

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. ER20-2423-000
ER20-2424-000
ER20-2424-001
ER20-2427-000
ER20-2427-001

ORDER CONDITIONALLY ACCEPTING AGREEMENTS SUBJECT TO FURTHER
COMPLIANCE FILING AND REJECTING AN UNEXECUTED FACILITIES
SERVICE AGREEMENT

(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 15, 2020, in Docket No. ER20-2423-000, in compliance with the December 2019 Order, MISO submitted an unexecuted amended and restated FCA (Amended FCA), among Red Pine Wind Project, LLC (Red Pine) as interconnection customer, Northern States Power Company, a Minnesota corporation (NSP), Great River

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).

Energy (Great River), Western Minnesota Municipal Power Agency (WMPMA), Otter Tail Power Company (Otter Tail), and Central Minnesota Municipal Power Agency (CMMMPA) as transmission owners, and MISO as transmission provider (collectively, the Parties). MISO asserts that the Amended FCA is revised to provide that the transmission owners may unilaterally elect to provide initial funding for network upgrades needed to connect Red Pine's generating facility to the transmission system.³ Also on July 15, 2020, in Docket Nos. ER20-2424-000 and ER20-2427-000, MISO submitted, respectively, an unexecuted Facilities Service Agreement (FSA) among Red Pine as interconnection customer, Otter Tail, as transmission owner, and MISO, as transmission provider (Otter Tail FSA) and an unexecuted FSA among Red Pine as interconnection customer, NSP as transmission owner, and MISO as transmission provider (NSP FSA), specifying the terms of repayment of money owed to the transmission owners for initially funding the network upgrades needed to connect Red Pine's generating facility. All three of these agreements pertain to Red Pine's project, designated as Project No. H081 in MISO's interconnection queue (Project).

3. We accept the Amended FCA and the Otter Tail FSA, 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. We reject the NSP FSA, as discussed below.

I. Background⁴

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.⁵ 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

³ MISO Amended and Restated FCA Filing, Docket No. ER20-2423-000, Transmittal Letter at 4 (filed July 15, 2020) (Amended FCA Filing).

⁴ For a full history of these proceedings, see the December 2019 Order, 169 FERC ¶ 61,233 at PP 2-21.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009).

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 unreasonable and ordered MISO to remove this option from its Tariff, effective March 22, 2011.⁶

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),⁷ the Commission found the Transmission Owner Initial Funding option to be unjust, unreasonable, and unduly discriminatory or preferential.⁸ 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, 2015.⁹

⁶ *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 43 (2011) (*E.ON*), *order on reh’g*, 142 FERC ¶ 61,048, at P 39 (2013), *order on reh’g*, 151 FERC ¶ 61,264 (2015).

⁷ 16 U.S.C. § 824e.

⁸ *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).

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,098 (2016); *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,168 (2016).

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.¹⁰ On remand, the Commission reversed its earlier findings and directed MISO to file Tariff 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.¹¹ 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.¹²

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.¹³

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, 2018.¹⁴ 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, provided that such election is done in a not unduly discriminatory manner.¹⁵ The Commission directed MISO to file Tariff revisions to provide for the implementation of this requirement.

¹⁰ *Ameren Servs. Co. v. FERC*, 880 F.3d 571, 585 (D.C. Cir. 2018).

¹¹ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158, at PP 33-34 (2018) (Ameren Remand Order).

¹² *Id.* P 35.

¹³ *Id.* P 36.

¹⁴ December 2019 Order, 169 FERC ¶ 61,233 at P 150.

¹⁵ *Id.* 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.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹

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.²⁰ 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 initial capital cost of the network

¹⁶ *Id.* P 136.

¹⁷ *Id.* PP 136-141; Notice of Extension of Time, Docket Nos. EL15-68-003, et al. (Apr. 13, 2020).

¹⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,248, at PP 21, 30 (2020).

¹⁹ *Id.* PP 29-30.

²⁰ *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*).

upgrade(s), which may be reduced *pro rata* over the term of the FSA.²¹ 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.²² The Commission found that the requirement was not duplicative of any other financial security.

II. Filings

A. Amended FCA

13. MISO states that it has designated the Amended FCA as First Revised Service Agreement No. 2852 under MISO's Tariff.²³ MISO states that the Amended FCA amends an original FCA executed on September 22, 2015 by and between the Parties; this original FCA was previously reported in the third quarter 2015 Electronic Quarterly Report (Original FCA).²⁴ The Amended FCA states that Red Pine owns and operates the Project, a generating facility that commenced commercial operation on December 28, 2017, pursuant to a GIA entered into between MISO, NSP, and Red Pine.²⁵ The Amended FCA states that the transmission owners' transmission systems are affected by the interconnection of the Project to NSP's transmission system, necessitating certain network upgrades. The Amended FCA is revised to provide that NSP and Otter Tail may elect the Transmission Owner Initial Funding option for their respective portions of the cost of the network upgrades required to facilitate the interconnection of the Project.²⁶ MISO requests that the Amended FCA be made effective as of the date of this order.

²¹ *Pro Forma* FSA Order, 171 FERC ¶ 61,075 at PP 23, 32.

²² *Id.* P 32.

²³ Amended FCA Filing, Transmittal Letter at 1.

²⁴ *Id.* at 4, Tab B, Amended FCA, preamble.

²⁵ *Id.*, Tab B, Amended FCA, preamble. The network upgrade included in the Amended FCA was first identified on NSP's system in the GIA executed on February 20, 2015.

²⁶ *Id.*, Transmittal Letter at 4, Tab B, Amended FCA, art. 3.2.1.

B. Otter Tail FSA

14. MISO states that it has designated the Otter Tail FSA as Original Service Agreement No. 3520 under MISO's Tariff.²⁷ MISO states that it has filed the Otter Tail FSA to implement Otter Tail's election of the Transmission Owner Initial Funding option for the network upgrades on Otter Tail's system associated with the Project that are currently in service and that were previously funded by Red Pine.²⁸ As further described below, Otter Tail will refund the net book value of the network upgrade costs previously collected from Red Pine and then recover from Red Pine the return on and of the cost of the network upgrades through a monthly or annual revenue requirement.²⁹ MISO requests that the Commission make the Otter Tail FSA effective as of August 1, 2020.

15. MISO explains that, while the Otter Tail FSA largely conforms to the *pro forma* FSA in MISO's Tariff, some non-conforming provisions have been proposed to reflect the fact that the network upgrades are already in service.³⁰ For instance, MISO states that Article II of the Otter Tail FSA has been modified to state that the term of this FSA will be 204 months, as opposed to the 240-month term in the *pro forma* FSA. MISO asserts that this change recognizes the fact that the network upgrades are already in service and reflects depreciation to date. MISO proposes to reduce the security amount by 5.88% of the net book value each year to reflect the reduction in the Otter Tail FSA's term. 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 Otter Tail FSA was negotiated. Finally, MISO proposes to revise Article IV.a to clarify that the security amount will be based on the actual net book value of the network upgrades. MISO asserts that these changes are just and reasonable because the network upgrades in question are in service and their actual costs are known.

²⁷ MISO Otter Tail-Red Pine FSA Filing, Docket No. ER20-2424-000, Transmittal Letter at 1 (filed July 15, 2020) (Otter Tail FSA Filing).

²⁸ *Id.* at 4.

²⁹ *Id.* at 3, Tab B, proposed Otter Tail FSA, preamble. We note that, while the filings refer to the "actual network upgrade initial capital cost," we use the term net book value.

³⁰ *Id.*, Transmittal Letter at 4.

C. NSP FSA

16. MISO states that it has designated the NSP FSA as Original Service Agreement No. 3521 under MISO's Tariff.³¹ MISO states that it has filed the NSP FSA to implement NSP's election of the Transmission Owner Initial Funding option for the network upgrades on NSP's system associated with the Project that are currently in service and that were previously funded by Red Pine.³²

17. MISO proposes non-conforming provisions that are similar to those proposed in the Otter Tail FSA, which are intended to account for the fact that the network upgrades associated with the Project are already in service.³³ For instance, MISO proposes a 204-month term and revisions to Article IV.a to clarify that the security amount will be based on the net book value of the network upgrades.

III. Notices and Responsive Pleadings

18. Notice of the Amended FCA, the Otter Tail FSA, and the NSP FSA were published in the *Federal Register*, 85 Fed. Reg. 44,063 (July 21, 2020), with interventions and protests due on or before August 5, 2020. Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company NSP, filed timely motions to intervene in Docket Nos. ER20-2423-000 and ER20-2427-000. EDF Renewables, Inc. filed timely motions to intervene in Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000. Red Pine filed separate protests in Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000. On August 5, 2020, Otter Tail filed a timely motion to intervene and comments in Docket Nos. ER20-2423-000 and ER20-2324-000.

19. On August 20, 2020, Xcel filed an answer to Red Pine's protests in Docket Nos. ER20-2423-000 and ER20-2427-000. On August 20, 2020, MISO filed an answer to Red Pine's protests in Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000. On August 20, 2020, Otter Tail filed an answer to Red Pine's protests in Docket Nos. ER20-2423-000 and ER20-2424-000. On September 1, 2020, Red Pine filed an answer to comments and answers in Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000.

³¹ MISO NSP-Red Pine FSA Filing, Docket No. ER20-2427-000, Transmittal Letter at 1 (filed July 15, 2020).

³² *Id.* at 4.

³³ *Id.*

IV. Deficiency Letter and Deficiency Response

20. On October 1, 2020, Commission staff issued a letter in Docket No. ER20-2424-000 informing MISO that its Otter Tail FSA filing was deficient and requesting additional support for the net book value stated in the Otter Tail FSA (Deficiency Letter).

21. On October 29, 2020, in Docket No. ER20-2424-001, MISO filed its response to the deficiency letter (Deficiency Response). Notice of MISO's Deficiency Response was published in the *Federal Register*, 85 Fed. Reg. 71,066 (Nov. 6, 2020), with interventions and protests due on or before November 19, 2020. None was filed.

V. Discussion

A. Procedural Matters

22. 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.

23. 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 filed in these proceedings because they provided information that assisted us in our decision-making process.

B. Substantive Matters

24. We accept the Amended FCA and the Otter Tail FSA, 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. As discussed below, we find that the Amended FCA appropriately reflects Otter Tail's decision to elect the Transmission Owner Initial Funding option for network upgrades associated with the Project that were originally identified on Otter Tail's system in the Original FCA executed on September 22, 2015, as allowed in the December 2019 Order. We find that the non-conforming Otter Tail 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.

25. As an initial matter, we accept the non-conforming provisions that MISO has proposed to Articles II and IV.a of the proposed Otter Tail FSA, as well as the proposed removal of *pro forma* FSA Article III.g from the Otter Tail 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 204-month term in Article II of the proposed Otter Tail 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.³⁴ We also accept MISO's proposal to reduce the security amount by 5.88% of the net book value each year to reflect the reduction in the Otter Tail FSA's term. Further, we accept the changes to the security provisions in Article IV.a of the proposed Otter Tail 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.

26. However, for the reasons provided below, we reject the NSP FSA and direct MISO to file a revised FCA that removes all references to NSP's unilateral election of the Transmission Owner Initial Funding option.

1. Eligibility for Transmission Owner Initial Funding

a. Protest and Comments

27. Red Pine asks the Commission to reject the Amended FCA because, while the Original FCA was technically executed within the interim period on September 15, 2015, the underlying network upgrade was first identified in a GIA between Red Pine and NSP (Red Pine GIA) that was executed on February 20, 2015 and made effective on April 4, 2015, prior to the beginning of the interim period.³⁵ Red Pine states that the network upgrade was later included in the Original FCA executed by Red Pine, MISO, NSP, Great River, WMMPA, Otter Tail, and CMMPA on September 15, 2015, and then in the Amended FCA. Red Pine argues that the Commission should not accept the attempt to make the Amended FCA an interim period agreement and should instead find that the network upgrade listed in the Amended FCA is a pre-interim period network upgrade outside of the Commission's determination in the December 2019 Order.³⁶

28. Red Pine also contends that NSP waived its right to elect the Transmission Owner Initial Funding option for the network upgrade when it declined to make the election

³⁴ 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.

³⁵ Red Pine Protest of the Amended FCA, Docket No. ER20-2423-000, at 1, 6.

³⁶ *Id.* at 6-7.

upon executing the Red Pine GIA in February 2015.³⁷ Red Pine explains that the Transmission Owner Initial Funding option was in the MISO Tariff in effect at that time, and maintains that it is unjust and unreasonable to allow NSP to now elect this option. Red Pine asserts that it is of no consequence that the network upgrade was moved to the Original FCA during the interim period, as this elevates form over substance.

29. Red Pine states that the Commission has treated the funding of network upgrades differently depending on the effective date of a change in policy.³⁸ Red Pine asserts that, in *E.ON*, the Commission clarified that its decision on removing Option 1 funding from the Tariff would not apply to agreements effective prior to March 22, 2011.³⁹ Red Pine also cites *Settlers Trail*, where the Commission determined that network upgrades identified by GIAs executed prior to March 22, 2011 would be subject to Option 1 funding, but incremental network upgrades identified in certain amended interconnection agreements and the associated MPFCA would not be subject to Option 1 funding because these agreements were effective after the March 22, 2011 effective date.⁴⁰ Red Pine argues that the network upgrade should be treated similarly to the situation in *Settlers Trail*. More specifically, Red Pine contends that the funding policy that applied when the cost responsibility was first assigned to Red Pine in the Red Pine GIA should control.⁴¹ Red Pine asserts that, because the network upgrade was part of the Red Pine GIA, it should not be affected by moving the network upgrade into the Original FCA during the interim period.

30. Otter Tail asserts that the Original FCA is clearly an interim period agreement eligible for retroactive election of the Transmission Owner Initial Funding option because it was entered into on September 22, 2015, which is within the interim period.⁴² Otter Tail contends that the issue of whether the Original FCA is an interim period agreement is outside the scope of this proceeding, which involves the justness and

³⁷ *Id.* at 7.

³⁸ *Id.*

³⁹ *Id.* at 8 (citing *E.ON*, 137 FERC ¶ 61,076).

⁴⁰ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,050, at PP 67-70 (2013) (*Settlers Trail*)).

⁴¹ *Id.* at 9.

⁴² Otter Tail Comments, Docket Nos. ER20-2423-000 and ER20-2424-000, at 5-6. We understand that the Original FCA was the first agreement where a portion of the network upgrade was first identified on Otter Tail's system.

reasonableness of the terms and conditions of the Amended FCA and the two proposed FSAs, and not whether the Original FCA is an interim period agreement.

b. Answers

31. Xcel, Otter Tail, and MISO argue that the Original FCA became effective September 22, 2015, which is within the interim period.⁴³ Additionally, Xcel and Otter Tail argue that the Original FCA, not the Red Pine GIA, is the agreement being reopened, and that the Red Pine GIA's date of execution and effective date is irrelevant.⁴⁴ Xcel states that Red Pine's reliance on the Red Pine GIA's effective date is misplaced, as the Red Pine GIA was amended on July 14, 2015 and became effective on July 29, 2015 (Amended Red Pine GIA).⁴⁵ Otter Tail also contends that the fact that Xcel did not elect Transmission Owner Initial Funding under the Red Pine GIA does not affect the rights of Otter Tail, which was not a party to that Red Pine GIA, to unilaterally elect the Transmission Owner Initial funding option under the Amended FCA.⁴⁶

32. Otter Tail notes that MISO included the Amended FCA in the list of interim period agreements in its compliance filings to the December 2019 Order and argues that Red Pine should have raised its concerns in response to those compliance filings.⁴⁷

33. Xcel states that the Amended Red Pine GIA reflects changes to the in-service date of the network upgrades and a reclassification of some of the network upgrades as affected system upgrades.⁴⁸ Xcel argues that, at the time of the Amended Red Pine GIA's execution, NSP did not have a unilateral right to elect to fund the modified

⁴³ Xcel Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2427-000, at 3; Otter Tail Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2424-000, at 4; MISO Answer to Protest, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 3.

⁴⁴ Xcel Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2427-000, at 3; Otter Tail Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2424-000, at 5.

⁴⁵ Xcel Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2427-000, at 4.

⁴⁶ Otter Tail Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2424-000, at 5.

⁴⁷ *Id.* at 5-6.

⁴⁸ Xcel Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2427-000, at 4.

network upgrades.⁴⁹ For this reason, Xcel argues that Red Pine's statement that the network upgrades were identified in the Red Pine GIA is beside the point.⁵⁰ Xcel also states that NSP has not waived its rights to reopen the Original FCA because the Commission did not condition a transmission owner's or affected system operator's option to reopen a covered agreement based upon its previous choice about Transmission Owner Initial Funding.

34. In its answer to the comments and answers, Red Pine reiterates its position that the Original FCA is not an interim period agreement.⁵¹ Red Pine argues that the list of agreements that MISO identified in its compliance filing did not establish the right for the identified transmission owners to reopen agreements.⁵² Additionally, Red Pine renews its argument that, because the Transmission Owner Initial Funding election was in effect when the network upgrades were first included in the Red Pine GIA, they are ineligible for Transmission Owner Initial Funding despite being "moved to a subsequent agreement" (i.e., from the Red Pine GIA to the Original FCA).⁵³ Red Pine also argues that the Original FCA came into existence during the interim period due to a MISO misstep. Red Pine explains that MISO ran the interconnection studies assessing the impacts of the proposed Red Pine generation to the MISO-wide grid, and that those studies identified the need for network upgrades on the NSP system and that only NSP would ultimately own the network upgrades. Red Pine states that MISO tendered the Red Pine GIA that listed those network upgrades and thereafter the Red Pine GIA became effective in the pre-interim period. Red Pine contends that, had MISO done a proper job in the first instance, MISO would have tendered both the Red Pine GIA and the Red Pine FCA in the pre-interim period.⁵⁴

35. In reply to Xcel, Red Pine reiterates that the network upgrades at issue were originally identified in the pre-interim period Red Pine GIA, and relevant precedent

⁴⁹ *Id.* at 4-5.

⁵⁰ *Id.* at 5.

⁵¹ Red Pine Answer to Answers, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 2-8.

⁵² *Id.* at 3.

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 4-5.

precludes retroactive Transmission Owner Initial Funding for network upgrades identified prior to the interim period.⁵⁵

36. Red Pine disagrees with Xcel's argument that the Amended GIA controls because, Xcel argues, it superseded the Red Pine GIA during the interim period.⁵⁶ Red Pine points to facts that it argues undermine Xcel's position; specifically, the Red Pine GIA previously listed \$9.4 million in network upgrade costs, but \$1.1 million of those upgrades were moved to the Original FCA, leaving \$8.3 million in the Amended Red Pine GIA. Red Pine argues that Xcel would have sought to retroactively elect the Transmission Owner Initial Funding option for \$9.4 million in network upgrades, and not just the \$1.1 million portion, if there were any credence to its argument that the Amended Red Pine GIA is controlling to establish the eligibility of the Original FCA as an interim period agreement.⁵⁷ Red Pine also asks the Commission to consider Xcel's actions in Docket Nos. ER20-2421-000 and ER20-2422-000, where Xcel has protested Otter Tail's attempt to reopen an FCA and collect Transmission Owner Initial Funding pricing, arguing that the relevant FCA in that proceeding was submitted unexecuted prior to the interim period.⁵⁸ Red Pine argues that the underlying facts in those proceedings and here are the same.⁵⁹

c. Commission Determination

37. Consistent with precedent and the December 2019 Order, we find that, with regard to interim period agreements, a transmission owner or affected system operator may elect the Transmission Owner Initial Funding option for network upgrades on its system that were identified for the first time in an agreement to which the transmission owner or affected system operator is a party only if that agreement was executed or filed unexecuted during the interim period. Thus, we find that, because the network upgrade in the Amended FCA was identified on Otter Tail's system for the first time in the Original FCA, which was executed on September 22, 2015 (i.e., within the interim period), Otter Tail may elect the Transmission Owner Initial Funding option for the portion of the costs of the network upgrade identified on its system. Thus, we accept the Amended FCA, which includes this network upgrade, subject to condition as discussed below. However, because the network upgrade in the NSP FSA was first identified in

⁵⁵ *Id.* at 5.

⁵⁶ *Id.*

⁵⁷ *Id.* at 5-6.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 7.

the Red Pine GIA, which was executed by the parties on February 20, 2015 (i.e., prior to the interim period), we find that NSP may not elect the Transmission Owner Initial Funding option for the portion of the costs of the network upgrade identified on its system. Consequently, we reject the NSP FSA and direct MISO, in a compliance filing to be made within 60 days from the date of this order, to file a revised FCA that removes all references to NSP's unilateral election of the Transmission Owner Initial Funding option.⁶⁰

38. To arrive at this determination, we find that the phrases “entered into” or “became effective” during the interim period⁶¹ must be applied consistent with Commission precedent. The Commission has previously found that the terms of a Tariff that should apply are the terms in the Tariff that is effective and on file on the date that the interconnection agreement is executed or initially filed unexecuted with the Commission.⁶² As a result of this finding, the Commission has declined to modify network upgrade funding terms from interconnection agreements that predate revisions to the relevant Tariff provisions.⁶³ The Commission has applied this precedent in

⁶⁰ Because we are rejecting the NSP FSA, we will not address the arguments raised in the Red Pine Protest of the NSP FSA. *Pub. Serv. Elec. & Gas Co. v. Fed. Energy Regulatory Comm'n*, No. 19-1091, 2021 WL 786414, at *7 (D.C. Cir. 2021) Red Pine protests the requested June 30, 2020 effective date for the NSP FSA and the proposed security provision. *See* Red Pine Protest of the NSP FSA, Docket No. ER20-2427-000, at 6-9.

⁶¹ *See* December 2019 Order, 169 FERC ¶ 61,233 at PP 41, 125-135.

⁶² To clarify further, an interconnection agreement that is initially filed unexecuted with the Commission may be executed at a later date after the Commission rules on the issues in the unexecuted agreement. Therefore, the date the unexecuted agreement is initially filed at the Commission is the operative date for determining what terms of the Tariff will apply to the agreement, and not the later date that the agreement is executed.

⁶³ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008) (*Prairie State*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 at P 62 (finding that the cost allocation method that should apply with respect to interconnection agreements is the one provided in the Tariff that was effective and on file on the date when the agreement was executed or filed unexecuted); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,277, at P 10 (2008) (finding that because two generator interconnection agreements had been executed after the effective date of newly revised interconnection queue rules, the interconnection agreements must be revised to conform with the new rules); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order denying reh'g*, 119 FERC ¶ 61,087 (2007)

several cases involving network upgrade funding options in MISO.⁶⁴ The Commission has also rejected requests to revise the funding method chosen for network upgrades identified in a previously executed GIA as part of an amendment to that GIA where no change has been made to the previously identified network upgrades. In making this finding, the Commission rejected arguments that the FPA requires the effective date for all GIA terms to be the date of the last accepted GIA.⁶⁵

39. With respect to NSP's attempted election of the Transmission Owner Initial Funding option in the Amended FCA, we note that Transmission Owner Initial Funding was available to NSP at the time it executed the Red Pine GIA on February 20, 2015. In particular, we note that the Red Pine GIA, which was accepted by delegated letter order on April 4, 2015 in Docket No. ER15-2287-000, identified certain network upgrades on NSP's system for the first time, which included the network upgrade at issue here, and contained the following language in Article 11.3: "Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer."⁶⁶ As Red Pine notes, NSP did not elect the Transmission Owner Initial Funding option at that time.⁶⁷ Furthermore, when the network upgrade was first identified in the Red Pine GIA, Red Pine's upfront payment for the network upgrade was memorialized in the payment milestones in Appendix B of the Red Pine GIA. Thus, we are upholding the previous agreement that NSP and Red Pine entered into with respect to the funding rate for the network upgrades identified in the Red Pine GIA.⁶⁸

(rejecting proposal to modify network upgrade cost allocation in existing interconnection agreements).

⁶⁴ See *Settlers Trail*, 143 FERC ¶ 61,050 at PP 67-70; *Rail Splitter Wind Farm, LLC v. Ameren Servs. Co.*, 142 FERC ¶ 61,047 (2013) (*Rail Splitter*), order on reh'g, 146 FERC ¶ 61,017 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,111, at P 40 (2013) (*Hoopeston*), order on reh'g and compliance, 149 FERC ¶ 61,099, at PP 14-19 (2014) (*Hoopeston Rehearing*); *Prairie State*, 125 FERC ¶ 61,210 at PP 17-19.

⁶⁵ *Hoopeston*, 145 FERC ¶ 61,111 at P 40; *Hoopeston Rehearing*, 149 FERC ¶ 61,099 at PP 14-19.

⁶⁶ Red Pine GIA, Art. 11.3 (Docket No. ER15-2287-000).

⁶⁷ See Red Pine Protest of the Amended FCA, Docket No. ER20-2423-000, at 2.

⁶⁸ See *Rail Splitter*, 142 FERC ¶ 61,047 at P 31, order denying reh'g and granting

40. The Commission has found that FPA-jurisdictional agreements, for which the public interest presumption is not applicable, are “not to be lightly revised” because “a degree of stability and predictability is crucial to businesses and markets and to attracting investment in the utility business.”⁶⁹ In accordance with this precedent, we find that it would not be just and reasonable to allow NSP to reverse the network upgrade funding decision memorialized in the Red Pine GIA simply because the network upgrades were moved to an FCA. Allowing NSP to do so would violate the agreed-upon rate.⁷⁰

41. We reject Otter Tail’s argument that Red Pine should have raised its concerns in response to the list of agreements MISO submitted in compliance with the December 2019 Order. The Commission did not address the merits of that list, as the list did not provide any details that would have allowed the Commission to make any finding as to whether any of the agreements listed were properly classified as interim period agreements. Therefore, we find that Red Pine raised its concerns in the appropriate forum, i.e., Docket No. ER20-2423-000, the docket in which the agreements it is contesting were filed.

42. Finally, we find unpersuasive Red Pine’s argument that the Amended FCA should also be considered a pre-interim period agreement because it would have been filed prior to the interim period had MISO filed it timely. Commission precedent has not relied on earlier dates that an agreement could have been filed unexecuted or executed to determine the terms of the Tariff that are in effect and we disagree that the Commission should start doing so here.

clarification, 146 FERC ¶ 61,017 at P 20.

⁶⁹ *Rail Splitter*, 142 FERC ¶ 61,047 at P 31.

⁷⁰ Article 11.3 of the Red Pine GIA states that the “Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner’s System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Interconnection Customer.”

2. Effective Dates

a. Amended FCA and Otter Tail FSA Filings

43. MISO requests that the Commission grant waiver of any Commission regulations that the Commission may deem applicable to the Amended FCA and requests an effective date as of the date of the issuance of the Commission order.⁷¹

44. MISO requests that the Commission waive its 60-day prior notice requirement to make the Otter Tail FSA effective as of August 1, 2020.⁷² MISO argues that this effective date is necessary because the net book value in the Otter Tail FSA is calculated as of August 1, 2020. MISO contends that imposing a different effective date might require MISO to refile the Otter Tail FSA to revise the determination of the annual and monthly revenue requirements, which are based off of the net book value, and that the August 1, 2020 date will provide certainty to the parties as to the status of the agreement. MISO also requests waiver of any 18 C.F.R. § 35 (2020) requirements that may apply.

b. Protest and Comments

45. Red Pine protests the proposed effective date of August 1, 2020 for the Otter Tail FSA and asks the Commission to establish an effective date of September 13, 2020, which is 60 days after filing.⁷³ Red Pine argues that MISO and Otter Tail have not stated any reason for their proposed effective date other than administrative convenience.⁷⁴ Red Pine contends that administrative convenience is not good cause to subject Red Pine to paying the rate earlier than the Commission's regulations provide. Red Pine argues that, if August 1, 2020 was a necessary date, MISO and Otter Tail could have filed the Otter Tail FSA 60 days prior to that date. Further, Red Pine argues, if an August 1, 2020 effective date is allowed, Red Pine would be subjected to back payments; Red Pine explains that the Commission will likely issue its order in September 2020, and according to the terms of the Otter Tail FSA, Red Pine would have to pay the monthly fee as of the August 1, 2020 effective date. Red Pine also contends

⁷¹ Amended FCA Filing, Transmittal Letter at 6.

⁷² *Id.* at 5.

⁷³ Red Pine Protest of the Otter Tail FSA, Docket No. ER202424-000, at 8. Red Pine incorrectly states throughout its protest that the requested effective date of the Otter Tail FSA is June 30, 2020. We refer to the correct requested effective date in the summary of the protest.

⁷⁴ *Id.* at 9.

that it is inconsistent to establish an August 1, 2020 effective date for the Otter Tail FSA when the underlying basis for the rate is the Amended FCA, which has a requested effective date as of the date of Commission order.

46. In its comments, Otter Tail supports MISO's request for an August 1, 2020 effective date for the Otter Tail FSA.⁷⁵ Otter Tail claims that: (1) the requested effective date is consistent with Commission regulations because it was filed within 30 days of commencement of service; and (2) requiring a different effective date might require MISO to refile the Otter Tail FSA to revise the annual and monthly revenue requirement. Otter Tail also asks that the Commission make the Amended FCA effective on August 1, 2020 to be consistent with the Otter Tail FSA.

c. Answers

47. MISO and Otter Tail ask the Commission to grant MISO's requested August 1, 2020 effective date for the Otter Tail FSA, which they argue is a service agreement filed within 30 days of commencement of service pursuant to 18 C.F.R. § 35.3(a)(2) (2020).⁷⁶ They argue that, if the Commission finds that the Otter Tail FSA is subject to the 60-day prior notice requirement, good cause for waiver exists because granting a different date would require renegotiation and recalculation of the net book valuation date and the payment schedule. Furthermore, MISO and Otter Tail argue that Red Pine has been on notice that FSAs would be required since Otter Tail notified Red Pine that it would exercise the Transmission Owner Initial Funding option.

48. Red Pine reiterates that it would be procedurally and substantively deficient to charge a rate as of August 1, 2020 when MISO has requested that the Amended FCA (which is the basis for charging rates pursuant to the FSAs) become effective as of the date of Commission order.⁷⁷

d. Commission Determination

49. We accept the Amended FCA to become effective as of the date of this order, as MISO has requested. As noted above, Article 3.2.1 of the Amended FCA allows Otter Tail to elect the Transmission Owner Initial Funding option for network upgrades

⁷⁵ Otter Tail Comments, Docket Nos. ER20-2423-000 and ER20-2424-000, at 9.

⁷⁶ MISO Answer to Protest, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 7; Otter Tail Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2424-000, at 8.

⁷⁷ Red Pine Answer to Answers, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 9.

associated with the Project that were originally identified on Otter Tail's system in the Original FCA executed by the Parties on September 22, 2015. The Otter Tail FSA implementing Otter Tail's choice of the Transmission Owner Initial Funding option cannot be effective before the contract language in the Amended FCA allowing Otter Tail to make that choice. Thus, we deny the requested August 1, 2020 effective date for the Otter Tail FSA and instead accept it effective as of the date of this order. As discussed below, the effective date granted for the Otter Tail FSA may require some conforming changes to the FSA, such as adjustment to the net book value calculation.

50. We establish the date of this order as the effective date for the Otter Tail FSA to align with the effective date that the filer, MISO, submitted for the Amended FCA and therefore deny Otter Tail's request to grant an effective date of August 1, 2020 for the Amended FCA.

3. Security

a. Otter Tail FSA Filing

51. The proposed Otter Tail FSA includes a security provision that is substantially similar to the security provision in the *pro forma* FSA. Specifically, the Otter Tail 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 previously funded by the interconnection customer (i.e., the net book value).⁷⁸ The transmission owner will release all security received for the network upgrade costs under the FCA upon the transmission owner's receipt of security under the Otter Tail FSA. The security provided under the FCA may be applied as the security for the Otter Tail FSA – the interconnection customer will not be required to maintain concurrently the security under the FCA and the security under the Otter Tail FSA.

b. Protest

52. Red Pine protests the requirement to post irrevocable security under the Otter Tail FSA for the same reasons that have been raised in protests and on rehearing in the *Pro Forma* FSA proceeding, Docket No. ER20-359-000.⁷⁹ Red Pine argues that

⁷⁸ Otter Tail FSA Filing, Tab B, proposed Otter Tail FSA, art. IV (Security).

⁷⁹ Red Pine Protest of the Otter Tail FSA, Docket No. ER20-2424-000, at 6-7. We note that Docket No. ER20-359-002 refers to the proceeding addressing Tariff revisions to implement MISO's *pro forma* FSA, which is no longer pending before the Commission, as discussed further below.

Option 1 funding and the terms of the Otter Tail FSA are identical because, in both circumstances, the transmission owner seeks to refund the amounts funded by the interconnection customer after the network upgrade has become operational, and then to recollect that amount from the interconnection customer over time through a revenue requirement based on the transmission owner's carrying costs. Red Pine contends that, in *White Oak II*, the Commission rejected a provision for irrevocable security in an Option 1 FSA, finding that irrevocable security is not necessary if the interconnection customer fails to make payments under the FSA because the default provision in the FSA covers this risk.⁸⁰ Red Pine asserts that the Otter Tail FSA has similar default provisions, which will protect Otter Tail and its transmission customers should Red Pine fail to make payments. Red Pine argues that the Commission has been clear that irrevocable security is necessary during construction but not once the network upgrades are completed and operational and payments start under an FSA.⁸¹ Red Pine contends that irrevocable security is not needed in the Otter Tail FSA because Red Pine provided security during construction and that the irrevocable security provision would require Red Pine to carry a liability on its books for the terms of the Otter Tail FSA, which Red Pine contends would create an unjust and unreasonable double burden.⁸²

c. Answers

53. MISO states that the security provision in the Otter Tail FSA was previously accepted in the *Pro Forma* FSA proceeding.⁸³ MISO notes that Red Pine relies on the rehearing requests filed in the *Pro Forma* FSA proceeding, but notes that a pending rehearing request does not stay or modify the *Pro Forma* FSA Order or the FSA security provision it adopted.

54. Otter Tail also argues that the Commission already accepted the conforming provisions of the Otter Tail FSA, and that, to the extent that Red Pine disagrees, it should have raised such arguments in, or sought rehearing of the order accepting the *Pro Forma* FSA Order.⁸⁴

⁸⁰ *Id.* at 7 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,072, at P 15 (2016) (*White Oak II*)).

⁸¹ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,145, at P 39 (2015); *White Oak II*, 154 FERC ¶ 61,072 at P 11).

⁸² *Id.* at 7-8.

⁸³ MISO Answer to Protest, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 6.

⁸⁴ Otter Tail Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2424-000,

55. Red Pine answers that no party has shown that the irrevocable security proposed in the Otter Tail FSA is just and reasonable.⁸⁵ Red Pine argues that the legality of requiring such security is pending on rehearing and reaffirms its protest on this point.⁸⁶

d. Commission Determination

56. We find that the requirement in the Otter Tail FSA for Red Pine 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 Red Pine'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 Otter Tail FSA follows the Tariff. Therefore, the Commission's decision in *White Oak II* is distinguishable.

57. We note that the Commission, in the *Pro Forma* FSA Order and the *Pro Forma* FSA Order on Rehearing, accepted the security provision as just and reasonable and found that "the posting of financial security is reasonable to protect the transmission owner and transmission service customers from the risk that an interconnection customer will stop making payments under an FSA and that the portion of the undepreciated costs would be borne by either the transmission owner or transmission customers or assigned to another interconnection customer."⁸⁷

4. Refund and Payment Structure

a. Amended FCA and Otter Tail FSA Filings

58. The Amended FCA states that the transmission owner will refund the costs previously collected from the interconnection customer for the network upgrades associated with the Project.⁸⁸ As a prerequisite, the interconnection customer must

at 7.

⁸⁵ Red Pine Answer to Answers, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 8.

⁸⁶ *Id.* at 8-9.

⁸⁷ *Pro Forma* FSA Order, 171 FERC ¶ 61,075 at P 32, *order addressing argument raised on reh'g*, *Pro Forma* FSA Order on Rehearing, 173 FERC ¶ 61,037, at PP 20-23.

⁸⁸ Amended FCA Filing, Tab B, Amended FCA, app. A.

provide the transmission owner with the aforementioned irrevocable security reasonable to the transmission owner in an amount equal to the net book value, which the Amended FCA states is calculated as \$43,330,⁸⁹ within the later of 45 days after execution of the FSA or 45 days after Commission acceptance of the unexecuted FSA.⁹⁰ Within 10 days of receipt of this security, the transmission owner will then refund to the interconnection customer the \$43,330.⁹¹ The Amended FCA notes that the amount of the refund is based on the net book value of the network upgrades as of June 30, 2020.⁹² The Amended FCA also states that, “[i]n the event the refund date changes due to the Effective Date of this Agreement or the associated FSA, the refund will be adjusted to account for net book value as of the refund date.”⁹³

59. The transmission owner will charge the interconnection customer under the terms of the Otter Tail 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 Otter Tail FSA, beginning with the month following the effective date of the FSA and continuing for the term of the FSA, the interconnection customer will pay the monthly revenue requirement to the transmission owner by the 15th day of each month.⁹⁴ Alternatively, the interconnection customer may switch to an annual payment. The Otter Tail FSA states that, because the network upgrades associated with the Otter Tail FSA are already in service, for the purposes of calculating the monthly revenue requirement, the net book value of the network upgrades is

⁸⁹ We note that this number is in conflict with the net book value stated in the Otter Tail FSA, which is \$42,248. *See* Otter Tail FSA Filing, Tab B, proposed Otter Tail FSA, art. III (Network Upgrade Charge) and ex. 1.

⁹⁰ Amended FCA Filing, Tab B, Amended FCA, app. A. (Interconnection Customer Milestone 2); Otter Tail 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.

⁹¹ Amended FCA Filing, Tab B, Amended FCA, app. A (Transmission Owner Milestone 10).

⁹² We note that this date is apparently an error, as the requested effective date of the Otter Tail FSA is August 1, 2020, and the Otter Tail FSA asserts that the net book value is calculated as of August 1, 2020. *See* Otter Tail FSA Filing, Transmittal Letter at 3.

⁹³ Amended FCA Filing, Tab B, Amended FCA, app. A.

⁹⁴ Otter Tail FSA Filing, Tab B, proposed Otter Tail FSA, art. III (Network Upgrade Charge).

calculated as of the effective date of the associated Amended FCA.⁹⁵ Ultimately, the Otter Tail FSA states that the net book value is calculated at \$42,248⁹⁶ and, using a levelized fixed charge rate of 12.0165%, the monthly revenue requirement is calculated as \$423 and the annual revenue requirement is calculated as \$5,077.⁹⁷ The Otter Tail 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 Otter Tail FSA states that the payment will be re-calculated annually by updating certain inputs to the formula rate.

b. Deficiency Letter and Deficiency Response

60. In the Deficiency Letter, Commission staff sought support for the net book value stated in the Otter Tail FSA. The Commission required, as part of this support, that MISO "include the actual gross plant value of the network upgrades, the actual in-service date of the network upgrades, and the accrued depreciation as well as the depreciation rate and support for why the chosen depreciation rate is just and reasonable."⁹⁸

61. MISO states, based on information provided by Otter Tail, that the actual gross plant value of the network upgrades associated with the Project is \$44,412, and that the actual in-service date of these network upgrades was August 31, 2017. MISO states that Otter Tail has not incurred any depreciation to date, so Otter Tail estimated the accumulated depreciation that would have been incurred from the in-service date of the network upgrade to the effective date of the Otter Tail FSA to arrive at the net book

⁹⁵ *Id.*, preamble. We note that the preamble references the effective date of the "GIA," but this is presumably a typographical error. We also note that this preamble language conflicts with Otter Tail's assertion that the net book value is being calculated as of August 1, 2020 (i.e., the requested effective date of the Otter Tail FSA). *See* Otter Tail FSA Filing, Transmittal Letter at 3.

⁹⁶ We note that this number is in conflict with the net book value stated in the Amended FCA, which is \$43,330. *See* Amended FCA Filing, Tab B, Amended FCA, app. A

⁹⁷ Otter Tail FSA Filing, Tab B, proposed Otter Tail FSA, art. III (Network Upgrade Charge) and ex. 1.

⁹⁸ Deficiency Letter at 2.

value reflected in the reflected in Otter Tail FSA assuming that Otter Tail could have originally elected Transmission Owner Initial Funding.⁹⁹

62. MISO also states that Otter Tail used the 2019 composite transmission remaining life to determine a 1.6242% incremental composite depreciate rate, which, according to MISO, represents the composite remaining lives of Otter Tail's 2019 transmission plant account numbers 350.2, 353, 354, 355, 356, and 358.¹⁰⁰

63. MISO states that applying the annual depreciation rate to the actual gross plant value yields \$60.11 in monthly depreciation for the 36 months from August 31, 2017 (the in-service date) to August 31, 2020, which results in a projected accumulated depreciation expense of \$2,163.98 that would have been incurred if Otter Tail had originally been able to elect the Transmission Owner Initial Funding option.¹⁰¹ According to MISO, subtracting accrued depreciation from the actual gross plant value yields a net book value of \$42,248.02, as of August 31, 2020, which is the amount reflected in the Otter Tail FSA.¹⁰²

c. Protest

64. Red Pine asserts that the remaining undepreciated cost of Otter Tail's portion of the network upgrade is \$42,248.¹⁰³ Red Pine states that, because Otter Tail has elected to refund the \$42,248 to Red Pine and then re-collect it over the next 17 years through a revenue requirement that includes Otter Tail's carrying costs, Red Pine will pay \$86,309, or more than double the remaining undepreciated value of the network upgrade that Red Pine initially funded.

⁹⁹ *Id.* at 3.

¹⁰⁰ *Id.*

¹⁰¹ MISO states that Otter Tail used the month-ending August 31, 2020 as the last month for determining the accrued depreciation because the depreciation expense is calculated on the month ending balance, and the first payment under the Otter Tail FSA was not due until September 2020, the first month following the requested August 1, 2020 effective date. *Id.* n.11.

¹⁰² *Id.* at 4.

¹⁰³ Red Pine Protest of the Otter Tail FSA, Docket No. ER20-2424-000, at 5.

d. Commission Determination

65. We find it just and reasonable for the Otter Tail FSA to require that Otter Tail must refund the net book value of the network upgrade costs previously collected from Red Pine and set forth annual and monthly revenue requirements allowing Otter Tail to recover a return on and of this net book value. To the extent that Red Pine is arguing that the Commission should reject the Otter Tail FSA on the grounds that the Transmission Owner Initial Funding option increases Red Pine's costs, we reject this argument because it has already been addressed and denied by the Commission.¹⁰⁴

66. However, due to the effective date granted for the Otter Tail FSA (i.e., the date of this order), some adjustment to the net book value calculation may be necessary. Specifically, Otter Tail indicates that the net book value has been calculated as of the requested effective date for the Otter Tail FSA, which is August 1, 2020,¹⁰⁵ and that any changes to that effective date will require the refund to be adjusted to account for net book value as of the refund date. We direct MISO, in the compliance filing due within 60 days from the date of this order, to either: (1) recalculate the refund due to the interconnection customer to account for the effective date of the Otter Tail FSA granted in this order; or (2) justify the continued use of the August 1, 2020 (i.e., through August 31, 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 Otter Tail FSA, which should be equal to the net book value. Finally, we note that the Amended FCA and the Otter Tail FSA contain multiple typographical

¹⁰⁴ 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.”).

¹⁰⁵ We note that MISO explained in response to the Deficiency Letter that Otter Tail calculated depreciation through August 31, 2020 to reflect that payments from Red Pine would not be made until September 2020. As we indicate above, there is one instance of conflicting (and apparently incorrect) language in the preamble to the Otter Tail FSA indicating that the net book value is calculated as of the effective date of the Amended FCA. In addition, as noted above, the Amended FCA incorrectly states that the amount of the refund is based on the net book value of the network upgrades as of June 30, 2020. See Amended FCA Filing, Tab B, Amended FCA, app. A.

errors that refer to the incorrect net book valuation date, the incorrect net book value amount, and the incorrect agreements. We direct MISO, on compliance, to correct all such errors and any other typographical errors not specifically identified herein.

67. We also find that the proposed provisions related to the timing of the refund to Red Pine and the monthly payments made by Red Pine are unjust and unreasonable. Specifically, under Article IV(a) of the Otter Tail FSA and Appendix A to the Amended FCA, Red Pine 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 Otter Tail FSA by all parties or 45 days from Commission acceptance of the unexecuted Otter Tail FSA. Otter Tail must then refund to Red Pine the net book value of the network upgrades already paid by Red Pine within 10 days of receipt of security. As Red Pine has not yet executed the Otter Tail FSA, it may not receive its refund until 55 days after the issuance of this order. However, under Article III of the Otter Tail FSA, Red Pine 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 Red Pine will receive its refund before it must begin making payments to Otter Tail that are designed to allow Otter Tail to recover a return on and of the money refunded to Red Pine. We find it unjust and unreasonable for Red Pine to potentially be required to begin making payments that allow Otter Tail to recover a return on and of funds that Otter Tail 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 Otter Tail FSA could require payments to begin the business day following Red Pine's receipt of the refund.

5. Reservation of Rights

a. Protest

68. Red Pine states that the December 2019 Order is pending on rehearing, and should the Commission grant rehearing, the premise for the Amended FCA and the associated Otter Tail FSA will no longer exist.¹⁰⁶ Red Pine states that, should the Commission deny rehearing, then the December 2019 Order will be appealed. Red Pine states that it files a protest to ensure that, if the Amended FCA and Otter Tail FSA are accepted by the Commission, Red Pine will not be precluded from seeking to have the Amended FCA and Otter Tail FSA become a nullity effective to the date accepted by the Commission and for Red Pine to be made financially whole if: (1) Transmission Owner Initial Funding generally; or (2) the ability to retroactively elect Transmission Owner Initial

¹⁰⁶ Red Pine Protest of the Amended FCA, Docket No. ER20-2423-000, at 9-10; Red Pine Protest of the Otter Tail FSA, Docket No. ER20-2424-000, at 10-11.

Funding in the interim period; or (3) the provision of irrevocable security ultimately are found illegal under the FPA. Red Pine states that its preference is for the reservation of rights to be memorialized in the Amended FCA and Otter Tail FSA, but if the Commission declines that request, then Red Pine requests that the Commission acknowledge Red Pine's position in the order so that it is memorialized in the formal record.

b. Answers

69. Xcel asks the Commission to reject Red Pine's request to memorialize its proposed reservation of rights with regard to the Amended FCA if the Commission's standing orders are reversed on rehearing or appeal.¹⁰⁷ Xcel states that Red Pine's protests already memorialize its position and that Red Pine has not proposed specific language that would allow the Commission to determine if Red Pine's request is just and reasonable. Similarly, Otter Tail argues that Red Pine's asserted reservation of rights do not preclude the Commission from accepting the agreements.¹⁰⁸

70. MISO states that it is "well-established" that the scope of compliance proceedings does not include issues pending on rehearing in another docket.¹⁰⁹ MISO contends that it would be premature to grant Red Pine's request to memorialize its reservations because it would be up to the Commission to determine appropriate remedies if the Commission modifies or reverses the December 2019 Order.¹¹⁰

71. Red Pine argues that, had it not reserved its rights explicitly, Otter Tail, Xcel, and MISO would argue that Red Pine waived its right to have the Amended FCA and Otter Tail FSA rescinded.¹¹¹

¹⁰⁷ Xcel Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2427-000, at 3.

¹⁰⁸ Otter Tail Answer to Protest, Docket Nos. ER20-2423-000 and ER20-2424-000, at 9.

¹⁰⁹ MISO Answer to Protest, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 5-6.

¹¹⁰ *Id.* at 7.

¹¹¹ Red Pine Answer to Answers, Docket Nos. ER20-2423-000, ER20-2424-000, and ER20-2427-000, at 10.

c. Commission Determination

72. We deny Red Pine's request to memorialize its reservation of rights in the Amended FCA or Otter Tail FSA. The Otter Tail 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.¹¹² In addition, Article X.f of the Otter Tail FSA and Article 16.4 of the Amended FCA 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.¹¹³

The Commission orders:

(A) The Amended FCA 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 Otter Tail 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) The NSP FSA is rejected, as discussed in the body of this order.

¹¹² 16 U.S.C. § 8251(c); 18 C.F.R. § 385.713(e) (2020). We also note that, after Red Pine 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.

¹¹³ *See Midcontinent Indep. Sys. Operator, Inc.*, 173 FERC ¶ 61,076, at P 13 (2020).

(D) 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.*