public objection to proposals for balance during the stakeholder meetings.⁷⁸

AWEA and WOW believe that any additional queue reform at MISO must be balanced as both the ICs and the TOs have important roles to play in ensuring an efficient and accurate interconnection process. TOs should also have consequences if they do not participate in the study model review and if they do not provide accurate information and corrections to the model. In many cases, the ICs do not have the detailed information about the transmission system, other ICs' requirements, or new generators or transmission facilities being added to the system. If this information is not provided, the lack of timely information can mean delays in the interconnection process in order to correct these errors and run restudies. Or, the lack of such timely information can result in costly modifications to ICs' required upgrade facilities after they have signed their GIAs.⁷⁹

⁷⁶ MISO presentation at the IPTF meeting on April 28, 2011 indicated “[g]eneral agreement on concept” under Model Sign-off. Also, MISO presentation at the IPTF meeting on May 26, 2011 indicated “[g]eneral agreement on model review.”

⁷⁷ MISO presentation at the IPTF meeting on May 26, 2011 indicated that a failure of a TO to respond to the model sign-off would mean that the TO has cost responsibility for mitigating any constraints that did not show up in the results due to such errors or lack of response.

⁷⁸ WOW did submit suggestions in writing to MISO staff and the IPTF with specific tariff language that provided balanced consequences for both ICs and TOs to incent effective participation in the study model sign-off. Yet, to our knowledge, concerns from other stakeholders pushed MISO to only include consequences for the ICs in the final Proposal.

⁷⁹ In FERC Dockets ER11-3326, ER11-3327, and ER11-3330, the Commission required revised GIAs even though original executed GIAs were signed a year before. In this case the interconnection customer was required to pay for new and additional network upgrades that were needed as a result of an “error” in the studies MISO/Ameren performed, because MISO/Ameren did not include the full MW capacity of a known generator in the studies.

In addition, TOs should face consequences if they fail to meet timelines in the interconnection process. Often such failures may simply arise because TOs have not dedicated enough staff to complete studies in a timely manner. But, ICs are paying for timely studies, and the studies should be provided within the period specified in the Tariff. ICs' business decisions are made based on timing expectations of the interconnection process. If TOs need to hire outside consultants in order to meet study timelines, consequences for their failure to timely perform their duties in the interconnection process can incent them to do so.

AWEA and WOW request that the Commission require MISO to change the deadline for study model review to a 90-day review, and to remove the punitive consequence of withdrawal from the queue if the study model review is not returned in the prescribed time period. In addition, we request that the Commission require MISO to make a compliance filing that would include balanced consequences for MISO and the TOs regarding meeting timelines included in the tariff, inclusion of errors in study models, etc.

G. Modifications Should Continue to Be Evaluated Based on Impacts to Lower Queued Customers

At Section 4.4.4 of the Proposal, MISO restricts changes to a generating facility's commercial operation date ("COD"), as well as the date an IC expects to begin receiving backup power (the "ISD"), and supports this restriction by asserting that definitive dates with respect to these particular milestones are needed to protect later-queued customers from commercial uncertainties. In so stating, MISO treats all extensions to CODs and ISDs as suspensions, in order to justify a hard-and-fast implication that any extension to a COD or ISD is a per se Material Modification beginning at the DPP, *i.e.*, that extensions to CODs or ISDs necessarily cause an adverse impact to later-queued customers. Notably, MISO proposes to deny (and

currently is denying) any extensions to CODs and ISDs, even when the TO is prepared to agree to the extensions and no later-queued ICs will be adversely impacted. In short, MISO has provided no support that later-queued customers are currently being adversely impacted by COD or ISD extensions or that these revisions would resolve a real issue.⁸⁰ Accordingly, WOW and AWEA urge the Commission to reject the revisions to Section 4.4.4. as being unsupported and inconsistent with the Commission's precedent and the policies underlying queue reform. WOW and AWEA further urge the Commission to again clarify that MISO may not summarily deny extensions to an IC's COD or ISD in situations in which there is no adverse impact to later-queued customers. Where MISO can show no such impact, there is no reasonable basis for MISO to deny an extension to a customer's COD, ISD, or other milestones.⁸¹

The revisions to Section 4.4.4 are not MISO's first attempt at likening extensions to CODs, ISDs, or other milestones to a de facto suspension, and the Commission's precedent includes examples where MISO's previous attempts at establishing that equivalence were rejected. The rationale underlying those decisions provides support for the Commission to reject Section 4.4.4 of the Revised GIP. In *Quilt Block Wind Farm*,⁸² a wind farm developer sought to extend its COD beyond the three-year safe harbor period, but MISO rejected the request and filed the interconnection agreement unexecuted. In its comments to the Commission, MISO requested a ruling on how interconnection queue reform would affect an IC's ability to amend its

⁸⁰ For purposes of comparison, consider the evidence that MISO submitted in its initial queue reform application in 2008 that demonstrated the frequency of suspensions in the interconnection queue and the uncertainty those suspensions created for later-queued customers. There, MISO could point to 26 suspended projects totaling 3.6 GW in its interconnection queue, each of which had an effect on 116 later-queued customers, on average. MISO has provided no such support for the revisions to Section 4.4.4.

⁸¹ *See, e.g., Judith Gap Energy LLC*, 125 FERC ¶ 61,169 (2008).

⁸² *Quilt Block Wind Farm*, 130 FERC ¶ 61,172 (2010).

COD, even though the interconnection agreement at issue predated queue reform. MISO asserted that

in light of MISO's revisions to expedite the processing of interconnection requests and the Commission's recognition of the harm caused by the suspended projects in the queue, MISO believes that permitting the Interconnection Customer to extend its [COD] in this instance would effectively permit a de facto increase in suspension time. Such extensions in time increase the uncertainty and delay for lower queued projects that result from projects remaining in the queue as if suspended.^[83]

MISO asserted that its tariff, by way of its restrictions on suspension, prohibited the requested extension, and requested a tariff waiver if the Commission determined the extension was permissible. In its order, the Commission accepted the extension without granting the tariff waiver, explaining that the waiver was unnecessary because a COD extension is not equivalent to a de facto suspension and should be allowed absent a determination of harm to later-queued customers.⁸⁴

In *Pomeroy Wind Farm*,⁸⁵ a decision issued just prior to that in *Quilt Block*, the Commission considered whether extensions to a COD must necessarily fall subject to the same restrictions that limit suspensions.⁸⁶ In that proceeding, MISO requested the Commission confirm that allowing an IC to remain in the queue indefinitely causes a "general harm" to other generators thereby resulting in a per se Material Modification, which would prohibit any extension to the customer's milestones. In response, the IC argued that there was an important distinction between a suspension – a customer's unilateral right to affect others later in the

⁸³ MISO Transmittal Letter at 5, Docket No. ER10-579 (2010).

⁸⁴ *Quilt Block Wind Farm*, 130 FERC ¶ 61,172 at P 13.

⁸⁵ 130 FERC ¶ 61,124 (2010).

⁸⁶ The interconnection agreement at issue in *Pomeroy Wind Farm* predated queue reform but the decision nevertheless bears upon Section 4.4.4 of the Revised GIP.

queue – and an extension to the COD that harms no other customers. The Commission ruled in favor of the IC, implicitly on the basis that an extension in the COD does not amount to a general harm and should be accepted absent an adverse impact to later-queued customers.

Lastly, the Commission’s recent decision in *Lakeswind Power Partners* indicates that the Commission continues to support the notion that, absent harm or uncertainty to other customers, an interconnection customer’s request to amend its milestones should not be unreasonably denied. In that proceeding, an IC requested that its milestone requirements be stayed or amended to reflect the results and effects of restudies that were underway. MISO denied the request and held the customer to its original milestones. When the customer did not meet its milestones to MISO’s satisfaction, MISO attempted to terminate the customer’s interconnection agreement, arguing that amending the customer’s milestones would result in a de facto suspension in violation of MISO’s tariff and the policies underlying queue reform. The Commission found that extending Lakeswind’s milestones would not amount to a suspension. “When considering whether to extend milestones or to grant or extend a suspension, the Commission takes into account many factors, including whether the extension would harm generators lower in the interconnection queue and any uncertainty that speculative projects may present to other projects in the queue.” In other words, the Commission is concerned with how a delay in milestones may affect other customers. “[MISO] argues that delaying Lakeswind’s milestones would permit a de facto suspension of Lakeswind’s obligations under the [Generator Interconnection Agreement], which would be impermissible under [MISO’s] tariff. We disagree. In order to accept [MISO’s] argument, we would have to concur that any extension of milestones equates to a suspension which is not the case.”

Just as MISO failed to justify equating an extension of milestones to a suspension in Quilt Block, Pomeroy, and Lakeswind Power Partners, it has also failed to justify a hard-and-fast rule that would bar interconnection customers from modifying CODs or ISDs in situations in which there would be no harm to later-queued customers. The revisions to Section 4.4.4 lack rational support, will needlessly prevent developers from being able to modify their milestones to reflect changing economic and development needs, and will provide “certainty” to MISO in situations in which such certainty has no public value. MISO has not shown why the Commission’s sound policy with respect to COD and ISD extensions no longer is sufficient, or why the proposed changes are superior to current Commission policy. Therefore AWEA and WOW urge the Commission to reject Section 4.4.4 of the Revised GIP.

H. Limited Modifications Should Be Allowed to Wind Farm Data Requirements Submitted By Interconnection Customers Prior to DPP

MISO has developed a study scope form for ICs to submit information about their projects for use in the DPP studies. While AWEA and WOW support the use of this form, we believe that the required information cannot be provided with 100% accuracy at the point in the interconnection process at which MISO would request it. Some aspects of a project continue to be refined until the point of construction, and others may be defined based on results from the interconnection study. WOW and its members have worked with MISO and TOs to adjust the information requested in this form. However, AWEA and WOW remain concerned about an IC’s lack of ability to adjust these data as a project is refined.

In particular, an IC cannot provide all data requested on pages 4 and 5 of Attachment A to Appendix 1 of the GIP with 100% accuracy at the outset of the DPP. For example, the expected total charging (MVAR) provided by the collector cables between the generator turbines

and the Point of Interconnection (“POI”) also depends on the design and construction-specific details that will be available later in the process. An estimate can be provided at the time the form is submitted, but will likely need to be adjusted later. The Operational Tap Setting, on the other hand, is impossible to determine at the outset of the DPP, and should be removed from this form. While typical data for transformers can and will be provided, data sheets for a project’s specific transformers will not be available as transformers are not typically ordered prior to the commencement of the DPP stage. AWEA and WOW believe that ICs can provide reasonable estimates to most of the information requested on the form at that time, but are concerned that the stringent limitations to modifications in Section 4 of the Tariff could result in an IC being withdrawn from the queue in the later stages of the DPP when it needs to modify certain details due to design improvements, manufacturer changes, or simply receipt of specific manufacturer data sheets. In conversations with MISO staff, WOW requested that such modifications be allowed within a tolerance band (such as plus or minus 10%). All electrical system and equipment have tolerance ranges during translation of theoretical design (equipment or system) into manufacturing and construction owing to practical limitations in the real world. MISO staff did not accept that proposal but indicated that changes could be made on a case-by-case basis. However, such flexibility, which MISO and the TO’s themselves use, is not provided for the IC in the Tariff or in the Attachment A to Appendix 1.

The Proposal includes changes to Section 4 of the Tariff related to refining a project that significantly limit allowable modifications. ICs would not have the opportunity to show that their requested change is not material and would not materially impact other ICs. Accordingly, AWEA and WOW request that the Commission require MISO to clarify and add language to the

Tariff that allows certain changes, pursuant to Attachment A to Appendix 1, so long as an IC can show that such change is not material to other ICs.

I. MISO and TOs Should Not Be Able to Unilaterally Change a Requested Point of Interconnection

At Sections 8.3 and 8.5 of the Revised GIP, MISO proposes that at two points in the interconnection study process – one of which occurs at the late Facilities Study stage – it should have the unilateral ability to modify an IC’s POI, provided that modifying the POI results in net savings in the cost of Transmission Owner’s Interconnection Facilities, Network Upgrades, and “where reasonably known” by MISO, the Interconnection Customer’s Interconnection Facilities. Where a customer requests to revert to its original POI, the costs of the Network Upgrades associated with the original POI will be fully allocated to the customer on a non-refundable basis. Although the concept of providing interconnection service more cost-effectively certainly warrants discussion, what MISO has proposed in Sections 8.3 and 8.5 of the Revised GIP, with the unilateral authority it provides, may subject interconnection customers to unreasonable uncertainty—something the Commission sought to reduce through queue reform. For that reason, the Commission should not accept without revision MISO’s proposal with respect to shifting POIs.

Sections 8.3 and 8.5 of the Revised GIP fail to account for the fact that, for many reasons, an interconnection customer may not so easily be able to modify its POI. For example, an interconnection customer may intend to interconnect its project by sharing interconnection facilities with existing projects to avoid building duplicative tie lines and save on interconnection costs. A customer may also have previously spent substantial time and money in securing the routing for its original POI, which resources may be in jeopardy if MISO is allowed to make

unilateral changes. Or similarly, an IC may find that it is not able to secure rights to use a new right-of-way that would allow it to access the new POI. In addition, many states have permitting requirements that could apply to interconnection facilities that may make it challenging, costly, or unlikely that an IC can move its interconnection facilities to access the new POI.⁸⁷

Furthermore, and perhaps most significantly, customers may have contractually locked in power prices and scheduled commercial operation dates based on assumptions created through the interconnection study process, only to have those assumptions – and potentially a customer’s contracts – upset by a unilaterally modified POI. Accordingly, Sections 8.3 and 8.5 of the Revised GIP may cause any number of uncertainties to interconnection customers, and the only way to avoid some of those uncertainties is to incur additional, non-refundable costs—an uncertainty itself to project economics.

The better approach to Sections 8.3 and 8.5 is one of cooperation, rather than one of coercion. If an interconnection customer, too, could benefit from a modified POI by having the costs of its interconnection facilities reduced by a percentage of the net savings such that the customer’s total interconnection costs are reduced or, at a minimum, left unharmed, a customer would more willingly cooperate in modifying its POI. In addition, interconnection customers must have a reasonable veto power over any decision to modify their POIs, as such authority may be necessary to preserve the interconnection customer’s development assumptions and contractual obligations. AWEA and WOW accordingly encourage the Commission to reject Sections 8.3 and 8.5 of the Revised GIP until such time that MISO offers an approach to

⁸⁷ Many states in the MISO footprint have facility and/or route permit requirements for transmission lines above certain sizes and lengths that apply to many generator lead lines. For example, Iowa requires entities building transmission lines 69 kV and larger to obtain an electric franchise from the Iowa Utilities Board pursuant to Iowa Code Chapter 478.

increasing cost-effectiveness that encourages cooperation among all necessary parties and does not unreasonably disrupt customers' project development objectives.

J. “Forfeited” DPP Entry Milestone Funds Should Be Used to Benefit Impacted Parties

AWEA and WOW suggest that forfeited DPP entry milestone funds should be credited so that affected parties benefit. Discussions of this topic during the IPTF stakeholder process indicated an approach by which these funds would be credited to Schedule 10 of the Tariff, but we do not find that detailed in the filing of the Proposal. We request the Commission require MISO to detail and justify how forfeited DPP entry milestones will be credited. It is our understanding that Schedule 10 is an RTO-wide administrative charge that affects transmission customers; therefore, Schedule 10 refunds would have a very limited benefit to ICs who are the parties most affected when an interconnection project drops out of the queue in a late stage of the interconnection process.

The goal of instituting a high hurdle for the DPP entry milestone supposedly is to provide an incentive to ICs not to move into the late stages of the interconnection process until they are “ready.” The goal is not to transfer funds from ICs to transmission customers. Moreover, withdrawals of late-stage projects can cause restudies, delays, and uncertainty for other ICs. AWEA and WOW believe that because other ICs are most impacted by the withdrawal of a project, they should benefit from any funds forfeited due to a withdrawal. Such funds could be used to finance required restudies that result from the withdrawal, or to finance upgrades that would have otherwise been paid for by the withdrawing customer, but are later required to support other interconnections. In addition to requiring that MISO clarify how these funds are credited, we request that the Commission require MISO to credit them in such a way that the

parties most affected by the withdrawal of an IC from the DPP are those that benefit from the forfeited funds.

K. Proposed Net Zero Provisions to the Tariff

This AWEA and WOW protest is not aimed at every part of MISO's Proposal. Instead, AWEA and WOW generally support the addition of NZI provisions to the Tariff, as we believe they would provide a consistent approach for new generators seeking NZIs and support a more efficient use of the existing transmission grid. Therefore, we would support adoption of NZI provisions for the reasons detailed below.

Because NZIs enable new generators to use existing interconnection capacity associated with existing interconnected generators with minimal upgrades required, NZIs will allow for more efficient use of the existing transmission system at a time when the transmission grid in MISO energy market is close to capacity. Similar to the way Conditional Firm transmission service has created a new product to allow for use of the transmission grid for delivery of energy when capacity on the grid is not otherwise being utilized by firm transmission service customers, NZIs allow for greater use of currently contracted interconnection rights.

NZIs also can provide a bridge strategy for increased development of wind and other generation, until such time as transmission upgrades, either regional or local, can be built. Transmission lines are long-lead-time projects, while wind plants can be built in less than a year. In some areas of the MISO grid, large, regionally beneficial transmission upgrades have been identified and in some cases are underway, but these lines have expected online dates of between 2013 and 2020. These regionally beneficial lines, or Multi-Value Projects, will ultimately provide new capacity that can help support the addition of new generation. By sharing

interconnection capacity with another generator at the same point of interconnection, NZIs can allow new generation to come online until such time as new system upgrades are constructed.

AWEA and WOW take no position here regarding any existing or future NZIs, disputes related to NZIs, or the details of implementing NZIs. Regardless of how these details are resolved, we believe that codification in the Tariff of NZIs will provide a consistent approach to the process of interconnecting a new generator in a Net Zero situation, as well as consistent NZI agreements. Such consistency will help all parties understand ahead of time what is expected of them, and undoubtedly will lead to a less contentious and more efficient interconnection process.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, AWEA and WOW respectfully request that the Commission grant their motions to intervene and accept this protest into the record in this proceeding.

Respectfully submitted,

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Dated: November 30, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 30th day of November 2011.

By: /s/ Sarah Johnson Phillips
Sarah Johnson Phillips