

107 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

American Transmission Company, LLC

Docket No. ER04-754-000

ORDER CONDITIONALLY ACCEPTING AMENDED
INTERCONNECTION AGREEMENT

(Issued June 4, 2004)

1. In this order we accept American Transmission Co., LLC's (ATC) Amended and Restated Generation-Transmission Interconnection Agreement (IA) with Wisconsin Public Service Corporation (WPSC) effective June 21, 2004. This order benefits customers because it assures that the terms, rates and conditions for interconnection service are just and reasonable, and provides the parties with a reasonable means to ensure the reliable operation, protection and integrity of the transmission system.
2. This Amended and Restated IA between ATC and WPSC provides for the interconnection for all of WPSC's generating facilities, however the amendments relate only to the Kewaunee Nuclear Power Plant (Kewaunee). Kewaunee is directly interconnected to ATC's transmission system. In 2002, ATC transferred operation of its facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).
3. The Amended and Restated IA addresses a 43 MW increase in the generating output of Kewaunee and reflects the sale of Kewaunee to Dominion Energy Kewaunee, Inc. (Dominion) in order to facilitate the assignment of the IA to Dominion once the sale is completed.¹ ATC requests a waiver of the Commission's 60-day prior notice requirement² to allow a March 19, 2004 effective date.

¹ Dominion Energy Kewaunee, Inc., et al. 106 FERC ¶ 62,191 (2004) (order authorizing the disposition of Kewaunee, a jurisdictional facility).

² 18 C.F.R. § 35.3 (2003).

4. In addition this Amended and Restated IA includes Attachment C which is an Acknowledgement signed by ATC and Midwest ISO. Specifically this Acknowledgement recognizes: (1) the Amendments agreed to by ATC and Midwest ISO; (2) that the amendments have been reviewed and agreed to by Midwest ISO consistent with its OATT (3) that Midwest ISO has those rights over the facility's operations consistent with its Operating Protocol; and (4) that all future changes will be subject to review and approval of Midwest ISO.

Notice and Intervention

5. Notice of ATC's April 22, 2004 filing was published in the Federal Register, 69 Fed. Reg. 25,382 (2004), with protests or interventions due on or before May 6, 2004. Dominion and Midwest ISO filed motions to intervene and comments.

6. Dominion supports this filing and states this Amended and Restated IA will facilitate the assignment of the agreement and the closing of the Commission approved transfer of the facilities to Dominion.

7. Midwest ISO states that as an RTO, it has the responsibility to reliably operate and plan the transmission facilities under its management and control, including those transmission facilities owned by ATC. The Midwest ISO provides transmission service and interconnection service over the transmission facilities placed under its control by its transmission-owning members. Furthermore, the Midwest ISO has established procedures by which the interconnection of generating facilities to such transmission facilities are evaluated, including generating facilities similar to those of Kewaunee.

8. Midwest ISO states that prior to it beginning operations on February 1, 2002, many IAs existed between its transmission-owning members and generators, including the Original IA between ATC and WPSC. Midwest ISO acknowledges it is not a signatory to these agreements; however, it asserts it should have a role in the evaluation and negotiation of any amended pre-existing IAs within Midwest ISO's footprint. Midwest ISO states that under the Operating Protocol for Existing Generators (Operating Protocol),³ it has the authority to take the necessary steps with respect to Kewaunee to ensure the safety and reliability of the transmission system.

³ The Commission conditionally accepted the Operating Protocol for filing in Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,262 (2002); see also Midwest Independent Transmission System Operator, Inc. 104 FERC ¶ 61,245 (2003).

9. Midwest ISO states that while it believes this agreement is consistent with Commission policy and the Midwest ISO's procedures, it is concerned with the precedential value Commission approval would have with respect to other similar amended agreements. Midwest ISO believes being a signatory to IAs would be the best way to ensure safe and reliable transmission. However, it proposes a second option whereby Midwest ISO would be involved in acknowledging and participating in amendment negotiations and, if the parties agree, be a signatory to any amended agreement. Midwest ISO argues this acknowledgement procedure is similar to the Commission's certificate concurrence provided for in its regulations.⁴

10. Midwest ISO states this is a practical approach that would bridge the gap between any amended pre-existing IAs and Midwest ISO's functional control of the transmission facilities to assure Midwest ISO they are able to address any operational issues as they arise.

Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make Midwest ISO and Dominion parties to this proceeding.

12. As a required characteristic of an RTO, Midwest ISO must have exclusive authority for maintaining short-term reliability⁵ and must take the steps necessary to enhance reliability and competition.⁶ As Midwest ISO has acknowledged, there are numerous IAs that predate Midwest ISO. Midwest ISO's Operating Protocol,⁷ provides for Midwest ISO the authority over the generators to ensure reliability in operating the transmission facilities under Midwest ISO's control. However, the Commission recognizes the potential to circumvent Midwest ISO's authority if generators and transmission owners amend these existing IAs without Midwest ISO's participation.

⁴ 18 C.F.R. §35.1 (2003).

⁵ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁶ Midwest ISO, 97 FERC ¶ 61,326 (2001).

⁷ Midwest Independent Transmission System Operator, Inc., FERC First Revised Rate Schedule No. 4.

13. Generally, IAs are amended to recognize and address changes that have occurred since the previous signing. The Midwest ISO's obtaining operational control over the transmission facilities is a significant change, and should be addressed in the Amended and Restated IA. When amending an IA to address other changed circumstances, the parties must recognize this major change in circumstances.

14. Section 1.2.1 of Midwest ISO's Operating Protocol addresses pre-Midwest ISO interconnection agreements, stating that these agreements "shall remain in effect unless modified or terminated by the parties thereto pursuant to section 205 or 206 of the Federal Power Act."⁸ At that time, Midwest ISO has the authority to supersede the prior agreements. In this case, as Midwest ISO has stated, and the Commission concurs, the Midwest ISO is best suited to ensure the safe and reliable operation of the transmission system when it is a party to any amended IA.⁹

15. Moreover, while there are numerous agreements that were in place or in progress prior to the Midwest ISO becoming the regional transmission provider and, for that reason, are grandfathered, we are now past that transition period. Thus, any new interconnection agreements or modifications to existing agreements properly fall under the purview of the current transmission provider, Midwest ISO.

16. Therefore, in order to ensure that Midwest ISO has the ability to operate a safe and reliable transmission system, and to account for changed circumstances in amended agreements, including Midwest ISO's role as the regional transmission provider, we will require that Midwest ISO participate in the negotiations and become a signatory to the amendments. This process is to ensure that the amendments have been agreed to by the generating facility, transmission owner, and Midwest ISO, and are consistent with Midwest ISO's OATT. Furthermore, this three-party agreement should reiterate that Midwest ISO has rights over the facility's operations consistent with its Operating Protocol and that all future amendments to the original IA will be subject to negotiation and approval by all three parties. We do not believe that an after-the-fact acknowledgement statement by the Midwest ISO permits appropriate and sufficient participation by the transmission provider.

17. This three-party agreement is consistent with Commission precedent. While we recognize the IA at issue here predates Order No. 2003, the amendment does not, and Order No. 2003 does specify the Commission's requirement for ISO-related interconnection agreements to be three-party agreements between the transmission

⁸ Section 1.2.1, Operating Protocol for Existing Generators, FERC Electric Tariff, First Revised Rate Schedule FERC No. 4.

⁹ Midwest ISO Comment at 3.

owner, transmission provider and the interconnection customer.¹⁰ Furthermore, the Commission has previously approved amended IAs that were codified in three-party agreements under the Midwest ISO tariff.¹¹

18. In this filing, ATC included an Acknowledgement signed by Midwest ISO and ATC as Attachment C and Midwest ISO intervened with comments stating it supports the changes in the Amended and Restated IA. However, this support was not in the form of a signed three-party agreement as discussed above. Therefore, we will accept ATC's Amended and Restated IA subject to the condition that the parties file a signed three-party agreement to amend this IA as ordered below.

19. However, consistent with Commission precedent, we will deny ATC's request for waiver of our prior notice requirement because it has not shown good cause to justify granting waiver.¹² We will thus make the Agreement effective June 21, 2004, after 60 days' notice from the date ATC made this filing.

The Commission orders:

(A) The proposed Amended Restated Interconnection Agreement is hereby conditionally accepted for filing effective June 21, 2004 as discussed in the body of this order.

¹⁰ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 909 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A) reh'g pending.

¹¹ See e.g., Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,076 (2003).

¹² See Central Hudson Gas and Electric Corp., 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1993).

(B) ATC is hereby directed to file a signed three-party agreement, as described in the body of this order, within 30 days from the date of this order.

(C) ATC's request for waiver of the Commission's prior notice requirement is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.