

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER05-636-003
ER05-636-004
ER05-662-003
ER05-662-004
ER05-864-002
ER05-864-003

ORDER DENYING REQUEST FOR REHEARING
AND CONDITIONALLY ACCEPTING COMPLIANCE FILINGS

(Issued September 7, 2006)

1. We address in this order the request for rehearing filed by American Transmission Company LLC (American Transmission)¹ of the Commission's April 7, 2006 Order that conditionally accepted compliance revisions filed by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to three interconnection service agreements (Interconnection Agreements).² We address also the May 8, 2006 compliance filing that Midwest ISO submitted to comply with the April 7 Order (May 8 Compliance Filings). For the reasons discussed below, we will deny the request for

¹ American Transmission is a single-purpose, transmission-only company that provides transmission service over its lines to interconnecting generating facilities under Midwest ISO's Open Access Transmission and Energy Markets Tariff (EMT).

² *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,022 (2006) (April 7 Order). The April 7 Order conditionally accepted Midwest ISO's October 17, 2005 filing of compliance revisions to the three Interconnection Agreements (October 17 Filings) and required further compliance. Midwest ISO had submitted the October 17 Filings in response to the Commission's June 17, 2005 directives in *Midwest Independent Transmission System Operator*, 111 FERC ¶ 61,421 (2005) (June 2005 Order).

rehearing and will continue to require Midwest ISO to conform the Interconnection Agreements as directed in the April 7 Order and the June 2005 Order. We will accept the May 8 Compliance Filings, subject to Midwest ISO's revising the Interconnection Agreements further, as directed below.

I. Background

2. In early 2005, Midwest ISO filed these Interconnection Agreements for three wind power generators seeking to interconnect with American Transmission's transmission system: Columbia Community Windpower LLC (Columbia) (Docket No. ER05-636 proceedings); Darlington Wind Farm (Darlington) (Docket No. ER05-662 proceedings); and Forward Energy LLC (Forward Energy) (Docket No. ER05-864 proceedings).³ The requested effective dates were January 26, 2005, February 23, 2005, and April 5, 2005, respectively. The Interconnection Agreements were based on but did not entirely conform to the then-existing Midwest ISO *pro forma* Large Generator Interconnection Agreement (Early 2005 *pro forma* LGIA), in Attachment X, "Standard Large Generator Interconnection Procedures," which Midwest ISO had adopted under Order No. 2003.⁴ The Commission conditionally accepted these Interconnection Agreements in the June 2005 Order.

3. The June 2005 Order divided into two groups the proposed provisions that did not conform to the Early 2005 *pro forma* LGIA. The Commission accepted non-conforming

³ These filings were made on: February 23, amended April 20, 2005 (Docket No. ER05-636 proceedings); March 2, amended April 25, 2005 (Docket No. ER05-662 proceedings); and April 26, 2005 (Docket No. ER05-864 proceedings).

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (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, *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *appeal docketed sub nom. National Association of Regulatory Utility Commissioners v. FERC*, Nos. 04-1148, *et al.* (D.C. Cir. Apr. 29, 2004) (Order No. 2003). After Midwest ISO replaced its Open Access Transmission Tariff (OATT) with the EMT, effective April 1, 2005, Attachment X was transferred to the EMT. Previously, generator interconnections had been governed by Attachment R to the Midwest ISO OATT. On July 8, 2004, in *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶61,027, *order on reh'g and clarification*, 109 FERC ¶ 61,085 (2004) (2004 Order), the Commission revised Attachment R to apply only to generators equal to or smaller than 20 MW, and approved, for larger generators, new Attachment X, which contains Midwest ISO's *pro forma* LGIA and *pro forma* Large Generator Interconnection Procedures (LGIP), as required by Order No. 2003.

provisions that “bridged” the transition between pre- and post-Order No. 2003 processing of interconnection requests.⁵ The Commission rejected as insufficiently justified the remaining non-conforming provisions, including provisions that the parties had negotiated. The Commission offered Midwest ISO a choice. It could continue with the approved, executed Interconnection Agreements if it re-filed them, within 30 days, to conform to the *pro forma* LGIA in effect when the agreements were executed, *i.e.*, the Early 2005 *pro forma* LGIA. Alternatively, Midwest ISO could withdraw the Interconnection Agreements and re-file with sufficient justification for the non-conforming provisions.⁶

4. Midwest ISO’s October 17, 2005 responsive filings⁷ (the October 17 Filings) combined characteristics of both choices. Cover letters to each filing stated that Midwest ISO was filing the Interconnection Agreement in compliance with the June 2005 Order and requested the same effective dates as provided in that order. None of the October 17 Filings withdrew the original Interconnection Agreements. Midwest ISO stated that it was filing the three Interconnection Agreements unexecuted because of additional deviations to which the interconnection customers had not agreed.

5. In the April 7 Order, the Commission observed that neither Midwest ISO nor American Transmission had sought rehearing of the June 2005 Order. The Commission found that Midwest ISO had chosen to make compliance filings, *i.e.*, to revise the conditionally accepted Interconnection Agreements, while also proposing several changes not required by the June 2005 Order. Accordingly, the Commission rejected the non-conforming provisions other than those explicitly allowed by the June 2005 Order. The Commission then accepted the October 17 Filings and directed Midwest ISO to make further compliance filings that removed the rejected, non-conforming provisions.⁸

6. An exception to the requirement to remove non-conforming provisions concerned language in the metering provisions of Articles 7.1 and 7.4 in all three Interconnection Agreements. The Commission directed that these provisions must mirror precisely the language accepted in the 2004 Order. The reason was that the Commission had previously accepted these metering provisions for the Midwest ISO *pro forma* LGIA, and

⁵ June 2005 Order, 111 FERC ¶ 61,421 at P15. This group of accepted, non-conforming revisions included changes related to the April 1, 2005 transfer of the *pro forma* LGIA from Attachment R of the OATT to Attachment X of the EMT.

⁶ *Id.* P 13.

⁷ Docket Nos. ER05-636-003, ER05-662-003, and ER05-864-002.

⁸ April 7 Order, 115 FERC ¶ 61,022 at P 18, P 20.

only an administrative error caused their omission from the *pro forma* LGIA that existed on the dates when the parties signed their Interconnection Agreements.⁹

7. The April 7 Order denied American Transmission's protest, which urged the Commission to revise the October 17 Filings to include additional changes that Midwest ISO had acknowledged, in other proceedings, should be included in such interconnection agreements. The Commission stated that American Transmission could have sought rehearing of the June 2005 Order and that compliance filing proceedings were not the proper venues to raise these concerns.¹⁰

8. On May 8, 2006, American Transmission filed a request for rehearing of the April 7 Order. Also on that date, Midwest ISO submitted revised Interconnection Agreements, stating that these revised filings, *i.e.*, the May 8 Compliance Filings, comply with the April 7 Order.

II. Rehearing Request

9. On rehearing, American Transmission asks the Commission to add to the Interconnection Agreements certain provisions that received Commission approval after the execution dates of the Interconnection Agreements. American Transmission points to the April 7 Order's inclusion in the Interconnection Agreements of the non-conforming metering provisions because the Commission had previously approved these provisions for inclusion in the Midwest ISO *pro forma* LGIA. American Transmission then points out that, on February 13, 2006, in the Docket No. ER05-1475-000 proceeding, the Commission accepted revisions to Attachment X,¹¹ and that these revisions include the same provisions that the April 7 Order subsequently rejected for the Interconnection Agreements. American Transmission argues that, because the February 13 Order's acceptance of the revisions to Attachment X precedes issuance of the April 7 Order, these terms and conditions were already part of the Midwest ISO *pro forma* LGIA on April 7, 2006, when the Commission issued its order on the Interconnection Agreements. The April 7 Order, it urges, should therefore have required inclusion of the February 13, 2006 revisions in the Interconnection Agreements. American Transmission criticizes the

⁹ *Id.* P19. The Commission observed that these omitted provisions had been restored to the Midwest ISO *pro forma* LGIA on February 13, 2006, *citing, Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,134, *order on compliance*, 115 FERC ¶ 61,223 (2006) (February 13 Order).

¹⁰ April 7 Order, 115 FERC ¶ 61,022 at P 20.

¹¹ Rehearing request at 7, citing the February 13 Order, 114 FERC ¶ 61,134 at P 19, P 24, and P 27. The Attachment X revisions were made effective November 16, 2005.

Commission for establishing differing terms and conditions among generating facilities. It asks the Commission to grant rehearing and, consistent with the reasoning adopting the metering provisions, to include in the Interconnection Agreements those provisions that the Commission's February 13 Order had approved for inclusion in the Midwest ISO *pro forma* LGIA.¹²

10. Next, American Transmission argues that the Commission erred by considering the October 17 Filings to be compliance filings. Although acknowledging that Midwest ISO so styled them, American Transmission contends that, because of their deviations from the *pro forma* LGIA that existed when the original filings were submitted, *i.e.*, the Early 2005 *pro forma* LGIA, the Commission should have considered the October 17 Filings as re-filings of unexecuted interconnection service agreements, although with inadequate justification of the non-conforming provisions. American Transmission urges that it was not obligated to seek rehearing of the June 2005 Order because, on October 17, 2005, Midwest ISO was not making a "compliance filing;" rather it was complying with the June 2005 Order by "re-filing" interconnection service agreements.

11. On May 23, 2006, Darlington filed a motion seeking permission to respond to American Transmission's rehearing request, and a response opposing the rehearing request (Darlington's Response).

III. Revised Interconnection Agreements and Notice

12. In cover letters to the three May 8 Compliance Filings, Midwest ISO states that it is filing the Interconnection Agreements in compliance with the April 7 Order. It states further that it revised the Interconnection Agreements to remove non-conforming provisions, other than those explicitly accepted in the June 2005 Order, and that it removed also the minor deviations from its *pro forma* LGIA that had been inadvertently added or omitted.

13. Notices of Midwest ISO's May 8 Compliance Filings were published in the *Federal Register*, 71 Fed. Reg. 29,940 and 30,907 (2006), with interventions, protests, and comments due on or before May 30, 2006. None were filed.

¹² These terms and conditions concern the definition of Distribution System, section 9.6.1, changing the uniformly applied power factor range to .95 leading to .90 lagging, and section 11.5, concerning the timing of the tender and receipt of security.

IV. Discussion

A. Procedural Matter

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006) prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept Darlington's Response and will therefore reject it.

B. Rehearing Request

15. We will deny rehearing. We emphasize that this order does not address the merits of the non-conforming revisions to the three Interconnection Agreements that Midwest ISO proposed in the October 17 Filings. Rather, this order concerns compliance procedure.¹³ Once an entity has chosen to make a compliance filing in response to a Commission directive, that entity must submit a filing that fully complies with the Commission's stated directive and cannot make new proposals.¹⁴ Compliance filings are not to include new changes initiated by the filing entity, but only changes expressly directed by the Commission.¹⁵

16. American Transmission argues that our insistence on conforming provisions is inconsistent with our acceptance of the metering provision, which American Transmission says is a non-conforming provision. In the April 7 Order, the Commission required the inclusion in the Interconnection Agreements of metering provisions that the Commission had previously accepted in the 2004 Order, reasoning that those provisions were previously accepted and were not present in the *pro forma* LGIA on the dates on which the parties signed their Interconnection Agreements due solely to administrative error.¹⁶ Upon further review, the metering provisions accepted in the 2004 Order were

¹³ Even American Transmission admits that Midwest ISO styled the October 17 Filings as compliance filings. Rehearing request at 3-4.

¹⁴ See *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 & n.25 (citing, *inter alia*, *Midwest Independent Transmission System Operator*, 99 FERC ¶ 61,302, at 62,264 (2002), *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997), *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321 at 63,160 (1993)). See also *American Elec. Power Serv. Corp.*, 99 FERC ¶ 61,178 at 61,699, *letter order on clarification*, 100 FERC ¶ 61,150 (2002) (compliance filings are limited to specific directives in the Commission's order; the sole issue is whether they comply with those directives).

¹⁵ *Southern Co. Services, Inc.*, 61 FERC at 62,328 (1992), *reh'g denied*, 63 FERC ¶ 61,217 at 62,596 (1993).

¹⁶ Midwest ISO has not stated when it believes the administrative error occurred.

effective until April 1, 2005, when the Midwest ISO's EMT became effective, replacing the OATT.¹⁷ Thus, the Darlington and Columbia Interconnection Agreements, which were executed before April 1, 2005, contain metering provisions that were accepted in the 2004 Order and conform to the *pro forma* LGIA on file at the time of execution. Therefore, there is no inconsistency between our treatment of these conforming metering provisions and our denial of the non-conforming provisions sought by American Transmission.

17. With respect to the Forward Energy Interconnection Agreement, which was executed after April 1, 2005, the inclusion of the metering provisions that were required in the 2004 Order (*i.e.*, in effect prior to April 1, 2005), was an acceptance of non-conforming modifications to the Midwest ISO *pro forma* LGIA. Nonetheless, we will not grant American Transmission's request for rehearing to accept its requested non-conforming changes based on our inadvertent acceptance of the non-conforming metering provision in the Forward Energy Interconnection Agreement. The proper remedy to any inconsistency, as alleged by American Transmission, would be to require the non-conforming metering provisions in the Forward Energy Interconnection Agreement to conform with the *pro forma* LGIA metering provisions that were on file when the Interconnection Agreement was executed. However, since no party has filed a request for rehearing of the metering provisions in Forward Energy's Interconnection Agreement, we shall not require that those metering provisions conform to the metering provisions in the *pro forma* LGIA which contained the administrative error.

18. Our refusal to include in the Interconnection Agreements the provisions requested by American Transmission because they do not comply with the Commission's June 2005 Order does not preclude future approval of these provisions. The parties are free to propose them, under section 205 of the Federal Power Act (FPA),¹⁸ as further amendments to the accepted Interconnection Agreements. The Commission could then address them in accord with established procedures, such as notice and opportunity for comments.

19. Further, as American Transmission also acknowledges, the non-conforming provisions were inadequately justified and so did not meet this requirement of the June 2005 Order if Midwest ISO had chosen the second option of re-filing with an adequate

¹⁷ See Midwest ISO's filing on December 22, 2004 in Docket No. ER04-691 containing Attachment X to Midwest ISO's EMT with the administrative error in the metering provisions. The Midwest ISO proposed an effective date in that filing of March 1, 2005, but the effective date was delayed until April 1, 2005, the date on which Midwest ISO's energy markets commenced operation.

¹⁸ 16 U.S.C. ¶ 824d (2000).

justification. Order No. 2003 sets a high standard for approval of provisions that do not conform to the *pro forma* interconnection service agreement. The parties proposing non-conforming provisions must explain why unique circumstances require the provisions and what operational concerns or other reasons necessitate the changes.¹⁹ Midwest ISO's October 17 Filings did not meet this standard.

C. Revised Interconnection Agreements

20. We will conditionally accept the May 8 Compliance Filings, but will require further revisions to bring the Interconnection Agreements into full compliance with the June 2005 Order, as directed by the April 7 Order. That order rejected all non-conforming changes other than those explicitly allowed by the June 2005 Order.²⁰ The non-allowed, non-conforming changes that still need to be conformed to the Midwest ISO *pro forma* LGIA as of the execution date of the Interconnection Agreements concern: Appendix H, "Form of Irrevocable Letter of Credit;" Appendix I, "Easements;" section 4.1; the definition of "confidential information;" and various stylistic and non-substantive deviations. The reasons for requiring conformity are set forth at length in the June 2005 Order at P 10 through P 12.²¹ We need not repeat them here.

21. Each of the May 8 Compliance Filings includes, as Appendix H, the transmission owner's form of irrevocable letter of credit. These appendices were included also in the original, early 2005 filings, with the explanation only that the transmission owner provides its form of letter of credit for inclusion in the Interconnection Agreement.²² Midwest ISO did not show that Appendix H was operationally necessary, nor did the June 2005 Order explicitly accept Appendix H as a non-conforming deviation from the *pro forma* LGIA. Accordingly, we will direct Midwest ISO to remove Appendix H from each Interconnection Agreement and to make conforming modifications to the tables of contents.

22. The May 8 Compliance Filing for Darlington, Docket No. ER05-662-004, includes, as Appendix I, a form for granting substation, transmission line, and access easements to American Transmission. This appendix was included also in the original, March 1, 2005 filing, with the explanation only that the transmission owner provided its

¹⁹ Order No. 2003 at P 26; Order No. 2003-B at P 140.

²⁰ April 7 Order, 115 FERC ¶ 61,022 at P 18.

²¹ *See also MidAmerican Energy Co.*, 116 FERC ¶ 61,018, at P 7-8 (2006).

²² *See* April 20, 2005 filing in Docket No. ER05-636-001 at Original Sheet No. 78, April 20, 2005 filing in Docket No. ER05-662-001 at Original Sheet No. 79, and April 26, 2005 filing in Docket No. ER05-864-000 at Original Sheet No. 83.

easement form for inclusion in the Interconnection Agreement.²³ Midwest ISO did not show that Appendix I was operationally necessary, nor did the June 2005 Order explicitly accept Appendix I as a non-conforming deviation from the *pro forma* LGIA. Accordingly, we will direct Midwest ISO to remove Appendix I and to make conforming modifications to the table of contents. If, in the future, Midwest ISO finds that Appendix I is operationally necessary, it may then propose incorporation of this appendix into the Darlington Interconnection Agreement.

23. In the May 8 Compliance filing for Columbia, Docket No. ER05-636-004, Midwest ISO proposes changes in section 4.1, “Interconnection Product Options,” from the text in the executed Interconnection Agreement that the Commission conditionally approved in the June 2005 Order so as to bridge the transition from pre- to post-Order No. 2003 processing of interconnection requests.²⁴ Midwest ISO proposes to change the choice of interconnection service from Energy Resource to 80 percent Energy Resource and 20 percent Network Resource, and to remove the section’s first paragraph, which discusses future modification of this choice. The Commission did not require the changes that Midwest ISO now proposes in either the June 2005 Order or the April 7 Order. Therefore, we will reject them. Accordingly, we direct Midwest ISO to conform section 4.1 to the text of the conditionally-approved Interconnection Agreement by reinstating the original choice of Energy Resource Interconnection Service and the original first paragraph of the section.

24. The definition of “confidential information” in the May 8 Compliance Filings differs from that in the Early 2005 *pro forma* LGIA. For example, Midwest ISO added the phrase “or commercially or competitively sensitive information.” As stated above, the June 2005 Order required the Interconnection Agreements to conform precisely to the Early 2005 *pro forma* LGIA that existed when the Interconnection Agreements were executed. Accordingly, we direct Midwest ISO to remove these non-conforming provisions and to use the definition of confidential information in its *pro forma* LGIA when the Interconnection Agreements were executed.

25. Lastly, we will require Midwest ISO to remove the stylistic and non-substantive provisions that deviate from the Early 2005 *pro forma* LGIA. Some of these unauthorized changes are in the tables of contents, sections 19.1, 25.5, and 27.1, and the appendices.

26. Although the April 7 Order directed Midwest ISO to file complete, redlined versions of the entire proposed Interconnection Agreements showing all provisions that do not conform to its *pro forma* LGIA as of execution of the Interconnection

²³ April 25, 2005 filing in Docket No. ER05-662-001 at Original Sheet No. 79.

²⁴ See June 2005 Order, 111 FERC ¶ 61,421 at P 15.

Agreements,²⁵ Midwest ISO merely filed redlined versions of certain pages. Thus, many of the non-conforming changes in the Interconnection Agreements are not highlighted in the May 8 Compliance Filings. We will again require Midwest ISO to file complete, redlined versions of the Interconnection Agreements showing all provisions that do not conform to the *pro forma* LGIA that existed on the dates when the Interconnection Agreements were executed. Doing so will aid both Midwest ISO and ourselves in determining that the only changes to the Interconnection Agreements in the forthcoming compliance filing are changes that the Commission has authorized. We expect the forthcoming compliance filing to comply fully with the Commission's directives.

The Commission orders:

(A) American Transmission's request for rehearing of the April 7 Order is hereby denied.

(B) The revisions to the Interconnection Agreements included in Midwest ISO's May 8 Compliance Filings are hereby accepted conditionally, to become effective on the dates requested, subject to the Commission's review and acceptance of the compliance filing ordered below.

(C) Midwest ISO is hereby directed to make a compliance filing, as discussed in the body of this order, within 30 days of the date of issuance of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.

²⁵ April 7 Order, 115 FERC ¶ 61,022 at P 18 n.7.