UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.	))	Docket No. ER04-458-000

COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. 385.211, the Organization of MISO States ("OMS") herein submits its comments in response to the filing submitted by the Midwest Independent Transmission System Operator ("MISO") in the above-captioned docket on January 20, 2004. On January 29, 2004, the Commission issued a Notice establishing February 10, 2004 as the comment date on MISO's filing. On February 4, 2004, the OMS submitted its Notice of Intervention along with a Motion for Extension of Comment Period for the OMS through February 27, 2004. The Commission granted the extension by Notice issued February 9, 2004.

These OMS Comments address three concerns: (1) cost allocation policy for generation interconnection-related network transmission system upgrades; (2) language in MISO's proposed Attachment X regarding the issuance of "refunds" to generators for network upgrades rather than transmission usage "credits"; and (3) distribution facilities issues. The OMS makes four recommendations for the Commission:

> (1) MISO's proposed Attachment X be allowed to go into effect (with one variance described below) as its terms and conditions, taken as a whole, are better than those in MISO's existing Attachment R for their designed purposes;

(2) the cost allocation provisions in LGIA Sections 11.3 and 11.4 of Attachment X be treated as interim only and milestones be established by the MISO, its stakeholders and the OMS so that a replacement cost allocation policy for generator interconnections can be filed with the Commission no later than August 3, 2004 to be made effective no later than December 1, 2004;

(3) the language in LGIA Section 11.4 be changed to substitute the concept of transmission usage "credit" as used in MISO's existing Attachment R instead of the "refund" concept in proposed Attachment X as a useful variance from the Order 2003 *pro forma* language; and

(4) the issue of generator interconnection-related distribution upgrades be set for technical conference to be managed by the OMS because the treatment of distribution upgrades in MISO's proposed Attachment X is neither clear nor well supported, and because of the states' particular interest and unique role regarding distribution issues.

I. INTRODUCTION

The OMS is a non-profit, self-governing organization of representatives from each state with regulatory jurisdiction over entities participating in the MISO, a regional transmission organization as defined by the Commission.[1]

The purpose of the OMS is to coordinate regulatory oversight among the states. The OMS makes recommendations to MISO, the MISO Board of Directors, the Commission, other relevant government entities, and state commissions as appropriate and intervenes in proceedings before the Commission and in related judicial proceedings to express the positions of the OMS.

II. BACKGROUND

[1] The state regulatory agencies that are member of the OMS are the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Kentucky Public Service Commission, the Michigan Public Service Commission, the Minnesota Public Utilities Commission, the Missouri Public Service Commission, the Montana Public Service Commission, the Nebraska Power Review Board, the North Dakota Public Service Commission, the Ohio Public Utilities Commission, the Pennsylvania Public Utility Commission, the South Dakota Public Utilities Commission, and the Wisconsin Public Service Commission. The Manitoba Public Utilities Board is also a member of the OMS.

On July 24, 2003, the Commission issued Order 2003.[2] Order 2003 required all public utilities that own, control or operate facilities used for the transmission of electricity in interstate commerce to have on file a standard procedure and a standard agreement for the interconnection of generators to the transmission grid. Order 2003 also requires that these public utilities file revised open access transmission tariffs to add a large generator interconnection procedure ("LGIP") and a large generator interconnection agreement ("LGIA") for generators with capacity greater than 20 MW.

On January 20, 2004, the MISO submitted to the Commission, pursuant to Order 2003, its proposed revisions to the Midwest ISO Open Access Transmission Tariff to be incorporated as a new Attachment X to its open access transmission tariff and certain related revisions to MISO's existing Attachment R.

III. SUMMARY OF MISO's GENERATOR INTERCONNECTION-RELATED COST ALLOCATION PROPOSAL

As MISO notes in its transmittal letter, the Commission established, in Order 2003, default *pro forma* terms and conditions for the Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement.[3] However, the Commission invited RTOs to submit variances from the *pro forma* LGIA and LGIP language in order to customize terms and conditions to better match regional needs and recognize a degree of RTO independence in assessing regional system operating characteristics and requirements. Order 2003 states,

> While RTOs and ISOs are required to submit compliance filings, they may submit LGIP and LGIA terms and conditions that meet an 'independent entity variation' standard that is more flexible than the 'consistent with or superior to' standard and the regional differences standard.[4]

[2] 68 Fed. Reg 49,845 (Aug. 19, 2003), FERC Stats & Regs. 31,146 (2003).
[3] Transmittal Letter at 9.
[4] Order 2003 at P 26.

Order 2003 also states that for an independent entity, "the Commission continues to allow flexibility regarding the interconnection pricing policy that each independent entity chooses to adopt, subject to Commission approval."[5]

Nevertheless, despite the Commission's invitation for independent RTO flexibility, MISO elected not to substantively act on the invitation with respect to terms and conditions for generator interconnection cost allocation in its January 20 filing. Rather, MISO chose to adopt and file the Commission's Order 2003 *pro forma* default provisions for cost allocation with only very minor variances.

The Order 2003 *pro forma* default approach for cost allocation involves the interconnecting generator initially providing the funds for necessary transmission network upgrades to the transmission owner in whose zone the network upgrades are needed, but receiving reimbursement (refunds with interest), over a period no greater than five years, from the transmission owner. In other words, the entirety of the costs of network upgrades needed to support generator interconnection becomes the responsibility (over a period no greater than five years) of the transmission owner(s) in whose zone(s) the network upgrades are constructed. MISO's tariff language to implement this proposed cost allocation policy for generator interconnection network upgrades can primarily be found in Sections 11.3 and 11.4 of the LGIA.

MISO's Transmittal Letter states that, as an "independent entity," MISO "will determine the required type and amount of Network Upgrades on a transparent and non-discriminatory basis."[6] MISO's proposed LGIA Section 11.3 states (in part) that,

[5] Order 2003 at P 698.
[6] Transmittal Letter at 31.

- "Unless Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities, they shall be solely funded by the Interconnection Customer."

- "Transmission Owner shall design, procure, construct, install, and own the Network Upgrades, Transmission Owner's System Protection Facilities and Distribution Upgrades described in Appendix A [of the LGIA]."

- "The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades and/or Generator Upgrades."

MISO's proposed LGIA Section 11.4 states (in part) that,

- "Interconnection Customer shall be entitled to a cash refund, equal to the total amount paid to Transmission Owner and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments. . ."

- "Transmission Owner and Affected System Operator shall provide refunds to Interconnection Customer only after commercial operation of the Generating Facility has been demonstrated."

- "Transmission Owner and Affected System Operator [shall] refund all amounts paid by Interconnection Customer for the Network Upgrades, together with interest, within five (5) years from the Commercial Operation Date."

The MISO candidly acknowledges that the *pro forma* default cost allocation method for network upgrades that it is proposing in Sections 11.3 and 11.4 "may result in certain inequities when applied by an RTO, and particularly the Midwest ISO."[7] The MISO states that its proposed network upgrades cost allocation method "may not adequately address situations where an interconnection customer intends to sell its output off-system or out of state."[8] The MISO acknowledges that, in such cases, the proposed network upgrades cost allocation method may require transmission customers of the local transmission owner to incur the cost of transmission network upgrades that

[7] Transmittal Letter at 29.
[8] Transmittal Letter at 29.

do not provide them with benefits.[9] The MISO further acknowledges the existence of state laws and state regulatory practices that might prohibit local transmission customers from being charged rates that include the costs of transmission network upgrades that do not provide them with benefits.[10] Finally, the MISO notes the Commission's own acknowledgment that the policy proposed by MISO of providing refunds to the interconnecting generator[11] for the cost of the network upgrades that would not be needed but for the interconnection of the new generator

> mutes somewhat the Interconnection Customer's [the generator] incentive to make an efficient siting decision that takes new transmission costs into account, and it provides the Interconnection Customer with what many view as an improper subsidy, particularly when the Interconnection Customer chooses to sell its output off-system.[12]

MISO states without elaboration that it carefully considered these negative aspects of its network upgrades cost allocation proposal and balanced them against the benefits of adopting its proposal.[13] MISO states that it ultimately determined that its filed cost allocation proposal is "the most appropriate approach pending development and implementation of a Commission-approved beneficiary-based cost allocation methodology."[14]

MISO refers to its proposed network upgrades cost allocation approach (the *pro forma* approach) as "an interim price proposal."[15] While MISO filed the *pro forma* cost allocation approach in Attachment X for Commission approval, it, nevertheless, states

[9] Transmittal Letter at 29.
[10] Transmittal Letter at 29.
[11] MISO's Transmittal Letter at 29 mistakenly refers to its proposed policy to issue "refunds" as a 'default' crediting proposal." As explained in Section VI.B below, there is a major difference between "refunding" and "crediting" and MISO is proposing "refunding" as does the Order 2003 *pro forma* LGIA.
[12] Order 2003 at P 695.
[13] Transmittal Letter at 29.
[14] Transmittal Letter at 30.
[15] Transmittal Letter at 28.

that it supports a "comprehensive beneficiary-based cost allocation methodology" as "the appropriate end-state to be achieved."[16]

MISO states that,

> developing a sound and balanced pricing policy that supports the goals of the Commission regarding interconnection pricing policies, and that also meets the diverse needs of stakeholders throughout an RTO with the scope of the Midwest ISO, requires a considerable length of time for vetting of issues and ideas.[17]

MISO also states that, throughout the compliance filing development period, including the 90-day extension that was granted by the Commission, the Midwest ISO engaged in discussion with the OMS and with other stakeholders on an "appropriate comprehensive pricing policy that would include pricing of Network Upgrades needed to accommodate generator interconnection requests."[18]

IV. OMS ROLE

In Order 2003, the Commission invited regional state committees such as the OMS to "establish criteria that an independent entity would use to determine which Transmission System upgrades, including those required for generator interconnections, should be participant funded and which should not."[19] The OMS notes the Commission's acknowledgment that regional state committees, such as the OMS, could "allow states to work together to identify beneficiaries of expansion projects and make recommendations on pricing proposals and cost recovery that may include rolling

[16] Transmittal Letter at 29-30.
[17] Transmittal Letter at 6.
[18] Transmittal Letter at 6.
[19] Order 2003 at P 698.

in, assignment to beneficiaries, or some combination of the two."[20] The OMS also notes the Commission's statement that,

> Each RTO or ISO will be required to have a clear transmission cost recovery policy outlined in its tariff. We will look to the RTO or ISO and the regional state committee to determine the appropriate regional approach for allocating the costs of new transmission.[21]

The OMS has functioned, and plans to continue to function, in a role consistent with that outlined by the Commission's statements quoted here.

V. OMS POSITION

The OMS Board of Directors has officially endorsed a document including principles for a generator interconnection-related network upgrade cost allocation policy featuring cost causation and benefits factors (hereafter, "OMS Principles document"). These OMS endorsed principles are:

- The cost allocation policy should be designed so that MISO can satisfy the requirements of FERC's Order 2003.
- The cost allocation policy should send appropriate signals to generators to efficiently locate their plants on the grid.
- The cost allocation policy should reflect the classic principles of "cost causers should be cost bearers" and "he who benefits should pay".
- The cost allocation policy's inherent incentives or disincentives to construct network improvements should be made transparent.
- The cost allocation policy should be designed to work well within MISO's set of general network facility upgrade cost allocation policies (e.g., reliability, load growth or congestion relief driven).
- The cost allocation policy should not unnecessarily conflict with the various transmission company business models (e.g., vertically integrated, stand-alone affiliated, independent, or merchant) employed within MISO's footprint.

The OMS "Principles" document also sketched out a suggested procedure for developing a cost allocation policy consistent with the endorsed principles.[22] Finally, the

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[20] Order 2003 at P 679.
[21] Wholesale Market Platform White Paper at 6, (Issued April 28, 2003).
[22] The OMS suggested the following procedure:
Step 1: Is the upgrade facility included in the "needed reliability facilities" in MISO's five-year plan?

OMS "Principles" document identified some of the analytical work that MISO would have to undertake and analytical tests and technical capability that MISO would need to develop and have in place in order to implement a cost allocation policy like that envisioned in the OMS "Principles" document.[23]

The OMS supports development of a comprehensive, objective beneficiary-based cost allocation methodology for network transmission upgrades that addresses network upgrades of all kinds, not just those related to generator interconnection. MISO states that it also supports such a policy.[24]

- If Yes, follow the principles associated with "reliability upgrades."
- If No, go to Step 2.

Step 2: Can MISO identify an entity willing to voluntarily assume the costs of the network upgrade?
- If Yes, no further cost allocation is needed.
- If No, go to Step 3.

Step 3: Using a pre-defined standard test, can MISO identify the generator(s) but for which the particular network upgrade would not be needed?
- If Yes, "but for" cost causers will be assigned costs pursuant to a pre-defined cost causer/facilities beneficiary cost sharing formula.
- If No, go to Step 4 to try to identify facilities beneficiaries.

Step 4: Using a pre-defined standard test, can MISO identify specific beneficiaries of the network upgrade?
- If Yes, the beneficiaries or the load-serving entities serving the beneficiaries will be assigned costs pursuant to a pre-defined cost causer/facilities beneficiary cost sharing formula.
- If No, and the response to Step 3 is "No," the network upgrade costs will be spread to a zone or zones.
- If No, and the response to Step 3 is "Yes," the portion of the network upgrade costs no assigned to the "but for" cost causing interconnection customer will be spread to a zone or zones.

[23] This capability would need to include:
(1) a clearly defined set of criteria for specifying "needed reliability facilities," and have in place a policy for cost allocation associated with "needed reliability facilities";
(2) a pre-defined standard test for identifying the "but for" generator or generators;
(3) a pre-defined standard test for identifying specific beneficiaries of the network upgrade using a forward-looking approach and established time frame;
(4) a pre-defined formula or formulas for allocating the network upgrade costs between identifiable cost causer generators and specific identified beneficiaries of the network upgrade, and a formula or formulas for proportionally allocating costs to beneficiaries in relation to their benefits;
(5) a method for geographically allocating the network upgrades to a zone, a sub-zone, or multiple zones; and
(6) a set of specific rights (e.g., physical or financial rights) that will be allocated to entities in exchange for their agreement to bear the costs of the transmission upgrade (this set of rights may be different before and after MISO establishes real-time and day-ahead energy markets).

[24] Transmittal Letter at 29-30.

MISO states that at its January 14, 2004 Advisory Committee meeting, approval was given for the

> establishment of a stakeholder driven task force, the Regional Expansion Criteria and Benefits Task Force, with a proposed scope to explore the criteria to be used to justify inclusion of expansion proposals in the MTEP [regional transmission expansion plan] and to recommend appropriate tariff structures to recover the costs of such expansions. These criteria and cost recovery structures would apply to all transmission expansions including those expansions driven by requests for generation interconnection service.[25]

The OMS supports MISO's facilitation of a stakeholder-driven Regional Expansion Criteria and Benefits Task Force and its goal of developing a comprehensive framework for network upgrade cost allocation. The OMS favorably notes that the Regional Expansion Criteria and Benefits Task Force initiating document that was approved by the MISO Advisory Committee on January 14, 2004 states,

> [t]he task force will coordinate its work with that of the OMS on an on-going basis as that group [OMS] establishes criteria for cost allocation and proposes cost recovery policies as described by FERC in Order 2003 and FERC's Wholesale Market Platform Whitepaper.[26]

The OMS supports MISO's statement that "the Midwest ISO, the OMS, and other stakeholders will continue discussions to create and implement an objective, beneficiaries-based policy."[27] Indeed, on January 12 2004, the OMS Board approved a Motion stating,

> The OMS Board expresses its desire that MISO continue to work with the OMS Pricing Group, and others as necessary, to fine-tune a cost allocation approach incorporating a rigorous benefits analysis and implementing the other cost allocation principles in the OMS Principles document with the intent for MISO to make a revised cost allocation tariff filing to go into effect on or before December 1, 2004.

[25] Transmittal Letter at 9.
[26] Regional Expansion Criteria and Benefits Task Force initiating document at 1.
[27] Transmittal Letter at 6.

Although MISO's commitment to continue work on the cost allocation issue is promising, the OMS had hopes that MISO would have, by now, been much further along than it is in developing a beneficiary-based methodology for the narrow purpose of pricing network upgrades needed to accommodate generator interconnection requests, while it puts in place a framework for developing a comprehensive cost allocation policy. While MISO correctly notes that several meetings were held during the last few months of 2003 to discuss Order 2003 compliance issues,[28] it was not until January 5, 2004 (over five months after the Commission issued Order 2003) that MISO released for review preliminary write-ups of several alternative cost allocation approaches, including one (labeled as Proposal 3) that would have employed a beneficiary-based approach for generator interconnection-related network upgrade cost allocation.[29] Those preliminary write-ups were then made the subject of an afternoon stakeholder conference held on January 7, 2004.

On January 12, 2004, the OMS Board of Directors officially passed a motion stating that MISO's Proposal 3 (released by MISO on January 5, 2004) comes closer to satisfying the OMS's cost allocation principles for generator related network upgrades than any of the other alternatives presented by MISO at MISO's January 7 stakeholder conference.[30] Despite this expression of preliminary support for the approach in Proposal 3, the OMS Board recognized that, by January 12, 2004, Proposal 3 had not yet been sufficiently developed and fine-tuned into tariff language to serve as the basis

[28] Transmittal Letter at 8.
[29] MISO's draft "Proposal 3" is attached hereto for informational purposes as Appendix A.
[30] The OMS Board notified the MISO that Proposal 3, from the January 7, 2004, MISO Pricing Stakeholder meeting, comes the closest to satisfying the "Principles for Allocating Transmission Upgrade Costs Associated with New Generator Interconnection" adopted by the OMS Board on January 12, 2004 ("Cost Principles").

for MISO's January 20 compliance filing. In particular, the OMS Board identified some specific deficiencies in Proposal 3 that need extensive work before Proposal 3 could be made ready for filing.[31]

VI. OMS RECOMMENDATION

A. Allocation of Generator Interconnection-Related Transmission Network Upgrade Costs

In its January 20 compliance filing, the MISO asks the Commission to make its proposed Attachment X (the LGIA and LGIP), including the cost allocation provisions of LGIA Sections 11.3 and 11.4, effective "the later of sixty (60) days after the date of this compliance filing (*viz.* March 22, 2004) or the date that the Commission approves the Midwest ISO's proposed variations."[32] The OMS notes that, pursuant to Commission policy, MISO's existing Commission-approved standards and procedures for generator interconnection (primarily found in Attachment R) will continue in effect until replaced by order of the Commission.[33]

It is OMS's position that, despite the MISO-acknowledged serious problems in its cost allocation provisions, the elements of MISO's proposed Attachment X, taken as a whole, would constitute an improvement in overall generator interconnection terms and conditions as compared to MISO's existing Attachment R (with the exception explained in subsection B below). For example, Section 11.4.1 of MISO's proposed LGIA would clarify that a generator is due refunds only if it achieves commercial operation and only

[31] The OMS Board noted that deficiencies in Proposal 3 include but are not limited to: (1) recognition of state sovereign authority over certain transmission issues; (2) a more specific and appropriate allocation of costs to beneficiaries based upon OMS's Cost Principles; and (3) the use of LMP/production as a costing model.
[32] Transmittal Letter at 34-35.
[33] Notice Clarifying Compliance Procedures, Docket No. RM02-1-000/RM02-1-001, January 8, 2004 at P3.

if it substantially achieves the level of output upon which the associated transmission upgrades were planned and built. Other examples of marginal improvement of Attachment X over Attachment R could be cited. For this reason, the OMS supports MISO's request that the Commission put Attachment X into effect as an interim measure with the variance proposed in subsection B below.

However, putting Attachment X into effect cannot be the end of the discussion and progress regarding allocation of generator interconnection-related network upgrade costs. Indeed, MISO itself refers to the network upgrade cost allocation approach in Attachment X as "an interim price proposal."[34] As Commissioner Brownell stated in a recently issued dissent in another case involving network transmission upgrades cost allocation, "What is required is a rigorous cost benefit analysis based on fundamental cost causation principles."[35] MISO and its stakeholders must quickly undertake the detailed technical analysis and design the analytical tests that would be needed to support a more efficient and finely tuned cost allocation policy for generator interconnection-related network upgrades based on the OMS cost allocation principles. As MISO acknowledges, this work is likely to lead to revisions to Attachment X in the relatively near future.[36]

Regardless of what action the Commission takes concerning MISO's interim generator interconnection cost allocation policy, the Commission should require MISO, in coordination with its stakeholders and the OMS, to establish a schedule and a set of milestones to meet the goal of developing a more permanent generator interconnection

[34] Transmittal Letter at 28.
[35] New England Power Pool and ISO New England, Inc., 105 FERC ¶ 61,300, Brownell Dissent at 1 (December 18, 2003).
[36] Transmittal Letter at 9.

cost allocation policy that can be filed with the Commission and be made effective no later than December 1, 2004.[37]

The OMS recommends that the Commission impose on MISO a deadline of no later than August 3, 2004 for filing interconnection-related cost allocation tariff sheets to replace the relevant portions of LGIA Sections 11.3 and 11.4 of MISO's proposed Attachment X.[38] The OMS understands that MISO's newly forming Regional Expansion Criteria and Benefits Task Force is targeting an October 1, 2004 date for MISO to make such a replacement filing.[39] Nevertheless, the OMS urges an acceleration of that time frame because it is very important that the interim cost allocation provisions of Attachment X remain in place no longer than December 1, 2004. Establishing a replacement filing date of August 3, 2004, rather than October 1, 2004, will help ensure that December 1, 2004 can be achieved as the effective date for the replacement cost allocation tariff provisions. A Commission requirement imposed on MISO concerning both the August 3 filing date and the December 1 effective date will help both stakeholders and MISO focus their efforts in this regard.

B. The "Refund" Concept in MISO's Proposed Attachment X LGIA should be Replaced with the "Credit" Concept Used in MISO's Existing Attachment R

MISO's existing generator interconnection policy can be found in Attachment R to its open access transmission tariff. Section 2.1 of Attachment R requires the generator seeking an interconnection to advance to the transmission owner the funds required for construction of network transmission upgrades that MISO determines to be needed for

[37] Currently, December 1, 2004 is MISO's targeted start-up date for real-time and day-ahead energy markets and constitutes a logical effective date for related tariff changes.
[38] Section 35.3 of the Commission's regulations provides that, under normal circumstances, tariff filings be made no earlier than 120 days prior to the proposed effective date.
[39] See, e.g., presentation of Mr. Tom Russell to the January 14, 2004 MISO Advisory Committee meeting.

the project. Section 9.1.4 of Attachment R-4 provides that the transmission owner "shall design, procure, construct and install" the network upgrades. Section 10.2 of Attachment R and Section 9.2.2 of Attachment R-4 require the transmission owner to pay the generator back over a period of time for the funds advanced. All this is very similar to the policy that MISO is proposing in Attachment X.

One difference, however, is the use of the word "refund" in proposed Attachment X and "credit" in existing Attachment R. Section 10.2 of Attachment R and Section 9.2.2 of Attachment R-4 state that, "Generator shall be entitled to credits for transmission service taken. . ." Underlining added. MISO's proposed Attachment X, LGIA Section 11.4.1 of, on the other hand, uses the term "refund," as does the Commission's Order 2003 pro forma LGIA. That section states that the generator "shall be entitled to a cash refund, equal to the total amount paid" to the transmission owner. Underlining added. MISO's proposed LGIA Section 11.4.1 reflects the Order 2003 pro forma provision that the generator be refunded in full, with interest, within five years of the commercial operation date for the money the generator advanced to the transmission owner to build the network upgrades to accommodate the generator.

This proposed mandatory refund policy raises some additional concerns with MISO's overall Attachment X cost allocation proposal that would not be as severe under a policy like that in MISO's existing Attachment R of crediting the generator for transmission service that it takes. Under some circumstances, the generator may not purchase sufficient transmission service from the transmission owner over the five-year period to produce a sufficient revenue stream for the transmission owner to pay the generator back for the money the generator initially advanced. This circumstance could

arise, for example, if, for some reason (e.g., generator bankruptcy or a downturn in energy market conditions), the generator discontinues production after having reached full commercial operation levels. In this circumstance, the generator would have achieved the triggering condition in MISO's LGIA Section 11.4.1 (i.e., the full level of commercial operation) to be eligible for full refund of the network upgrade money it initially advanced to the transmission owner. However, because of the generator's decision to cease production and cease purchasing transmission service from the transmission owner, the transmission owner would lose the stream of revenues from which to be able to make the refund back to the generator.

OMS's concern about this feature of MISO's proposal is heightened due to the fact that there is no certainty, and little expectation, that the transmission owner(s) (and the transmission owners' customers) that will be required to make the refund are the ones who will be benefiting from the required network upgrade. These types of problems would be obviated in the long run by implementing a cost allocation policy based on the OMS benefits and cost causation principles. However, short of that, these types of problems could be obviated by replacing the refund concept in MISO's proposed LGIA Section 11.4.1 with a concept (like that in MISO's existing Attachment R) of credits for transmission service actually purchased from the transmission owner. The OMS believes inclusion of such a credit concept in MISO's LGIA would constitute a useful regional variance and mitigate some of the negative consequences of permitting MISO's filed cost allocation approach to go into effect as an interim measure as the MISO, the MISO stakeholders, and the OMS work together to develop a more permanent cost allocation policy based on the OMS cost allocation principles.

Consequently, OMS recommends that the Commission require MISO to make this change (substituting the credit concept for the refund concept) to its proposed Attachment X in a compliance filing to be submitted within thirty days of Commission issuance of an Order on this matter.[40]

C. Distribution Upgrades

The OMS notes the clear provision in Section 11.3 of MISO's proposed LGIA that states, "The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. . . ." MISO is also clear that the transmission owner shall design, procure, construct, install, and own any needed distribution upgrades.[41] However, MISO's authority to make these declarations concerning distribution facilities in its FERC-jurisdictional tariff is not clear, given the role carved out for state regulators in Section 201 of the Federal Power Act concerning distribution.

MISO states that, as an "independent entity," MISO will determine the required type and amount of transmission network upgrades on a transparent and non-discriminatory basis."[42] However, MISO's role in assessing the required type and amount of distribution upgrades is not as clear. For example, MISO's definition of "Interconnection Facilities Study" in Article I of the LGIA seems to indicate that MISO will identify the needed distribution upgrade facilities and determine the cost of such facilities.[43] However, setting aside the jurisdictional questions, MISO's technical

[40] In directing MISO to return to the concept of credits as a variance from the Order 2003 *pro forma* concept of refunds, the Commission should also direct the MISO to address the impact of this variance on generators of different load factor, e.g., base-load versus peaking, and to propose mitigating measures for low load factor facilities.
[41] LGIA Section 11.3.
[42] Transmittal Letter at 31.
[43] MISO defines "Interconnection Facilities Study" as "a study conducted by the Transmission Provider, or its agent, for the Interconnection Customer to determine a list of facilities (including Transmission Owner's

capability to identify required distribution upgrades that are not even under MISO's functional control has not been demonstrated. Similarly, while MISO's definition of "Interconnection Facilities Study" seems to indicate that MISO will determine the costs of needed distribution upgrades, MISO's exact role in this determination is not clear. Nor has MISO demonstrated its technical capability to identify the costs of needed distribution upgrades that are not even under MISO's functional control.

Finally, the OMS notes the anomalous definition in Article I of the LGIA that defines "Transmission Owner" as including, as applicable, "the owner and/or operator of distribution facilities interconnected to the Transmission System." While defining that term that way may be useful in facilitating MISO's proposed role in allocating distribution upgrade costs, the propriety of MISO's role in this regard is still open to question.

Indeed, as explained above, MISO has not produced sufficient evidence or adequately supported its proposed treatment of distribution upgrades.[44] Given the states' key role regarding distribution facilities and the open questions and lack of clarity on this issue presented by MISO's January 20 filing, the OMS recommends that the Commission request the OMS to conduct a technical conference on the treatment of

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Interconnection Facilities, System Protection Facilities, and if such upgrades have been determined, Network Upgrades, **Distribution Upgrades**, Generator Upgrades, and upgrades on Affected Systems, as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures." Emphasis added.

[44] In Article I of the LGIA, MISO defines "Distribution System" as "the Transmission Owner's facilities and equipment, if any, connected to the Transmission System and used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among Control Areas and other entities owning distribution facilities interconnected to the Transmission System."

MISO defines "Distribution Upgrades" as "the additions, modifications, and upgrades to the Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the delivery service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce."

distribution upgrades in Attachment X. The technical conference would explore MISO's authority with respect to distribution upgrades and MISO's technical capability to perform the role that is ultimately agreed upon for MISO concerning distribution upgrades. The technical conference would be held in a location of the OMS's choosing, be open to MISO, the Commission, and all interested stakeholders, and be held no later than sixty days after the Commission issues an Order on this matter.

VII. CONCLUSION

Wherefore, for the reasons stated above, the OMS recommends that the Commission: (1) allow MISO's Attachment X to go into effect (with a variance to change the "refund" concept in LGIA Section 11.4 to a "credit" concept), but treat MISO's filed network upgrades cost allocation policy, if it is accepted, as interim only; (2) require MISO, in coordination with its stakeholders and the OMS, to establish a schedule and a set of milestones so that a replacement cost allocation policy can be filed with the Commission no later than August 3, 2004, and be made effective no later than December 1, 2004; (3) direct the MISO to replace (by 30-day compliance filing) the "refund" concept in MISO's proposed Attachment X with the "credit" concept in MISO's existing Attachment R as a useful variance from the Order 2003 *pro forma* provisions; and (4) request that the OMS initiate a technical conference to address the distribution-related provisions of MISO's proposed generator interconnection policy.

The Organization of MISO States submits these comments since a majority of the members have agreed to generally support them. The following members generally support these comments, but reserve the right to file clarifying comments or minority reports on their own regarding the issues discussed in these comments:

- Indiana Utility Regulatory Commission
  Iowa Utilities Board
- Kentucky Public Service Commission
- Michigan Public Service Commission
  Minnesota Public Utilities Commission
- Missouri Public Service Commission
  Montana Public Service Commission
- North Dakota Public Service Commission
- Ohio Public Utilities Commission
  South Dakota Public Utilities Commission
- Wisconsin Public Service Commission

For procedural reasons, these members are not able to express a formal position at this time:

- Illinois Commerce Commission
- Nebraska Power Review Board

Members not participating in these comments are:

- Manitoba Public Utilities Board
  Pennsylvania Public Utility Commission

The Minnesota Department of Commerce, as an associate member of the OMS, supports these comments and participated in the preparing of these comments.

Respectfully submitted,

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APPENDIX A

Appendix A is MISO Proposal 3 which is one of the alternative cost allocation approaches released by MISO on January 5, 2004 for discussion at MISO's stakeholder conference on January 7, 2004.

Proposal 3: Cost allocation to Zones based on determination of beneficiaries; Attachment N left as is today.

Add to LGIP and LGIA:

Definitions:

Benefits Analysis shall mean an economic analysis performed by the Transmission Provider in accordance with criteria endorsed by the Organization of Midwest ISO States. The analysis will determine for each Midwest ISO Pricing Zone the pro rata prospective benefits as the reduction in Annual Marginal Wholesale Energy Costs based on locational marginal prices for a security constrained economic dispatch.

11.4 Recovery of Transmission Owner Costs Associated with Network Upgrades or Distribution Upgrades

This Article sets forth the allocation of costs for Network Upgrades, except for ITC Service, which shall be governed by the applicable ITC Rate Schedule, of Transmission Owner Network Upgrades in rates.

Transmission Owner funds all Network Upgrades to Transmission Owner's facilities that are needed for providing Interconnection Service under this LGIA.

The Midwest ISO shall perform a Benefits Analysis and allocate the Transmission Owner's monthly fixed cost for Network Upgrades as calculated in Article 11.4.1 to the beneficiary firm transmission customers via Transmission Provider's applicable zonal rate(s) in accordance with Article 11.4.2.

If and to the extent Midwest ISO's Benefits Analysis shows that the annual benefits are less than the annual fixed cost of the Network Upgrade, the Interconnection Customer shall pay the amounts in excess of the calculated benefit as a monthly fixed charge as calculated in Article 11.4.1

11.4.1 Fixed Charge Calculation

The following formula shall be used in deriving the Transmission Owner's monthly fixed charges for Network Upgrades provided by the Transmission Owner as detailed in Appendix A of this LGIA:

C = (A x B) ÷ 12

Where:

A is the fixed charge rate for the applicable Transmission Owners.

B is the cost incurred as specified in this LGIA by the Transmission Owner in constructing or having constructed the facility or portion of the facility for which it is responsible.

C is the monthly dollar assessment.

The fixed charge rates used in calculating the charges under this Article 11.4.1 for Network Upgrades shall be developed from the applicable formula attached at Attachment N-1 to the Tariff.

If more than one Transmission Owner owns a portion of the facility, the total annual charge shall equal the sum of D calculated for the portion of the facility for which each Transmission Owner is responsible. The monthly charge shall equal D divided by 12.

11.4.2 Fixed Charge Cost Allocation

The costs shall be allocated among each zone based upon the Benefits Analysis performed under Article 11.4.1 using following formula:

Z_A Cost Allocation = Z_A Benefit Ratio * Annualized Benefit Charge to Zones

Where:

Annualized Benefit Charge to Zones = Annualized Project Fixed Charge (AxB) Less Interconnection Customer Cost Responsibility

Interconnection Customer Cost Responsibility = Annualized Project Fixed Charge

(AxB) Less Net Annual Benefit to All MISO Zones (not to be less than zero)

Until such time as the Organization of Midwest ISO States endorse, and the FERC approves a Midwest ISO Benefit Analysis methodology, an interim Zonal Benefit Ratio will be calculated as follows:

$$Z_A \text{ Benefit Ratio} = \frac{Z_A \text{ Annual Marginal Energy Cost Reduction (\$)}}{\text{Sum of Annual Marginal Energy Cost (AMEC) Reduction to All MISO Zones with AMEC Reduction}}$$

Where:

Z_A Annual Marginal Energy Cost Reduction ($) = Difference in Zonal Average Annual Marginal Energy Costs between Base Case and Network Upgrade Case in a five-year prospective Security Constrained Dispatch model.

The monthly cost allocation for each zone shall be calculated as follows:

$$Z_A \text{ Monthly Charge} = \frac{Z_A \text{ Cost Allocation}}{12}$$

For Network Upgrades that are placed into service prior to June 1 in any year, the calendar year used to derive the first charge up until June 1 shall not be the immediately preceding calendar year before that year. For Network Upgrades that go into service on or after June 1, the immediately preceding calendar year shall be used. Each June 1, the charge shall be recalculated based upon the prior calendar year and the charge shall remain in effect until the next June 1 adjustment. The charges for service of less than one month shall be calculated in the same manner as the less that one month charges in the rate formula, Attachment O of the Tariff.

11.4.3. Applicability Of The Charge

The Annualized Benefit Charge to Zones shall apply to all customers under the Tariff, except for ITC Service, and all load including bundled load, except for loads on the ITC System. Each Transmission Owner or any affiliate or division of such owner serving bundled load not under this Tariff and which is served by Midwest ISO transmission facilities shall pay the charge under this Article 11.4.3 in addition to other applicable charges under the Tariff including base transmission charges under Schedules 7, 8, or 9.

The Interconnection Customer Cost Responsibility shall apply to the Interconnection Customer.

If the Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Owner and Affected System Operator shall at that time provide refunds to Interconnection Customer for the amounts advanced for the Network Upgrades.

If the Generating Facility's demonstrated capability at the Commercial Operation Date of each or all energy production devices as appropriate at the Facility is more then 5% below the threshold capacity level that Network Upgrades were determined to not be required but for the Interconnection Request, then the annual fixed charge cost as calculated in Section C Attachment N for these facilities associated with the unneeded Network Upgrades shall be the responsibility of the Interconnection Customer until such time as the Network Upgrades are needed to accommodate the demonstrated capability of the Generating Facility along with other firm uses of the Transmission or Distribution System as applicable. The threshold capacity level(s) associated with the discrete

Network Upgrades as determined in a non-discriminatory manner by the Transmission Provider in the Interconnection System Impact Study as the highest output level for which all or an identified portion of the Network Upgrades that are required for the full electrical output will not be required. The threshold capacity level(s) and associated Network Upgrades are listed in Appendix C.

11.4.4 Special Provisions for Midwest ISO as an Affected System.

When the Midwest ISO is an Affected System for an interconnection to another system, the Midwest ISO will coordinate the performance of interconnection studies with the other system and will include all impacted Midwest ISO Transmission Owning members, as provided for in the LGIP. The Midwest ISO will determine if any Network Upgrades that are required on the Midwest ISO system as a result of the Interconnection Request would not have been needed but for the Interconnection Request. Unless the impacted Midwest ISO Transmission Owner(s) provides, under the LGIA between the Interconnection Customer and the other system, for the payment of refunds for amounts advanced to the Midwest ISO or an impacted Midwest ISO Transmission Owner for Network Upgrades, the Interconnection Customer, the Midwest ISO, and the impacted Midwest ISO Transmission Owner(s) shall enter into an agreement that provides pursuant to Attachment N of Transmission Providers' Tariff, Transmission Owner funds all Network Upgrades on Transmission Owner's facilities needed for connecting Interconnection Customer's Generating Facility to the Transmission System under this LGIA.

The Midwest ISO shall perform a Benefits Analysis and allocate the Transmission Owner's monthly fixed cost for Network Upgrades as calculated in Article 11.4.1 to the Interconnection Customer and the beneficiary firm transmission customers via Transmission Provider's applicable zonal rate(s) in accordance with Article 11.4.2.

If and to the extent Midwest ISO transmission customer beneficiaries are not found the Interconnection Customer shall pay the Transmission Owner's monthly fixed cost for Network Upgrades as calculated in Article 11.4.1

11.4.5 Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrade.