

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 No. ER06-30-002

ORDER ON REHEARING

(Issued July 5, 2006)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Union Electric Company d/b/a/ AmerenUE (Union Electric) (collectively, petitioners) request rehearing of the Commission order issued in this proceeding on January 27, 2006.<sup>1</sup> The January 27 Order rejected an executed Large Generator Interconnection Agreement (LGIA) among the Midwest ISO, Union Electric and Central Illinois Public Service Company d/b/a/ AmerenCIPS (Central Illinois). For the reasons discussed below, we grant rehearing.

**Background**

2. The Midwest ISO submitted for filing the LGIA to interconnect Union Electric's generating facility to Central Illinois's transmission system. The January 27 Order determined that Article 4.1 of the LGIA did not conform to the Midwest ISO's Order No. 2003 *pro forma* interconnection agreement.<sup>2</sup> The non-conforming provision would allow Union Electric to obtain conditional network resource interconnection service until a

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,078 (2006) (January 27 Order).

<sup>2</sup> 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, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003-C) *appeal docketed National Assoc. of Regulatory Utility Commissioners, et al. v. FERC*, No. 04-1148, *et al.* (D.C. Cir. May 3, 2004).

higher queued project goes into service. Once that happens, Union Electric might have to be re-designated as an energy resource interconnection service, or could request to be re-studied to determine the amount of generating capacity that may remain as a network resource interconnection service.

3. In the January 27 Order, the Commission determined that a provision such as this may provide benefits by allowing an interconnection customer to receive a higher level of interconnection service conditionally, making use of available capacity without disturbing queue positions. Our concern with the LGIA was that it limited such benefits to a particular customer. The order explained that such a right must be offered in a manner that is not unduly discriminatory, treating similarly situated interconnection customers consistently and fairly. The order rejected the LGIA, noting that the Midwest ISO could either remove the provision from the LGIA or file to amend its *pro forma* tariff to include the proposed non-conforming provision.

### **Rehearing Request**

4. On rehearing, petitioners state that the Commission's decision to reject the entire LGIA was inconsistent with precedent, citing the Commission's past practice in cases such as this of accepting the agreement on condition that the non-conforming provision be removed. Specifically, petitioners state that the Commission typically conditionally accepts such an agreement subject to the Midwest ISO revising it to conform with the *pro forma* interconnection agreement or withdrawing the agreement and re-filing it with sufficient explanation for the non-conforming provisions.<sup>3</sup>

5. Petitioners state that the Commission's decision that the conditional network resource interconnection service should be offered to all similarly situated interconnection customers does not warrant rejection of the entire LGIA. In addition, they state that, although the non-conforming provision is not in the Midwest ISO's *pro forma* interconnection agreement, the Midwest ISO has offered such service to all similarly situated interconnection customers on a non-discriminatory basis.

6. Petitioners state that the Commission's decision harms the parties to the LGIA because it has left them without any interconnection agreement at all, creating uncertainty with regard to the generating facility, which is already in service. In addition, petitioners state that denying this customer the benefits of conditional network resource

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<sup>3</sup> Citing *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,270 (2005); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,067 (2005); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,002 (2005); *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,421 (2005).

interconnection service until the Midwest ISO can file to get the Commission to approve a revision to its *pro forma* interconnection agreement creates additional uncertainty regarding whether the customer must commit to additional studies or network upgrades for a generating facility that is already in service. The Midwest ISO commits to make the necessary revisions to its *pro forma* interconnection agreement to allow all interconnection customers the option of conditional network resource interconnection service, noting that it already offers such service to all similarly situated interconnection customers when there are higher queued projects that will limit network resource interconnection service in the future when they go into service.

7. To support their argument that the provision meets the standard for non-conforming provisions, Petitioners state that the language in Article 4.1 addressed “novel legal issues” and “other unique factors” associated with this interconnection that drove the non-conforming language. According to petitioners, the novel legal issue is that the interconnection customer was given the option of deferring its decision as to whether to fund network upgrades until such upgrades were needed for its generating facility. The unique factor is the situation where a higher queued project’s choice of network resource interconnection service affects a lower queued project’s ability to obtain network resource interconnection service, but the effect will not occur until the higher queued project goes into service. Petitioners urge the Commission to reconsider its January order and conditionally accept the LGIA to provide certainty regarding the operating generating facility.

8. The Midwest ISO commits to make a future tariff filing revising Article 4.1 of its *pro forma* interconnection agreement to give all interconnection customers the option of conditional network resource interconnection service going forward. Petitioners cite additional pending dockets in which the Midwest ISO requested non-conforming revisions to Article 4.1 of the interconnection agreements to address specific needs and unique factors for interconnection customers where higher queued projects would take the available network resource interconnection service away from lower queued projects when the higher queued projects went into service.<sup>4</sup> The Midwest ISO would like to maintain the requested effective dates for those individual interconnection agreements and requests that the Commission accept the LGIA as filed, or alternatively, accept the LGIA with the requested effective date (October 4, 2005) subject to the Midwest ISO making a tariff revision to revise Article 4.1 of its *pro forma* interconnection agreement.

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<sup>4</sup> Docket Nos. ER06-216, ER06-435, ER06-22, and ER06-158.

## Discussion

9. We grant petitioners' request for rehearing. We also conditionally accept the executed LGIA, as discussed below, subject to the Midwest ISO revising its *pro forma* LGIA.

10. We agree with the petitioners that the proposal to allow an interconnection customer to receive a higher level of interconnection service on a conditional basis can provide benefits. However, these benefits should be made available to all interconnection customers in a transparent, non-discriminatory manner, which the Midwest ISO now says it has been doing. The independence of the Midwest ISO and the fact that the Midwest ISO must go through its stakeholder process before it can file to amend its *pro forma* agreement, argue in favor of allowing this provision now. Therefore, we will waive our regulation at 18 C.F.R. § 35.28(f)(1)(ii) to permit this non-conforming provision. In order to ensure that the service continues to be offered to all customers, the Midwest ISO should file to amend its *pro forma* agreement to include this language.

11. We clarify our January 27 Order as follows. In the January 27 Order, we stated:

“...in order to ensure that all similarly situated interconnection customers are treated on a consistent and fair basis, we will reject the non-conforming agreement filed by Midwest ISO. Midwest ISO may amend its *pro forma* tariff under the *consistent with or superior to standard* to include the proposed non-conforming provision. If it does not do so, it must remove the provision from the instant interconnection agreement.”<sup>5</sup>

We now clarify that the Midwest ISO may propose to amend its *pro forma* tariff under the *independent entity standard* or the *consistent with or superior to standard* to include the proposed provision.<sup>6</sup>

12. The Commission will conditionally accept the LGIA, subject to the Midwest ISO's filing to amend its *pro forma* LGIA within 90 days of the issuance of this order to conform with Article 4.1 of this agreement, and on the Commission's approval of the amendment. If the Midwest ISO chooses not to amend its *pro forma* agreement, it must revise this agreement to remove the non-conforming provision, and notify the Commission within 90 days that it has done so.

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<sup>5</sup> See *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,256 (2006) P 8 (emphasis added).

<sup>6</sup> See Order No. 2003 at P 827.

The Commission orders:

(A) The Midwest ISO's and Union Electric's request for rehearing is hereby granted.

(B) The Midwest ISO is directed within 90 days of the date of this order to either make a filing amending its *pro forma* agreement as discussed in the body of this order, or notify the Commission that it has modified the agreement to remove the non-conforming provision.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.