

175 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Midcontinent Independent System Operator, Inc. Docket Nos. ER20-2411-000
ER20-2412-000
ER20-2412-001

ORDER CONDITIONALLY ACCEPTING AGREEMENTS SUBJECT TO FURTHER
COMPLIANCE FILING

(Issued April 15, 2021)

1. In an order issued on December 20, 2019, the Commission found that Generator Interconnection Agreements (GIAs), Facilities Construction Agreements (FCAs), and Multi-Party Facilities Construction Agreements (MPFCAs)¹ entered into in the Midcontinent Independent System Operator, Inc. (MISO) region between June 24, 2015 and August 31, 2018 should be revised to allow transmission owners and affected system operators to unilaterally elect to provide initial funding for network upgrades, if they so choose.²

2. On July 14, 2020, in Docket No. ER20-2411-000, MISO submitted an unexecuted amended and restated GIA (Amended Agreement) among Stoneray Power Partners, LLC (Stoneray) as interconnection customer, Northern States Power Company, a Minnesota corporation (NSP) as transmission owner, and MISO as transmission provider (collectively, the Parties). MISO asserts that the Amended Agreement is revised to provide that NSP may unilaterally elect to provide initial funding for network upgrades

¹ The *pro forma* GIA governs the network upgrades constructed for the interconnection customer by the transmission owner with which it directly interconnects. The *pro forma* FCA is an agreement for network upgrades on affected systems. The indirectly-connected transmission owner under the FCA is known as the affected system operator. The *pro forma* MPFCA is used when multiple interconnection requests cause the need for construction of common network upgrades on a directly-connected transmission system or the transmission system of an affected system operator.

² *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,233, at P 1 (2019) (December 2019 Order).

needed to connect Stoneray's generating facility (Project) to the transmission system.³ Also on July 14, 2020, in Docket No. ER20-2412-000, MISO submitted an unexecuted Facilities Service Agreement (Stoneray FSA)⁴ among the Parties that specifies the terms of repayment of money owed to NSP for initially funding the network upgrades needed to connect the Project.⁵

3. We accept the Agreements, effective as of the date of this order, subject to a further compliance filing to be made within 60 days from the date of this order, as discussed below.

I. Background⁶

A. MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff

4. In MISO, an interconnection customer is responsible for 100% of network upgrade costs, with a possible 10% reimbursement for network upgrades that are 345 kV and above.⁷ MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) initially provided three options for funding the costs of network upgrades for generator interconnections, but only options two and three are currently in effect. Under Option 1: (1) the interconnection customer provided up-front funding for network upgrades; (2) the transmission owner provided a 100% refund of the cost of network upgrades to the interconnection customer upon completion of the network upgrades; and (3) the transmission owner assessed the interconnection customer a monthly network upgrade charge to recover the cost of the non-reimbursable portion of the network upgrade costs. The Commission later found Option 1 funding to be unjust and

³ MISO Amended and Restated GIA Filing, Docket No. ER20-2411-000, Transmittal Letter at 4 (filed July 14, 2020) (Amended Agreement Filing).

⁴ The Amended Agreement and Stoneray FSA are collectively referred to herein as "Agreements."

⁵ MISO NSP-Stoneray FSA Filing, Docket No. ER20-2412-000, Transmittal Letter at 4 (FSA Filing).

⁶ For a full history of these proceedings, see the December 2019 Order, 169 FERC ¶ 61,233 at PP 2-21.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009).

unreasonable and ordered MISO to remove this option from its Tariff, effective March 22, 2011.⁸

5. Under Option 2: (1) the interconnection customer provides up-front funding for network upgrades; and (2) the transmission owner refunds the reimbursable portion of the payment, as applicable, to the interconnection customer in the form of a credit to reduce the transmission service charges incurred by the transmission customer with no further financial obligations on the interconnection customer for the cost of network upgrades (the “Generator Initial Funding” option). Under Option 3, the transmission owner may: (1) unilaterally elect to provide the up-front funding for the capital cost of the network upgrades; and (2) assign the non-reimbursable portion of the costs of the network upgrades directly to the interconnection customer through a network upgrade charge that recovers a return on and of the transmission owner’s cost of capital (the “Transmission Owner Initial Funding” option).

B. Ameren Proceedings

6. In 2015, in response to a complaint filed under section 206 of the Federal Power Act (FPA),⁹ the Commission found the Transmission Owner Initial Funding option to be unjust, unreasonable, and unduly discriminatory or preferential.¹⁰ The Commission accepted MISO’s compliance filings revising MISO’s *pro forma* GIA, *pro forma* FCA, and *pro forma* MPFCA so that a transmission owner or affected system operator may provide the up-front funding for the capital cost of the network upgrades only upon the mutual agreement of both the transmission owner and the interconnection customer, with such Tariff changes effective on June 24, 2015.¹¹

7. On appeal, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated and remanded the Commission’s orders in these proceedings.¹² On remand, the Commission reversed its earlier findings and directed MISO to file Tariff

⁸ *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 43 (2011), *order on reh’g*, 142 FERC ¶ 61,048, at P 39 (2013), *order on reh’g*, 151 FERC ¶ 61,264 (2015).

⁹ 16 U.S.C. § 824e.

¹⁰ *Otter Tail Power Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,220, at P 48, *order on reh’g*, 153 FERC ¶ 61,352, at PP 29-30 (2015).

¹¹ *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,098 (2016); *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,168 (2016).

¹² *Ameren Servs. Co. v. FERC*, 880 F.3d 571, 585 (D.C. Cir. 2018).

sheets, to be effective prospectively from the date of the order (August 31, 2018), to include the Transmission Owner Initial Funding option in the *pro forma* GIA, *pro forma* FCA, and *pro forma* MPFCA.¹³ The Commission also determined that it would not address any agreements entered into between June 24, 2015 (the original effective date of the directed changes to MISO's *pro forma* GIA, *pro forma* FCA, and *pro forma* MPFCA) and August 31, 2018 (the date of the Ameren Remand Order) until after further briefing because of the potential harm it could cause to interconnection customers that have already obtained financing and paid for the network upgrade capital costs that were directly assigned to them.¹⁴

8. The Commission requested further briefing limited to determining how to address GIAs, FCAs, and MPFCAs that were entered into between June 24, 2015 and August 31, 2018 (i.e., the “interim period”) where the interconnection customer provided Generator Initial Funding and the transmission owner or affected system operator that was party to the agreement would have elected the Transmission Owner Initial Funding option had it been available.¹⁵

9. In the December 2019 Order, the Commission accepted MISO's compliance filing to include the Transmission Owner Initial Funding option in the Tariff, effective August 31, 2018.¹⁶ The Commission also considered the briefs provided in response to the questions in the Ameren Remand Order and found that transmission owners and affected system operators should have the right to elect the Transmission Owner Initial Funding option for any GIA, FCA, or MPFCA that became effective during the interim period,¹⁷ provided that such election is done in a not unduly discriminatory manner.¹⁸ The Commission directed MISO to file Tariff revisions to provide for the implementation of this requirement.

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158, at PP 33-34 (2018) (Ameren Remand Order).

¹⁴ *Id.* P 35.

¹⁵ *Id.* P 36.

¹⁶ December 2019 Order, 169 FERC ¶ 61,233 at P 150.

¹⁷ See *Midcontinent Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,032, at PP 37-43 (2021) for a discussion of how the Commission interprets the term “became effective during the interim period,” consistent with Commission precedent.

¹⁸ December 2019 Order, 169 FERC ¶ 61,233 at P 125.

10. The Commission directed MISO to submit a filing within 60 days of the issuance of the December 2019 Order providing a list of all agreements that became effective during the interim period under which the transmission owner or affected system operator is electing the Transmission Owner Initial Funding option.¹⁹ The Commission also directed MISO to file the amended agreements within 60 days from the date of the order (the deadline was later extended to July 17, 2020), along with FSAs for in-service network upgrades.²⁰

11. On rehearing, the Commission upheld its finding in the December 2019 Order allowing transmission owners and affected system operators that were parties to any GIAs, FCAs, and MPFCAs that became effective during the interim period to elect Transmission Owner Initial Funding for the network upgrades in those agreements, and accepted MISO's Tariff revisions implementing this requirement.²¹ The Commission also noted that MISO timely filed a list of all affected agreements, which included 13 GIAs, five FCAs, and three MPFCAs, and stated that the affected agreements and their associated FSAs would be acted on by the Commission in the relevant dockets at a future date.²²

C. Pro Forma FSA

12. On April 27, 2020, the Commission accepted MISO's Tariff filing to implement a new *pro forma* FSA in its Tariff, effective on the date of the order, which provides a standard agreement for use when a transmission owner or affected system operator elects the Transmission Owner Initial Funding option.²³ As relevant here, the Commission accepted the proposed requirement in the *pro forma* FSA that the interconnection customer must provide security (for example, a letter of credit, surety bond, or parent guaranty) in an amount equal to the cost of the network upgrade(s), which may be

¹⁹ *Id.* P 136.

²⁰ *Id.* PP 136-141; Notice of Extension of Time, Docket Nos. EL15-68-003, et al. (Apr. 13, 2020).

²¹ *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,248, at PP 21, 30 (2020).

²² *Id.* PP 29-30.

²³ *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,075 (*Pro Forma FSA Order*), *order addressing argument raised on reh'g*, 173 FERC ¶ 61,037 (2020) (*Pro Forma FSA Order on Rehearing*).

reduced *pro rata* over the term of the FSA.²⁴ The Commission found that the security requirement was a reasonable way to protect the transmission owner and transmission service customers from the risk that an interconnection customer will stop making payments under an FSA, as the unpaid portion of any undepreciated costs would otherwise be borne by either the transmission owner or transmission service customers, or assigned to another interconnection customer.²⁵ The Commission found that the requirement was not duplicative of any other financial security.

II. Filings

13. MISO states that it has designated the Amended Agreement as Second Revised Service Agreement No. 2959 under MISO's Tariff, and that it has designated the Project as Project No. J426 in its interconnection queue.²⁶ The Amended Agreement replaces and supersedes the first amended GIA executed by and between the Parties on June 20, 2018 and filed in Docket No. ER18-1914-000.²⁷ MISO asserts that Article 11.3 of the Amended Agreement is revised to provide that NSP may elect the Transmission Owner Initial Funding option for the network upgrades required to facilitate the interconnection of the Project to NSP's transmission system, in accordance with the December 2019 Order.²⁸ MISO notes that the Amended Agreement is being filed on an unexecuted basis at the direction of the interconnection customer. MISO requests that the Amended Agreement be made effective as of the date of this order.

14. MISO states that it has designated the Stoneray FSA as Original Service Agreement No. 3513 under MISO's Tariff.²⁹ MISO states that it has filed the Stoneray FSA to implement NSP's election of the Transmission Owner Initial Funding option for the network upgrades associated with the Project, which were funded by Stoneray under the terms of the original GIA and which are currently in service. As further described

²⁴ *Pro Forma* FSA Order, 171 FERC ¶ 61,075 at PP 23, 32.

²⁵ *Id.* P 32.

²⁶ Amended Agreement Filing, Transmittal Letter at 1.

²⁷ *Id.*, Tab B, Amended and Restated GIA, preamble. The first amended GIA replaced and superseded the original GIA filed in Docket No. ER17-83-000. The original GIA was executed by and between the Parties on September 28, 2016. *See* MISO, Midwest ISO Agreement, SA 2959, Northern States Power-Stoneray Power Partners GIA (J426), 31.0.0 (eff. Oct. 14, 2016).

²⁸ Amended Agreement Filing, Transmittal Letter at 4.

²⁹ FSA Filing, Transmittal Letter at 1.

below, NSP will refund the net book value of the network upgrade costs previously collected from Stoneray under the terms of the original GIA and then recover from Stoneray the return on and of the cost of the network upgrades through a monthly or annual revenue requirement.³⁰ MISO requests that the Stoneray FSA be made effective as of June 30, 2020.

15. MISO explains that, while the Stoneray FSA largely conforms to the *pro forma* FSA in MISO's Tariff, some non-conforming provisions have been proposed to reflect the fact that each of the network upgrades associated with Project No. J426 is currently in service.³¹ For instance, MISO states that Article II of the Stoneray FSA has been modified to state that the term will be 216 months, as opposed to the 240-month term in the *pro forma* FSA. MISO explains that this change recognizes the fact that, if the network upgrades had been under an FSA starting when they were placed into service, the network upgrades would be partially depreciated. MISO also states that, while Article III.g of the *pro forma* FSA contains provisions related to the true-up of the estimated initial cost of the network upgrades and the network upgrades' actual cost, the provisions have been removed as unnecessary because the actual network upgrade costs were known at the time the Stoneray FSA was negotiated. MISO asserts that the security provisions in Article IV.a have also been revised to clarify that the security amount will be based on the net book value of the network upgrades. MISO contends that the changes are just and reasonable because, while the *pro forma* FSA envisions that an FSA may be executed before the network upgrades are in service and before their actual costs are known, in this case the upgrades are in service and their actual costs are known.

III. Notice and Responsive Pleadings

16. Notice of MISO's Amended Agreement and Stoneray FSA filings was published in the *Federal Register*, 85 Fed. Reg. 43,833 (July 20, 2020), with interventions and protests due on or before August 4, 2020.

17. Timely motions to intervene in Docket Nos. ER20-2411-000 and ER20-2412-000 were filed by Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company NSP, and EDF Renewables, Inc. Stoneray filed timely protests in Docket Nos. ER20-2411-000 and ER20-2412-000.

³⁰ *Id.* at 3 and Tab B, proposed FSA, preamble. We note that, while the filings refer to the calculation of the net book value as the "initial capital cost," we use the term net book value.

³¹ *Id.*, Transmittal Letter at 4.

18. On August 19, 2020, MISO and Xcel filed answers to Stoneray's protests. On September 1, 2020, Stoneray filed an answer to the answers.

IV. Deficiency Letter and Deficiency Response

19. On October 1, 2020, Commission staff issued a letter informing MISO that its Stoneray FSA filing in Docket No. ER20-2412-000 was deficient and requesting additional support for the net book value stated in the Stoneray FSA (Deficiency Letter). MISO submitted its response in Docket No. ER20-2412-001 on October 28, 2020 (Deficiency Response). Notice of MISO's Deficiency Response was published in the *Federal Register*, 85 Fed. Reg. 69,616 (Nov. 3, 2020), with interventions and protests due on or before November 18, 2020. None was filed.

V. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

22. We accept the Agreements, effective as of the date of this order, subject to a further compliance filing to be submitted within 60 days from the date of this order, as discussed below. We find that the Amended Agreement appropriately reflects NSP's decision to elect the Transmission Owner Initial Funding option for network upgrades associated with the Project that were originally identified in the interim period agreement executed by the Parties on September 28, 2016, as allowed in the December 2019 Order. We also find that the associated non-conforming Stoneray FSA, with the conditions imposed below, sets forth just and reasonable terms and conditions to implement the network upgrade charge payment for in-service network upgrades, as discussed below.

23. As an initial matter, we accept the non-conforming provisions that MISO has proposed to Articles II and IV.a of the Stoneray FSA, as well as the proposed removal of *pro forma* FSA Article III.g from the Stoneray FSA; we find that these changes are just and reasonable because they reflect the fact that each of the network upgrades associated with the Project is currently in service. Specifically, we accept the proposed 216-month term in Article II of the Stoneray FSA in recognition of the fact that, if the network

upgrades had been under an FSA starting when they were placed into service, the network upgrades would be partially depreciated.³² We also accept the changes to the security provisions in Article IV.a of the Stoneray FSA to clarify that the security amount will be based on the net book value of the network upgrades. Finally, we accept the removal of provisions in Article III.g of the *pro forma* FSA related to the true-up of the estimated initial cost of the network upgrades and the network upgrades' actual cost. We agree that a true-up from estimated costs to actual costs will not be necessary in this case because actual costs have been used to calculate the net book value of the network upgrades.

1. Effective Dates

a. Filing

24. MISO requests that the Commission grant waiver of any Commission regulations that the Commission may deem applicable to the Amended Agreement filing, and requests issuance of an order accepting the Amended Agreement with an effective date as of the date of the Commission order.³³

25. MISO requests that the Commission waive its 60-day prior notice requirement and make the Stoneray FSA effective as of June 30, 2020.³⁴ MISO states that the calculation of the annual and monthly revenue requirements are based on the net book value of the network upgrades as of June 30, 2020, and argues that allowing this effective date is necessary to be consistent with this valuation. MISO contends that imposing a different effective date might require MISO to refile the Stoneray FSA to revise the determination of the annual and monthly revenue requirements, and that the June 30, 2020 date will provide certainty to the Parties as to the status of the agreement. MISO also requests that the Commission grant waiver of any other Commission regulations that the Commission may deem applicable to the Stoneray FSA filing.

b. Protest

26. Stoneray protests the proposed effective date of June 30, 2020 for the Stoneray FSA and asks the Commission to establish an effective date of September 12, 2020,

³² We note that the parties are free to amend the term of the FSA if needed based on the effective date granted by the Commission.

³³ Amended Agreement Filing, Transmittal Letter at 4-5.

³⁴ FSA Filing, Transmittal Letter at 5.

which is 60 days after filing.³⁵ Stoneray argues that MISO and NSP have not stated any other reason for their requested effective date other than administrative convenience. Stoneray contends that administrative convenience is not good cause to subject Stoneray to paying the rate earlier than the Commission's regulations provide. Stoneray argues that, if June 30, 2020 was a necessary date, MISO and NSP could have filed the Stoneray FSA in April 2020. Further, Stoneray argues, if a June 30, 2020 effective date is allowed, Stoneray would be subjected to three-four months of payments at once; Stoneray explains that the Commission will likely issue its order in September 2020, and according to the terms of the Stoneray FSA, Stoneray would have to pay the monthly fee as of the June 30, 2020 effective date.³⁶ Stoneray also contends that it is inconsistent to establish a June 30, 2020, effective date for the Stoneray FSA when the underlying basis for the rate is the proposed Amended Agreement, which has a requested effective date as of the date of a Commission order.

c. Answers

27. MISO argues that Stoneray's objection to the requested effective date for the Stoneray FSA lacks merit, as the FSA is a service agreement and was properly filed within 30 days of commencement of service.³⁷ To the extent the Commission finds that the Stoneray FSA is subject to the 60-day filing requirement, MISO contends that there is good cause for granting the June 30, 2020 effective date due to the net book valuation date. MISO argues that granting a different effective date would require revisions to the net book value, including renegotiation and recalculation of the valuation date and the payment schedule. In any event, MISO states, Stoneray has been on notice that the Stoneray FSA would be required since NSP notified Stoneray that it would exercise the Transmission Owner Initial Funding option.

28. Stoneray answers that, because MISO requested an effective date as of the date of Commission order for the proposed Amended Agreement, it is procedurally and substantively deficient to charge a rate under the Stoneray FSA as of June 30, 2020, when the proposed Amended Agreement is not yet effective under the FPA.³⁸ Stoneray contends that MISO's administrative efficiency arguments are irrelevant.³⁹

³⁵ Stoneray Protest of the FSA, Docket No. ER20-2412-000, at 5.

³⁶ *Id.* at 6.

³⁷ MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 6.

³⁸ Stoneray Answer to Answers, Docket Nos. ER20-2411 and ER20-2412, at 3-4.

³⁹ *Id.* at 4.

d. Commission Determination

29. We accept the Amended Agreement to become effective as of the date of this order, as MISO has requested. As noted above, Article 11.3 of the Amended Agreement allows NSP to elect the Transmission Owner Initial Funding option for the network upgrades associated with the Project that were originally identified in the interim period agreement executed by the Parties on September 28, 2016. The Stoneray FSA implementing NSP's choice of the Transmission Owner Initial Funding option cannot be effective before the contract language in the Amended Agreement allowing NSP to make that choice. Thus, we deny the requested June 30, 2020 effective date for the Stoneray FSA and instead accept it effective as of the date of this order. As discussed below, the effective date granted for the Stoneray FSA may require some conforming changes to the FSA, such as adjustment to the net book value calculation.

2. Security

a. Filing

30. MISO states that the Stoneray FSA includes a security provision that is substantially similar to the security provision in the *pro forma* FSA. The Stoneray FSA requires the interconnection customer to provide the transmission owner with a form of irrevocable security reasonably acceptable to the transmission owner (for example, a letter of credit, surety bond, or parent guaranty) in an amount equal to the remaining cost of the network upgrades paid under the terms of the original GIA for the funding of the network upgrades (i.e., the net book value).⁴⁰ The transmission owner will release all security received for the network upgrade costs under the GIA upon the transmission owner's receipt of security under the Stoneray FSA. The security provided under the GIA may be applied as the security for the Stoneray FSA – the interconnection customer will not be required to maintain concurrently the security under the GIA and the security under the Stoneray FSA.

b. Protest

31. Stoneray states that the Stoneray FSA would require Stoneray to post security for the 18-year term of the agreement.⁴¹ Stoneray states that the Stoneray FSA includes this security because the Commission accepted the concept as part of the *pro forma* FSA it accepted in the *Pro Forma* FSA Order; however, Stoneray notes that rehearing has been sought of that Commission decision and Stoneray protests the requirement to post security under the Stoneray FSA for all the reasons that have been raised in protests and

⁴⁰ FSA Filing, Tab B, proposed FSA, art. IV (Security).

⁴¹ Stoneray Protest of the FSA, Docket No. ER20-2412-000, at 3.

on rehearing of the *Pro Forma* FSA Order. Stoneray requests that the Commission address each of the points raised in that rehearing request and apply them to the security NSP is seeking in this docket.⁴²

32. Stoneray provides a summary of those arguments. Stoneray states that the circumstances under an Option 1 FSA and the Stoneray FSA submitted in this proceeding are identical once the network upgrades are completed and operational.⁴³ Specifically, Stoneray asserts that the Stoneray FSA is identical to an Option 1 FSA in that Stoneray has fully funded the network upgrade, which is now operational, and NSP would refund the amount previously funded by Stoneray back to Stoneray and then recollect the refunded amount from Stoneray over 18 years through a revenue requirement that is based on NSP's carrying costs.⁴⁴ Stoneray states that, in the Option 1 FSA context, the Commission rejected a MISO transmission owner's attempt to require the interconnection customer to provide security for the term of the FSA, finding that security is not needed in the event that the interconnection customer fails to make payments under the FSA because the default provision of the FSA covers this risk.⁴⁵ Stoneray asserts that the Stoneray FSA contains a similar default provision, which will similarly protect NSP and its transmission customers should Stoneray fail to make payments. Stoneray states that the Commission has been clear that security is not needed once the network upgrades are completed and operational and collection of payments begins under an FSA.⁴⁶ Finally, Stoneray argues that the security provision in the Stoneray FSA would require Stoneray to carry a liability on its books to make payments for the term of the FSA *and* carry the liability of providing security for those payments for the term of the FSA; Stoneray contends that this is a double burden and is not just and reasonable.

c. Answers

33. Xcel and MISO contend that the security provisions in the Stoneray FSA are consistent with those in the *pro forma* FSA that have already been accepted as just and

⁴² *Id.* at 5.

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 3-4.

⁴⁵ *Id.* at 4 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,072, at P 15 (2016) (*White Oak II*)).

⁴⁶ *Id.* (citing *White Oak II*, 154 FERC ¶ 61,072 at P 11).

reasonable.⁴⁷ MISO states that, in fact, the order accepting the *pro forma* FSA specifically rejected the very arguments against the security requirement that are advanced in Stoneray's protest.⁴⁸ Xcel argues that these security provisions protect transmission owners and their transmission service customers against the risk of non-payment or default by interconnection customers regardless of whether the network upgrades are currently in-service.⁴⁹ Xcel and MISO state that the pending requests for rehearing of the *Pro Forma* FSA Order do not stay the effectiveness or enforceability of that order.⁵⁰

34. In its answer to Xcel's and MISO's answers, Stoneray contends that no persuasive argument has been advanced to show that the irrevocable security in the Stoneray FSA is just and reasonable.⁵¹ Stoneray asserts that the Commission has not addressed the legality of requiring an interconnection customer to provide irrevocable security under an FSA and the issue is pending on rehearing before the Commission.⁵² Stoneray claims that, if it had not protested this point, Xcel would have claimed that Stoneray waived its right not to provide irrevocable security if later the legality of the irrevocable security is overturned by the Commission or a court.

d. Commission Determination

35. We find that the requirement in the Stoneray FSA for Stoneray to post security on the net book value of the network upgrade is just and reasonable because it is required by the Tariff. We reject Stoneray's arguments that the Commission's findings removing the security provision from an Option 1 FSA in *White Oak II* apply here. In *White Oak II*, the Commission based its decision to remove the security provision from the White Oak FSA on the fact that there was no security requirement in the Tariff that applied to FSAs. Here, the effective Tariff includes a security provision for the *pro forma* FSA, and the security provision in the Stoneray FSA follows the Tariff. Therefore, the Commission's

⁴⁷ Xcel Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 3-4; MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 5.

⁴⁸ MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 5 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,075, PP 33-34 (2020)).

⁴⁹ Xcel Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 4-5.

⁵⁰ *Id.* at 5; MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 5.

⁵¹ Stoneray Answer to Answers, Docket Nos. ER20-2411 and ER20-2412, at 2.

⁵² *Id.* at 3.

decision in *White Oak II* is distinguishable. With respect to the arguments raised by Stoneray that were also raised in the *Pro Forma* FSA Order and on rehearing of that order, we note that the Commission rejected those arguments on rehearing.⁵³

3. Refund and Payment Structure

a. Filings

36. The Amended Agreement states that the transmission owner will refund the costs previously collected from the interconnection customer for the network upgrades associated with the Project.⁵⁴ As a prerequisite, the interconnection customer must provide the transmission owner with the aforementioned irrevocable security reasonable to the transmission owner in an amount equal to the net book value, which is calculated as \$2,630,774, within the later of 45 days after execution of the FSA or 45 days after Commission acceptance of the unexecuted FSA.⁵⁵ Within 10 days of receipt of this security, the transmission owner will then refund to the interconnection customer \$2,630,744. The Amended Agreement notes that the amount of the refund is based on the net book value of the network upgrades as of June 30, 2020, which is the requested effective date of the Stoneray FSA.⁵⁶ The Amended Agreement states that, “[i]n the event the refund date changes due to the Effective Date of this GIA or the associated FSA, the refund will be adjusted to account for net book value as of the refund date.”⁵⁷

37. The transmission owner will charge the interconnection customer under the terms of the Stoneray FSA to recoup a return on and of the net book value of the network upgrades refunded to the interconnection customer through a monthly or annual revenue requirement. According to the Stoneray FSA, beginning with the month following the effective date of the FSA and continuing for the term of the FSA, the interconnection

⁵³ *Pro Forma* FSA Order on Rehearing, 173 FERC ¶ 61,037 at PP 20-23.

⁵⁴ Amended Agreement Filing, Tab B, Generator Interconnection Agreement, ex. A5 (Estimated Costs of Transmission Owner’s Interconnection Facilities and Network Upgrades to be Constructed by Transmission Owner).

⁵⁵ *Id.*, app. B (Interconnection Customer Milestone 1d); FSA Filing, Tab B, proposed FSA, art. IV (Security). The calculation of the net book value of the network upgrade cost is explained further below.

⁵⁶ *Id.*, ex. A5 (Estimated Costs of Transmission Owner’s Interconnection Facilities and Network Upgrades to be Constructed by Transmission Owner), ex. A9 (Facilities Subject to Transmission Owner Reimbursement).

⁵⁷ *Id.*, app. B (Transmission Owner Milestone 11).

customer will pay the monthly revenue requirement to the transmission owner by the 15th day of each month.⁵⁸ Alternatively, the interconnection customer may switch to an annual payment. The Stoneray FSA states that, because the network upgrades associated with the FSA are already in service, for the purposes of calculating the monthly revenue requirement, the net book value of the network upgrades is calculated as of the effective date of the associated Amended Agreement.⁵⁹ The Stoneray FSA calculates the net book value at \$2,630,774 and, using a levelized fixed charge rate of 11.3630%, calculates the monthly revenue requirement at \$24,911 and the annual revenue requirement at \$298,935.⁶⁰ The Stoneray FSA states that the revenue requirements and the levelized fixed charge rate are based on the net book value, term, and certain historic, actual data from the transmission owner's attachment O formula rate or successor rate under the Tariff, including the transmission owner's: (1) combined tax rate; (2) interest on long term debt; (3) long term debt and common equity balances; and (4) Commission-approved return on equity. The Stoneray FSA states that the payment will be recalculated annually by updating certain inputs to the formula rate.

b. Deficiency Letter and Deficiency Response

38. In the Deficiency Letter, Commission staff asked for more information about how the net book value is calculated, including information about the actual gross plant value of the network upgrades, the in-service date of the network upgrades, and the accrued depreciation.

39. In the Deficiency Response, MISO states that: (1) the actual gross plant value of the network upgrades is \$2,750,641; (2) the actual in-service date of the network upgrades was September 20, 2018; and (3) the accrued depreciation is \$119,868.⁶¹ MISO explains that NSP calculated the blended depreciation rate for each plant account based on the depreciation rate in each of NSP's three jurisdictions (Minnesota, North Dakota, and South Dakota), as shown in a sample net book value calculation attached to the Deficiency Response.

⁵⁸ FSA Filing, Tab B, proposed FSA, art. III (Network Upgrade Charge).

⁵⁹ *Id.*, preamble. We note that this preamble language conflicts with: (1) Exhibit A5 and Appendix B to the Amended Agreement; and (2) the calculations shown in Exhibit I to the Stoneray FSA, which all indicate that the refund net book value is calculated as of June 30, 2020 (i.e., the requested effective date of the Stoneray FSA).

⁶⁰ FSA Filing, Tab B, proposed FSA, art. III (Network Upgrade Charge) and ex. 1.

⁶¹ Deficiency Response at 3.

c. Protest

40. Stoneray asks the Commission to reject the Stoneray FSA.⁶² Stoneray states that MISO, NSP, and Stoneray are parties to the original GIA that became effective on October 14, 2016. Stoneray asserts that the GIA identified a new substation as a network upgrade that was required for interconnection, and that the estimated cost of the substation was \$3,413,000. Stoneray states that it funded the network upgrade, which is already in service.⁶³ Stoneray states that the depreciated cost of the network upgrade since it was placed in operation (i.e., net book value) is now \$2,630,774. Stoneray contends that, now that NSP has elected the Transmission Owner Initial Funding option, NSP intends to refund that \$2,630,774 to Stoneray and then re-collect it over the next 18 years through a revenue requirement that includes NSP's carrying costs, which translates to a cost of \$5,380,830 to Stoneray, or more than double the remaining depreciated value of what Stoneray initially funded.

d. Commission Determination

41. We find it just and reasonable for the Stoneray FSA to require that NSP must refund the net book value of the network upgrade costs previously collected from Stoneray under the terms of the original GIA and set forth annual and monthly revenue requirements allowing NSP to recover a return on and of this net book value. We deny Stoneray's request to reject the Stoneray FSA on the grounds that the Transmission Owner Initial Funding option increases Stoneray's costs – this argument has already been addressed and denied by the Commission.⁶⁴

42. However, due to the effective date granted for the Stoneray FSA (i.e., the date of this order), some adjustment to the net book value calculation may be necessary. Specifically, Exhibit A5 and Appendix B to the Amended Agreement state that the refund to the interconnection customer is based on a net book value as of June 30, 2020, which

⁶² Stoneray Protest of the FSA, Docket No. ER20-2412-000, at 1.

⁶³ *Id.* at 2.

⁶⁴ *See* December 2019 Order, 169 FERC ¶ 61,233 at P 128 (“While we acknowledge that re-opening existing GIAs, FCAs, MPFCAs may increase costs to certain interconnection customers . . . , we are not persuaded that these potential impacts are so great that we should deprive transmission owners or affected system operators of an opportunity to earn a return on the capital costs of the network upgrades built on their system that should have been expressly allowed under the Tariff during the interim period.”).

is the requested effective date for the Stoneray FSA.⁶⁵ Exhibit A5 and Appendix B to the Amended Agreement further state that “[i]n the event the refund date changes due to the Effective Date of this GIA or the associated FSA, the refund will be adjusted to account for net book value as of the refund date.” We direct MISO, on compliance, to either: (1) recalculate the refund due to the interconnection customer to account for the effective date of the Stoneray FSA granted in this order; or (2) justify the continued use of the June 30, 2020 calculation date for the net book value. We also direct MISO to make any necessary conforming changes to: (1) the monthly and annual revenue requirements, which are based partially on the net book value; (2) the references to the net book valuation date throughout the Agreements; and (3) the required amount of security to be posted under the Stoneray FSA, which should be equal to the net book value.

43. We also find that the proposed provisions related to the timing of the refund to Stoneray and the monthly payments made by Stoneray are unjust and unreasonable. Specifically, under Article IV(a) of the Stoneray FSA and Appendix B to the Amended Agreement, Stoneray is required to provide security in the amount of the net book value of the network upgrades within the later of 45 days from execution of the FSA by all Parties or 45 days from Commission acceptance of the unexecuted FSA. NSP must then refund to Stoneray the net book value of the network upgrades already paid by Stoneray within 10 days of receipt of security. As Stoneray has not yet executed the Stoneray FSA, it may not receive its refund until 55 days after the issuance of this order. However, under Article III of the Stoneray FSA, Stoneray must begin making its network upgrade charge payments by the 15th day of the month following the effective date of the FSA, which is the date of this order. Therefore, the Agreements do not ensure that Stoneray will receive its refund before it must begin making payments to NSP that are designed to allow NSP to recover a return on and of the money refunded to Stoneray. We find it unjust and unreasonable for Stoneray to potentially be required to begin making payments that allow NSP to recover a return on and of funds that NSP still possesses. We direct MISO, in the compliance filing due within 60 days from the date of this order, to propose changes that fix this potential timing discrepancy. For instance, the Stoneray FSA could require payments to begin the business day following Stoneray’s receipt of the refund.

⁶⁵ As we indicate above, there is one instance of conflicting (and apparently incorrect) language in the preamble to the Stoneray FSA indicating that the net book value is calculated as of the effective date of the Amended Agreement.

4. Reservation of Rights

a. Protest

44. Stoneray states that the December 2019 Order is pending on rehearing, and should the Commission grant rehearing, the premise for the Agreements will no longer exist.⁶⁶ Stoneray states that, should the Commission deny rehearing, then the December 2019 Order will be appealed.⁶⁷ Stoneray states that it files a protest to ensure that, if the proposed Agreements are accepted by the Commission, Stoneray will not be precluded from seeking to have the proposed Agreements become a nullity effective to the date accepted by the Commission and for Stoneray to be made financially whole if: (1) Transmission Owner Initial Funding generally; or (2) the ability to retroactively elect Transmission Owner Initial Funding in the interim period; or (3) the provision of irrevocable security ultimately are found illegal under the FPA. Stoneray states that its preference is for the reservation of rights to be memorialized in the Agreements, but if the Commission declines that request, then Stoneray requests that the Commission acknowledge Stoneray's position in the order so that it is memorialized in the formal record.⁶⁸

b. Answers

45. Xcel and MISO contend that the Agreements were filed in accordance with the Commission's requirements in the December 2019 Order, and that the pending requests for rehearing of the December 2019 Order do not stay the effectiveness or enforceability of that order.⁶⁹ Xcel and MISO also ask the Commission to reject Stoneray's request to memorialize its reservation of rights in the Agreements.⁷⁰ Xcel states that Stoneray has memorialized its protest in the formal record and that Stoneray has not proposed specific language to include in the Agreements, nor shown that such language is a just,

⁶⁶ Stoneray Protest of the Amended Agreement, Docket No. ER20-2411-000, at 2-3; Stoneray Protest of the FSA, Docket No. ER20-2412-000, at 6.

⁶⁷ Stoneray Protest of the Amended Agreement, Docket No. ER20-2411, at 3; Stoneray Protest of FSA, Docket No. ER20-2412-000, at 7.

⁶⁸ Stoneray Protest of the Amended Agreement, Docket No. ER20-2411, at 3-4; Stoneray Protest of FSA, Docket No. ER20-2412-000, at 8.

⁶⁹ Xcel Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 3; MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 2-4.

⁷⁰ Xcel Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 5; MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 6.

reasonable, and necessary change to the *pro forma* FSA.⁷¹ MISO states that such amendments would be premature because any reversal or modification on rehearing or appeal in the underlying dockets is speculative, and if the December 2019 Order is reversed, it will be up to the Commission to fashion appropriate remedies.⁷²

46. Stoneray asserts that it was justified in reserving its rights should the Commission or a court overturn the legality of the Transmission Owner Initial Funding option, retroactively applying Transmission Owner Initial Funding to agreements from the interim period, or the irrevocable security provision under MISO's *pro forma* FSA.⁷³ Stoneray asserts that, if it did not specifically reserve its rights and if these issues are overturned, Xcel might argue that Stoneray waived its right to have the Agreements rescinded.

c. Commission Determination

47. We deny Stoneray's request to memorialize its reservation of rights in the Agreements. The Stoneray FSA, which conforms with MISO's *pro forma* FSA, appropriately reflects the state of the law as of the date the agreement becomes effective. Neither a request for rehearing nor a petition for review stays the effectiveness or enforceability of a Commission order.⁷⁴ In addition, Article X.f of the Stoneray FSA and Article 30.11 of the Amended Agreement provide that nothing in the Agreements shall limit the rights of the Parties or of the Commission under Sections 205 and 206 of the FPA and the Commission's rules and regulations thereunder. The Commission will exercise its discretion to fashion appropriate remedies in the event that its orders are vacated or modified by Commission orders or the courts, and will rule on any request to retroactively annul and reverse Transmission Owner Initial Funding elections if and when an FPA section 205 or 206 filing making such a request is submitted.

⁷¹ Xcel Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 6.

⁷² MISO Answer to Protests, Docket Nos. ER20-2411 and ER20-2412, at 6.

⁷³ Stoneray Answer to Answers, Docket Nos. ER20-2411 and ER20-2412, at 5.

⁷⁴ 16 U.S.C. § 8251(c); 18 C.F.R. § 385.713(e) (2020). We also note that, after Stoneray filed its protest in this proceeding, the Commission issued an order addressing arguments raised on rehearing of the December 2019 Order and reached the same result it did in the December 2019 Order. See *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,248 at PP 21-28.

The Commission orders:

(A) The Amended Agreement is hereby accepted, subject to condition, to become effective as of the date of this order, as discussed in the body of this order.

(B) The Stoneray FSA is hereby accepted, subject to condition, to become effective as of the date of this order, as discussed in the body of this order.

(C) MISO is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Chairman Glick is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	Docket Nos.	ER20-2436-000	
		ER20-2437-000	
		ER20-2437-001	
			ER20-2423-000
			ER20-2424-000
			ER20-2424-001
			ER20-2427-000
			ER20-2427-001
			ER20-2411-000
			ER20-2412-000
			ER20-2412-001
			ER20-2438-000
			ER20-2439-000
			ER20-2439-001

(Issued April 15, 2021)

GLICK, Chairman, *concurring*:

1. I support today's orders accepting the revised, interim-period Generator Interconnection Agreements (GIAs) and Facilities Construction Agreements (FCAs) – and associated Facilities Service Agreements (FSAs) – because the agreements are generally consistent with the Midcontinent Independent System Operator, Inc. (MISO) *pro forma* agreements and reflect the state of the law today.

2. However, I write separately to reiterate my concern that giving transmission owners the discretion to unilaterally choose whether to self-fund network upgrades constructed on behalf of affiliated and non-affiliated interconnection customers may be unjust and unreasonable and unduly discriminatory or preferential.¹ The Commission

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,233 (2019) (Glick, Comm'r, dissenting), *order on reh'g*, 172 FERC ¶ 61,248 (2020) (Glick, Comm'r, dissenting).

failed to meaningfully wrestle with these concerns in its orders allowing transmission owners the unilateral right to choose up-front funding.²

3. I also continue to believe that the Commission was unwise to permit the reopening of numerous previously-negotiated interconnection agreements without engaging in meaningful balancing of the specific facts and equities presented and in the face of considerable evidence that allowing transmission owners and affected system operators to retroactively elect to self-fund the network upgrades associated with those agreements will result in substantial harm to interconnection customers.³

For these reasons, I respectfully concur.

Richard Glick
Chairman

² *Id.*

³ *Id.*