

146 FERC ¶ 61,113  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Interstate Power and Light Company

Docket No. EL12-104-001

v.

ITC Midwest, LLC

Midcontinent Independent System Operator, Inc. Docket No. ER13-2156-000

ORDER ON REHEARING, CLARIFICATION AND COMPLIANCE FILING

(Issued February 20, 2014)

1. On August 16, 2013, ITC Midwest, LLC (ITCM) requested rehearing or, in the alternative, clarification of the Commission's order<sup>1</sup> granting a complaint filed by Interstate Power and Light Company (IPL) against ITCM pursuant to section 206 of the Federal Power Act (FPA).<sup>2</sup> On August 19, 2013, IPL filed a request for clarification of the July 18 Order. On August 14, 2013, Midcontinent Independent System Operator, Inc. (MISO) submitted tariff revisions to comply with the July 18 Order. In this order, we deny ITCM's request for rehearing, grant in part and deny in part ITCM and IPL's respective requests for clarification, and accept MISO's compliance filing.

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<sup>1</sup> *Interstate Power and Light Co. v. ITC Midwest, LLC*, 144 FERC ¶ 61,052 (2013) (July 18 Order).

<sup>2</sup> 16 U.S.C. § 824e (2012).

## I. Background

### A. IPL Complaint

2. On September 14, 2012, IPL filed a complaint against ITCM, seeking to change a provision of Attachment FF of the MISO Tariff, under which generator interconnection customers in the ITCM zone were able to receive up to 100 percent reimbursement for interconnection-related network upgrade costs (ITCM Policy).<sup>3</sup> IPL, as the largest transmission customer within the ITCM zone, alleged that the ITCM Policy unfairly burdened IPL and its retail customers with significant added transmission costs, compared to the costs that they would otherwise bear under the interconnection-related network upgrade policy generally used elsewhere in the MISO footprint,<sup>4</sup> and that these costs exceeded the benefits that IPL and its retail customers received from the upgrades. IPL specifically challenged the assumption that it and its customers were obtaining benefits commensurate with the costs it incurred, arguing that it had no evidence that: (1) overall transmission system reliability has materially improved as a result of the generator interconnection-related network upgrades for which ITCM reimbursed its generator interconnection customers 100 percent of their costs; (2) it or any other generator in the ITCM pricing zone has experienced an improved ability to export power due to counterflows; (3) locational marginal prices have been materially reduced as a result of generation interconnected through reimbursable generator interconnection-related network upgrades; or (4) any other significant benefit has accrued to IPL or its customers.

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<sup>3</sup> Under the ITCM Policy, an interconnection customer paid for 100 percent of the costs of the network upgrades up-front. The interconnection customer was then reimbursed 100 percent of those network upgrade costs within 90 days of its Commercial Operation Date if it demonstrated at that time that either: (1) the generating facility had been designated as a Network Resource to serve *any* Network Load in MISO; or (2) it had entered into a contract with *any* MISO network customer for capacity, or in the case of an Intermittent Resource, for energy, from the generating facility for a period of one year or longer. July 18 Order, 144 FERC ¶ 61,052 at P 39.

<sup>4</sup> Under the reimbursement policy for generator interconnection-related network upgrades generally used throughout the MISO footprint (MISO Policy), the interconnection customer is repaid 10 percent of the cost of network upgrades above 345 kV and is fully responsible for network upgrades 345 kV and below. MISO Tariff, Attachment FF III.A.2.d.1.

3. While IPL acknowledged that it has seen certain system improvements since the ITCM Policy was adopted (e.g., a general reduction in the number of sustained transmission outages and lower locational marginal prices), IPL rejected the notion that these benefits were related to the ITCM Policy, and attributed them to upgrades unassociated with generator interconnections and the general downturn in the economy. IPL requested that the Commission grant its complaint and direct MISO to revise its Tariff, effective September 14, 2012, to conform the policy for generator interconnection-related network upgrades in the ITCM zone to the policy generally used throughout the MISO footprint.<sup>5</sup>

#### **B. Answer to the Complaint**

4. ITCM challenged IPL's assertion that IPL has not benefitted from reliability improvements or lower energy prices resulting from generator interconnection-related network upgrades. ITCM noted that IPL provided no studies to support its claim that the benefits resulted from other system improvements or the downturn in the economy, and ITCM argued that IPL would, in fact, benefit from increased local generation because locational marginal prices would be reduced at the interconnection site. ITCM further argued that the ITCM Policy was just and reasonable and not unduly discriminatory, noting that the Commission has upheld 100 percent reimbursement policies as a means to increase competition in bulk power markets and help ensure reliability and just and reasonable prices. ITCM argued that IPL did, in fact, benefit from the disputed transmission system upgrades, which ITCM characterized as "part and parcel to rehabilitation in the historic underinvestment in the [ITCM] transmission system."<sup>6</sup> ITCM also claimed that IPL exaggerated some of the costs it claimed to have paid under the ITCM Policy. Ultimately, ITCM concluded that the ITCM Policy promoted a more efficient transmission planning process because it allowed ITCM to plan based upon the best configuration for system improvement rather than the lowest cost that would be paid by the generator interconnection customer.<sup>7</sup>

#### **C. The July 18 Order**

5. The Commission granted IPL's complaint, finding that the ITCM Policy, in the context of MISO's zonal rate structure, resulted in an improper subsidy and was therefore unjust, unreasonable, and unduly discriminatory or preferential. In Order Nos. 2003-A

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<sup>5</sup> July 18 Order, 144 FERC ¶ 61,052 at PP 14-19.

<sup>6</sup> *Id.* P 23 (quoting ITCM Answer to Complaint at 23).

<sup>7</sup> *Id.* PP 20-25.

and 2003-B, the Commission explained that it adopted two protections for native load customers to ensure that those customers did not provide an improper subsidy for generator interconnection-related network upgrades: (1) “higher-of” pricing, and (2) the ability to demonstrate on a case-by-case basis that “higher-of” pricing results in an improper subsidy. However, in Order No. 2003-B, the Commission stated that it could not envision that such a subsidy would ever occur because the “higher-of” policy was designed to avoid such a situation.<sup>8</sup> Similarly, in cases where the generator interconnection customer sells off-system, the Commission concluded in Order No. 2003 that transmission customers on the system remain protected because the transmission provider has the assurance that it can recover from the generator interconnection customer the higher of incremental or embedded costs.<sup>9</sup>

6. With respect to the ITCM Policy, however, the Commission concluded that its discussion in the Order No. 2003 rulemaking proceeding did not directly address the issue presented by the complaint: namely, whether the ITCM Policy is appropriate in light of MISO’s zonal rate structure. The Commission found that, as implemented within MISO’s zonal rate structure, the ITCM Policy did not provide for adequate contribution to the costs of network upgrades required to interconnect a generator in the ITCM zone from either the interconnecting generator or a transmission customer taking service to access the generator’s output when the generator exports to another MISO pricing zone. This is because, in MISO’s zonal rate structure, the embedded cost transmission rate paid is the rate of the pricing zone where the power is *delivered*, rather than where it is sourced. Therefore, when an interconnection customer located in the ITCM zone exports its power to another pricing zone, full reimbursement by ITCM of the cost of network upgrades required for the interconnection service occurs without adequate contribution to the embedded costs of the ITCM transmission system by the interconnection customer or transmission customer exporting the power. The Commission found that those network upgrade costs are instead largely recovered through the transmission rates within the ITCM zone that are paid by customers, such as IPL, that take transmission service to serve their loads in the ITCM zone. Accordingly, the Commission found that “higher-of” pricing in this situation does not, as Order No. 2003 envisioned, protect IPL and other customers in the ITCM zone against impermissibly subsidizing network upgrades required for generator interconnection. The Commission directed MISO to revise Attachment FF of its Tariff, effective as of the date of the July 18 Order, to conform the

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<sup>8</sup> *Id.* P 35 (citing Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 56).

<sup>9</sup> *Id.* P 37 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 588).

generator interconnection-related network upgrade reimbursement policy in the ITCM zone to the policy generally used elsewhere in MISO.<sup>10</sup>

## II. Discussion

### A. Request for Rehearing

#### 1. ITCM

7. ITCM argues that the Commission erred by failing to examine the relevant data in the record and articulate a rational connection between the facts and its decision to overturn the ITCM Policy. ITCM asserts that the Commission failed to give any weight to the substantial benefits of the ITCM Policy, and argues that the ITCM Policy allocated costs based on economic realities, i.e., that network upgrades associated with new generator interconnections provide economic benefits to the ITCM zone in the form of lower locational marginal prices<sup>11</sup> and enhanced reliability. ITCM argues that the Commission, in approving the ITCM Policy, recognized that IPL and other customers would benefit from the addition of new generation, even if that generation has a power purchase agreement with a utility in another state, and the Commission failed in the July 18 Order to articulate a reason for reversing course on its policy. ITCM further argues that subsequent to its approval of the ITCM Policy, the Commission's approval of MISO's Multi-Value Project cost allocation methodology<sup>12</sup> demonstrates an understanding that the addition of network transmission has broad benefits and beneficiaries. However, ITCM argues, the Commission failed to consider the benefits of lower locational marginal prices in MISO due to the ITCM Policy, nor did it consider that IPL admitted that its locational marginal prices are lower, despite attempting to explain those lower prices with unsupported claims that they are due to other factors, such as the

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<sup>10</sup> *Id.* PP 39-44.

<sup>11</sup> For example, ITCM argues that in MISO, many purchasers of remote wind are simply arbitraging the locational marginal prices between the point of injection and the locational marginal price at the load zone, which is a logical economic action in a market, like MISO, that has no physical delivery rights or obligations. ITCM states that the injection of this additional wind energy lowers the locational marginal price at the wind interconnection site, providing benefits to local, zonal loads even if the local loads did not contract for that power. ITCM Rehearing Request at 11.

<sup>12</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (subsequent history omitted).

economic downturn. ITCM, by comparison, states that it provided evidence that the locational marginal prices in the ITCM zone have been low.<sup>13</sup>

8. Furthermore, ITCM argues that the ITCM Policy recognized the clear economic benefits of increased system reliability, which are derived from greater sectionalizing of the grid and increased system capability. The ITCM Policy, according to ITCM, also recognized the historic underinvestment in the ITCM system and sought to remedy IPL's failure to timely invest in system upgrades.<sup>14</sup> ITCM argues that these needed upgrades should not rest on the backs of generators alone, especially where record evidence demonstrates the significant benefits to ratepayers, and that allocating these network upgrade costs to independent power producers puts them at a competitive disadvantage to generation owned by the local utility. In addition, ITCM notes that IPL acknowledges that it has experienced a decrease in system outages. ITCM ultimately concludes that the July 18 Order did not give ITCM's arguments the benefit of serious consideration and argues that this failure constitutes reversible error.<sup>15</sup>

9. ITCM asserts that the Commission also failed to provide any rationale for its policy change, and particularly to explain why the ITCM Policy that the Commission previously approved as just and reasonable is no longer just and reasonable. ITCM argues that the ITCM Policy was consistent with the approach utilized by the Commission for decades, that was formally adopted in Order No. 2003, and that is utilized in other RTOs, such as the Southwest Power Pool,<sup>16</sup> and other MISO zones. ITCM notes that the Commission has long held that the cost of network upgrades should be borne by all parties who benefit from them, not just the party receiving the greatest benefit. ITCM argues that the ITCM Policy is pro-competitive, as the Commission

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<sup>13</sup> ITCM Rehearing Request at 9-13.

<sup>14</sup> ITCM refers to the affidavit submitted with its answer to the IPL complaint, in which ITCM witness Doug Collins describes the investment in 69, 115, and 161 kV upgrades, and notes that almost 70 percent of the network upgrade costs (approximately \$89.5 million out of a total of \$129 million) are for upgrades that increase the capacity of the transmission system. Mr. Collins also notes that the average age of the lines being replaced is approximately 51 years, and ITCM asserts that therefore these interconnection upgrades are, in some instances, expediting system improvements that would have been necessary even without the additional generation. *Id.* at 13-14.

<sup>15</sup> *Id.* at 13-15.

<sup>16</sup> *Id.* at 15 (citing Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Vol. No. 1, Attachments Z1 (0.0.0) and Z2 (0.0.0)).

previously recognized in Order No. 2003 when it approved a similar, *pro forma* 100 percent cost reimbursement policy. In addition, ITCM notes that the Commission has consistently accepted different approaches in charging rates for jurisdictional services and has found that more than one method for calculating rates for the same service is acceptable. By requiring a “one size fits all” approach, ITCM argues that the Commission arbitrarily precluded meaningful review of the ITCM Policy’s costs and benefits, which include providing a level playing field for generation developers. ITCM also asserts that the ITCM Policy remains consistent with the Commission’s long-held policy of prohibiting “and” pricing for transmission service, noting that, if a new generator pays for its network upgrades and transmission service, then the new generator would be responsible for paying for both its incremental upgrades and for transmission service.<sup>17</sup>

10. ITCM argues that the July 18 Order, by requiring MISO to conform the reimbursement policy for generator interconnection-related network upgrades in the ITCM zone to the policy generally used in MISO, is inconsistent with standard cost causation policies. ITCM asserts that the result of the July 18 Order is that the ITCM zone will pay zero percent of the costs for network facilities below 345 kV and only 0.38 percent of the costs of network facilities rated at or above 345 kV. ITCM argues that the Commission:

is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members. “[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them.”<sup>18</sup>

However, according to ITCM, the result of the July 18 Order is that the costs of network upgrades in the ITCM zone are shifted onto generators and customers outside the ITCM zone, which will allow customers in the ITCM zone to pay no more than a trivial amount for the locational marginal pricing and reliability benefits they receive from the transmission upgrades. The effect, ITCM claims, is that the Commission has created an impermissible subsidy for those entities who receive the largest benefits from the network upgrades. ITCM therefore asserts that the Commission has failed its burden under section 206 of the FPA to prove the reasonableness of the change in methodology. In addition, ITCM argues that the ITCM Policy is more consistent with the approved cost

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<sup>17</sup> *Id.* at 15-18.

<sup>18</sup> *Id.* at 18-19 (quoting *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (citation omitted)).

allocation for transmission upgrades under Attachment FF of the MISO Tariff. For example, ITCM argues, remote loads from ITCM's service territory will pay load ratio shares of all transmission projects constructed under MISO's new Multi-Value Project tariff provisions, which may include both high voltage lines and lower voltage facilities necessary to support the higher voltage lines, and similarly under the ITCM Policy, the primary beneficiaries of local network upgrades will pay for those facilities while the broader network upgrades approved by MISO are allocated across the MISO footprint. ITCM argues that this outcome is just and reasonable, and the Commission committed reversible error by failing to follow its own cost causation policy.<sup>19</sup>

11. ITCM argues that the Commission erred by failing to hold a hearing and develop further record evidence on the dispute. ITCM states that a complainant must do more than make unsubstantiated allegations to prevail on a complaint, and IPL entirely failed its burden of proof by failing to offer substantial evidence that the ITCM Policy is unjust and unreasonable, especially in light of the contrary evidence introduced by ITCM. At a minimum, the Commission acted arbitrarily and capriciously by not requiring a hearing to be held to verify and resolve any disputed issues of material fact. ITCM further argues that the Commission, in reversing its position on the ITCM Policy, deprived ITCM of its rights under section 205 of the FPA. Citing to the Commission's order accepting the ITCM Policy, ITCM argues that the reasons for accepting the ITCM Policy in 2008 remain applicable today, and the July 18 Order has not been adequately justified by the Commission. ITCM notes that the Commission, in originally accepting the ITCM Policy, rejected an argument by Great River that the ITCM Policy would result in an increased zonal rate without benefits to other customers in the ITCM zone and found that the ITCM Policy looks beyond direct-usage related benefits of network upgrades to other benefits, including improved reliability, improved ability to import generation due to counterflows that are created from exporting generators, and reduced locational marginal prices. ITCM notes that the Commission accepted the ITCM Policy under the MISO zonal transmission pricing structure that largely exists today, and therefore that the Commission approved the ITCM Policy fully aware that it would result in a different cost allocation for network upgrades in different MISO zones. ITCM argues that the Commission failed to adequately explain what evidence or facts changed such that the ITCM Policy became unjust and unreasonable.<sup>20</sup>

12. Finally, ITCM argues that the July 18 Order discourages new renewable generation, which is contrary to both national and Commission policy. ITCM claims that

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<sup>19</sup> *Id.* at 18-21.

<sup>20</sup> *Id.* at 21-24.

the ITCM Policy supports President Obama's goals of diversifying America's energy sources, and notes that numerous states have adopted renewable portfolio standards to further this goal. However, ITCM argues that the July 18 Order will hinder renewable development by increasing the costs to renewable developers to connect to the grid without taking into account the numerous benefits of such interconnections. ITCM asserts that the July 18 Order also might have the unintended consequence of generators locating in sub-optimal parts of the grid to minimize network upgrade costs, which could in turn lead to higher fuel transmission costs and ultimately higher costs to consumers. ITCM notes that Order No. 1000<sup>21</sup> relied on the need to access renewable energy as a justification for expanding transmission planning requirements, but the July 18 Order undermines that justification by forcing additional costs onto renewable projects. ITCM argues that the ITCM Policy incentivized the location of wind resources in the ITCM region, where wind is abundant and higher generating capacity factors can be attained, which in turn benefitted the state of Iowa and its economy.<sup>22</sup>

## 2. Commission Determination

13. For the reasons discussed below, we deny ITCM's request for rehearing of the Commission's July 18 Order.

14. First, we disagree with ITCM that the Commission's findings in the July 18 Order are unsupported. ITCM asserts that the Commission failed to examine the evidence in the record regarding the purported benefits of the ITCM Policy and "reversed course" on its prior recognition of the variety of benefits that result from network upgrades. However, the Commission has recognized and continues to recognize the benefits beyond those associated with direct usage of the network upgrades. In this case, a comprehensive review of network upgrade benefits was unnecessary in order to grant IPL's complaint, because these benefits cannot override the fundamental flaw in the ITCM Policy that the July 18 Order identified: namely that, as implemented within the MISO zonal rate structure, the ITCM Policy did not provide adequate contribution to the costs of network upgrades required to interconnect a generator in the ITCM zone from either the interconnecting generator or a transmission customer taking service to access the generator's output when the generator exports to another MISO pricing zone, because

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<sup>21</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>22</sup> ITCM Rehearing Request at 24-27.

neither the generator nor the transmission customer pay the zonal transmission rate that includes the costs of those upgrades.<sup>23</sup> Thus, the Commission's prior and ongoing recognition of network benefits does not preclude the finding of an improper subsidy or require a different outcome on rehearing.

15. Contrary to ITCM's argument, the July 18 Order is consistent with Commission precedent, which has sought to properly incentivize network upgrade benefits while protecting native load from improperly subsidizing generator interconnection. As stated in the July 18 Order, Order No. 2003-A clarified that the Commission was not abandoning "any of the fundamental principles that have long guided our transmission pricing policy," in particular transmission providers' ability to charge the "higher-of" the incremental cost rate or the embedded cost rate,<sup>24</sup> and Order No. 2003-B reaffirmed this "important objective of our interconnection pricing policy."<sup>25</sup> Notably, in Order No. 2003-A the Commission stated that:

[a]llowing transmission providers to charge the higher of an incremental cost rate or an embedded cost rate ensures that other transmission customers, including the Transmission Provider's native load, will not subsidize Network Upgrades required to interconnect merchant generation.<sup>26</sup>

However, Order No. 2003-B also affirmed an additional protection for native load and other customers: namely, that a party could file with the Commission to demonstrate an improper subsidy.<sup>27</sup> Therefore, the Commission has simultaneously recognized the existence of network-wide benefits while adopting critical protections for native load against improper subsidies.

16. In the instant case, the Commission examined the record and determined in the July 18 Order that, as discussed above, an improper subsidy did indeed exist. The

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<sup>23</sup> July 18 Order, 144 FERC ¶ 61,052 at P 40.

<sup>24</sup> Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 580.

<sup>25</sup> Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 56.

<sup>26</sup> Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 580.

<sup>27</sup> Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 56. As explained below, in proposing this additional protection, the Commission assumed in the first instance the application of a pricing policy that is designed to avoid subsidy, i.e., "higher of" pricing.

Commission found that “higher-of” pricing in this situation does not, as Order No. 2003 and its progeny envisioned, protect IPL and other customers in the ITCM zone from subsidizing network upgrades required for generator interconnection. The Commission was therefore not required to establish hearing procedures,<sup>28</sup> and, after examining the record, it articulated its rationale for finding that this improper subsidy existed.

17. We also note that, in a prior order denying rehearing of a Commission order accepting the 100 percent reimbursement policy, the Commission reiterated that Order No. 2003 provided for two “fail-safe” customer protections: (1) “higher of” pricing; and (2) the ability of customers to make an FPA section 206 filing demonstrating that the Order No. 2003 pricing policy results in an improper subsidy by the transmission provider’s native load or other customers, if they believe an unfair subsidy is occurring.<sup>29</sup> In the ATC & ITC/METC Rehearing Order, the Commission recognized that “higher of” pricing is unavailable in MISO because of its license plate zonal rate structure, but noted that the ability to file an FPA section 206 complaint demonstrating an improper subsidy remained a viable option for customers concerned that they are unfairly subsidizing interconnecting generators.<sup>30</sup> However, the Commission’s reliance on the ability to file a section 206 complaint demonstrating an improper subsidy was inconsistent with Order No. 2003-B, because the adoption of that second “fail-safe” customer protection in Order No. 2003-B was specifically premised on a pricing policy designed to avoid such subsidy being in place in the first instance: namely, the protections of “higher of” pricing, which we concluded in the July 18 Order do not adequately protect customers in the circumstances presented by the complaint.<sup>31</sup>

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<sup>28</sup> The Commission need only hold an evidentiary hearing when a genuine issue of material fact exists and that issue “cannot be adequately resolved on the written record.” *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994) (citation and quotation omitted).

<sup>29</sup> *Int’l Transmission Co.*, 123 FERC ¶ 61,065, at P 20 (2008) (ATC & ITC/METC Rehearing Order).

<sup>30</sup> *Id.*

<sup>31</sup> In addition to arguing that the ITCM Policy is consistent with the approach adopted in Order No. 2003, ITCM also argues that its policy is consistent with the approach utilized in SPP. *Supra* P 9. We note, however, that the costs of network upgrades required solely for a generator interconnection in SPP are subject to participant funding by the interconnection customer. *See* SPP Open Access Transmission Tariff, Sixth Revised Vol. No. 1, Definition of “Directly Assigned Upgrade Costs.” SPP’s

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18. ITCM also states that Commission policy has held that all parties benefitting from network upgrades should contribute to the costs of those upgrades, “not just the party receiving the greatest benefit,” and that these benefits may still be significant even if they are not large.<sup>32</sup> Again, as explained above, the critical flaw in the ITCM Policy is that it *failed* to ensure the very contribution that ITCM recognizes that Commission precedent requires, as, because of MISO’s zonal rate structure, generators inside the ITCM zone that export power to load outside the ITCM zone were not contributing to the costs of network upgrades required to interconnect those generators.

19. Therefore, contrary to ITCM’s assertions that the Commission is arbitrarily applying a “one-size fits-all” policy and is inexplicably departing from precedent,<sup>33</sup> the Commission is in fact applying a broadly-accepted reimbursement policy while acting to protect native load from improper subsidies as articulated in Order Nos. 2003-A and 2003-B. As discussed in the July 18 Order, the Commission accepted the MISO Policy, which was developed by MISO and approved by a majority of its stakeholders, on an interim basis to address unintended location-specific outcomes resulting from application of MISO’s prior reimbursement policy.<sup>34</sup> In a subsequent order accepting the MISO Policy on a permanent basis, the Commission explicitly affirmed that the MISO Policy “remains just and reasonable,”<sup>35</sup> and the Commission finds this to still be the case.

20. ITCM’s attacks on the MISO Policy otherwise constitute an impermissible collateral attack on the Commission’s prior acceptance of that policy. We disagree that application of the MISO Policy to ITCM “flips [the Commission’s] cost causation principles on its head,” as the Commission has already found the MISO Policy, particularly when coupled with MISO’s Multi-Value Project cost allocation

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Tariff, to which ITCM refers, simply provides the interconnection customer with a financial right associated with such participant funded network upgrade, consistent with the financial transmission rights provided for participant funded network upgrades in MISO and in other RTOs. *See* Attachment Z2 §§ I and II.D.3. *See also* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 695.

<sup>32</sup> ITCM Rehearing Request at 16.

<sup>33</sup> *Id.* at 18.

<sup>34</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009) (*Otter Tail/MDU Order*).

<sup>35</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 332 (2010).

methodology, to be just and reasonable. ITCM provides no explanation as to why its transmission pricing zone is unique, such that the MISO Policy, notwithstanding its general applicability within the MISO footprint, is not just and reasonable when applied to the ITCM zone.

21. In addition, ITCM asserts that the MISO Policy impermissibly “requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members,” and ITCM also states that “the Commission has created an impermissible subsidy for those entities who receive the largest benefits from the Network Upgrades.”<sup>36</sup> First, we disagree that generator interconnection customers interconnecting in the ITCM zone derive no or trivial benefits from these network upgrades, which “but for” the reliable interconnection of these generators in the ITCM zone would not be built pursuant to MISO’s Tariff. Accordingly, without these upgrades, these generators would be unable to interconnect with the ITCM system, let alone sell their power onto the grid.

22. We also disagree with ITCM that the MISO Policy creates an impermissible subsidy in favor of existing transmission customers, particularly load, within the ITCM zone. First, we note that, under the MISO Policy, load will directly (in the case of generation resources developed by load-serving entities) or indirectly (in the case of generation resources whose output is contracted by load-serving entities) pay for the cost of network upgrades necessary to interconnect new generating resources that serve native load, as those costs will be rolled into the cost of power for those resources. In addition, transmission customers in the ITCM zone directly contribute to the costs of maintaining and upgrading the transmission system in that zone through their payment for transmission service. Although interconnection customers will fund the bulk of the network upgrades required for their interconnection, existing transmission customers, particularly load, are otherwise responsible for the overwhelming majority of transmission system costs in the ITCM zone.<sup>37</sup> Furthermore, while ITCM will, of course, continue to plan to improve the transmission system and to assess costs for those upgrades to appropriate beneficiaries (e.g., load) by including those upgrades in its zonal

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<sup>36</sup> ITCM Rehearing Request at 18-19.

<sup>37</sup> For example, IPL notes in its complaint that IPL’s customer load, served using network integration transmission service on the ITCM transmission system, represents approximately 88 percent of the joint rate zone load that includes Great River Energy, the Southern Minnesota Municipal Power Agency, and the Central Minnesota Municipal Power Agency, and paid approximately 88 percent of ITCM’s annual revenue requirements in 2011. IPL Complaint at 4 n.7, 7.

transmission rates, it need not, and indeed should not, rely on the generator interconnection process to identify network upgrades that can improve its system. We therefore reject ITCM's argument that the MISO Policy creates an impermissible subsidy in favor of transmission customers in the ITCM zone.

23. Finally, we disagree that the July 18 Order discourages renewable generation and should be rejected. Assertions that the July 18 Order will "stymie" development of renewables or lead to increased costs for consumers because of inefficient siting are speculative and unsubstantiated, and do not refute the Commission's underlying finding that the ITCM Policy results in an impermissible subsidy by native load within the ITCM zone.

## **B. Requests for Clarification**

### **1. ITCM**

24. If the Commission does not grant rehearing, ITCM requests clarification that (1) its interconnection customers that have connected under provisional GIAs prior to the July 18 Order will be treated under the prior ITCM Policy when their studies are completed and network upgrades determined, and (2) all interconnection customers that had reached the MISO generator interconnection queue process M2 milestone date by July 18, 2013 will remain under the prior ITCM Policy. ITCM explains that these customers previously made business decisions regarding their interconnections based on the policy in place when they provisionally interconnected or posted the M2 milestone payment, as appropriate. ITCM argues that to change the policy for these customers would constitute undue discrimination and would not be just and reasonable.<sup>38</sup>

### **2. IPL**

25. IPL requests that the Commission clarify that GIAs executed before July 18, 2013 will be subject to the revised reimbursement policy in the ITCM zone if the GIAs are amended to add additional network upgrades. IPL argues that, notwithstanding the Commission's statement in the July 18 Order that it would decide such issues on a case-by-case basis,<sup>39</sup> Commission precedent supports IPL's clarification request.<sup>40</sup> IPL states

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<sup>38</sup> ITCM Rehearing Request at 28-29.

<sup>39</sup> July 18 Order, 144 FERC ¶ 61,052 at P 44.

<sup>40</sup> IPL Clarification Request at 5 (discussing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210 (2008), in which the Commission concluded that a new reimbursement policy should apply to additional upgrades included in an amended

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that it is concerned that, if the Commission does not grant the requested clarification, additional disputes or litigation will result, despite the Commission having concluded in the July 18 Order that the ITCM Policy creates an improper subsidy. IPL argues that there is no particular scenario that would justify application of the ITCM Policy to new upgrades associated with a previously executed GIA.<sup>41</sup>

### 3. Commission Determination

26. We grant in part and deny in part ITCM's request for clarification. Regarding the impact of the July 18 Order on provisional GIAs, we find that the appropriate reimbursement policy is the one in effect on the date a GIA is executed or is filed unexecuted with the Commission.<sup>42</sup> Accordingly, upgrades identified in a provisional GIA that was executed or filed unexecuted with the Commission prior to July 18, 2013 will be governed by the prior ITCM Policy. However, any upgrades that are subsequently identified and incorporated into such a provisional GIA, and which were

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GIA, while the existing network upgrades would be governed by the prior reimbursement policy, and Order No. 2003, in which the Commission concluded that an amendment to an existing interconnection agreement to increase capacity is treated as an entirely new interconnection request that must be placed in the queue).

<sup>41</sup> IPL Clarification Request at 4-6. On September 3, 2013, NextEra Energy Resources, LLC (NextEra) filed an answer in response to IPL's request for clarification, in which NextEra also asks that the Commission clarify which existing GIAs will be subject to a case-by-case evaluation if they are amended. However, while both IPL and NextEra's Filings seek "clarifications," IPL and NextEra effectively seek rehearing of the July 18 Order, in that they request that we reject the case-by-case approach ordered therein and instead categorically rule that amendments to certain categories of existing GIAs will (in IPL's case) or will not (in NextEra's case) be subject to the MISO Policy. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2013), prohibits answers to a request for rehearing, and Rule 713(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(b) (2013), states that a request for rehearing "must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding." Therefore, NextEra's Answer, whether treated as an answer to IPL's rehearing request or an out-of-time rehearing request (given that it was submitted more than 30 days after the July 18 Order), is rejected.

<sup>42</sup> *Otter Tail/MDU Order*, 129 FERC ¶ 61,060 at P 62; *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, at P 70 (2006).

not included in the provisional GIA that was executed or filed unexecuted with the Commission prior to July 18, 2013, will be governed by the MISO Policy in effect in the ITCM zone after July 18, 2013.

27. We decline ITCM's request that we clarify that interconnection customers who had reached the M2 milestone in the generator interconnection queue process prior to the issuance of the July 18 Order will remain eligible for reimbursement under the ITCM Policy. While we recognize that such customers have made financial commitments to enter or remain in the definitive planning phase of MISO's interconnection process, we affirm our finding in the July 18 Order that customers that have executed a GIA or filed an unexecuted GIA with the Commission prior to July 18, 2013 remain eligible for reimbursement under the ITCM Policy. If customers posted the M2 milestone and now wish to withdraw from the queue because of the changes ordered in the July 18 Order, and the MISO Tariff does not provide an opportunity for them to recoup their M2 milestone payment, those customers may file a request for waiver with the Commission and present their case for recovery.

28. Finally, we grant in part and deny in part IPL's request for clarification. As discussed above, upgrades that are subsequently identified and incorporated into a provisional GIA, and which were not included in the provisional GIA that was executed or filed unexecuted with the Commission prior to July 18, 2013, will be governed by the MISO Policy in effect in the ITCM zone after July 18, 2013. However, as stated in the July 18 Order, we believe that amendments to non-provisional GIAs (as clarified herein) are more appropriately addressed on a case-by-case basis to give consideration to the situation giving rise to the amendments. As cited by IPL and the Commission in the July 18 Order, the Commission has found that additional upgrades associated with a request to increase the capacity of the generation facility may be subject to the new reimbursement policy effective at the time the amended GIA was executed. However, the Commission reached that holding based on specific facts (e.g., an increase in a generator's capacity) that may be different than those presented in future amendments.<sup>43</sup> The Commission therefore affirms that it is important to retain the discretion to assess each particular situation giving rise to an amendment on a case-by-case basis.

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<sup>43</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,210, at P 17 (2008) (“Given the unusual circumstances in this case, we find that in order to reach a just and reasonable result, the 50-50 cost-sharing provisions should only apply to the upgrades associated with the 150 MW increase.”).

### **III. MISO's Compliance Filing**

#### **A. Notice and Interventions**

29. Notice of MISO's compliance filing was published in the *Federal Register*, 78 Fed. Reg. 51,719 (2013), with interventions and protests due on or before September 4, 2013. Timely motions to intervene were filed by Alliant Energy, Consumers Energy Company, Geronimo Wind Energy, LLC, MidAmerican Energy Company, and the NRG Companies.<sup>44</sup>

#### **B. Compliance Filing**

30. As stated above, the Commission directed MISO to revise Attachment FF of its Tariff to conform the generator interconnection-related network upgrade reimbursement policy in the ITCM zone to the policy generally used elsewhere in MISO.<sup>45</sup> On August 14, 2013, MISO filed with the Commission revisions to Attachment FF, Section III.A.2.d of the Tariff. Specifically, MISO removed references to ITCM from Section III.A.2.d.4, thereby making Sections III.A.2.d.1-3 (MISO's general interconnection customer reimbursement provisions) applicable to ITCM.

#### **C. Commission Determination**

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. We accept the Tariff revisions proposed by MISO. They satisfy the requirement of the July 18 Order to conform the policy for reimbursement of generator interconnection-related network upgrade costs in the ITCM zone to the MISO Policy.

#### **The Commission orders:**

(A) ITCM's request for rehearing is hereby denied, as discussed in the body of this order.

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<sup>44</sup> The NRG Companies consist of: Louisiana Generating LLC, NRG Power Marketing LLC, GenOn Energy Management, LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, Cottonwood Energy Company LP and NRG Wholesale Generation LP.

<sup>45</sup> July 18 Order, 144 FERC ¶ 61,052 at P 42.

(B) ITCM's request for clarification is hereby granted in part and denied in part, as discussed in the body of this order.

(C) IPL's request for clarification is hereby granted in part and denied in part, as discussed in the body of this order.

(D) MISO's Compliance Filing is hereby accepted effective July 18, 2013, as directed in the body of this order.

By the Commission. Commissioner Norris 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

Interstate Power and Light Company

Docket No. EL12-104-001

v.

ITC Midwest, LLC

(Issued February 20, 2014)

NORRIS, Commissioner, *concurring*:

I write separately to reiterate my concern that the remedy in this complaint proceeding – use of MISO’s generator interconnection reimbursement policy – may not adequately recognize the benefits that interconnection-related network upgrades provide to all users of the MISO transmission system. These benefits include enhanced reliability and lower energy prices resulting from a modernized, less constrained transmission system and an increase in energy supply options. MISO’s policy risks ignoring these benefits by allocating the vast majority, if not all, the cost responsibility for interconnection-related network upgrades to the generator interconnection customer.<sup>46</sup>

I encourage MISO and its stakeholders to consider a cost allocation remedy that would recognize and balance the benefits of interconnection-related network upgrades to both the generator interconnection customer and the broader set of MISO transmission system customers.

For these reasons, I respectfully concur.

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John R. Norris, Commissioner

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<sup>46</sup> Under MISO’s generally applicable policy, generator interconnection customers are reimbursed for 10 percent of any required network upgrades rated at or above 345 kV, and receive no reimbursement for required network upgrades rated less than 345 kV.