

128 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company

Docket No. ER09-823-000

ORDER ACCEPTING AND SUSPENDING PROPOSED LARGE GENERATOR
INTERCONNECTION AGREEMENT AND ESTABLISHING HEARING
PROCEDURES

(Issued July 30, 2009)

1. MidAmerican Energy Company (MidAmerican) filed an unexecuted Large Generator Interconnection Agreement (Interconnection Agreement) between itself and Clipper Windpower Development Company Inc. (Clipper) setting forth the rates, terms and conditions regarding the interconnection of Clipper's proposed 50 MW, Victory II wind farm pursuant to MidAmerican's Open Access Transmission Tariff (OATT). MidAmerican requests the Commission to determine that certain facility improvements are not "Network Upgrades" eligible for revenue crediting pursuant to section 11 of the Interconnection Agreement. In this order, we accept for filing the proposed Interconnection Agreement, and suspend it nominally, to become effective May 9, 2009, subject to refund. We also establish hearing procedures.

I. MidAmerican's Filing

2. On March 9, 2009, MidAmerican filed the unexecuted Interconnection Agreement with Clipper. MidAmerican states that Clipper has an existing wind farm, Victory I, interconnected with MidAmerican's transmission system. MidAmerican states that Clipper seeks to obtain Network Resource Interconnection Service to interconnect another windfarm, Victory II, to MidAmerican's transmission system by adding a new 161 kV terminal at MidAmerican's Victory Substation. According to MidAmerican, the Victory Substation is located on a 161 kV line that constitutes a portion of the MidAmerican integrated transmission system between the MidAmerican Monona County Substation and the MidAmerican Carroll County Substation.

3. MidAmerican states that its 161 kV Carroll County Substation is interconnected with the Carroll North 69 kV substation (Carroll North Substation) and the Carroll South 69 kV substation (Carroll South Substation) via 69 kV lines that are operated in a networked fashion. Additionally, MidAmerican states that the existing 69 kV line extending from Carroll South Substation ends at the 69 kV Toyne substation (Toyne Substation), which is owned and operated by Corn Belt Power Cooperative, Inc. (Corn Belt). Additionally, MidAmerican states that there is an additional 69 kV line extending from Carroll County Substation that is used to serve wholesale customers of Corn Belt.

4. MidAmerican explains that the disputed upgrades involve three facilities.¹ The first facility includes a second 161-69 kV transformer installed at the Carroll County Substation, which MidAmerican states resolves an overloading condition on the existing 161-69 kV transformer at the substation caused by the Victory II interconnection. The second facility is a new 69 kV line between the Carroll North Substation and the Carroll South Substation, which MidAmerican states resolves an overload condition on the existing Carroll County to Carroll South 69 kV line. The third facility is the addition of a new 69 kV terminal to the Carroll South Substation and protective relaying modifications at the Carroll North Substation.

5. MidAmerican asserts that the upgrades do not meet the Interconnection Agreements' definitions of Network Upgrades or Distribution Upgrades. MidAmerican states that, since these facilities are not upgrades to the facilities over which service is provided under the MidAmerican OATT, the upgrades cannot be viewed as upgrades to the transmission system and, as a result, cannot be viewed as Network Upgrades. Likewise, MidAmerican states that the facilities do not literally meet the definition of Distribution Upgrades because the upgrades are not upgrades to the utility's jurisdictional distribution system.² MidAmerican states that the Commission has explained that some facilities associated with an interconnection may belong to a third category, upgrades to non-integrated facilities that can be directly assigned to the generator.³

6. MidAmerican argues that the facilities being upgraded are not used by wholesale customers and no portion of the cost is included in MidAmerican's OATT or as a direct assignment charge in a service agreement. Further, MidAmerican argues that, applying

¹ According to the Interconnection Agreement, the estimated cost of the disputed upgrades is almost \$2.6 million. In addition, the Interconnection Agreement also proposes roughly \$535,661 of Network Upgrades, which are not in dispute.

² *Cabazon Wind Partners, LLC v. Southern California Edison Co.*, 117 FERC ¶ 61,212, at P 13 (2006), *reh'g denied*, 118 FERC ¶ 61,246 (2007) (*Cabazon*).

³ *Cabazon*, 117 FERC ¶ 61,212 at P 13 & n.15.

the Commission's seven-factor test in Order No. 888,⁴ the subject facilities are local distribution facilities that no wholesale customer has requested to use for a wholesale transaction. Moreover, MidAmerican notes that Clipper is not requesting to use the subject facilities to complete wholesale transactions.⁵

7. MidAmerican states that the facilities being upgraded are better classified as comprising part of an Affected System, defined in the Interconnection Agreement as an electric system other than MidAmerican's transmission system that may be affected by the proposed interconnection. However, even if the upgrades were deemed upgrades to an Affected System, the upgrades would still not constitute Network Upgrades because no service is provided over them under the MidAmerican OATT.

8. MidAmerican states that the Interconnection Agreement and Large Generator Interconnection Procedures are silent as to cost allocation for upgrades to state-jurisdictional local distribution facilities because the Commission lacks jurisdiction to allocate the costs of local distribution facilities that are used only by retail customers.⁶

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at P 401-402, 435-36 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁵ In Docket No. ER99-3887, MidAmerican made a filing for approval of the Illinois Commerce Commission's application of the seven-factor test to determine the jurisdiction split between transmission and local distribution prior to retail access in Illinois. MidAmerican states that, in its filing, these lines were classified for jurisdictional purposes as local distribution facilities. MidAmerican Transmittal at 10.

⁶ MidAmerican notes that the Commission disclaimed jurisdiction over interconnections to local distribution facilities not currently being used for wholesale transactions in Order No. 2003-C. *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, *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 (D.C. Cir. 2007).

II. Deficiency Letter and Response

9. On May 4, 2009, Commission staff issued a deficiency letter requesting further information associated with MidAmerican's filing. In the deficiency letter, Commission staff directed MidAmerican to submit a version of the Interconnection Agreement redlined against MidAmerican's *pro forma* interconnection agreement. The deficiency letter also directed MidAmerican to provide: (1) the base case and additional input data files, if any, that were used to perform the System Impact Study for Clipper's interconnection request; (2) a brief description of how the System Impact Study was performed; and (3) the load flow case and input files with the new wind generator modeled in the network. Staff also requested MidAmerican to identify any facility loading violations and whether the overloads occur under normal or contingency conditions. If the overloads occur under contingency conditions, the request asked for the contingency list and the contingency that caused the overloads. Additionally, staff requested the load flow case and input data files with the proposed upgrades that would mitigate the overloads and a detailed breaker one-line diagram of the proposed upgrades. Staff also requested an explanation of whether the interconnection with Corn Belt at the Toyne Substation is normally open or normally closed, and if normally closed, the reason why it is normally closed if there are no sales that use the interconnection. Finally, staff requested that MidAmerican identify any transmission service requests on MidAmerican's system that use the interconnection with Corn Belt at the Toyne Substation.

10. In response to the deficiency letter, MidAmerican states that there were no deviations from MidAmerican's *pro forma* interconnection agreement, but rather, a few sections of the body of the agreement were filled in. MidAmerican provided the redlined version of the Interconnection Agreement, as requested. MidAmerican also provided the requested load flow models, input data files, a report of the System Impact Study, and a description of the loading violations, contingency lists, and a detailed breaker one-line diagram of the proposed upgrades.

11. Finally, in section III of its response to the deficiency letter, MidAmerican explains that the interconnection between MidAmerican and Corn Belt at the Toyne Substation is normally closed pursuant to an interconnection agreement between the parties, which identifies the point as an interconnection point. MidAmerican states that there are over fifty interconnections between the two companies, nearly all at the 69 kV level and many of which are normally closed interconnections, which enable each utility to serve retail load reliably and economically.

III. Notices of Filings and Responsive Pleadings

12. Notice of MidAmerican's filing was published in the *Federal Register*, 74 Fed. Reg. 14,118 (2009), with interventions and protests due on or before March 30, 2009. A timely, unopposed motion to intervene, and protest was filed by Clipper.⁷ MidAmerican filed an answer to Clipper's protest.⁸

13. Notice of MidAmerican's response to the deficiency letter was published in the *Federal Register*, 74 Fed. Reg. 28,685 (2009), with interventions and protests due on or before June 25, 2009. Clipper filed a protest to MidAmerican's response to the deficiency letter. MidAmerican filed an answer.

A. Clipper's Protest

14. Clipper argues that MidAmerican is not following Commission policy in finding that the upgrades are not Network Upgrades.⁹ Clipper states that, under Commission policy, voltage is not an appropriate standard for determining whether lines are local distribution facilities (not under the Commission's jurisdiction) or networked facilities (used for Commission-jurisdictional services).¹⁰ Clipper also states that, under Commission policy, whether the facilities are subject to a Commission-jurisdictional tariff or whether the facilities are subject to the operational control of a regional transmission organization does not determine whether the upgrades to the facilities are Network Upgrades.¹¹ Clipper states that the applicable standard is derived from the Commission opinion and order in *Mansfield*¹² (the *Mansfield* test), which determines if

⁷ Clipper filed a non-public motion to intervene and protest with a request for confidential treatment as well as a public version with such confidential information redacted.

⁸ MidAmerican filed a non-public answer with a request for confidential treatment as well as a public version with such confidential information redacted.

⁹ Clipper states that the non-interconnection facilities at issue are called Distribution Upgrades by MidAmerican even though they don't meet the definition of Distribution Upgrades.

¹⁰ Clipper Protest at 5-6, citing *Cabazon*, 117 FERC ¶ 61,212 at P 4 n.5 (2006), citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 803-804.

¹¹ *Id.*

¹² *Mansfield Mun. Electric Dep't v. New England Power Co.*, 97 FERC ¶ 61,134 (2001) (*Mansfield*).

special circumstances exist such that a facility on the transmission provider's side of the point of the interconnection is not a network facility (i.e., non-integrated facility).¹³ Clipper notes that under the *Mansfield* test, facilities can be found to be integrated regardless of whether the facilities are considered local distribution facilities under the Commission's seven-factor test from Order No. 888. Clipper states that MidAmerican does not apply the *Mansfield* test, but when Clipper does, the facilities satisfy several of the test factors.

B. MidAmerican's Answer to Clipper's Protest

15. MidAmerican argues that the facilities should be classified as local distribution facilities pursuant to the seven-factor test and that the *Mansfield* test does not apply to local distribution facilities. Alternatively, MidAmerican argues that, were the Commission to decide to apply the *Mansfield* test to the subject facilities, the results would demonstrate that the upgrades and associated facilities are non-integrated facilities and thus their costs should be directly assigned to Clipper. In support of its application of the *Mansfield* test to the subject facilities, MidAmerican submits the affidavit of Dehn A. Stevens, Manager of Transmission Services for MidAmerican.

C. Clipper's Protest to Deficiency Letter Response

16. Clipper protests section III of MidAmerican's response to the deficiency letter. Clipper states that the MidAmerican facilities between the Carroll County Substation and the Toyne Substation interconnection "clearly do not satisfy the criteria for local distribution facilities." Clipper notes that the facilities at the Toyne Substation are metered facilities and requests that the Commission require MidAmerican to submit metering data collected by the Toyne Substation and identify the rate schedule pursuant to which power flows recorded by the metering equipment are made. Additionally, Clipper argues that MidAmerican provides Network Integration Transmission Service to Corn Belt pursuant to an integration agreement. Clipper states that the integration agreement allows MidAmerican to provide re-dispatch services to MidAmerican and Corn Belt and that Corn Belt is required to compensate MidAmerican during certain months if its power factor is less than 95 percent during the parties' coincident monthly system peak demand. Clipper states that, because of this arrangement, it would be anomalous for an interconnection point between the two systems not to function as part of the integrated system. Additionally, Clipper argues that, since both MidAmerican and Corn Belt are members of the Mid-Continent Area Power Pool (MAPP) pursuant to the MAPP Power Pool Agreement, each member provides electric services to each other

¹³ Clipper Protest at 6-7, citing *Mansfield*, 97 FERC ¶ 61,134 and *City of Anaheim, Cal.*, 113 FERC ¶ 61,091, at P 35 (2005), *reh'g denied*, 114 FERC ¶ 61,311 (2006).

member, with the consequence that facilities used to accomplish those results are jurisdictional facilities used for wholesale sales in interstate commerce.

D. MidAmerican's Answer to Clipper's Protest of Deficiency Letter Response

17. MidAmerican argues that Clipper failed to demonstrate that any wholesale uses are made of the subject facilities. Alternatively, MidAmerican argues that, were the Commission to determine that wholesale transactions did exist over the subject facilities, such wholesale transactions would not be determinative as to whether the subject facilities were integrated transmission facilities.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Clipper's timely, unopposed motion to intervene serves to make it a party to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MidAmerican's answers because they have provided information that assisted us in our decision-making process.

B. Hearing Procedures

20. MidAmerican's filing and response to the staff deficiency letter raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing procedures ordered below. Based on the record in this proceeding, issues of material fact include, but are not limited to, discrepancies between the filing and the response to the deficiency letter as to the nature of the facilities at issue.

21. For example, MidAmerican states that the upgrades include a new 69 kV line from the Carroll South Substation to the Carroll North Substation to form another parallel connection between the Carroll County Substation and the Carroll South Substation.¹⁴ However, this new 69 kV line was not modeled in the load flow cases for the Western Iowa Generation Group (generation and network upgrades) or identified in the July 3, 2006 System Impact Study provided in response to the deficiency letter, which studied

¹⁴ MidAmerican Transmittal at 6.

upgrades from the Carroll County Substation to the Carroll South Substation to the Toyne Substation. Moreover, given the apparent differences between the facilities studied in the System Impact Study and the facilities actually proposed by MidAmerican in this filing, the record does not clearly indicate whether the proposed facilities are even necessary for the interconnection service provided to Clipper and whether MidAmerican should charge Clipper for them in the first instance.

22. Additionally, MidAmerican states that the existing transformer at the Carroll County Substation is used for both wholesale and retail purposes and the new transformer will only serve retail load.¹⁵ However, according to the load flow cases submitted by MidAmerican, the two transformers both serve the same bus bar which, in turn, can serve wholesale customers, depending on the breaker configuration. Thus, MidAmerican has not explained how only one of the two transformers would be used to serve wholesale load from a common bus bar.

23. Finally, the record does not clearly indicate whether or not the upgraded facilities will function in a manner such that those facilities can be considered integrated with MidAmerican's jurisdictional transmission system.

24. Our preliminary analysis indicates that the Interconnection Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Interconnection Agreement for filing, suspend it for a nominal period, make it effective May 9, 2009, subject to refund, and set it for hearing procedures.

The Commission orders:

(A) MidAmerican's proposed Interconnection Agreement is hereby accepted for filing and suspended for a nominal period, to become effective May 9, 2009, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning MidAmerican's proposed Interconnection Agreement.

¹⁵ MidAmerican Answer at 5-6.

(C) A presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.