

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. ER05-636-002
ER05-662-002
ER05-864-001
(not consolidated)

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILINGS

(Issued April 7, 2006)

1. In this order, the Commission accepts revisions to three wind-related Large Generator Interconnection Agreements (Interconnection Agreements) filed in compliance with the Commission's June 17, 2005 Order,¹ subject to the Midwest ISO re-filing the Interconnection Agreements, as discussed below. In the June 17 Order, the Commission accepted the three Interconnection Agreements, subject to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) making certain changes to bring the agreements into compliance with the *pro forma* Large Generator Interconnection Agreement (*pro forma* LGIA) in the Midwest ISO's Tariff.² We find that the three revised Interconnection Agreements do not fully comply with the Commission's directives. Thus, we accept them, subject to the condition that the Midwest ISO re-file them, with the appropriate revisions, as directed below.

I. Background

2. The three Interconnection Agreements at issue here all involve wind generator Interconnection Customers seeking to interconnect to American Transmission Company, LLC's (American Transmission) transmission system. American Transmission is a transmission owner within the Midwest ISO. The three Interconnection Customers are Columbia Community Windpower LLC (Columbia); Darlington Wind Farm LLC

¹ *Midwest Independent System Operator, Inc.*, 111 FERC ¶ 61,421 (2005) (June 17 Order).

² The Midwest ISO *pro forma* interconnection agreement was in Attachment X to the Midwest ISO's Open Access Transmission Tariff (OATT), but has been transferred to the Midwest ISO's Open Access Transmission and Energy Market Tariff (TEMT or Tariff), which superseded the OATT effective April 1, 2005.

(Darlington); and Forward Energy LLC (Forward Energy). All three Interconnection Agreements as originally filed contained provisions that did not conform with the *pro forma* LGIA in the Midwest ISO's Tariff.

3. In the June 17 Order, the Commission conditionally accepted the three Interconnection Agreements, subject to the Midwest ISO bringing the Interconnection Agreements into compliance with the Midwest ISO's *pro forma* LGIA.³ Alternatively, the June 17 Order stated that the Midwest ISO could elect to withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions.⁴

A. The October 17 Compliance Filings

4. On October 17, 2005, the Midwest ISO submitted three compliance filings that the Midwest ISO states conform to the *pro forma* LGIA and the directives in the June 17 Order. In each case, the Midwest ISO states that the provisions that had been rejected by the Commission in the June 17 Order have been removed, and have been replaced with appropriate provisions from the Midwest ISO Tariff. However, the Midwest ISO also states that the revised Interconnection Agreements contain certain new non-conforming provisions not explicitly approved by the Commission in the June 17 Order that the Midwest ISO nonetheless states are consistent with the directives in that order.

5. One set of non-conforming provisions involves metering provisions in Articles 7.1 and 7.4. The Midwest ISO states that these provisions were originally filed with the Commission in Docket Nos. ER04-458-000 and ER04-458-001 to become part of the Midwest ISO's *pro forma* LGIA, and were accepted by the Commission,⁵ but that the language was inadvertently omitted when Attachment X was published as part of the Tariff. The Midwest ISO requests that the Commission accept this metering language because, among other things, the Commission has previously accepted it.

³ The order rejected stylistic and non-substantive non-conforming provisions, but accepted several other non-conforming provisions that "bridge" the transition between the Midwest ISO's pre-Order No. 2003 processing of interconnection requests and its post-Order No. 2003 processing of interconnection requests. See June 17 Order, P 15. *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

⁴ The effective dates requested by the parties were January 26, 2005 for the Columbia project; February 23, 2005 for the Darlington project; and April 5, 2005 for the Forward Energy project.

⁵ The Midwest ISO cites *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027 (2004) (July 8, 2004 Order).

6. Additionally, in Docket No. ER05-864-001, the Midwest ISO seeks to preserve a deviation in Article 18.3.2 concerning general liability insurance that had been proposed in the initially-filed Interconnection Agreement. The Midwest ISO states that this deviation allows the Interconnection Customer to conform with certain insurance requirements and provides necessary operating requirements for the interconnection. The language states as follows:

To the extent Environmental Impairment Liability Insurance including sudden and accidental pollution limits of no less than \$1,000,000 per occurrence with a deductible not to exceed \$50,000 are obtained the provision of coverage for pollution above shall be considered met under sections 18.3.2 and 18.3.4.

7. In Docket No. ER05-636-002, the Midwest ISO seeks a new deviation to Article 4.1 of the LGIA, to “maximize[] the availability of N[etwork] R[esource] service to the Interconnection Customer.” The Midwest ISO states that the addition “allows the Interconnection Customer to designate the amount of MWs within the [] capability that can run as N[etwork] R[esource] with the remaining MW capability running as E[nergy] R[esource] [Service].”

8. Additionally, the filings contain other minor, non-substantive non-conforming provisions that are not eliminated from the initially proposed Interconnection Agreements, are not described in the transmittal letter, and are not indicated on the redlined pages submitted with the filings.

9. The Midwest ISO submitted the compliance filings unexecuted because it states that the parties either have not had the opportunity to review all the proposed modifications or oppose the modifications.

B. Notice of Filings

10. Notices of the filings in Docket Nos. ER05-636-002, ER05-662-002 and ER05-864-001 were published in the *Federal Register*, 70 Fed. Reg. 61,972 (2005), with comments, interventions and protests due on or before November 11, 2005. American Transmission filed a timely motion to intervene and protest. Darlington filed a motion for leave to respond and response. The Midwest ISO filed a motion for leave to answer and answer to protest. American Transmission and Darlington each filed a second motion for leave to respond and a response to the earlier pleadings.

11. In its protest to each of the three filings, American Transmission proposes additional changes, stating that the compliance filings do not include changes that the Midwest ISO had acknowledged in other proceedings should be included in these LGIAs.

12. First, American Transmission argues that the definition of “Distributed System” should be revised to reflect the fact that American Transmission does not own any distribution facilities. American Transmission states that more than 30 percent of the

facilities administered by the Midwest ISO are distribution facilities, and that the change is therefore warranted as a “regional difference.” American Transmission argues that the revised definition of Distributed System would apply to stand alone transmission companies, such as itself, as well as in those situations where there is more than one distribution system interconnected to the transmission system.

13. Second, American Transmission states that the reactive power requirements found in the Interconnection Agreements should be modified to require 0.95 leading to 0.90 lagging. American Transmission states that this is the power range throughout American Transmission’s control system. Any new generator that interconnects into American Transmission’s transmission system that does not adopt this power range would effectively “lean” on existing generators for the supply of or absorption of reactive power. American Transmission states that the Midwest ISO supports American Transmission’s power factor range of .95 leading to .90 lagging as a deviation from the *pro forma* LGIA in Interconnection Agreements involving American Transmission, providing that American Transmission demonstrates that this power factor will apply to all generators on a comparable basis. American Transmission also states that the Midwest ISO stated in Docket No. ER05-1475-000 that interconnection agreements involving American Transmission should be allowed to deviate from the power factor range section of the *pro forma* LGIA.

14. Third, American Transmission proposes that section 11.5 of the Interconnection Agreements specifically refer to Appendix B in order to avoid any confusion as to the date on which the Interconnection Customer is required to perform certain financial obligations.

15. Fourth, American Transmission argues that section 18.1 of the Interconnection Agreements, dealing with the limitation of liability, should be modified to reflect the fact that during construction of Network Upgrades and Interconnection Facilities, the level of risk, and thus the level of protection that should be afforded the Transmission Owner and Interconnection Customer, is greater than when the Generating Facility is being operated. This change, American Transmission asserts, is necessary to bring the Interconnection Agreements in line with recent changes to the Midwest ISO’s TEMT.

II. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept answers filed by Darlington, American Transmission, or the Midwest ISO, and, therefore, reject them.

B. Determination

18. The June 17 Order gave the Midwest ISO two alternatives: (1) withdraw the three Interconnection Agreements and re-file them, along with justifications for any non-conforming changes; or (2) bring the three Interconnection Agreements into compliance with the relevant Midwest ISO Tariff provisions. The Midwest ISO elected to make compliance filings and did not seek rehearing of the June 17 Order. However, it proposes several changes not required by the June 17 Order. The non-conforming provisions in the Midwest ISO's *pro forma* Interconnection Agreement, other than those explicitly allowed by the June 17 Order, are rejected.⁶ The Midwest ISO is directed to make compliance filings within 30 days of the issuance of this order that remove these non-conforming provisions.⁷

19. The Commission will require that the language in the metering provisions in Articles 7.1 and 7.4 to all three Interconnection Agreements precisely mirror the language we accepted in the July 8, 2004 Order. The Commission had previously accepted these metering provisions in the Midwest ISO's *pro forma* LGIA, and it was only because of an administrative error that these provisions were not present in the Midwest ISO's *pro forma* LGIA on the dates on which the parties signed their Interconnection Agreements.⁸

⁶ See, e.g., *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,336 at P 5 (2004); *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321 at p. 63,160 (1993) (the Commission will not consider arguments raised in a compliance proceeding that do not respond to the narrow issue of the filing company's compliance with the explicit directives of the Commission in the earlier order).

⁷ We note that in the compliance filing submitted in Docket No. ER05-864-001, the Midwest ISO included the wrong customer name on the first page of the Interconnection Agreement. Additionally, there were other minor, non-substantive deviations that the Midwest ISO still has not eliminated from the initially proposed Interconnection Agreements that did not show up on the redlined pages submitted by the Midwest ISO. Accordingly, when the Midwest ISO refiles these compliance filings, we direct the Midwest ISO to include a complete redlined copy of the Interconnection Agreements showing all provisions that do not conform to the Midwest ISO *pro forma* LGIA that existed on the dates on which the Interconnection Agreements were executed.

⁸ We also note that these provisions were restored to the Midwest ISO's *pro forma* LGIA in *Midwest Independent System Operator, Inc.*, 114 FERC ¶ 61,134 (2006) (February 13, 2006 Order).

20. We deny American Transmission's protest. American Transmission could have sought rehearing of the June 17 Order, but did not.⁹ The June 17 Order also permitted the Midwest ISO to withdraw these filings and refile any non-conforming provisions, with sufficient justification.¹⁰ It did not do so. These compliance filings are not the proper venues to raise these concerns.

21. Similarly, we reject the Midwest ISO's attempt to include the general liability insurance deviation, previously rejected in the June 17 Order, in this compliance filing. It could have sought rehearing of the June 17 Order, but did not.

The Commission orders:

(A) The compliance filings made by the Midwest ISO are accepted, subject to further compliance, as noted in the body of this order and with the effective dates as previously approved.

(B) The Midwest ISO is hereby directed to make compliance filings within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ In fact, some, but not all, of these provisions proposed by American Transmission in its protest to these compliance filings were changed generically in the Midwest ISO's *pro forma* LGIA. See *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,134 (2006).

¹⁰ See June 17 Order at P 13.