

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER06-22-000
ER06-22-001
ER06-158-000
ER06-158-001
(Not Consolidated)

ORDER REJECTING INTERCONNECTION AGREEMENTS

(Issued March 10, 2006)

1. In this order we reject the unexecuted Large Generator Interconnection Agreement (LGIA) among Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Endeavor Power Partners, LLC (Endeavor Power) and Interstate Power and Light Company (Interstate) in Docket No. ER06-22-000 and the unexecuted LGIA among Midwest ISO, Interstate and Summit Wind, LLC (Summit) in Docket No. ER06-158-000.

Background

2. On October 12, 2005 and November 7, 2005, as amended on January 9, 2006 and January 20, 2006, Midwest ISO submitted for filing the two LGIAs. The LGIAs contain various proposed provisions that do not conform with Midwest ISO's *pro forma* interconnection agreement.¹

¹ *Midwest Independent Transmission System Operator*, 114 FERC ¶ 61,134 (2006) (Order Accepting Proposed Revisions to *Pro Forma* LGIP and LGIA, Subject to Modifications). See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*; Order No. 2003-B, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003-C).

3. These provisions include: (1) the addition of language that Midwest ISO claims is necessary for these specific interconnection agreements to reflect the fact that the project involves the interconnection customer's exercise of construction step-in rights for "stand alone" network upgrades and transmission owner interconnection facilities and "the interconnection customer's election for performance of out of queue order studies"; (2) additional language in Article 11.2 that provides that the interconnection customer will own all of the transmission owner's interconnection facilities and stand alone network upgrades until the transmission owner, through testing, determines that the facilities and upgrades are acceptable; (3) additional language in Article 11.3 that clarifies "the differences in handling facilities" constructed by the interconnection customer for eventual ownership by the transmission owner; and (4) Article 4.1, which concerns Scope of Service, Interconnection Product Options. Midwest ISO states that the parties support the proposed provisions because the provisions capture unique project-specific circumstances or characteristics that are "consistent with or superior to" the language provided in the Midwest ISO's *pro forma* LGIA.

4. Midwest ISO adds that the non-conforming provision in Article 4.1 also addresses factors unique to these interconnections.² It states that the provision allows the interconnection customers to receive conditional Network Resource interconnection service until a higher queued project goes into service. Upon the completion of the Network Resource interconnection study, Endeavor Power and Interstate or Summit and Interstate may need to be re-designated as a receiving Energy Resource interconnection service or may request to be restudied to determine the available generating capacity if they want Network Resource interconnection service.

5. Midwest ISO states that the non-conforming provision in Article 4.1 addresses the situation where because there are existing constraints on the transmission system, the interconnection customer seeking Network Resource status does not qualify for the Network Resource status until additional studies or upgrades are completed. However, should the interconnection customer desire, at that time, not to fund the additional studies to determine the extent of the needed upgrades, it can request conditional Network Resource status to the extent that this service is available on the transmission system. Midwest ISO also states that Article 4.1 addresses the uncertainty of higher queued projects going into service or being completed and allows the Transmission Provider and Transmission Owner to coordinate to defer network upgrades until the higher queued project goes into service.

² In response to deficiency letters issued by the Director, Division of Tariffs and Market Development-Central, on December 9, 2005 and December 22, 2005, Midwest ISO filed support demonstrating that the non-conforming provisions in Article 4.1 are just and reasonable.

Notices of Filing, Interventions, and Protests

6. Notices of Midwest ISO's October 12, 2005 and November 7, 2005 filings were published in the *Federal Register*, 70 Fed. Reg. 61,804 (2005) and 70 Fed. Reg. 71,121 (2005), with interventions or protests due on or before November 2, 2005 and November 28, 2005. None were filed. Notices of Midwest ISO's December 9, 2005 and December 20, 2005 amendments were published in the *Federal Register*, 71 Fed. Reg. 3284 (2006) and 71 Fed. Reg. 5825 (2006) with interventions or protests due on or before January 30, 2006 and February 10, 2006. None were filed.

Discussion

7. In Order No. 2003, the Commission required Transmission Providers (such as Midwest ISO) to file *pro forma* interconnection documents and to offer their interconnection customers service consistent with these documents.³ The use of *pro forma* documents ensures that interconnection customers receive non-discriminatory service and that all interconnection customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an interconnection customer to negotiate each individual agreement. This reduces transaction costs and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.⁴ However, at the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.⁵ The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.⁶

8. We recognize that the type of provisions filed here can provide benefits. For example, Article 4.1 would allow the interconnection customer to receive a higher level

³ See Order No. 2003.

⁴ See *Id.* at P 10 (“it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues”).

⁵ *Id.* at PP 913-15.

⁶ Order No. 2003-B at P 140 (“each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision”).

of interconnection service, albeit on a conditional basis. It would leave queue positions undisturbed and would make use of available capacity, which results in a more efficient use of the transmission system. However, we see no reason why these benefits should only be available to Endeavor Power, Interstate and Summit, and Midwest ISO has failed, accordingly, to justify acceptance of this provision on a non-conforming basis. Such a right, if offered, must be offered in a not unduly discriminatory manner. Therefore, in order to ensure that all similarly situated interconnection customers are treated on a consistent and fair basis, we will reject the non-conforming agreements.⁷ Midwest ISO may propose to amend its *pro forma* tariff under the consistent with or superior to standard or the independent entity standard to include the proposed provision. If it does not do so, it must remove the provision from the LGIAs. We note that whichever option Midwest ISO chooses, any LGIA that conforms to the Midwest ISO's *pro forma* LGIA will only be required to be reported in Midwest ISO's quarterly transaction report and not filed here with the Commission.⁸

The Commission orders:

Midwest ISO's proposed LGIAs are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷ We did the same in *Midwest Independent Transmission System Operator*, 114 FERC ¶ 61,078 at P 7 (2006).

⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. P 31,127 at P 7 (2002).