

125 FERC ¶ 61,354  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER09-123-000

ORDER CONDITIONALLY ACCEPTING SMALL GENERATOR  
INTERCONNECTION AGREEMENT

(Issued December 22, 2008)

1. In this order, the Commission will conditionally accept the Small Generator Interconnection Agreement (Interconnection Agreement) among Midwest Independent Transmission System Operator, Inc. (Midwest ISO) as the Transmission Provider, Grant County Wind, LLC (Grant County) as the Interconnection Customer, and Otter Tail Power Company (Otter Tail) as the Transmission Owner, effective May 23, 2007, as requested. We condition our acceptance on the outcome of the proceeding in Midwest ISO's Order No. 2006 compliance filing pending before the Commission in Docket No. ER06-192-000, *et al.*

**I. Background**

2. The Commission in Order No. 2006 required all public utilities to adopt standard rules for interconnecting new sources of electricity no larger than 20 MW (small generators).<sup>1</sup> Order No. 2006 standardized the general terms and conditions for small

---

<sup>1</sup> The Commission adopted the Small Generator Interconnection Procedures (Interconnection Procedures) and *pro forma* Small Generator Interconnection Agreement in Order No. 2006. *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending*, *Consolidated Edison Co. of New York, Inc. v. FERC*, Nos. 06-1018, 06-1031, 06-1032, 06-1036 (D.C. Cir.).

generator interconnection service, just as Order No. 2003 standardized the terms and conditions for large generator interconnection service.<sup>2</sup> The Commission's *pro forma* Small Generator Interconnection Agreement and Interconnection Procedures are designed to reduce interconnection time and costs for interconnection customers and transmission providers, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and types of new generation that will compete in the wholesale electricity market, facilitate development of non-polluting alternative energy sources, and mitigate undue discrimination.<sup>3</sup>

3. Midwest ISO filed proposed revisions to its existing *pro forma* Small Generator Interconnection Agreement and Interconnection Procedures in Attachment R of Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT) to comply with the requirements of Order No. 2006. The Commission then issued Order No. 2006-A, revising the Commission's *pro forma* Small Generator Interconnection Agreement and Interconnection Procedures, and Order No. 2006-B, further revising its *pro forma* Small Generator Interconnection Agreement and Interconnection Procedures. Midwest ISO filed amendments to its Order No. 2006 compliance filing in Docket Nos. ER06-192-001 and ER06-192-002 to comply with Order Nos. 2006-A and 2006-B.

## II. This Filing

4. On October 24, 2008, Midwest ISO filed an executed Interconnection Agreement among itself, Grant County, and Otter Tail. The Interconnection Agreement involves the interconnection of 10 wind turbines that each have a 2 MW capacity (20 MW in total), along with related equipment (Generating Facility). Grant County, the Interconnection Customer, will not own the Generating Facility. Instead, each turbine and its associated equipment will be owned by a separate Minnesota limited liability company, each of which will interconnect with facilities owned by Grant County. Grant County will then interconnect with Otter Tail's facilities.

5. Midwest ISO states that the Interconnection Agreement is based on its proposed *pro forma* Small Generator Interconnection Agreement as it existed when the Interconnection Agreement was originally negotiated, with certain non-conforming

---

<sup>2</sup> *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 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (2007).

<sup>3</sup> Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 1.

provisions. The non-conforming provisions include those associated with the unusual ownership of the Generating Facility and those needed to make the Interconnection Agreement a three-party agreement.

6. Midwest ISO requests waiver of the Commission's 60-day prior notice requirement in order to permit an effective date of May 23, 2007. Midwest ISO states that the Commission generally grants waiver of the 60-day prior notice for uncontested filings that do not change rates. Midwest ISO requests that the May 23, 2007 date be used to provide certainty to the parties as to the status of the agreement.

### **III. Notice of Filing**

7. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 65,844 (2008), with interventions and protests due on or before November 14, 2008. None was filed.

### **IV. Discussion**

8. Midwest ISO states that the Interconnection Agreement is based on the proposed *pro forma* Small Generator Interconnection Agreement pending before the Commission when the Agreement was executed on May 25, 2007. In particular, the Interconnection Agreement is based on the *pro forma* Small Generator Interconnection Agreement Midwest ISO filed in compliance with Order No. 2006, in Docket No. ER06-192-000, *et al.* In addition, the Interconnection Agreement includes changes that Midwest ISO made to its *pro forma* Small Generator Interconnection Agreement and that the Commission conditionally accepted in Docket No. ER06-1418-000, subject to the outcome of Docket No. ER06-192-000.<sup>4</sup> However, as discussed below, the Interconnection Agreement contains some non-conforming provisions.

9. When a party files a non-conforming interconnection agreement with the Commission, that party must clearly identify the portions of the agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.<sup>5</sup> The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure

---

<sup>4</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,115 (2006).

<sup>5</sup> Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140 (“each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision”).

that operational or other reasons necessitate the non-conforming agreement.<sup>6</sup> A Transmission Provider seeking a case-specific deviation from a *pro forma* interconnection agreement bears the burden to justify and explain what makes the interconnection unique and what operational concerns or other reasons necessitate the non-conforming provisions.<sup>7</sup>

**A. Non-conforming Provisions to Account for Unusual Ownership Structure**

10. Midwest ISO states that the proposed Interconnection Agreement includes non-conforming provisions necessary to reflect the unusual ownership structure of the Generating Facility. Each of the limited liability companies owns one wind turbine and related equipment instead of the Interconnection Customer owning all ten turbines. Certain provisions clarify the obligations of the Interconnection Customer relative to the ownership characteristics of the Generating Facility. Specifically, they clarify that while the Interconnection Customer does not own the wind turbines, it is the Interconnection Customer's responsibility to ensure that the Generating Facility is operated in accordance with the Interconnection Agreement.<sup>8</sup> Midwest ISO also proposes to revise the Terms of Glossary (Attachment 1) to provide uniform use of terms through the Interconnection Agreement and clarify the responsibilities of the Interconnection Customer.<sup>9</sup>

11. The Commission has previously permitted similar deviations as a result of this type of ownership structure, including provisions that establish the relationship between the Interconnection Customer and the wind generation facilities, as well as requiring that the Interconnection Customer "cause" certain actions to be undertaken by the wind

---

<sup>6</sup> See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (PJM Order); see also *El Paso Elec. Co.*, 110 FERC ¶ 61,163, at P 4 (2005).

<sup>7</sup> See PJM Order, 111 FERC ¶ 61,098 at P 9.

<sup>8</sup> Revisions to Articles 1.2, 1.3, 1.8.2, 2.1.1, and 3.4.5 distinguish the Interconnection Customer from the owners of the Generating Facility. Revisions to Articles 1.5.2, 1.5.4, 1.6, 1.8.1, and 2.2.2 require the Interconnection Customer to "cause" the action required in these provisions since the Interconnection Customer does not own or operate the wind turbines.

<sup>9</sup> Midwest ISO made revisions to the terms "Interconnection Customer" and "Small Generating Facility." Midwest ISO also proposes adding the term "Generating Company."

generation facilities. The Commission will accept Midwest ISO's proposed deviations that are needed to accommodate the unusual ownership of the Generating Facility.<sup>10</sup>

**B. Revisions to Reflect the Nature of a Three-Party Agreement**

12. Midwest ISO also proposes non-conforming provisions in the Interconnection Agreement to reflect that it is a three-party agreement among itself (as Transmission Provider), Grant County (as Interconnection Customer), and Otter Tail (as Transmission Owner). Midwest ISO states that these changes are similar, but not identical, to those that Midwest ISO submitted as part of its Order No. 2006 compliance filings. Midwest ISO states that some differences are inadvertent and that some differences are changes Midwest ISO should have proposed in its Order No. 2006 compliance filings.

13. Insofar as the proposed interconnection agreement reflects revisions to the Midwest ISO's *pro forma* Small Generator Interconnection Agreement that are pending before the Commission in ER06-192-000 *et al.*, the Commission will conditionally accept the Interconnection Agreement, including the language to reflect the nature of a three-party agreement, to take effect May 23, 2007,<sup>11</sup> subject to the outcome of the Midwest ISO's Order No. 2006 compliance filings in Docket No. ER06-192-000 *et al.* Midwest ISO must make a compliance filing, within 30 days of the date of an order either approving or directing further revisions to the *pro forma* Small Generator Interconnection Agreement in Docket No. ER06-192-000 *et al.*, with any necessary revisions to the Interconnection Agreement in order to conform it to the *pro forma* Small Generator Interconnection Agreement that the Commission ultimately accepts (except for the non-conforming provisions related to the unusual ownership characteristics of the Generating Facility).<sup>12</sup>

---

<sup>10</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,188 (2007) (accepts similar deviations as a result of an unusual ownership structure).

<sup>11</sup> *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,189 (1992).

<sup>12</sup> To the extent it has not already done so, we expect Midwest ISO will amend its Order No. 2006 compliance filings to include the language in the instant Interconnection Agreement that it states should have been included in the *pro forma* Small Generator Interconnection Agreement that it filed in compliance with Order No. 2006 in Docket No. ER06-192-000, *et al.*

**C. Conditional Energy Resource Interconnection Service**

14. Midwest ISO notes that under its Small Generator Interconnection Procedures, interconnection customers with small generating facilities can receive Energy Resource Interconnection Service on a conditional basis until a higher queued project goes into service. Midwest ISO states that although the Interconnection Agreement does not reflect such conditional service, the Interconnection Agreement is subject to the most current Interconnection Procedures, and that conditional Energy Resource Interconnection Service is thus available to Grant County, if appropriate.

15. We agree that conditional Energy Resource Interconnection Service is available to Grant County, if appropriate. However, if Grant County intends to use such conditional service, the Interconnection Agreement must be amended and Midwest ISO must file the revised Agreement to note that Grant County is taking such service.

The Commission orders:

(A) The Interconnection Agreement is hereby conditionally accepted for filing, as discussed above, effective May 23, 2007, subject to the outcome of the proceeding in Docket No. ER06-192-000, *et al.*, and subject to the compliance filings ordered herein.

(B) Waiver of the 60 day prior-notice requirement is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.