

131 FERC ¶ 61,199  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 28, 2010

In Reply Refer To:  
Midwest Independent Transmission System  
Operator, Inc.  
Docket No. ER10-1007-000

Midwest Independent Transmission System Operator, Inc.  
P.O. Box 4204  
Carmel, IN 46082

Attn: Matthew R. Dorsett, Esq.  
Attorney for Midwest Independent Transmission System Operator, Inc.

Reference: Interconnection Agreement

Dear Mr. Dorsett:

1. On April 2, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, under section 205 of the Federal Power Act,<sup>1</sup> an unexecuted Generator Interconnection Agreement (interconnection agreement) among Central Minnesota Municipal Power Agency (Central Minnesota), a municipal power supply agency organized under Minnesota law, City of Delano (Delano), a municipal corporation organized under Minnesota law, and Midwest ISO.<sup>2</sup>

2. Midwest ISO states that the body of the interconnection agreement conforms to the *pro forma* Generator Interconnection Agreement (GIA) except for proposed non-conforming language in article 18.4.4, which requires each party to the interconnection agreement to maintain a minimum amount of Excess Public Liability Insurance.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Midwest ISO notes that Central Minnesota and Delano have indicated that they would execute the Interconnection Agreement but that it is filing the agreement unexecuted in order to secure the Commission's approval of the non-conforming language. Transmittal Letter at 2 n.1.

<sup>3</sup> See *id.* at 2; also see Original Sheet No. 59.

Midwest ISO argues that its proposed modifications to article 18.4.4 are necessary to accommodate the novel legal issue raised by Central Minnesota's and Delano's status as municipal entities under Minnesota law. It explains that Minnesota law limits the total liability of municipal entities to far less than the minimum amount of Excess Public Liability Insurance coverage required under article 18.4.4 of the *pro forma* GIA.<sup>4</sup> According to Midwest ISO, municipal entities that elect to carry insurance coverage in excess of the cap set by Minnesota law waive the statutory limit on their liability up to the full amount of their insurance coverage.<sup>5</sup> Midwest ISO states that article 18.4.4, as proposed, expressly exempts Central Minnesota and Delano from carrying Excess Public Liability Insurance coverage in excess of the limitation on liability under Minnesota law and, thereby, preserves Central Minnesota's and Delano's limited liability as municipal entities.<sup>6</sup>

3. Midwest ISO requests that the Commission waive its 60-day prior notice requirement and permit the interconnection agreement to become effective on April 3, 2010, on the basis that the Commission generally grants such waivers in cases of uncontested filings that do not change rates.<sup>7</sup>

4. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 Fed. Reg. 18,494 (2010) with interventions or protests due on or before April 23, 2010. No interventions or protests were filed.

5. In Order No. 2003, the Commission required Transmission Providers to file *pro forma* interconnection documents and to offer their customers interconnection service

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<sup>4</sup> Transmittal Letter at 3 (citing Minn. Stat. § 466.04 (2009)).

<sup>5</sup> Transmittal Letter at 3 (citing Minn. Stat. § 466.06 (2009)).

<sup>6</sup> Midwest ISO proposes to add the following underlined language to article 18.4.4:

Excess Public Liability Insurance over and above the Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/twenty Million Dollars (\$20,000,000) aggregate; provided however, neither Interconnection Customer nor Transmission Owner shall be required to carry Excess Public Liability insurance coverage exceeding the limitation on liability established in Minnesota Statute § 466.04.

<sup>7</sup> Transmittal Letter at 4 (citing *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,189 (1992)).

consistent with these documents.<sup>8</sup> At the same time, the Commission recognized that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for variations from a Transmission Provider's *pro forma* GIA.<sup>9</sup> The filing party is responsible for clearly identifying the portions of the interconnection agreement that differ from its *pro forma* agreement and explaining why the unique circumstances require a non-conforming interconnection agreement.<sup>10</sup>

6. We find that the status of Central Minnesota and Delano as municipal entities subject to limited liability provisions under state law presents a unique circumstance that necessitates a non-conforming agreement. Here, the proposed non-conforming language is necessary to allow Central Minnesota and Delano to retain the distinct status afforded to them by Minnesota law. Accordingly, we accept the interconnection agreement, effective April 3, 2010, as requested.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> See *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, at P 11, *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); also see *Fla. Power & Light Co.*, 118 FERC ¶ 61,176, at P 10 (2007).

<sup>9</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 913-915; *Fla. Power & Light*, 118 FERC ¶ 61,176 at P 11.

<sup>10</sup> Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140.