

147 FERC ¶ 61,186  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent  
System Operator, Inc.

Docket No. ER14-1684-000

ORDER ACCEPTING NOTICE OF TERMINATION

(Issued June 6, 2014)

1. On April 8, 2014, Midcontinent Independent System Operator, Inc. (MISO) filed a notice of termination of the Multi-Party Facilities Construction Agreement (Construction Agreement) among AWA Goodhue, LLC (AWA Goodhue),<sup>1</sup> Belle Creek Wind, LLC (Belle Creek Wind), Great River Energy (Great River), and MISO (collectively, the Parties).<sup>2</sup> In this order, we accept the notice of termination to be effective June 7, 2014, as requested.

**I. Background**

2. The Construction Agreement provides for upgrades needed to support the interconnection of the New Era Project (Project), designated as Project No. H062 in MISO's interconnection queue, as well as the Belle Creek Wind project, designated as Project No. H074. The Construction Agreement provides that Great River install various reactive compensation common use upgrades required to maintain system stability when

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<sup>1</sup> MISO states that, effective October 2, 2012, Peter J. Mastic Holdings II, LLC acquired 100 percent of the membership interest in AWA Goodhue. Effective October 8, 2012, the Articles of Organization of AWA Goodhue were amended to change the name of the limited liability company to New Era Wind Farm, LLC (New Era).

<sup>2</sup> The Parties executed the Construction Agreement on September 21, 2010. MISO states that the Construction Agreement conformed to the MISO *pro forma* multi-party facilities construction agreement in effect at the time. Accordingly, the Construction Agreement was not filed at the Commission, but MISO designated it as Original Service Agreement No. 2252 under its FERC Electric Tariff, Fifth Revised Vol. No. 1 (Tariff) and reported it in its Electric Quarterly Report.

Belle Creek Wind and New Era's generating facilities are placed in service under their respective generator interconnection agreements (GIAs). Among other things, the Construction Agreement provides that Great River: (1) install a new 69 kilovolt (kV) 3-way tap switch structure; (2) add a new 2-circuit breaker, 69 kV Claybank switching substation, which includes the installation of a new control building; and (3) terminate a 69 kV transmission line into the Claybank switching substation.

## **II. MISO's Notice of Termination of the Construction Agreement**

3. MISO states that it seeks termination of the Construction Agreement because New Era is in breach under the Construction Agreement for failing to make payment of amounts due in excess of \$108,751 related to network upgrades for the Project that are material terms to the Construction Agreement. According to MISO, Great River provided New Era with a notice of breach and notice of default. MISO states that New Era, after being notified of its breach under the Construction Agreement, failed to cure its breach when it did not make payments of amounts due and this default triggers the right to terminate the Construction Agreement. MISO states that it provided New Era and Great River a notice of termination in accordance with the terms of the Construction Agreement.<sup>3</sup> MISO states that, to its knowledge, New Era has not taken steps to fulfill its obligations and cure the breach or default. MISO also contends that Belle Creek Wind withdrew from the queue and New Era withdrew public permit requests and publicly stated that it will not pursue a wind project in the region.<sup>4</sup> MISO requests an effective date of June 7, 2014, for the termination.

4. MISO also contends that termination of the Construction Agreement is just and reasonable, is not unduly discriminatory, and is consistent with the public interest and

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<sup>3</sup> MISO cites the following Construction Agreement terms as support for termination: (1) Article 1.10 (defining "default" as the failure of a breaching party to cure its breach in accordance with Article 9); (2) Article 9.2 (providing a five day cure period for a breach for a failure to pay any amount when due and establishing that a cure must be diligently pursued to completion for the breach to be cured); (3) Article 9.2.2 (stating that a party will be in default if it fails to cure the breach or take reasonable steps to do so within the cure period). *See* MISO Notice of Termination at 3 & n.7.

<sup>4</sup> MISO Notice of Termination at 2 (citing MISO Ex. 6 (Order Accepting Withdrawal, Revoking Site Permit, and Closing Dockets Before the Minnesota Public Utilities Commission)).

Commission precedent.<sup>5</sup> MISO notes that in ruling on a notice of termination in *Lakeswind I*, the Commission stated that

[w]hen considering whether to extend milestones or to grant or extend a suspension the Commission takes into account many factors, including whether the extension would harm generators lower in the interconnection queue and any uncertainty that speculative projects may present to other projects in the queue.<sup>6]</sup>

5. According to MISO, New Era's failure to meet its contractual obligations under the Construction Agreement demonstrates that the Project is speculative and not prepared to proceed and is at increased risk for late-termination, an increased risk which would in turn harm other projects in the queue.<sup>7</sup> MISO argues that acceptance of its notice of termination would meet the *Lakeswind I* standard because acceptance will eliminate the harm of uncertainty to lower-queued projects, projects in the same group study, transmission owners, and the MISO interconnection queue process caused by speculative projects remaining in the queue. MISO adds that acceptance will benefit other projects by removing uncertainty regarding whether the upgrades in the Construction Agreement will be funded.<sup>8</sup>

6. MISO states that the Commission clarified in *Lakeswind II* that key factors in its determination not to accept the notice of termination in question were: (1) whether any other projects were relying on network upgrades that the interconnection customer was to build; and (2) the interconnection customer's good faith efforts to cure its default, including payment of security sufficient for the transmission owner. MISO maintains that New Era's default has not been cured, the required payments to Great River have not been made, and New Era has publicly stated that it does not plan to proceed with the Project.

7. MISO also states that neither suspension of the Construction Agreement nor extension of its milestones is a permissible option. MISO maintains that the Construction Agreement provides that a party's "obligation to make payments or to provide and

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<sup>5</sup> *Id.* at 4-5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 (2011) (*Lakeswind I*), *order on reh'g and clarification*, 141 FERC ¶ 61,097 (2012) (*Lakeswind II*)).

<sup>6</sup> *Id.* at 4 (quoting *Lakeswind I*, 137 FERC ¶ 61,008 at P 25 (citations omitted)).

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *See id.* at 4-10.

maintain irrevocable security shall not be suspended by *Force Majeure*.”<sup>9</sup> Further, MISO states that because payment obligations may not be suspended, MISO cannot extend the milestones. MISO contends that an extension here would also serve no purpose because New Era has withdrawn public permit requests and has publicly stated that it will not pursue a wind project in this region.

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

8. Notice of MISO’s filing was published in the *Federal Register*, 79 Fed. Reg. 21,914 (2014), with interventions and protests due on or before April 29, 2014. On April 29, 2014, New Era filed a timely motion to intervene and protest. On May 14, 2014, Great River filed a motion to intervene and comment out-of-time. On May 14, 2014, MISO filed an answer to New Era’s protest.

9. In its protest, New Era disagrees with MISO’s argument that the notice of termination is just and reasonable and consistent with the public interest. New Era states that it fully satisfied its obligations to post over \$1.3 million in cash deposits to fund Great River’s activities under the New Era GIA and the Construction Agreement.<sup>10</sup> Additionally, New Era states that it satisfied its obligations to pay for all facilities needed to support the Project’s interconnection, with the exception of disputed amounts in excess of \$108,751 representing Great River’s unsupported cost overruns that exceeded New Era’s substantial cash deposits. New Era further states that, on multiple occasions, New Era requested documentation detailing Great River’s cost overruns, but has received little to no information in return. According to New Era, Great River asserted that these cost overruns were approved in a change in scope by the prior upstream owner, but Great River has not provided any documentation to New Era that supports those statements. New Era states that, without such documentation, it consistently disputed that Great River appropriately incurred these amounts and maintained that it is not in default under the Construction Agreement. New Era also states that MISO continues to hold approximately \$67,840 in New Era’s interconnection study account, which could be applied to amounts that may remain owing to Great River once the Parties have shared reasonable documentation to support their costs and the change in scope. After such discussions, New Era states it would remit payment to Great River of any outstanding amounts exceeding its remaining deposits. According to New Era, its network upgrades are completed and fully paid for, with the exception of the amounts in dispute.<sup>11</sup>

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<sup>9</sup> *Id.* at 5 (citing Construction Agreement, art. 4.3).

<sup>10</sup> MISO states that New Era has a GIA to connect its generating facility to the Great River Energy Transmission System. *Id.* at 1 n.1.

<sup>11</sup> New Era Protest at 2-4.

10. In addition, New Era argues that MISO fails to establish that the Project is speculative. New Era states that MISO's argument that the Project is speculative risks disproportionately labeling projects with minor defaults as being speculative without acknowledging that even viable projects may encounter default. Furthermore, New Era disputes MISO's statements about New Era's actions in withdrawing permit requests and New Era's statements regarding the difficulties encountered for the Project's development. New Era acknowledges that the Project has encountered unforeseen public opposition and significant setbacks related to controversial wildlife impacts that stalled construction on New Era's generating facility and required New Era to reassess its development strategy. However, New Era states that, despite such setbacks, it has continued its interconnection development efforts in earnest by fully satisfying over \$1.3 million in payment milestones under the GIA and Construction Agreement. Additionally, New Era states that it has a new strategic partner and plans to utilize the network upgrades that it funded by the end of 2016. New Era states that, regardless of MISO's arguments that the Project is speculative, New Era has repeatedly disputed the cost overruns in controversy in this docket and does not acknowledge that it is in default under the Construction Agreement.

11. New Era also disagrees with MISO that there is any actual harm to other interconnection customers that will be prevented if the notice of termination is accepted. New Era states that, contrary to MISO's arguments, the harm of shifts in network upgrade costs to a lower-queued customer that may occur if a late-stage higher-queued customer exits the queue is not present in this case because the Project's network upgrades are built and funded, pending the disputed amounts that remain. According to New Era, the amounts paid by New Era for its network upgrades may not be reimbursable pursuant to Attachment FF of MISO's FERC Electric Tariff, and so granting the notice of termination could represent a windfall for Great River and later-queued customers. New Era states that it fails to see how later-queued customers may be harmed if New Era were to exit the queue as MISO claims.<sup>12</sup>

12. Furthermore, New Era states that it fails to see how its continued presence in the queue causes harm by creating the potential for cascading restudies if New Era later withdraws. New Era states that MISO's claims are factually unsupported and without merit because MISO has not presented any evidence that a single customer will be restudied or otherwise adversely impacted if New Era later withdraws.

13. New Era asserts that MISO, by filing a notice of termination of the Construction Agreement and not the GIA, deliberately overlooks the substantial investment that New Era has made in its interconnection in order to make New Era appear delinquent. Rather, New Era argues that its network upgrades are built and that it has fully satisfied

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<sup>12</sup> *Id.* at 6.

the progress payment milestones under its GIA and the Construction Agreement, with just the disputed cost overruns, representing less than 10 percent of the amounts already paid to Great River, remaining outstanding.

14. New Era states that, given the substantial amount of work that has already been completed and paid for under the GIA and the Construction Agreement, it is more reasonable to resolve the matter than go to the extreme result of terminating the Construction Agreement. New Era states that it remains committed to resolving this dispute with MISO and Great River, and therefore requests that the Commission reject the notice of termination and establish settlement judge procedures to assist in resolving this dispute.<sup>13</sup>

15. In its answer, MISO maintains that no additional showing of harm is necessary to permit the notice of termination to go into effect.<sup>14</sup> MISO states that the Commission rejected similar arguments in *Midwest Independent Transmission System Operator, Inc. (Ellerth)*:<sup>15</sup>

[T]he extension of milestones, without further evidence of an intent to cure, may present harm to lower queued interconnection customers in the form of uncertainty, cascading restudies, and shifted costs necessitated if the project is removed from the queue at a later date. While Ellerth argues that there is no potential cost shift in this case because the Switching Station is the only network upgrade required for the interconnection and no other customer is relying on its construction for its own interconnection service, the potential still exists for future reliance on this network upgrade by lower queued interconnection customers, and resultant harm.<sup>16</sup>

MISO asserts that the Commission should apply the same logic in this case as it did in *Ellerth*. MISO argues that, although New Era has funded a large part of the upgrades for the Project and only disputes a portion of the cost, the harm to other projects and the potential for others to rely on upgrades that New Era has not fully funded still exists.

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<sup>13</sup> *Id.* at 7.

<sup>14</sup> MISO Answer at 9-10.

<sup>15</sup> 143 FERC ¶ 61,114, at PP 20, 27 (2013). Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

<sup>16</sup> MISO Answer at 9 (quoting *Ellerth*, 143 FERC ¶ 61,114 at P 27).

Further, MISO argues that prior investment in the Project does not justify a delay in termination when the Project has not been shown to be viable.<sup>17</sup>

16. As to New Era's claim that the notice of termination is not just and reasonable because New Era has funded upgrades except those costs which it disputes, MISO asserts that New Era has not demonstrated that the project would viably proceed even if it resolved these billing issues, and delaying termination would suspend the project in violation of the MISO Tariff provisions limiting suspension to a *Force Majeure* event.<sup>18</sup> MISO claims that, even if such an event occurred, a party's obligation to pay or to provide and maintain irrevocable security shall not be suspended by *Force Majeure* under the Construction Agreement.<sup>19</sup> Furthermore, MISO argues that the Construction Agreement provides a remedy for billing disputes that should not delay termination proceedings. Specifically, MISO points to Article 2.4 of the Construction Agreement, which provides that the applicable provisions of the Construction Agreement survive termination "to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this [Construction] Agreement was in effect."<sup>20</sup> MISO asserts that New Era's dispute does not justify further delay and the Commission should accept the notice of termination.

17. MISO reiterates that the Project is speculative and termination is appropriate. According to MISO, New Era seeks an indefinite extension in meeting its obligations under the Construction Agreement because it provides no details to support its plans to have upgrades in use by 2016. Further, MISO argues that New Era's own filings at the Minnesota Public Utilities Commission to withdraw permit requests and the cancellation of power purchase agreements strongly indicate that the Project is speculative.<sup>21</sup>

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<sup>17</sup> *See id.* at 9-10.

<sup>18</sup> *Id.* at 3-4 (citing *Ellerth*, 143 FERC ¶ 61,114 at P 26).

<sup>19</sup> *Id.* at 4 (citing Construction Agreement at art. 4.3).

<sup>20</sup> *Id.* (citing Construction Agreement at art. 2.4).

<sup>21</sup> *Id.* at 7 (citing MISO Notice of Termination Ex. 6 (Order Accepting Withdrawal, Revoking Site Permit, and Closing Dockets Before the Minnesota Public Utilities Commission); New Era Protest, att. 1 at 1 (stating "now that the wind project will not be built, New Era is evaluating its options for disposition of [the Project]")).

18. Finally, MISO maintains in its answer that termination is appropriate because New Era has not cured the breach or taken appropriate steps to do so and is now in default under the Construction Agreement. According to MISO, if New Era disputed costs under the terms of the Construction Agreement, it should have deposited the disputed funds with MISO, Great River, or an independent escrow account pending resolution of the dispute.<sup>22</sup> MISO dismisses New Era's statement that it has study deposits remaining with MISO that could be redirected to pay any disputed amount because study deposits serve a separate purpose and are not available to fund upgrades. Rather, MISO states that study deposits are retained until used for appropriate study purposes or are refunded pursuant to the MISO Tariff when the project is withdrawn or reaches commercial operation.<sup>23</sup>

19. Great River supports MISO's answer. Great River states that, contrary to New Era's claims, it worked diligently with New Era and its predecessor to fully perform Great River's obligations under the Construction Agreement. According to Great River, it performed early engineering and other services in connection with the required network upgrades at the request of the Project No. H062 interconnection customer prior to the execution of the Construction Agreement, and agreed to financial assurances of milestone payments that were outside the terms of the Construction Agreement. Great River states that it largely completed the network upgrades required under the Construction Agreement on August 31, 2011, but could not fully complete the upgrades because the interconnection customer could not provide final relay settings or proceed with the interconnection of the Project due to delays in obtaining necessary permits. Great River states that while it appreciates the difficulties the Project has experienced, those difficulties should not relieve the payment obligations under the Construction Agreement. Great River asserts that the costs incurred for the Project were prudent and consistent with the terms of the Construction Agreement.<sup>24</sup> In addition, while the actual installed cost of the network upgrades performed exceeded the cost estimate by \$108,751.23, Great River asserts that the deviation was due to general increases in the cost of materials and services after the time that the estimate was prepared. Great River argues that this deviation represents an approximately 8 percent increase in the actual cost as compared to the estimated cost, and notes that under the Construction Agreement the "Total Cost Estimate Accuracy" applicable to network upgrade cost estimates is +/- 20 percent.<sup>25</sup>

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<sup>22</sup> *Id.* at 8 (citing Construction Agreement, art. 6.6).

<sup>23</sup> *Id.* at 8-9 (citing section 3.3.1 of MISO's Generator Interconnection Procedures in Attachment X of the MISO Tariff).

<sup>24</sup> Great River Comments at 3.

<sup>25</sup> *Id.* at 4 (citing Construction Agreement, app. A).

20. In addition, Great River disputes New Era's characterization that Great River failed to respond to New Era's information requests. Great River asserts that it has received very few requests for cost information from New Era and timely responded to every request. Great River states that its records reflect a telephone conference on October 18, 2012, involving MISO, Great River, and New Era, after which Great River forwarded an email notice to New Era at New Era's request to indicate the actual cost of the network upgrades under the Construction Agreement. Great River states that on October 7, 2013, it sent New Era an invoice requesting payment of the \$108,751.23. According to Great River, until recently it had not received any inquiries from New Era requesting additional details of the costs referenced on those two dates. Great River states that on November 27, 2013, it sent New Era a notice of breach under the Construction Agreement; Great River indicates New Era called and emailed Great River shortly thereafter to discuss options that would avoid termination of the Construction Agreement. Great River states that in response to a December 5, 2013 letter from New Era requesting additional information concerning the invoice amounts, Great River forwarded on December 16, 2013, a summary cost analysis for the Project network upgrades. Great River also states that on January 6, 2014, it sent New Era a notice of default under the Construction Agreement. Great River further states that on April 29, 2014, the same date as the New Era protest, Great River received an email notice from New Era invoking its audit rights under the Construction Agreement. According to Great River, an audit is scheduled to take place at Great River's offices on June 9, 2014.<sup>26</sup>

21. With regards to New Era's claim that cost overruns were approved by a change of scope by the prior upstream owner and that Great River has not provided any documentation that supports these statements, Great River maintains that there are no such scope changes in connection with the network upgrades associated with the Construction Agreement. Great River suspects that New Era's statement refers to the related but separate Project No. H061.<sup>27</sup>

#### **IV. Commission Determination**

##### **A. Procedural Matters**

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motion to intervene of New Era serves to make it a party to this proceeding.

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<sup>26</sup> *Id.* at 4-6.

<sup>27</sup> *Id.* at 6.

23. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), we will grant Great River's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

### **B. Substantive Matters**

25. The Commission will accept a notice of termination if the applicant demonstrates that the proposed termination is not unjust, unreasonable, unduly discriminatory, or preferential,<sup>28</sup> or if it is consistent with the public interest.<sup>29</sup> In the instant case, we agree with MISO that New Era breached the Construction Agreement by failing to make payments of amounts due.<sup>30</sup> MISO and Great River followed the procedures in the MISO Tariff by submitting to New Era a notice of breach, a notice of default, and a notice of termination. Under Article 9.2 of the Construction Agreement, the failure of the breaching party to cure a breach within 30 calendar days of receiving a notice of breach, or five calendar days if such breach is due to an occurrence under Article 9.1(a) or (c),<sup>31</sup>

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<sup>28</sup> See, e.g., *Allegheny Power System, Inc.*, 102 FERC ¶ 61,318, at P 9 (2003).

<sup>29</sup> See, e.g., *Duke Energy Moss Landing LLC, et al.*, 83 FERC ¶ 61,318, at 62,306 (1998), *order on reh'g*, 86 FERC ¶ 61,227 (1999).

<sup>30</sup> We note that MISO provides specific details in support of its argument in an exhibit to its notice of termination that it has designated as privileged. However, New Era and Great River provide information on MISO's allegations in their respective filings. We find that this information, along with the other public filings in the proceeding, is sufficient to allow us to rule on MISO's proposal without recourse to any material that has been designated privileged.

<sup>31</sup> Under Article 9.1 of the Construction Agreement, a breach of the agreement shall include:

(a) the failure to pay any amount when due, including failure to provide appropriate irrevocable security, as applicable under Article 6 (Creditworthiness, Billing, and Payments);

shall result in a default. If the breach is such that it cannot be cured within the cure period, then the interconnection customer may commence in good faith all steps as are reasonable and appropriate to cure the breach within such cure period and thereafter diligently pursue such action to completion.

26. We also agree with MISO that the Construction Agreement contains provisions to address billing disputes. Article 6.6 of the Construction Agreement states that:

[i]n the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the [Common Use Upgrade] as long as each Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute.

Although New Era disputes the \$108,751.23 amount billed by Great River, New Era did not utilize the mechanism provided in Article 6.6 of the Construction Agreement to

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(b) the failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;

(c) if a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;

(d) assignment of this Agreement in a manner inconsistent with the terms of this Agreement;

(e) failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or any related GIA;

(f) failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

dispute the billing amount.<sup>32</sup> Accordingly, we disagree with New Era that we should reject the notice of termination and establish settlement judge procedures to resolve the disputed costs.

27. In the instant case, we do not find that New Era has cured the breach. Although New Era claims it has on multiple occasions requested detailed billing information from Great River and has not received sufficient information in return, Great River states that it received no further inquiries from New Era after providing cost analysis summaries. Upon first learning in October 2012 that the actual cost of the network upgrades under the Construction Agreement had exceeded the estimated cost, New Era did not attempt to further discuss the cost overruns until December 2013.

28. Under Article 2.2.2 of the Construction Agreement, the termination of the Construction Agreement will remove the Project from the interconnection queue.<sup>33</sup> The Commission, in considering the proposed removal of a project from an interconnection queue, takes into account certain factors, including whether an extension of milestones would harm generators lower in the interconnection queue and any uncertainty that speculative projects may present to other projects in the queue.<sup>34</sup> The Commission has found that the extension of milestones, without further evidence of an intent to cure, may present harm to lower queued interconnection customers in the form of uncertainty, cascading restudies, and shifted costs necessitated if the project is removed from the queue at a later date.<sup>35</sup>

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<sup>32</sup> Regarding the disputed amount billed by Great River, the Commission encourages the parties to begin alternative dispute resolution (ADR) procedures to address the issues raised in the filings. The parties may avail themselves of ADR, available through the Commission's Dispute Resolution Service helpline at (877) 337-2237 or at (202) 502-6651, under which the parties must voluntarily agree to submit their dispute for mediation and to comply with various requirements outlined in the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.604 (2013).

<sup>33</sup> Under Article 2.2.2 of the Construction Agreement, an event of default by an interconnection customer will also result in the withdrawal of that interconnection customer's associated interconnection request from MISO's interconnection queue and MISO may declare a breach under the interconnection customer's related GIA, if any.

<sup>34</sup> *See Ellerth*, 143 FERC ¶ 61,114 at P 26.

<sup>35</sup> *Id.* P 27.

29. Although New Era states that the Project's network upgrades are built and funded, it acknowledges that the Project has experienced a number of significant setbacks that have stalled the Project's completion. Moreover, New Era does not refute that it has filed to withdraw public permits and terminated the power purchase agreements before the Minnesota Public Utilities Commission. Although New Era states that it is aligned with a new strategic partner that is confident it can overcome the previous issues that brought New Era's activities to a standstill,<sup>36</sup> New Era does not provide any additional detail as to how this new strategic partner plans to overcome these issues. Further, New Era does not state how it will be able to utilize the network upgrades by the end of 2016, as it claims.

30. Based on these circumstances, we find that New Era has not provided sufficient support to demonstrate that the Project is not speculative and agree with MISO that keeping the Project in the interconnection queue may present harm to lower queued interconnection customers in the form of uncertainty, cascading restudies, and shifted costs necessitated if the Project is removed from the queue at a later date.

31. Accordingly, based on the particular circumstances presented in this case, we find that the notice of termination is not unjust, unreasonable, unduly discriminatory or preferential, and we will therefore accept MISO's filing.

The Commission orders:

MISO's notice of termination is hereby accepted, effective June 7, 2014, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>36</sup> New Era Protest at 6.