175 FERC ¶ 61,031
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. ER20-2436-000 ER20-2437-000 ER20-2437-001

ORDER ACCEPTING AGREEMENTS

(Issued April 15, 2021)

1. In an order issued on December 20, 2019, the Commission found that Generator Interconnection Agreements (GIA), Facilities Construction Agreements (FCA), and Multi-Party Facilities Construction Agreements (MPFCA)[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 16, 2020, in Docket No. ER20-2436-000, MISO submitted an unexecuted amended and restated GIA (Amended Agreement) among North Star Solar PV, LLC (North Star) 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

---

[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).

provide that NSP may unilaterally elect to provide initial funding for network upgrades needed to connect North Star's generating facility (Project) to the transmission system.[3] Also on July 16, 2020, in Docket No. ER20-2437-000, MISO submitted an unexecuted Facilities Service Agreement (North Star FSA)[4] among the Parties that specifies the terms of repayment of money owed to NSP for the network upgrades needed to connect the Project.[5]

3. We accept the Agreements, effective as of June 30, 2020, as discussed below.

I. Background[6]

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, ER20-2436-000, Transmittal Letter at 3 (filed July 16, 2020) (Amended Agreement Filing).

[4] This order refers to the Amended Agreement and North Star FSA collectively as "Agreements."

[5] MISO NSP-North Star FSA Filing, Docket No. ER20-2437-000, Transmittal Letter at 4 (filed July 16, 2020) (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] *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 reduced *pro rata* over the term of the FSA.[24] The Commission found that the security

---

[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 arguments raised on reh'g*, 173 FERC ¶ 61,037 (2020).

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

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. 2871 under MISO's Tariff, and that it has designated the Project as Project No. J385 in its interconnection queue.[26] The Amended Agreement replaces and supersedes the first amended GIA executed by and between the Parties on October 26, 2016 and filed in Docket No. ER17-329-000.[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 June 30, 2020.

14. MISO states that it has designated the North Star FSA as Original Service Agreement No. 3519 under MISO's Tariff.[29] MISO states that it has filed the North Star 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 North Star under the terms of the original GIA and which are currently in service. As further described below, NSP will refund the net book value of the network upgrade costs previously collected from North Star under the terms of the original GIA and then recover from North Star the return on and of the cost of the network upgrades through an annual

---

[25] *Id.* P 32.

[26] Amended Agreement Filing, Transmittal Letter at 1.

[27] Amended Agreement Filing, Tab B, Amended and Restated GIA, preamble. The first amended GIA superseded the provisional GIA executed by and between the Parties on November 11, 2015.

[28] *Id.*, Transmittal Letter at 3.

[29] FSA Filing, Transmittal Letter at 1.

revenue requirement.[30] MISO requests that the North Star FSA be made effective as of June 30, 2020.

15. MISO explains that, while the North Star 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. J385 is currently in service.[31] For instance, MISO states that Article II of the North Star FSA has been modified to state that the term of this FSA will be 16 annual payments, 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 North Star 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. Finally, because the North Star FSA consists of 16 annual payments rather than 240 monthly payments, the proposed revisions state that the security amount may be reduced by 6.25% of the net book value each year. 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. MISO states that the Parties agree to these changes, noting that North Star agrees that the changes are necessary to account for in-service network upgrades.

III. <u>Notice and Responsive Pleadings</u>

16. Notice of MISO's Amended Agreement and North Star FSA filings was published in the *Federal Register*, 85 Fed. Reg. 44,297 (July 22, 2020), with interventions and protests due on or before August 6, 2020.

17. Timely motions to intervene in Docket No. ER20-2436-000 were filed by Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company NSP, and D.E. Shaw Renewable Investments, on behalf of its subsidiary North Star. Xcel filed a timely

---

[30] *Id.*, 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.

motion to intervene in Docket No. ER20-2437-000. North Star filed a timely motion to intervene and protest in Docket No. ER20-2437-000.

18. On August 21, 2020, MISO and Xcel filed answers to North Star's protest. On September 1, 2020, North Star 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 North Star FSA filing in Docket No. ER20-2437-000 was deficient and requesting additional support for the net book value stated in the North Star FSA (Deficiency Letter). MISO submitted its response in Docket No. ER20-2437-001 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 June 30, 2020, 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 November 11, 2015, as allowed in the December 2019 Order. We also find that the associated non-conforming North Star FSA 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 North Star FSA, as well as the proposed removal of *pro forma* FSA Article III.g from the North Star FSA; we agree with the Parties 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 term of 16 annual payments in Article II of the North Star FSA in recognition of the fact that approximately four years have passed since the network upgrade went into service. We accept the changes to the security provisions in Article IV.a of the North Star FSA to clarify that the security amount will be based on the net book value of the network upgrades. Because the proposed repayment structure of the North Star FSA is 16 annual payments rather than 240 monthly payments, we accept the proposal that the security amount may be reduced by 6.25% of the net book value each year. 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 upgrade.

1. Effective Dates

a. Filings

24. MISO requests that the Commission grant waiver of its 60-day prior notice requirement and make the Agreements effective as of June 30, 2020.[32] 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 these effective dates is necessary to ensure consistency with this valuation. MISO contends that imposing different effective dates might require MISO to refile the North Star 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 Agreements. MISO also requests that the Commission grant waiver of any other Commission regulations that the Commission may deem applicable to the filings.

b. Commission Determination

25. We accept the Agreements to be effective June 30, 2020, as requested.[33] We note that, in granting this effective date, there is no need to waive the Commission's 60-day

---

[32] Amended Agreement Filing, Transmittal Letter at 4-5; FSA Filing, Transmittal Letter at 5.

[33] We note that, in three orders issued today that similarly address MISO filings to implement the Transmission Owner Initial Funding option for other projects, the Commission denied the requested effective dates for the filed FSAs. *Midcontinent Indep. Sys. Operator*, *Inc.*, 175 FERC ¶ 61,032 (2021), *Midcontinent Indep. Sys. Operator*, *Inc.*, 175 FERC ¶ 61,033 (2021) and *Midcontinent Indep. Sys. Operator*, *Inc.*, 175 FERC ¶ 61,034 (2021). In each of those proceedings, MISO requested that the underlying GIA or FCA be made effective as of the date of the Commission's order accepting the

prior notice requirement because the revised interim period agreements and their associated FSAs are not new filings subject to the prior notice requirement of FPA section 205. Instead, they are being filed in order to correct the Commission's FPA section 206 decision that was vacated by the D.C. Circuit and return the parties to the position they would be in if the Commission had not committed this error.[34]

2. Security

a. Filing

26. MISO states that the North Star FSA includes a security provision that is substantially similar to the security provision in the *pro forma* FSA. The North Star 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).[35] Consistent with the *pro forma* FSA, 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 North Star FSA. The security provided under the GIA may be applied as the security for the North Star FSA – the interconnection customer will not be required to maintain concurrently the security under the GIA and the security under the North Star FSA.

b. Protest

27. North Star objects to the requirement that it post new security under the North Star FSA.[36] North Star contends that the Commission has consistently found that it is unjust and unreasonable for the interconnection customer to provide security in an FSA

---

agreements for filing but requested an earlier effective date for the corresponding FSA. We found that it is not possible to make an FSA effective prior to the effective date of the GIA or FCA that establishes the Transmission Owner Initial Funding option. Here, by contrast, MISO requested a June 30, 2020 effective date for both the GIA and the FSA, and therefore it is possible to implement a June 30, 2020 effective date.

[34] FPA section 205 requires that public utilities file new rates or changes to their existing rates 60 days before a proposed change may go into effect; filings made under FPA section 206 or filings directed to correct the Commission's legal error are not subject to this requirement. *See* 16 U.S.C. § 824d; 16 U.S.C. § 824(e); 16 U.S.C. § 825h.

[35] FSA Filing, Tab B, proposed FSA, art. IV (Security).

[36] North Star Protest of FSA, Docket No. ER20-2437-000, at 3.

applying Option 1 funding after network upgrades are in operation, and after the customer has posted security on the same cost of capital under the GIA, even when it was argued that the security requirement was justified based on the risk of customer default.[37] North Star states that this precedent is directly on point, arguing that the transmission owners' retroactive election of the Transmission Owner Initial Funding option for agreements effective during the interim period places interconnection customers in materially identical circumstances.[38] North Star explains that, under Option 1 funding, the interconnection customer would post security under its GIA and fund the capital up-front for construction of the network upgrades; after the network upgrades were completed, the transmission owner would refund the cost of the network upgrades, and thereafter, under an FSA, assess the interconnection customer network upgrade charges allowing the transmission owner to receive a return on and of the network upgrade costs.[39] North Star states that, like the customers subject to Option 1 funding in these precedents, North Star posted security when the first original GIA was executed on October 26, 2016, provided up-front capital for construction of the network upgrades (which will be refunded to allow the transmission owner to make the retroactive election to provide initial funding for the network upgrades), those network upgrades were constructed and are in-service, and North Star will pay the transmission owner under the North Star FSA a return on and of the costs of the network upgrades.[40]

28. North Star states that the security requirement in the North Star FSA is apparently in reliance on the fact that the *pro forma* FSA contains a security requirement; North Star argues that such reliance is misplaced.[41] North Star asserts that the North Star FSA is a non-conforming agreement due to necessary changes in order to implement Transmission Owner Initial Funding for network upgrades that are already in-service. North Star argues that, in accepting a security requirement in the *pro forma* FSA, the Commission envisioned it "for use in future FSAs implementing Transmission Owner Initial Funding."[42] But, North Star contends, the North Star FSA proposed in this case is not a future FSA; instead, the North Star FSA is associated with a GIA that became effective

[37] *Id.* at 5-7 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,145 (2015) (*White Oak*); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,072 (2016) (*White Oak II*); *Otter Tail Power Co.*, 155 FERC ¶ 61,125 (2016)).

[38] *Id.* at 3, 6.

[39] *Id.* at 5-6.

[40] *Id.* at 8.

[41] *Id.* at 9.

[42] *Id.* at 9 (citing *Pro Forma FSA Order,* 171 FERC ¶ 61,075 at P 34).

between June 2015 and August 2018. North Star states that it posted the security required under MISO's Tariff then in effect and satisfied the Tariff's requirements to fully fund the network upgrades. North Star contends that the Commission's precedents are on point and clear: "there is no justification for the payment terms of the FSA to include new security inasmuch as the security requirement that exists in the Tariff has already been satisfied…."[43] North Star asks the Commission to reject the North Star FSA or, if the Commission does not reject it, direct that the security provisions be removed.

29. Finally, North Star reserves any and all rights and remedies should the Commission on rehearing, or the courts on appeal, overturn or remand the Commission decisions permitting the election of the Transmission Owner Initial Funding option for interim agreements and/or the requirement to post security in FSAs associated with such agreements.[44]

c. <u>Answers</u>

30. MISO and Xcel contend that the security provisions in the North Star FSA are consistent with those in the *pro forma* FSA that have already been accepted as just and reasonable.[45] MISO and Xcel state that, in fact, the order accepting the *pro forma* FSA specifically rejected the very arguments against the security requirement that are advanced in North Star's protest.[46] MISO states that, although the North Star FSA is non-conforming, the non-conforming revisions included in the FSA do not change the substance of the security requirement.[47] MISO disagrees with North Star's argument that the security requirement was only meant to apply to future FSAs, and that the North Star FSA is not a future FSA. MISO asserts that, when the North Star FSA was filed on July 16, 2020, MISO's *pro forma* FSA Tariff provisions were in effect. MISO asserts that the very purpose of the *pro forma* FSA was to promote uniformity and avoid the need to negotiate and litigate each specific agreement, which is precisely what North Star is attempting to do in this docket.[48] Xcel argues that any changes to the security

---

[43] *Id.* at 9 (citing *White Oak*, 152 FERC ¶ 61,145 at P 39).

[44] *Id.* at 10.

[45] MISO Answer to Protest, Docket No. ER20-2437-000, at 2; Xcel Answer to Protest, Docket No. ER20-2437-000 at 7.

[46] MISO Answer to Protest, Docket No. ER20-2437-000, at 5; Xcel Answer to Protest, Docket No. ER20-2437-000 at 6.

[47] MISO Answer to Protest, Docket No. ER20-2437-000, at 5.

[48] *Id.* at 5-6.

requirement in the *pro forma* FSA must be consistent with or superior to the *pro forma* FSA, and must also be necessary; Xcel contends that North Star has not made such a demonstration with respect to the North Star FSA.[49] Xcel states that the primary purpose of the security provision is to protect transmission owners and their transmission service customers against the risk of non-payment or default by the interconnection customer; whether the network upgrades have been constructed is irrelevant.[50]

31. MISO states that there is no basis to reject the North Star FSA, because the protest has not shown that the FSA "patently fails to substantively comply with applicable requirements."[51] MISO asserts that the North Star FSA was filed in compliance with the Commission's directives in the December 2019 Order, and that the pending requests for rehearing of that order do not stay the effectiveness or enforceability of that order.[52]

32. In its answer to MISO's answer, North Star contends that MISO mischaracterizes its protest as a collateral attack on the December 2019 Order and the *Pro Forma* FSA Order.[53] North Star claims that the December 2019 Order did not address arguments on whether a retroactively amended interim period GIA should require the interconnection customer to post security under the North Star FSA.[54] Similarly, North Star asserts that the *Pro Forma* FSA Order accepted the security requirement for use in future FSAs implementing Transmission Owner Initial Funding; however, North Star argues, the North Star FSA complies with the directive in the December 2019 Order to return the parties to the GIAs entered into during the interim period to the position they would be in if the Commission had not issued the order eliminating Transmission Owner Initial Funding in 2015.[55] North Star argues that the Tariff did not require new security be posted under an FSA where the interconnection customer had already satisfied the security requirement in the Tariff.

---

[49] Xcel Answer to Protest, Docket No. ER20-2437-000, at 5.

[50] *Id.* at 2-3.

[51] MISO Answer to Protest, Docket No. ER20-2437-000, at 4 (citing 18 C.F.R. § 35.5(a) (2020)).

[52] *Id.* at 3-5.

[53] North Star Answer to MISO, Docket No. ER20-2437-000, at 1.

[54] *Id.* at 1-2.

[55] *Id.* at 2.

d. Commission Determination

33. We find that the requirement in the North Star FSA for North Star to post security on the net book value of the network upgrades is just and reasonable because it is required by the Tariff. We disagree with North Star's argument that the *pro forma* FSA should not be used here. The *pro forma* FSA was accepted by the Commission with an effective date of April 27, 2020. The North Star FSA was filed after the *pro forma* FSA became effective in the Tariff; therefore, MISO appropriately followed its Tariff when it used the *pro forma* FSA in this instance. Moreover, although the North Star FSA is non-conforming, we agree with Xcel that North Star has not shown the security requirement to be unnecessary. We also agree with MISO that the non-conforming revisions included in the agreement do not change the substance of the security requirement.

34. We reject North Star'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 North Star FSA follows the Tariff. Therefore, the Commission's decision in *White Oak II* is distinguishable.

3. Refund and Payment Structure

a. Filings

35. The North Star FSA states that the transmission owner will refund the net book value of the costs previously collected from the interconnection customer for the network upgrades associated with the Project.[56] 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 $2,740,698, within the later of 45 days after execution of the North Star FSA or 45 days after Commission acceptance of the unexecuted North Star FSA.[57] Within 10 days of receipt of this security, the transmission owner will then refund to the interconnection customer $2,740,698.[58]

---

[56] FSA Filing, Tab B, proposed FSA, preamble.

[57] *Id.* at art. III (Network Upgrade Charge) & art. IV (Security). The calculation of the net book value is explained further below.

[58] *Id.* at preamble & art. III (Network Upgrade Charge).

36. The transmission owner will charge the interconnection customer under the terms of the North Star FSA to recoup a return on and of the net book value of the network upgrades refunded to the interconnection customer through an annual revenue requirement. Under the terms of the North Star FSA, the interconnection customer will make its first annual payment to the transmission owner by the 15th day of the month following the interconnection customer's receipt of the refund of the net book value, and subsequent annual payments will be made each June until 16 annual payments have been made.[59] The North Star FSA states that, because the network upgrades associated with the FSA are already in service, for the purposes of calculating the revenue requirement, the net book value of the network upgrades is calculated as of the requested effective date of the Amended Agreement, which is June 30, 2020.[60] The North Star FSA calculates the net book value at $2,470,698 and, using a levelized fixed charge rate of 12.0932%, calculates the annual revenue requirement at $331,438.[61] The North Star 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 North Star FSA states that the payment will be re-calculated annually by updating certain inputs to the formula rate.

b. <u>Deficiency Letter and Deficiency Response</u>

37. 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.

38. In the Deficiency Response, MISO states that: (1) the actual gross plant value of the network upgrades is $2,959,402; (2) the actual in-service date of the network upgrades was November 17, 2016; and (3) the accrued depreciation is $218,704.[62] 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,

---

[59] *Id.* at art. II (Effective Date and Term) & art. III (Network Upgrade Charge).

[60] *Id.*, Transmittal Letter at 4, Tab B, proposed FSA, preamble.

[61] *Id.*, Tab B, proposed FSA, art. III (Network Upgrade Charge).

[62] Deficiency Response at 3.

and South Dakota), as shown in a sample net book value calculation attached to the Deficiency Response.

c. **Commission Determination**

39. We find the proposed refund and payment structure to be a just and reasonable mechanism for implementing NSP's choice to provide Transmission Owner Initial Funding for the network upgrades associated with the Project. Specifically, we find it just and reasonable for the North Star FSA to require that NSP must refund the $2,470,698 net book value of the network upgrade costs previously collected from North Star under the terms of the original GIA and set forth an annual revenue requirement allowing NSP to recover a return on and of this net book value. We also find it just and reasonable that North Star will not be required to make its first annual payment to NSP until the 15th day of the month following North Star's receipt of the refund of the net book value, with subsequent annual payments due each June.

The Commission orders:

(A) The Amended Agreement is hereby accepted, effective as of June 30, 2020, as discussed in the body of this order.

(B) The North Star FSA is hereby accepted, effective as of June 30, 2020, as discussed in the body of this order.

By the Commission. Chairman Glick is concurring with 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.*