

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company

Docket No. ER06-966-000

ORDER REJECTING NONCONFORMING PROVISIONS OF
AND OTHERWISE DISMISSING
LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued July 7, 2006)

1. In this order, we reject the nonconforming provisions of an executed Large Generator Interconnection Agreement (Interconnection Agreement) between MidAmerican Energy Company (MidAmerican) and Pomeroy Wind Farm, LLC (Pomeroy Wind). As a result, the Interconnection Agreement will be a conforming agreement and, as such, need not be filed with the Commission.

I. Background

2. On May 9, 2006, MidAmerican submitted for filing the executed Interconnection Agreement, dated April 13, 2006. The Interconnection Agreement is a two-party agreement that provides the terms under which an 80 megawatt wind farm proposed to be constructed by Pomeroy Wind will interconnect with the MidAmerican transmission system.

3. The Interconnection Agreement contains deviations from the *pro forma* Large Generator Interconnection Agreement (LGIA) in MidAmerican's Open Access Transmission Tariff (OATT), including, among other things, the removal and addition of

words, changes to definitions, and a modification to the insurance provisions. Additionally, MidAmerican proposes provisions that do not conform with Order Nos. 2003-A, 2003-B, and 2003-C¹ (Rehearing Orders).

4. MidAmerican states that the non-conforming provisions in the Interconnection Agreement either were requested by Pomeroy Wind or are necessary to reflect the resulting position of each party. MidAmerican also states that the Interconnection Agreement is consistent with or superior to the MidAmerican *pro forma* LGIA.

5. MidAmerican requests that the Interconnection Agreement become effective on July 1, 2006.

II. Notice of Filing and Responsive Pleadings

6. Notice of the Interconnection Agreement was published in the *Federal Register*, 71 Fed. Reg. 29,937 (2006), with interventions and protests due on or before May 30, 2006. None was filed.

III. Discussion

7. In Order No. 2003, the Commission required transmission providers (such as MidAmerican) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with those documents.² The use of *pro forma* documents ensures that interconnection customers, such as Pomeroy Wind, 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, ensures that all interconnection customers are treated fairly, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.³

¹ *Standardization of Generator Interconnection Agreement and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 18, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

² Order No. 2003 at P 11-12.

³ *See id.* P 10 (“[I]t has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues.”)

8. 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.⁴ 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.⁵ The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming provisions.⁶ A Transmission Provider seeking a case-specific deviation from its approved *pro forma* interconnection agreement bears an even higher burden to explain what makes the interconnection unique and why its changes are operationally necessary (not merely “consistent with or superior to”) changes.⁷

9. Based on these policies, as discussed more fully below, the Commission rejects the proposed non-conforming provisions and directs MidAmerican to revise the Interconnection Agreement to include the changes required by the Rehearing Orders.

10. MidAmerican proposes numerous stylistic changes to wording and verb tenses throughout the Interconnection Agreement such as changing the wording and verb tenses in definitions of “Interconnection Study” and “Stand Alone Network Upgrades” under article 1. MidAmerican states that it and Pomeroy Wind agreed to these changes to reflect the parties’ resulting positions under the agreement. MidAmerican also adds a clarifying phrase to the Recitals of the Interconnection Agreement for definitional purposes. In addition, MidAmerican states that the parties agreed to delete terms that do not apply to the particular transaction. MidAmerican, for instance, proposes to delete article 5.17.10 because MidAmerican is both a Transmission Provider and a Transmission Owner and thus the section does not apply.

⁴ See P 913-15.

⁵ Order No. 2003-B at P 140 (“[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision....”)

⁶ See, e.g. PJM Interconnection, L.L.C., 111 FERC ¶ 61,098 at P 9 (2005) (PJM Order); see also Midwest Independent Transmission System Operator, Inc., 112 FERC ¶ 61,067 (2005); El Paso Electric Co., 110 FERC ¶ 61,163 at P 4 (2005).

⁷ See, e.g. PJM Order at P 9.

11. We will reject all of the stylistic and non-substantive deviations from MidAmerican's *pro forma* LGIA, as well as other non-conforming terms and conditions negotiated by the parties. Typographical and stylistic changes should be made on a *pro forma* basis.⁸ Furthermore, we also reject as unnecessary the deletion of non-applicable terms from the Interconnection Agreement. If a provision of a contract is not applicable, it is not applicable. Unless confusion is likely, modifications to a *pro forma* agreement that "clarify" matters not in doubt are not necessary. To find otherwise would set the precedent for every MidAmerican non-merchant transmission interconnection to be filed as a non-conforming agreement.⁹ In addition, simply stating that the parties "negotiated" for or "agreed" to the non-conforming changes is not sufficient justification.¹⁰ If MidAmerican believes changes to its *pro forma* LGIA are needed, it must file those changes on a generic basis.¹¹

12. MidAmerican also proposes to change the Excess Public Liability Insurance requirement in article 18.3.4 to reference the provisions in appendix B, which provides that the full insurance requirement of 20 million dollars does not have to be met until construction of the interconnection commences. This proposal requires a lesser amount of insurance for the first six months than what the *pro forma* LGIA requires. We recognize that the type of provision filed here can provide benefits. Indeed, MidAmerican's proposed insurance requirements are tailored to more closely match the need for insurance with the exposure to liabilities by not requiring the full insurance coverage until construction commences. However, these benefits should be made available to all interconnection customers in a transparent, non-discriminatory manner so that MidAmerican cannot favor Pomeroy Wind over the rest of MidAmerican's customers. MidAmerican does not reveal any reliability concerns, novel legal issues, or other unique factors that would justify the filing of these non-conforming insurance provisions only for Pomeroy Wind. Therefore, in order to ensure that all similarly situated Interconnection Customers are treated on a consistent and fair basis, as Order No. 2003 requires, we will reject the non-conforming insurance provision in article 18.3

⁸ *See id.*

⁹ *Id.* P 14.

¹⁰ *Id.* at n.13.

¹¹ *See e.g., Sierra Pacific Power Co.*, 111 FERC ¶ 61,415 at P 8 (2005).

of the proposed Interconnection Agreement.¹² Even though we reject these provisions in the instant Interconnection Agreement, MidAmerican may still propose to amend its *pro forma* LGIA under the “consistent with or superior to” standard to include these insurance requirements in a transparent and non-discriminatory manner.

13. In addition, MidAmerican states that the proposed Interconnection Agreement does not reflect changes in its *pro forma* LGIA that were required by the Commission in the Rehearing Orders. MidAmerican asks the Commission to approve the Interconnection Agreement without the changes from the Rehearing Orders because the timing of the contract negotiations overlapped with the issuance of Rehearing Orders. We will reject this request. The Commission reviews interconnection agreements based on the terms and conditions in effect on the date when they are filed with the Commission,¹³ and, in this case, MidAmerican filed the Interconnection Agreement months after the Commission made the Rehearing Orders effective. The “timing” excuse MidAmerican presents is not a unique factor that would permit it to file a non-conforming agreement. MidAmerican, having filed the Interconnection Agreement after the Rehearing Orders took effect and not citing any relevant factors calling for the filing of a non-conforming agreement, cannot base its failure for making requisite changes to its *pro forma* on the date that the parties started negotiating the Interconnection Agreement.¹⁴

14. As explained above, we are rejecting all the non-conforming provisions in the Interconnection Agreement and requiring changes consistent with the Rehearing Orders. Once the required revisions are made, the Interconnection Agreement will conform to MidAmerican’s *pro forma* LGIA, and because conforming LGIA’s need not be filed with

¹² *But see Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,009 (2006) (allowing an independent transmission provider to include a nonstandard provision in an individual LGIA on the condition that the provision be added to its *pro forma* LGIA and explaining that a waiver of the Commission regulations was warranted for several reasons, including the fact that the transmission provider was an independent entity).

¹³ *See* Order No. 2003 at P 187.

¹⁴ *Cf. Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 at P 115 (2006) (explaining that generator interconnection agreements *filed* on or after the effective date for new provisions under a *pro forma* tariff must conform to the provisions in effect as of that effective date).

the Commission, no compliance filing will be necessary. An LGIA that conforms to MidAmerican's *pro forma* LGIA is only required to be reported in MidAmerican's quarterly transaction report.¹⁵ Therefore, the Interconnection Agreement is dismissed.

The Commission orders:

The nonconforming provisions of MidAmerican's proposed Interconnection Agreement are hereby rejected, and the Interconnection Agreement is dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁵ See, e.g., *Midwest Independent Transmission System Operator*, 114 FERC ¶ 61,256 at P 8 (2006) (explaining that any LGIA that conforms to 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).