

Agreement (“MPFCA”).⁷ MISO submitted that filing in this docket. AWEA protested and explained that the compliance filing cannot be viewed in isolation. MISO’s generation interconnection procedures (“GIP”) drastically changed *after* the complaint was filed in Docket No. EL15-36 and the Commission issued orders in Docket No. EL15-68. The opportunity for unilateral Transmission Owner Initial Funding cannot be grafted onto MISO’s Tariff assuming the implications and impacts are as existed in 2015. If the opportunity for Transmission Owner Initial Funding is to be added to MISO’s Tariff, GIP features that changed since 2015 must be addressed as well. AWEA identified those features. The Commission summarily dismissed AWEA’s protest in the Compliance Order.

AWEA respectfully submits that the Commission erred in doing so and requests rehearing of the Compliance Order.⁸ The Commission’s finding is arbitrary and capricious in violation of the Administrative Procedure Act, the FPA, and inconsistent with Commission precedent and policy.

II. SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

Pursuant to Rule 713(c)(2) of the Commission’s Rules of Practice and Procedure,⁹ AWEA identifies the following errors in the Compliance Order:

1. The Commission erred by finding that MISO need not submit additional Tariff provisions in order for Transmission Owner Initial Funding to be just and reasonable and not unduly discriminatory and preferential, that (i) require the transmission owner to elect Transmission Owner Initial Funding in Phase 1, (ii) require MISO to list the Transmission

⁷ Ameren Remand Order at P 33.

⁸ In the Compliance Order, the Commission also denied AWEA’s request for rehearing of the Ameren Remand Order and also addressed the issues it identified for briefing. AWEA’s Request for Rehearing of the Compliance Order is limited to other issues decided for the first time in the Compliance Order that pertain to the filing MISO submitted in this docket.

⁹ 18 C.F.R. § 385.713(c)(2) (2019).

Owner Initial Funding network upgrade cost estimate in the Phase 1 study result and (iii) provide that the interconnection customer needs not provide the Initial Payment and security when Transmission Owner Initial Funding is elected (“GIP Consistency Issues”);¹⁰

2. The Commission erred by finding that these GIP Consistency Issues are outside the scope of this proceeding, were addressed in the supplemental briefing portion of the Compliance Order and were a collateral attack on the Ameren Remand Order and failing to explain why that is the case;¹¹
3. The Commission erred by rendering decisions that are inconsistent with the Commission policy and precedent and by failing to reconcile its decisions in the Compliance Order with that policy and precedent;¹²
4. The Commission erred by rendering a decision that is internally inconsistent with other Commission findings in the Compliance Order;¹³ and
5. The Commission erred by failing to meaningfully address AWEA’s arguments and otherwise address facets of MISO’s current GIP that are in disharmony with Transmission Owner Initial Funding.¹⁴

¹⁰ See Administrative Procedure Act, Section 10(e), 5 U.S.C. section 706; *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“*Motor Vehicles*”).

¹¹ *Id.*

¹² See Administrative Procedure Act, Section 10(e), 5 U.S.C. section 706; *Motor Vehicles*, 463 U.S. at 43.

¹³ *Id.*

¹⁴ *Id.*

III. REQUEST FOR REHEARING

A. **The Commission Erred By Grafting Transmission Owner Initial Funding Into MISO's GIP Without Also Requiring That The Transmission Owner Elect Transmission Owner Initial Funding In Phase 1 And Requiring MISO To List The Estimated Cost Of Network Upgrades Based On The Transmission Owner Initial Funding Election In the Phase 1 Study Result**

In the Ameren Remand Order, the Commission ordered MISO to submit Tariff revisions to allow unilateral Transmission Owner Initial Funding as of August 31, 2018. The Commission stated the intent was to restore to MISO's Tariff what existed (with a GIA) and could have existed (with a FCA) as of June 24, 2015. However, as AWEA explained in its protest, Transmission Owner Initial Funding cannot simply be grafted into MISO's GIP with complete disregard for the other provisions in MISO's GIP. This is because MISO's GIP is *not* as it existed in 2015. MISO's GIP has undertaken a drastic overhaul that puts significant financial burdens on the interconnection customer that did not exist in June 2015.

In December 2015, MISO submitted proposed Tariff provisions that would have transformed MISO's GIP to a new three-phased study process, with two new cash-at-risk financial Milestone requirements. However, the Commission rejected that proposal for a variety of reasons but also provided guidance to MISO about how it could properly structure such GIP.¹⁵ In response to the Commission's guidance, in October 2016 (after the complaint was filed in Docket No. EL15-36 and after the Commission issued the order in Docket No. EL15-68) MISO submitted a different three-phased study GIP with cash-at-risk Milestones, which the Commission conditionally accepted with an effective date of January 4, 2017.¹⁶ Hence, per the Commission's guidance, MISO filed and the Commission installed a GIP that shifted significant financial burdens to interconnection customers: (i) three financial Milestones must be provided to enter into and

¹⁵ See *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,247 (2016) ("Guidance Order").

¹⁶ See *Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,003 (2017) ("GIP Revision Order").

proceed from Phase 1 to Phase 3 of MISO's GIP study process, (ii) the Milestones are larger than previously existed and (iii) the Milestones are at at-risk for forfeiture if the interconnection customer withdraws from MISO's queue at or after Decision Point 2, which were *not* at-risk of forfeiture before.

On December 3, 2019, before the Commission issued its Compliance Order, the Commission accepted a further GIP revision that imposed even greater harm on the interconnection customer.¹⁷ As a pre-requisite to simply enter MISO's queue and obtain study information about the impact of its proposed generating project (which information the interconnection customer cannot obtain by any other means), the interconnection customer immediately forfeits 50% of the first Milestone payment if it decides to withdraw at Decision Point 1 because the network upgrade costs identified in that first Phase 1 study result were too large to economically sustain its proposed generating project.¹⁸

In sum, MISO's GIP – in terms of financial risk to the interconnection customer – bears little resemblance to what existed in 2015 when the complaint was filed in Docket No. EL15-36 and the Commission issued orders in Docket No. EL15-68. As such, AWEA protested that there is a need to revise MISO's GIP in three respects so it harmonizes with the inserted Transmission Owner Initial Funding right. Indeed, had Transmission Owner Initial Funding been part of MISO's GIP in 2017 when MISO proposed its three-phased structure, AWEA and generation developers would have raised during the stakeholder process and again in protest at the Commission the same issues that AWEA raised in this docket.

¹⁷ See *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,173 (2019).

¹⁸ The first Milestone is \$4,000/MW. Thus, for a 250 MW generating project, \$1,000,000 must be provided, with \$500,000 forfeited if the project withdraws at Decision Point 1.

AWEA explained that (i) interconnection customers need to know by Phase 1 whether a transmission owner will select Transmission Owner Initial Funding because that funding will increase the customer's cost for network upgrades by at least 30-40% or more on net present value basis compared to what is listed in the Phase 1 study result and (ii) the Phase 1 study result must list the network upgrade cost as would exist with Transmission Owner Initial Funding (*i.e.*, based on the electing transmission owner's rate of return, years the charge will be collected, etc.). Without such a provision, an interconnection customer will (i) be provided network upgrade cost estimated in the Phase 1 study result, (ii) determine the estimate cost works for project economics and move to Phase 2 on that basis, and then to Phase 3 based on the Phase 2 study result that also is not based on Transmission Owner Initial Funding, providing more potentially-forfeitable financial Milestones,¹⁹ (iii) only to find out very late in Phase 3 that the transmission owner elects Transmission Owner Initial Funding so the network upgrade costs are much larger than expected. This late-stage information may render the proposed generating project uneconomic and force the interconnection customer to withdraw from the queue, which will put tens of millions of dollars are risk of forfeiture through no fault of the customer. This is not just and reasonable.

In the Compliance Order, the Commission responded with a single sentence: "We find that AWEA's remaining arguments are outside the scope of the compliance filing proceeding and are either (1) addressed in the determination on the supplemental briefing above or (2) a collateral attack on the Ameren Remand Order."²⁰ AWEA submits such cursory findings do not satisfy the requirements of the Administrative Procedure Act.

¹⁹ As the Commission is aware, the Milestones are often tens of millions of dollars.
²⁰ Compliance Order at P 151.

1. The Commission Erred By Failing To Explain Its Positions

The Commission failed to explain how requiring Transmission Owner Initial Funding to be selected in Phase 1 is outside the scope of this docket. This docket exists because the Commission ordered MISO to add Transmission Owner Initial Funding to its Tariff. In the Ameren Remand Order, the Commission did not preclude MISO from doing so in recognition of the fundamentally changed GIP that is now under its Tariff. Indeed, in the Ameren Remand Order, the Commission extended Transmission Owner Initial Funding to a MPFCA even though that option had never been part of MISO's Tariff and was not the subject of the complaint in Docket No. EL15-36 or the Commission's orders in Docket No. EL15-68 it had only existed before in MISO's Tariff for a GIA and was extended to a FCA per the Otter Tail complaint in Docket No. EL15-36. If the Commission could add to MISO's GIP to account for a MPFCA, it could include provisions that harmonize with MISO's new three-phased GIP.²¹ The Commission has acted inconsistently and in an arbitrary and capricious manner in violation of the Administrative Procedure Act.²² AWEA respectfully submits the need to harmonize Transmission Owner Initial Funding with a need to know at Phase 1 whether such election will occur and the cost to do so at Phase 1 was not outside the scope of this docket, but was integrally needed to implement Transmission Owner Initial Funding in a just and reasonable manner.

The Commission also failed to explain how its earlier determinations in the Compliance Order addressing the supplemental briefing addressed the need to require the transmission owner to select Transmission Owner Initial Funding by Phase 1 and for MISO to list an estimate of the network upgrade cost under Transmission Owner Initial Funding in the Phase 1 study result. In

²¹ Indeed, the Commission did that in an order issued the same day as the Compliance Order, accepting revisions that "reconcile" MISO's existing GIP with new facets. *See Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61221 at P 46 (2019).

²² *See* Administrative Procedure Act, Section 10(e), 5 U.S.C. section 706.

the Ameren Remand Order, the Commission requested briefing on specific questions about the potential retroactive application of Transmission Owner Initial Funding to GIAs, FCAs and MPFCAs entered into from June 24, 2015 to August 31, 2018 (“Interim Period”).²³ The filing at issue in this docket is post-Interim Period; it adds Transmission Owner Initial Funding from August 31, 2018 and going forward. Hence, the supplemental briefing that the Commission ordered and reviewed is not germane or relevant. Further, no Commission briefing question asked about other provisions in MISO’s GIP that would need to be revised to harmonize with adding Transmission Owner Initial Funding. Nor was there any discussion of this Phase 1 need in the section of the Compliance Order addressing the supplemental briefing. The Commission’s rationale is without foundation. The Commission is required to substantiate its findings.²⁴

Finally, the Commission failed to explain how requiring a transmission owner to elect Transmission Owner Initial Funding by Phase 1 is a collateral attack on the Ameren Remand Order. In that Order, the Commission simply reversed course, decided that unilateral Transmission Owner Initial Funding is just and reasonable and there was no need to gather evidence (as the D.C. Circuit stated on remand) to test the Commission’s previous finding that Transmission Owner Initial Funding is discriminatory and not just and reasonable. There is nothing in the Ameren Remand Order that addresses when, in MISO’s GIP process, that a transmission owner must elect Transmission Owner Initial Funding and the estimated cost if provided to the interconnection customer. Hence, by definition, there can be no collateral attack on that Order. Again, the Commission’s finding is not substantiated in violation of the Administrative Procedure Act.

²³ See Ameren Remand Order at P 36.

²⁴ *Williston Basin Interstate Pipeline Co. v. FERC*, 358 F.3d 45, 48 (D.C. Cir. 2004) (The Commission must make a “reasoned decision based upon substantial evidence in the record.”).

2. The Commission Erred Because Its Decision Is Contrary To Its Policy And Precedent That Provide The Interconnection Customer Has A Right To Information In The Interconnection Process So It Can make Informed Business Decisions

The Commission has made it clear that just and reasonable interconnection service practices require the transmission provider to provide proper information to the interconnection customer so it can make informed business decisions. In Order No. 845, the Commission globally reformed its *pro forma* GIP and adopted reforms “designed to improve interconnection process transparency and provide improved information to benefit all participants in the interconnection process,”²⁵ to “help[] interconnection customers to better assess the business risks,”²⁶ and to establish “a more efficient and informed interconnection process.”²⁷ The Commission stated:

[W]e note that increasing transparency of network models and assumptions will allow interconnection customers to make informed interconnection decisions, which could potentially help interconnection customers avoid entering the queue with non-viable interconnection requests. Informed interconnection decisions will also allow transmission providers to improve queue management. Improved queue management, in turn, should aid in decreasing the administrative burden on transmission providers. In addition, increased transparency will also mitigate the potential for study disputes, re-studies and late-stage withdrawals, thus increasing the efficiency of the interconnection process.²⁸

The Commission reiterated this concept in Order No. 845-A:

In adopting these reporting requirements, the Commission found that the reporting requirements provide **increased transparency and information to interconnection customers** and do not unduly burden transmission providers. It also found that the increased transparency resulting from these new requirements should provide for “improved queue management and **better informed interconnection customer planning** - results that may be important enough to support some corresponding burden on transmission providers.”²⁹

And:

²⁵ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 191 (2018).

²⁶ *Id.* at P 212.

²⁷ *Id.*

²⁸ *Id.* at P 239.

²⁹ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845-A, 166 FERC ¶ 61,137 at P 98 (2019) (emphasis added).

Regarding the issue of speculative projects, we note that *the Commission designed some of the Order No. 845 reforms to provide more and better information so that interconnection customers will be more likely to submit interconnection requests that achieve commercial operation*. For instance, the purpose of the reform on transparency regarding study models and assumptions is to reduce the likelihood that interconnection customers will submit multiple interconnection requests to figure out which request has the most suitable point of interconnection. Thus, this reform *will likely result in more accurate and informed decision-making by the interconnection customer*, which will, in turn, reduce the likelihood of late-stage withdrawals.³⁰

When MISO proposed its three-phased GIP in late 2016, it explained: “MISO is proposing significant improvements to the GIP *to ensure that Interconnection Customers have the information and incentives to determine the viability of their projects earlier in the process*.”³¹

The Commission affirmed this in its order accepting the new process:

We agree with MISO that *increased certainty* regarding affected planning processes is beneficial, and any diminished flexibility resulting from the language is offset by the added benefits provided *by more accurate study results*.³²

Indeed, the Commission stated this notion in MISO’s earlier attempt at queue reform that was rejected:

[W]e believe that the creation of the two proposed “off-ramps” *would provide interconnection customers with updated system impact information to assess the viability of their projects*. Ideally, the next System Impact Study after a Decision Point would be more accurate without non-ready projects, eliminating the need for unscheduled restudies. These appear to be positive changes to the DPP structure.³³

The Commission reiterated this need in September 2019, finding certain of the Affected System practices employed by MISO and SPP to be unjust and unduly discriminatory due to uncertainty for interconnection customers:

³⁰ *Id.* at P 169 (emphasis added).

³¹ *See Midcontinent Independent System Operator, Inc.*, Filing of Revisions to the Open Access Transmission, Energy and Operating Reserve Markets Tariff to Reform MISO’s Generator Interconnection Procedures, Docket No. ER17-156-000, Oct. 21, 2016, Prepared Direct Testimony Of Timothy Aliff at 4:14-17 (emphasis added).

³² *GIP Revision Order* at P 127 (emphasis added).

³³ *Guidance Order* at P 46 (emphasis added).

We find that EDF has shown that the lack of transparency in the Affected Systems coordination processes among MISO, [Southwest Power Pool, Inc. (“SPP”)], and PJM Interconnection, L.L.C. (“PJM”)] has caused EDF, and other interconnection customers in MISO, SPP, and PJM *harm due to uncertainty* over how MISO, SPP, and PJM are evaluating the impact of interconnection requests on Affected Systems. In particular, EDF has demonstrated that this lack of transparency *has affected its ability to make decisions regarding entering or remaining in the interconnection queue, because the timing of Affected System studies and the level of Affected System costs are uncertain. Cost uncertainty presents a significant obstacle to the development of new resources This lack of transparency in the current Affected Systems coordination process between MISO, SPP, and PJM has the potential to hinder the timely development of new resources and thereby to stifle competition in the wholesale markets, resulting in rates that are not just and reasonable or are unduly discriminatory or preferential.*³⁴

The Commission noted that existing MISO Affected System practices³⁵ create “uncertainty and confusion for interconnection customers”³⁶ and “may significantly affect rates, terms and conditions of service.”³⁷

The Commission’s finding in the Compliance Order that MISO’s submission in this docket is just and reasonable without a requirement for a transmission owner to elect Transmission Owner Initial Funding by Phase 1 and to identify the network upgrade cost estimate based on Transmission Owner Initial Funding in the Phase 1 study result is directly at odds with this plethora of Commission precedent and the specific findings therein – some of which the Commission issued *after* the Ameren Remand Order. As interconnection customers approach Decision Points 1 and 2, they will be utterly uninformed about whether a transmission owner will elect Transmission Owner Initial Funding and whether network upgrade costs will increase and by how much. Interconnection customers will be unable to properly gauge the cost of network upgrades and

³⁴ *EDF Renewable Energy, Inc. v. MISO, SPP and PJM*, 168 FERC ¶ 61,173 at P 32 (2019) (citing to Order No. 845 at P 37 which adopted the NOPR’s preliminary findings that “the current interconnection process may hinder timely development of new generation” and, thereby, “stifle competition” in the wholesale markets.”) (emphasis added).

³⁵ Affected Systems assess whether interconnection requests cause the need for network upgrades on the adjacent RTO system.

³⁶ *Id.* at P 21.

³⁷ *Id.* at note 33.

whether a proposed generating project will be economically viable. This is not just and reasonable. The Commission is obligated to explain why its decision departs from and is inconsistent with its policy and precedent and the rationale therein. AWEA raised this in its protest.³⁸ The Commission erred by failing to do so in the Compliance Order. The Commission erred by not explaining how the harms that the Commission identified in the precedent quoted above will not result here. AWEA urges the Commission to grant rehearing and find that a transmission owner must elect Transmission Owner Initial Funding by Phase 1 and the Phase 1 study result must list the estimated cost of network upgrades based on Transmission Owner Initial Funding so interconnection customers will be able to make informed business decisions consistent with Commission policy and precedent and “competition in wholesale markets” will not be “stifled.”

3. The Commission Erred Because Its Decision Is Internally Inconsistent With Its “Notice” Determinations

The Commission makes much of “notice” in the Compliance Order. For example, the Commission found that interconnection customers were on notice that its prior orders about Transmission Owner Initial Funding might be appealed to a Court and might be remanded and thus could have negotiated provisions in power purchase agreements (“PPAs”) and asset purchase agreements (“APAs”) to protect from any after-the-fact financial harm in event of such remand and Commission course-reverse.³⁹ The Commission’s decision not to require a transmission owner to elect Transmission Owner Initial Funding by Phase 1 and for the resulting network upgrade cost estimate to be identified in Phase 1 is inconsistent with this other Commission determination. The Commission found that an interconnection customer could have taken measures to protect against financial consequences in PPAs and APAs, but eschewed a similar

³⁸ *Midcontinent Indep. Sys. Operator, Inc.*, Protest Of The American Wind Energy Association, Docket No. ER18-2513, Oct. 19, 2018, at 13 (“AWEA Protest”).

³⁹ *See* Compliance Order at PP 128, 130, 132, 150.

request from AWEA that an interconnection customer be in a similar position to protect against financial consequences by knowing by Phase 1 whether a transmission owner will elect Transmission Owner Initial Funding. The Commission's duality will not withstand scrutiny.

Notice of proposed rates is a fundamental tenet of ratemaking and the filed rate doctrine. The Commission's failure to require a transmission owner to elect Transmission Owner Initial Funding by Phase 1 leaves it to the end of the study process (in late Phase 3 and perhaps at the GIA negotiation stage) for the true network upgrade costs to be known. In the meantime, the Commission has installed GIP that require the interconnection customer to provide larger financial Milestones in order to proceed to from Phase 1 Phase 3, with the potential for a surprise balloon Transmission Owner Initial Funding costs for the network upgrades in Phase 3, which might then render the proposed generating project immediately uneconomic, force the interconnection customer to withdraw from the queue and render the financial Milestones forfeit. The Commission erred by failing to render a decision that is consistent with the notice requirement of the filed rate doctrine. The filed rate doctrine is premised on predictability. The fact that Transmission Owner Initial Funding might be selected in Phase 3 is not sufficient notice given the financial forfeiture harm that is built into MISO's GIP. AWEA urges the Commission to grant rehearing so interconnection customers will have notice of the costs they face before proceeding deeper into MISO's study queue.

4. The Commission Erred By Rendering A Decision That Allows For Unlawful Undue Discrimination And Preference And Is Contrary To Its Order No. 2003 Policy

Transmission owners in MISO and their affiliates submit proposed generating projects in MISO queue just like independent power producers ("IPPs") do. By not ordering MISO to provide the Transmission Owner Initial Funding election and cost with the Phase 1 study result, the

Commission set up a structure that will act to a transmission owner's and its affiliate's cost advantage. When transmission owners/its affiliates and IPPs have projects in the same study cycle, both will provide financial Milestones. When Phase 3 is reached and the transmission owner elects Transmission Owner Initial Funding for all applicable projects and for the IPP to new cost is too high to sustain the economic viability of its proposed generating project, the IPP will withdraw from MISO's generation queue. When it does, the IPP's financial Milestones will be forfeited and likely accrue to the transmission owner's/affiliate's benefit. That is how MISO's GIP now functions.⁴⁰ The transmission owner, thus, has every incentive to delay providing its election until very late in the process. This is what the Commission installed when it failed to require MISO to revise its GIP to provide the Transmission Owner Initial Funding election and estimated cost at Phase 1. The Commission's decision has fostered undue discrimination and preference in direct violation of the FPA.

In Order No. 2003, the Commission stated that it will not allow interconnection rules that provide even *the mere opportunity* for such discrimination and preference by a transmission owner:

[T]he Commission remains concerned that, when the ***Transmission Provider is not independent and has an interest in frustrating rival generators***, the implementation of participant funding, including the “but for” pricing approach, creates opportunities for undue discrimination. As the Commission stated in the NOPR, a number of aspects of the “but for” approach are subjective, and ***a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage***. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers. ***The Commission would find any policy that creates opportunities for such discriminatory behavior to be unacceptable***.⁴¹

In Order No. 2003-A, the Commission found it not unduly discriminatory to allow an independent entity (*i.e.*, an RTO such as the MISO) to “propose innovative cost recovery methods, including participant funding” for the cost of network upgrades “while requiring a non-independent

⁴⁰ See MISO Tariff, Attachment X.

⁴¹ *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶ 61,103 at P 696 (2003) (emphasis added) (Order No. 2003).

Transmission Provider (*i.e.*, interconnecting transmission owner) to continue to use more traditional pricing required by Order No. 2003 for new interconnections” because “the two types of Transmission Providers are not similarly situated.”⁴² The Commission explained:

[W]hen [a network upgrade funding method] is implemented by an independent Transmission Provider which does not have an incentive to discourage new generation by competitors, new cost recovery methods including participant funding can yield efficient competitive results. ***However, because of their inherent subjectivity, new approaches such as participant funding could allow a non-independent Transmission Provider to propose methods that frustrate the development of new generating facilities that will compete with its own.*** For example, because RTOs and ISOs are independent, and neither own nor have affiliates that own generating facilities, we have less concern that existing utility owned generating facilities will be favored over new generating facilities or that utilities will “gold plate” their systems at the Interconnection Customer’s expense. The Commission gives some deference to RTOs and ISOs in many areas, not just interconnection, because they have no incentive to administer the Transmission System in a discriminatory manner.⁴³

The Commission also erred by rendering a decision that allows non-independent transmission owners to frustrate the development of generation by IPPs which compete with the transmission owner and its affiliates. The Commission erred by rendering a result that is directly at odds with the foundational generation interconnect policy and precedent.

5. The Commission’s Decision Is Arbitrary And Capricious Because It Failed To Meaningfully Address These Issues

AWEA identified a real problem and disharmony with MISO’s submission in this docket.

The Commission failed to meaningfully respond to AWEA’s points and in so doing acted in an arbitrary and capricious manner in violation of the Administrative Procedure Act.⁴⁴

⁴² *Standardization of Generator Interconnection Agreements and Procedures*, 106 FERC ¶ 61,220 at P 691 (2003) (emphasis added) (Order No. 2003-A).

⁴³ *Id.* (emphasis added).

⁴⁴ *See Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 543-44 (D.C. Cir. 2010) (“The Commission must respond to objections and address contrary evidence in more than a cursory fashion.”); *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011) (“Among other things, “[a]n agency’s “failure to respond meaningfully” to objections raised by a party renders its decision arbitrary and capricious.”) (quoting *PPL Wallingford Energy, LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (quoting *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001))).

B. The Commission Erred By Failing To Order Revisions To The Initial Payment And Security Provisions In MISO's GIP

AWEA explained that MISO's *pro forma* GIA requires the interconnection customer to provide an Initial Payment equal to 10%, 20% or 100% of the cost of network upgrades after execution of the GIA. AWEA also explained that MISO's *pro forma* GIA requires the interconnection customer to provide security equal to the remaining amount of the estimated cost of the network upgrades. AWEA protested that the Commission should order MISO to revise its *pro forma* GIA to provide that the Initial Payment and security provisions do not apply when the transmission owner has elected to fund the network upgrades under Transmission Owner Initial Funding. The transmission owner does not need the Initial Payment or the security because it has chosen to provide the funds to develop the network upgrades.

In the Compliance Order, the Commission responded: "We find that AWEA's remaining arguments are outside the scope of the compliance filing proceeding and are either (1) addressed in the determination on the supplemental briefing above or (2) a collateral attack on the Ameren Remand Order."⁴⁵ AWEA submits such cursory findings do not satisfy the requirements of the Administrative Procedure Act and are inconsistent with the Commission's precedent.

1. The Commission Erred By Failing To Explain Its Positions

AWEA will not lengthen this rehearing request by repeating the arguments listed above in Section IV.A.1, but specifically adopts them by reference and applies them to this Section IV.B of this rehearing request. For all the reasons stated above, the Initial Payment and security provisions are not outside of the scope, were not covered by the Commission's determination on the supplemental briefing and are not a collateral attack on the Ameren Remand Order.

⁴⁵ Compliance Order at P 151.

2. The Commission Erred By Rendering A Decision That Is Inconsistent With And Ignored Its Precedent

The Commission has held that requiring the interconnection customer to provide the funds up-front and then allow the transmission to elect to repay those amounts and collect it again from the interconnection customer for the next 20-30 years is unjust and unreasonable and provides an inappropriate situation to earn a rate of return because the transmission owner did not bear any risk. In its protest AWEA quoted the Commission:

[W]e find that it is unjust and unreasonable to require an interconnection customer to fund the construction of network upgrades up-front and then permit the transmission owner to elect to repay this amount and charge the interconnection customer for the transmission owner’s capital costs and income tax allowance over time. That option essentially allows transmission owners to avoid many of the risks and costs associated with financing a new construction project, while retaining benefits as if they did incur some of those risks and costs. While a transmission owner may finance the construction of the network upgrades itself and include the associated costs in its embedded transmission rate, under Option 1, the interconnection customer must first obtain the financing necessary to fund the construction of network upgrades up-front (and bears the financing costs up-front), and then essentially pay for the transmission owner to refinance such costs and bear the transmission owner’s capital costs and income tax allowance over a prescribed time period (e.g., 30 years). . . . We find that it is unjust and unreasonable to require the interconnection customer to bear the burden of funding the network upgrades up-front but then be repaid these costs and be subjected to a monthly Network Upgrade Charge reflecting the transmission owner’s capital costs and income tax allowance, which unreasonably increases the interconnection customer’s costs over time—solely at the discretion of the transmission owner.⁴⁶

The end result of Transmission Owner Initial Funding with the Initial Payment and security is no different than and is simply Option 1 ‘repackaged.’ If the transmission owner will provide the funding under Transmission Owner Initial Funding, it will face “many of the risks and costs associated with financing a new construction project,” as the Commission held in *E.ON*, and is thus entitled to a return on its investment in recognition of the risk. That risk is non-existent if the

⁴⁶ *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,076 at P 37 (2011) (“*E.ON*”).

interconnection customer must still provide the Initial Payment and security during the engineering, procurement and construction (“EPC”) phase of the network upgrades. As the Commission found in *E.ON*, transmission owners will “avoid many of the risks and costs associated with financing a new construction project, while retaining benefits as if they did incur some of those risks and costs.”

The Commission erred by failing to address this precedent that AWEA identified⁴⁷ and explain how its decision is not inconsistent with *E.ON*. In doing so, the Commission rendered a decision that is arbitrary and capricious. Worse, the Commission has imposed a double injury on interconnection customers: (i) the cost of network upgrades will increase exponentially under Transmission Owner Initial Funding and (ii) the interconnection customer must also bear the cost to obtain financing or otherwise tie-up its capital resources backstopping the transmission owner’s choice to fund the EPC of network upgrades through the Initial Payment and security. The Commission failed to explain why this is just and reasonable and results in just and reasonable rates.⁴⁸

3. The Commission’s Decision Is Arbitrary And Capricious Because It Failed To Meaningfully Address These Issues

AWEA identified a real problem with MISO’s submission in this docket. Again, the Commission failed to meaningfully respond to AWEA’s points and in so doing acted in an arbitrary and capricious manner in violation of the Administrative Procedure Act.⁴⁹

⁴⁷ See AWEA Protest at 15 and n.24.

⁴⁸ *Midcontinent Independent System Operator, Inc.*, 154 FERC ¶ 61,072 at P 13 (2016) (“the posting of security affects rates by increasing costs to interconnection customers”).

⁴⁹ See *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 543-44 (D.C. Cir. 2010) (“The Commission must respond to objections and address contrary evidence in more than a cursory fashion.”); *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011) (“Among other things, ‘[a]n agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.’”) (quoting *PPL Wallingford Energy, LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (quoting *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001))).

IV. CONCLUSION

For the foregoing reasons, AWEA respectfully requests that the Commission expeditiously grant rehearing of the Compliance Order as discussed above. Rehearing is necessary so (i) interconnection customers are apprised early on in MISO's GIP what the estimated cost of network upgrades will be, which will allow them to make informed business decisions and preclude transmission owners from acting in an unduly discriminatory and preferential manner to their own benefit, (ii) interconnection customers do not tie-up funds to backstop the transmission owner's decision to provide the funds through Transmission Owner Initial Funding in contravention of Commission precedent and the just and reasonable rate standard of the FPA and (iii) competition in wholesale markets is not stifled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day upon each person designated on the official service list compiled by the Secretary in these dockets.

Dated at Washington, DC this 21st day of January 2020.

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Document Content(s)

Request for Rehearing ER18-2513.PDF.....1-20