

175 FERC ¶ 61,034  
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. ER20-2438-000  
ER20-2439-000  
ER20-2439-001

ORDER CONDITIONALLY ACCEPTING AGREEMENTS SUBJECT TO  
FURTHER COMPLIANCE FILING

(Issued April 15, 2021)

1. In an order issued on December 20, 2019, the Commission found that Generator Interconnection Agreements (GIA), Facilities Construction Agreements (FCA), and Multi-Party Facilities Construction Agreements (MPFCA)<sup>1</sup> 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.<sup>2</sup>

2. On July 16, 2020, in Docket No. ER20-2438-000, MISO submitted an unexecuted amended and restated GIA (Amended Agreement) among Marshall Solar, LLC (Marshall Solar) as interconnection customer, Northern States Power Company, a Minnesota corporation (NSP) as transmission owner, and MISO as transmission provider

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<sup>1</sup> 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.

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

(collectively, the Parties). MISO asserts that the Amended Agreement is revised to provide that NSP may unilaterally elect to provide initial funding for network upgrades needed to connect Marshall Solar's generating facility (Project) to the transmission system.<sup>3</sup> Also on July 16, 2020, in Docket No. ER20-2439-000, MISO submitted an unexecuted Facilities Service Agreement (Marshall Solar FSA)<sup>4</sup> among the Parties that specifies the terms of repayment of money owed to NSP for initially funding the network upgrades needed to connect the Project.<sup>5</sup>

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

## **I. Background**<sup>6</sup>

### **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.<sup>7</sup> 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

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<sup>3</sup> MISO Amended and Restated GIA Filing, Docket No. ER20-2438-000, Transmittal Letter at 4 (filed July 16, 2020) (Amended Agreement Filing).

<sup>4</sup> This order refers to the Amended Agreement and Marshall Solar FSA collectively as "Agreements."

<sup>5</sup> MISO NSP-Marshall Solar FSA Filing, Docket No. ER20-2439-000, Transmittal Letter at 4 (filed July 16, 2020) (FSA Filing).

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

<sup>7</sup> *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.<sup>8</sup>

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),<sup>9</sup> the Commission found the Transmission Owner Initial Funding option to be unjust, unreasonable, and unduly discriminatory or preferential.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> On remand, the Commission reversed its earlier findings and directed MISO to file Tariff

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<sup>8</sup> *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).

<sup>9</sup> 16 U.S.C. § 824e.

<sup>10</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,220, at P 48 (2015), *order on reh’g*, 153 FERC ¶ 61,352, at PP 29-30 (2015).

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

<sup>12</sup> *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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup> 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,<sup>17</sup> provided that such election is done in a not unduly discriminatory manner.<sup>18</sup> The Commission directed MISO to file Tariff revisions to provide for the implementation of this requirement.

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

<sup>14</sup> *Id.* P 35.

<sup>15</sup> *Id.* P 36.

<sup>16</sup> December 2019 Order, 169 FERC ¶ 61,233 at P 150.

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

<sup>18</sup> December 2019 Order, 169 FERC ¶ 61,233 at P 125.

### C. Pro Forma FSA

10. 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> The Commission found that the requirement was not duplicative of any other financial security.

### II. Filings

11. MISO states that it has designated the Amended Agreement as Second Revised Service Agreement No. 2885 under MISO's Tariff, and that it has designated the Project as Project No. J400 in its interconnection queue.<sup>22</sup> The Amended Agreement replaces and supersedes the GIA executed by and between the Parties on November 1, 2016.<sup>23</sup> 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.<sup>24</sup> MISO notes that the Amended Agreement is being filed on an unexecuted basis at the direction of the interconnection customer.

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<sup>19</sup> *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) (*Pro Forma FSA Order on Rehearing*).

<sup>20</sup> *Pro Forma FSA Order*, 171 FERC ¶ 61,075 at PP 23, 32.

<sup>21</sup> *Id.* P 32.

<sup>22</sup> Amended Agreement Filing, Transmittal Letter at 1.

<sup>23</sup> *Id.*, Tab B, Amended and Restated GIA, preamble.

<sup>24</sup> *Id.*, Transmittal Letter at 4.

MISO requests that the Amended Agreement be made effective as of the date of this order.

12. MISO states that it has designated the Marshall Solar FSA as Original Service Agreement No. 3514 under MISO's Tariff.<sup>25</sup> MISO states that it has filed the Marshall Solar 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 Marshall Solar 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 Marshall Solar under the terms of the original GIA and then recover from Marshall Solar the return on and of the cost of the network upgrades through a monthly or annual revenue requirement.<sup>26</sup> MISO requests that the Marshall Solar FSA be made effective as of June 30, 2020.

13. MISO explains that, while the Marshall Solar 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. J400 is currently in service.<sup>27</sup> For instance, MISO 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 Marshall Solar FSA was negotiated. MISO asserts that the security provisions in Article IV.a have also been revised to clarify that the security amount will be based on the net book value of the network upgrades. MISO contends that the changes are just and reasonable because, while the *pro forma* FSA envisions that an FSA may be executed before the network upgrades are in service and before their actual costs are known, in this case the upgrades are in service and their actual costs are known.

### **III. Notice and Responsive Pleadings**

14. Notice of MISO's Amended Agreement and Marshall Solar 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.

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<sup>25</sup> FSA Filing, Transmittal Letter at 1.

<sup>26</sup> *Id.* at 4 and Tab B, proposed FSA, preamble. We note that, while the filings refer to the calculation of the net book value as the "initial capital cost," we use the term net book value.

<sup>27</sup> *Id.*, Transmittal Letter at 4.

15. Timely motions to intervene in Docket Nos. ER20-2438-000 and ER20-2439-000 were filed by Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company NSP. Marshall Solar filed timely motions to intervene and protests in Docket Nos. ER20-2438-000 and ER20-2439-000.

16. On August 21, 2020, MISO and Xcel filed answers to Marshall Solar's protests.

#### **IV. Deficiency Letter and Deficiency Response**

17. On October 1, 2020, Commission staff issued a letter informing MISO that its Marshall Solar FSA filing in Docket No. ER20-2439-000 was deficient and requesting additional support for the net book value stated in the Marshall Solar FSA (Deficiency Letter). MISO submitted its response in Docket No. ER20-2439-001 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**

18. 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.

19. 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 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**

20. We accept the Agreements, effective as of the date of this order, subject to a further compliance filing to be submitted within 60 days from the date of this order, as discussed below. We find that the Amended Agreement appropriately reflects NSP's decision to elect the Transmission Owner Initial Funding option for the network upgrades associated with the Project that were originally identified in the interim period agreement executed by the Parties on November 1, 2016, as allowed in the December 2019 Order. We also find that the associated non-conforming Marshall Solar 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.

21. As an initial matter, we accept the non-conforming provisions that MISO has proposed to Article IV.a of the Marshall Solar FSA, as well as the removal of *pro forma*

FSA Article III.g from the Marshall Solar 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 changes to the security provision in Article IV.a of the Marshall Solar FSA to clarify that the security amount will be based on the net book value of the network upgrades. We also 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**

22. MISO requests that the Commission waive its 60-day prior notice requirement and make the Amended Agreement effective date as of the date of the Commission order.<sup>28</sup>

23. MISO also requests that the Commission waive its 60-day prior notice requirement and make the Marshall Solar FSA effective as of June 30, 2020.<sup>29</sup> MISO states that the net book value of the network upgrades has been calculated as of June 30, 2020, and argues that allowing this effective date is necessary to ensure that the Marshall Solar FSA's effective date is consistent with this valuation. MISO contends that imposing a different effective date might require MISO to refile the Marshall Solar FSA to revise the determination of the net book value and the annual and monthly revenue requirements, and that the June 30, 2020 date will provide certainty to the Parties as to the status of the agreement. MISO also requests that the Commission grant waiver of any other Commission regulations that the Commission may deem applicable to the filing.

**b. Commission Determination**

24. We accept the Amended Agreement to become effective as of the date of this order, as MISO has requested. As noted above, Article 11.3 of the Amended Agreement allows NSP to elect the Transmission Owner Initial Funding option for network upgrades associated with the Project that were originally identified in the interim period agreement executed by the Parties on November 1, 2016. The Marshall Solar FSA implementing NSP's choice of the Transmission Owner Initial Funding option cannot be effective before the contract language in the Amended Agreement allowing NSP to make that choice. Thus, we deny the requested June 30, 2020 effective date for the Marshall Solar FSA and instead accept it effective as of the date of this order. As discussed below, the

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<sup>28</sup> Amended Agreement Filing, Transmittal Letter at 4.

<sup>29</sup> FSA Filing, Transmittal Letter at 5.

effective date granted for the Marshall Solar FSA may require some conforming changes to the FSA, such as adjustment to the net book value calculation.

**2. Security**

**a. Filing**

25. MISO states that the Marshall Solar FSA includes a security provision that is substantially similar to the security provision in the *pro forma* FSA. The Marshall Solar 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).<sup>30</sup> 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 Marshall Solar FSA. The security provided under the GIA may be applied as the security for the Marshall Solar FSA – the interconnection customer will not be required to maintain concurrently the security under the GIA and the security under the Marshall Solar FSA.

**b. Protest**

26. Marshall Solar states that the Marshall Solar FSA inappropriately requires it to post security, even though the Marshall Solar facility and the network upgrades have already been constructed and are in operation.<sup>31</sup> Marshall Solar argues that this is unnecessary because, if Marshall Solar does not make payments under the Marshall Solar FSA, NSP can avail itself of protections under the Marshall Solar FSA and GIA, and does not need to draw on a security to enforce compliance by Marshall Solar. Marshall Solar notes that the issue of whether security should be required is being litigated at the Commission in Docket No. ER20-359-002,<sup>32</sup> where it is argued that these security provisions create an undue burden on the generator because the network upgrades are already completed and financial security was already posted for the construction of the network upgrades under the GIA. Marshall Solar requests that the Commission remove the required financial security from the Marshall Solar FSA, or at least specify that it

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<sup>30</sup> *Id.*, Tab B, proposed FSA, art. IV (Security).

<sup>31</sup> Marshall Solar Protest of the FSA, Docket No. ER20-2439-000, at 3.

<sup>32</sup> 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.

should be removed if a future Commission order no longer provides for security in FSAs once upgrades are in service.

**c. Answers**

27. MISO states that the Marshall Solar FSA reflects the Commission's directives set forth in the December 2019 Order, and that pending requests for rehearing of that order do not stay its effectiveness.<sup>33</sup> MISO and Xcel contend that the security provisions in the Marshall Solar FSA are consistent with those in the *pro forma* FSA that have already been accepted as just and reasonable.<sup>34</sup> MISO states that, in fact, the order accepting the *pro forma* FSA specifically rejected the very arguments against the security requirement that are advanced in Marshall Solar's protest. MISO and Xcel state that pending requests for rehearing of that order do not stay its effectiveness.<sup>35</sup>

**d. Commission Determination**

28. We find that the requirement in the Marshall Solar FSA for Marshall Solar to post security on the net book value of the network upgrades is just and reasonable because it is required by the Tariff. 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."<sup>36</sup> With respect to the argument raised by Marshall Solar that the security requirement should be removed if a future Commission order no longer provided for security in FSAs, we note

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<sup>33</sup> MISO Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 2-4.

<sup>34</sup> *Id.* at 5; Xcel Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 3-4.

<sup>35</sup> MISO Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 5; Xcel Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 4.

<sup>36</sup> *Pro Forma* FSA Order, 171 FERC ¶ 61,075 at P 32, *Pro Forma* FSA Order on Rehearing, 173 FERC ¶ 61,037 at PP 20-23.

that the Commission upheld its acceptance of the security provision in the FSA on rehearing.<sup>37</sup>

### 3. Refund and Payment Structure

#### a. Filings

29. The Amended Agreement states that the transmission owner will refund the costs previously collected from the interconnection customer for the network upgrades associated with the Project.<sup>38</sup> 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 \$1,348,917, within the later of 45 days after execution of the Marshall Solar FSA or 45 days after Commission acceptance of the unexecuted Marshall Solar FSA.<sup>39</sup> Within 10 days of receipt of this security, the transmission owner will then refund to the interconnection customer \$1,348,917. The Amended Agreement notes that the amount of the refund is based on the net book value of the network upgrades as of June 30, 2020, which is the requested effective date of the Marshall Solar FSA.<sup>40</sup> The Amended Agreement states that, “[i]n the event the refund date changes due to the Effective Date of this GIA or the associated FSA, the refund will be adjusted to account for net book value as of the refund date.”<sup>41</sup>

30. The transmission owner will charge the interconnection customer under the terms of the Marshall Solar 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 Marshall Solar 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 15<sup>th</sup>

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<sup>37</sup> *Pro Forma* FSA Order on Rehearing, 173 FERC ¶ 61,037 at PP 20-23.

<sup>38</sup> Amended Agreement Filing, Tab B, Generator Interconnection Agreement, app. B (Transmission Owner Milestone 11).

<sup>39</sup> *Id.*, app. B (Interconnection Customer Milestone 1d); FSA Filing, Tab B, proposed FSA, art. IV (Security). The calculation of the net book value of the network upgrade cost is explained further below.

<sup>40</sup> Amended Agreement Filing, Tab B, Generator Interconnection Agreement, app. B (Transmission Owner Milestone 11).

<sup>41</sup> *Id.*

day of each month.<sup>42</sup> Alternatively, the interconnection customer may switch to an annual payment. The Marshall Solar FSA states that, because the network upgrades associated with the FSA are already in service, for the purposes of calculating the monthly revenue requirement, the net book value of the network upgrades is calculated as of the effective date of the associated Amended Agreement.<sup>43</sup> The Marshall Solar FSA calculates the net book value at \$1,348,917 and, using a levelized fixed charge rate of 10.7946%, calculates the monthly revenue requirement at \$12,134 and the annual revenue requirement at \$145,610.<sup>44</sup> The Marshall Solar 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 Marshall Solar FSA states that the payment will be re-calculated annually by updating certain inputs to the formula rate.

**b. Deficiency Letter and Deficiency Response**

31. 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 accrued depreciation.

32. In the Deficiency Response, MISO states that: (1) the actual gross plant value of the network upgrades is \$1,454,473; (2) the actual in-service date of the network upgrades was November 17, 2016; and (3) the accrued depreciation is \$105,556.<sup>45</sup> MISO explains that NSP calculated the blended depreciation rate for each plant account based on the depreciation rate in each of NSP's three jurisdictions (Minnesota, North Dakota, and South Dakota), as shown in a sample net book value calculation attached to the Deficiency Response.

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<sup>42</sup> FSA Filing, Tab B, proposed FSA, art. III (Network Upgrade Charge).

<sup>43</sup> *Id.*, preamble. We note that this preamble language conflicts with (1) Exhibit A5 and Appendix B to the Amended Agreement and (2) the calculations shown in Exhibit I to the proposed FSA, which all indicate that the refund net book value is calculated as of June 30, 2020 (i.e., the requested effective date of the Marshall Solar FSA).

<sup>44</sup> FSA Filing, Tab B, proposed FSA, art. III (Network Upgrade Charge) and ex. 1.

<sup>45</sup> Deficiency Response at 3.

**c. Commission Determination**

33. We find it just and reasonable for the Marshall Solar FSA to require that NSP must refund the net book value of the network upgrade costs previously collected from Marshall Solar under the terms of the original GIA and set forth annual and monthly revenue requirements allowing NSP to recover a return on and of this net book value. However, due to the effective date granted for the Marshall Solar FSA (i.e., the date of this order), some adjustment to the net book value calculation may be necessary. Specifically, Exhibit A5 and Appendix B to the Amended Agreement state that the refund to the interconnection customer is based on a net book value as of June 30, 2020, which is the requested effective date for the Marshall Solar FSA.<sup>46</sup> Exhibit A5 and Appendix B to the Amended Agreement further state that “[i]n the event the refund date changes due to the Effective Date of this Agreement or the associated [FSA], the refund will be adjusted to account for net book value.” We direct MISO, on compliance, to either: (1) recalculate the refund due to the interconnection customer to account for the effective date of the Marshall Solar FSA granted in this order; or (2) justify the continued use of the June 30, 2020 calculation date for the net book value. We also direct MISO to make any necessary conforming changes to: (1) the monthly and annual revenue requirements, which are based partially on the net book value; (2) the references to the net book valuation date throughout the Agreements; and (3) the required amount of security to be posted under the Marshall Solar FSA, which should be equal to the net book value.

34. We also find that the proposed provisions related to the timing of the refund to Marshall Solar and the monthly payments made by Marshall Solar are unjust and unreasonable. Specifically, under Article IV(a) of the Marshall Solar FSA and Appendix B to the Amended Agreement, Marshall Solar is required to provide security in the amount of the net book value of the network upgrades within the later of 45 days after execution of the Marshall Solar FSA by all Parties or 45 days after Commission acceptance of the unexecuted Marshall Solar FSA. NSP must then refund to Marshall Solar the net book value of the network upgrades already paid by Marshall Solar within 10 days of receipt of security. As Marshall Solar has not yet executed the FSA, it may not receive its refund until 55 days after the issuance of this order. However, under Article III of the Marshall Solar FSA, Marshall Solar must begin making its network upgrade charge payments by the 15<sup>th</sup> 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 Marshall Solar will receive its refund before it must begin making payments to NSP that are designed to allow NSP to recover a return on and of the money refunded to Marshall Solar. We find it unjust and unreasonable for Marshall Solar to potentially be required to begin making payments that allow NSP to

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<sup>46</sup> As we indicate above, there is one instance of conflicting (and apparently incorrect) language in the preamble to the Marshall Solar FSA indicating that the net book value is calculated as of the effective date of the Amended Agreement.

recover a return on and of funds that NSP still possesses. We direct MISO, in the compliance filing due within 60 days from the date of this order, to propose changes that fix this potential timing discrepancy. For instance, the Marshall Solar FSA could require payments to begin the business day following Marshall Solar's receipt of the refund.

#### **4. Reservation of Rights**

##### **a. Protest**

35. Marshall Solar states that the December 2019 Order is pending on rehearing, and should the Commission grant rehearing, the premise for the Amended Agreement and the associated Marshall Solar FSA will no longer exist.<sup>47</sup> If that occurs, Marshall Solar expressly reserves its right to file at the Commission to reverse the changes in the Amended Agreement and terminate the Marshall Solar FSA, so that it can be made financially whole. Marshall Solar requests that the Commission reject the Agreements and require the parties to amend them to say the changes will be undone if the legal premise for Transmission Owner Initial Funding is later eliminated. Alternatively, Marshall Solar requests that the Commission state in its order in this proceeding that, if future Commission decisions lead to reversal of the Transmission Owner Initial Funding option, then interconnection customers should be able to retroactively annul and reverse transmission owner elections of this option, terminating FSAs and restoring GIAs and other agreements to their form before Transmission Owner Initial Funding was imposed on interconnection customers.<sup>48</sup>

##### **b. Answers**

36. MISO and Xcel oppose Marshall Solar's proposal to memorialize its reservations in the Marshall Solar FSA.<sup>49</sup> MISO believes that such unilateral amendments would be premature because any reversal or modification on rehearing or appeal in the underlying dockets is speculative at this point.<sup>50</sup> Further, MISO asserts, if the December 2019 Order

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Marshall Solar Protest of the Amended Agreement, Docket No. ER20-2438-000, at 2-3; Marshall Solar Protest of the FSA, Docket No. ER20-2439-000, at 3.

<sup>48</sup> Marshall Solar Protest of the Amended Agreement, Docket No. ER20-2438-000, at 3; Marshall Solar Protest of the FSA, Docket No. ER20-2439-000, at 4.

<sup>49</sup> MISO Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 6; Xcel Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 4.

<sup>50</sup> MISO Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000,

or the *Pro Forma* FSA Order are reversed or modified at some point in the future, it will be up to the Commission to fashion appropriate remedies. Xcel states that, to the extent Marshall Solar is seeking to memorialize its protest in the formal record, it has done so already by filing the protest.<sup>51</sup> Xcel contends that Marshall Solar has not proposed specific language to include in the Agreements and has not shown that such changes would be just, reasonable, and necessary.

**c. Commission Determination**

37. We deny Marshall Solar's request that we direct the Parties to amend the Agreements to include language providing that Marshall Solar may terminate the Marshall Solar FSA if pending Commission or judicial decisions result in the elimination of the unilateral right of the transmission owner to elect the Transmission Owner Initial Funding option. We also disagree with Marshall Solar's alternative request that we hold at this time that we will allow interconnection customers to retroactively annul and reverse Transmission Owner Initial Funding elections should future Commission decisions lead to reversal of such unilateral elections. The Marshall Solar 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.<sup>52</sup> In addition, Article X.f of the Marshall Solar FSA and Article 30.11 of the Amended Agreement provide that nothing in the Agreements shall limit the rights of the Parties or of the Commission under Sections 205 and 206 of the FPA and the Commission's rules and regulations thereunder. The Commission will exercise its discretion to fashion appropriate remedies in the event that its orders are vacated or modified by Commission orders or the courts, and will rule on any request to retroactively annul and reverse Transmission Owner Initial Funding elections if and when an FPA section 205 or 206 filing making such a request is submitted.

The Commission orders:

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at 6.

<sup>51</sup> Xcel Answer to Protests, Docket Nos. ER20-2438-000 and ER20-2439-000, at 5.

<sup>52</sup> 16 U.S.C. § 8251(c); 18 C.F.R. § 385.713(e) (2020). We also note that, after Marshall Solar 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 (2020).

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

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

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

By the Commission. Commissioner 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.<sup>1</sup> The Commission

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<sup>1</sup> *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.<sup>2</sup>

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.<sup>3</sup>

For these reasons, I respectfully concur.

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Richard Glick  
Chairman

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*