

of Termination. The Proposed Interconnection Agreement and Notice of Termination shall be effective July 8, 2010, as requested, subject to refund. Finally, as discussed below, we set the issues raised by the Proposed Interconnection Agreement, as amended, and Notice of Termination for hearing and settlement judge procedures.

I. Background

A. Power Purchase Agreements and Related Interconnection Agreements

2. In 1993, LSP-Whitewater and Wisconsin Electric Power Company (Wisconsin Electric) entered into a Purchase Power Agreement (PPA) for Wisconsin Electric to purchase 236.5 MW of capacity and associated energy (1993 PPA).³ In 1995, LSP-Whitewater and Wisconsin Electric entered into the Original Interconnection Agreement as contemplated by the 1993 PPA. The Original Interconnection Agreement did not specify the LSP-Whitewater Facility's⁴ maximum capacity interconnection rights.

3. In 2000, LSP-Whitewater and ATCLLC entered into the Interim Interconnection Agreement precipitated by Wisconsin Electric's transfer of its transmission assets to ATCLLC as of January 1, 2001. The Interim Interconnection Agreement requires that the parties operate their respective facilities in accordance with the Original Interconnection Agreement until such time as a replacement agreement is accepted for filing by the Commission. The Interim Interconnection Agreement does not specify the Facility's maximum capacity interconnection rights.⁵

4. In 2002, LSP-Whitewater and Wisconsin Electric entered into a separate PPA for Wisconsin Electric to purchase an additional 12 MW of capacity and associated energy.

³ Article 5 of the 1993 PPA requires that LSP-Whitewater deliver up to 236.5 MW of "Committed Capacity" to Wisconsin Electric and permits LSP-Whitewater to sell up to 12 MW of additional capacity to other purchasers. Such capacity is based on referenced ambient conditions specified in the 1993 PPA. Appendix 9 of the 1993 PPA provides that the Facility may be dispatched in excess of 248.5 MW (i.e., 236.5 MW Committed Capacity plus 12 MW) as ambient conditions permit.

⁴ The Facility is a natural gas-fired electric cogeneration facility with a maximum net power production capacity of 278.75 MW under certain ambient conditions. The Facility became operational in August 1997 and operates as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.* (2006). *See* Docket No. QF94-155-000, Notice of Self-Recertification dated October 28, 2005.

⁵ The Original Interconnection Agreement was incorporated by reference into the Interim Interconnection Agreement. *See* Interim Interconnection Agreement, Article 1.

Between the two PPAs Wisconsin Electric purchases a total of 248.5 MW of capacity and associated energy from LSP-Whitewater.

B. Studies

5. In 1994, Wisconsin Electric conducted a study titled, “LS Power: 247 MW Generation Output Transmission Study” (Wisconsin Electric 1994 Study). For unspecified reasons, the Wisconsin Electric 1994 Study was terminated before completion.⁶

6. In 2005, Midwest ISO conducted a Market Transition Deliverability Test (2005 Study). The Midwest ISO 2005 Study evaluated the LSP-Whitewater Facility at 235 MW.

7. On March 16, 2007, the Commission issued a Final Rule (Order No. 693) that, among other things, accepted new reliability standards.⁷ ATCLLC and Midwest ISO determined that, to fulfill their respective obligations under the new reliability standards, they needed to file with the Commission a permanent interconnection agreement that set forth all of the rights, duties, and obligations of the Parties necessary for the safe and reliable operation of the transmission system.⁸ In early 2010, ATCLLC, on its initiative and at its expense, performed a generation impact study of the LSP-Whitewater Facility (ATCLLC 2010 Study). The ATCLLC 2010 Study revealed that certain modifications to the ATCLLC transmission system were necessary in order to ensure reliable injection of the 248.5 MW of Energy Resource Interconnection Service (ERIS).⁹ ATCLLC states that it made those modifications to its Transmission System, at no cost to LSP-Whitewater. According to Midwest ISO, this study was intended to provide updated analysis to validate the incomplete findings of the prematurely terminated Wisconsin Electric 1994 Study.¹⁰

⁶ See Midwest ISO Answer, Attachment A, at 2, Executive Summary of Wisconsin Electric 1994 Study.

⁷ Mandatory *Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁸ Transmittal Letter at 4.

⁹ See Midwest ISO Tariff, Attachment X, Generator Interconnection Procedures (GIP) section 1.

¹⁰ Midwest ISO and ATCLLC Answer at 9.

8. Once the ATCLLC 2010 Study was completed and after protracted negotiations, Midwest ISO filed the partially executed Proposed Interconnection Agreement filed in Docket No. ER10-1732-000. In addition, by letter dated July 26, 2010, Midwest ISO and ATCLLC notified LSP-Whitewater that LSP-Whitewater was expected to register, offer, and operate the Facility at no more than 248.5 MW for ERIS, or 236.5 MW for Network Resource Interconnection Service (NRIS).¹¹

II. Filings

A. Docket No. ER10-1732-000

9. The Proposed Interconnection Agreement adopts the terms and conditions of Midwest ISO's *pro forma* Generation Interconnection Agreement. The Parties have agreed on all elements set forth in the Interconnection Agreement and the Appendices, except for the amount of NRIS available under the Interconnection Agreement. Therefore, LSP-Whitewater and ATCLLC requested that Midwest ISO file the unexecuted Proposed Interconnection Agreement pursuant to section 11.3 of Midwest ISO's *pro forma* Generator Interconnection Procedures.¹²

10. In the course of reviewing the operational history at the point of interconnection, Midwest ISO found that during the period in which the LSP-Whitewater Facility has been interconnected to the Midwest ISO Transmission System, more than 248.5 MW were tendered and received. Midwest ISO asserts, however, that whether more than the NRIS amount may be tendered and received is not germane to the requirements under an Interconnection Agreement and is a matter more appropriately addressed by Midwest ISO as a real-time operations issue.

11. According to Midwest ISO, the 2005 Study indicated that the total amount of NRIS that can be reliably provided under any interconnection agreement that is applicable to the Facility, as presently configured, is 236.5 MW. In addition, Midwest ISO asserts that the ATCLLC 2010 Study shows that the total amount of ERIS that can be reliably provided, by the Facility, as it is presently configured, is 248.5 MW. Without further study, Midwest ISO maintains that it cannot assess whether its transmission system can be reliably operated to support the maximum net generating capacity of the LSP-Whitewater Facility (278.75 MW) as NRIS. Therefore, Midwest ISO and ATCLLC informed LSP-Whitewater that if it wants to operate the Facility above the 248.5 MW for ERIS, or 236.5 MW for NRIS, LSP-Whitewater must submit a new interconnection request, fund a new study, and agree to fund any necessary system upgrades disclosed by the study conducted in connection with that new request.

¹¹ See Midwest ISO Tariff, Attachment X, GIP section 1.

¹² See *id.*, section 11.3.

12. Additionally, Midwest ISO and ATCLLC told LSP-Whitewater that, should further studies be performed, the Proposed Interconnection Agreement could be amended to provide additional output above 248.5 MW.¹³ Midwest ISO and ATCLLC assert that ATCLLC would undertake the construction of any additional Network Upgrades required for reliable transmission of more than 248.5 MW. Under ATCLLC's current generator interconnection reimbursement policy, which is set forth in Attachment FF-ATCLLC of the Midwest ISO Tariff, LSP-Whitewater would be entitled to reimbursement of 100 percent of the costs of such Network Upgrades.¹⁴

13. Midwest ISO requests that the Commission waive the 60-day prior notice requirement as required by section 35.3(a) of the Commission's regulations, 18 C.F.R. § 35.3(a), and make the Proposed Interconnection Agreement, as amended, effective as of July 8, 2010. Midwest ISO states that the proposed effective date will ensure uninterrupted interconnection between ATCLLC and LSP-Whitewater.

B. Docket No. ER10-1733-000

14. Midwest ISO requests that if the Commission accepts the Proposed Interconnection Agreement, then the Commission also terminate the Interim Interconnection Agreement, effective July 8, 2010.

15. According to Midwest ISO, good cause exists to terminate the Interim Interconnection Agreement on the same date the Proposed Interconnection Agreement is accepted, so that there will be uninterrupted interconnection service between ATCLLC and LSP-Whitewater.

C. Docket No. ER10-2972-000

16. As noted above, Midwest ISO determined that the originally filed proposed Interim Interconnection Agreement incorrectly referenced the summer maximum net output level for the LSP-Whitewater Facility as 236.5 MW. Thus, in Midwest ISO's 2005 Study, the LSP-Whitewater Facility was studied for NRIS at a 235 MW summer

¹³ See Tariff at Original Sheet No. 3059 (*pro forma* Generation Interconnection Procedures, Sec. I) (defining an Interconnection Request as "an Interconnection Customer's request, in the form of Appendix 1 to the Generator Interconnection Procedures, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission System.").

¹⁴ See *id.* at Original Sheet No. 3488.

maximum net output level.¹⁵ Midwest ISO therefore, updated the Proposed Interconnection Agreement to reference the summer maximum net output level as 235 MW for NRIS and requests that the amended Proposed Interim Interconnection Agreement be made effective July 8, 2010, as previously requested.

D. Deficiency Letter and Responsive Pleadings

17. In a letter dated September 3, 2010, Commission Staff notified the Parties that their filings in Docket Nos. ER10-1732-00 and ER10-1733-000 were deficient, and required them to submit further information. As further detailed below, all three Parties made responsive filings.

III. Notice of Filings and Responsive Pleadings

18. Notice of Midwest ISO's filings in Docket Nos. ER10-1732-000 and ER10-1733-000 was published in the *Federal Register*, 75 Fed. Reg. 42,731 (2010), with interventions and protests due on or before July 28, 2010.

19. Wisconsin Electric filed a timely motion to intervene and a conditional protest in both proceedings. LSP-Whitewater filed a timely motion to intervene in both proceedings, a protest and a request for expedited action. Midwest ISO and ATCLLC filed a joint answer to the protests.

20. As noted above, on September 3, 2010, in Docket Nos. ER10-1732-000 and ER10-1733-000, Commission Staff issued a deficiency letter. Wisconsin Electric, Midwest ISO and LSP-Whitewater submitted separate responses to the deficiency letter. Due to Midwest ISO's inadvertent omission of ATCLLC's responses to the deficiency letter, Midwest ISO later amended its filing to include that supplemental information.

21. Notice of the responses to the deficiency letter was published in the *Federal Register*, 75 Fed. Reg. 57,985 (2010), with interventions and protests due on or before October 12, 2010. LSP-Whitewater filed comments.

22. Notice of Midwest ISO's filing in Docket No. ER10-2972-000 was published in the *Federal Register*, 75 Fed. Reg. 61,740 (2010), with interventions and protests due on or before October 15, 2010. Wisconsin Electric filed a timely motion to intervene and protest. Midwest ISO and ATCLLC filed a joint answer.

¹⁵ Docket No. ER10-2972-000 Transmittal Letter at 2.

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁶ the timely, unopposed motions to intervene serve to make the entities that filed them parties to the dockets in which the motions to intervene were filed.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁷ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's and ATCLLC's joint answers in all three dockets because they provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Initial Filings (Docket Nos. ER10-1732-000 and ER10-1733-000)

a. Protests

25. LSP-Whitewater asserts that under the Original and the Interim Interconnection Agreements it was entitled to interconnection service up to the maximum net output of the Facility. LSP-Whitewater states that Midwest ISO and ATCLLC notified it that the Facility would be limited to 236.5 MW of NRIS plus an additional 12 MW of ERIS until LSP-Whitewater submits a new interconnection request, a new study is conducted, and LSP-Whitewater agrees to fund any necessary system upgrades disclosed by studies made in connection with that new request. It objects to the Proposed Interconnection Agreement because that agreement limits LSP-Whitewater's interconnection capacity rights to 248.5 MW (net).¹⁸

26. LSP-Whitewater argues that the Midwest ISO 2005 Study, performed in connection with the transfer of operational control of ATCLLC's transmission facilities to Midwest ISO, erroneously studied the Facility at 235 MW. LSP-Whitewater also asserts that this error was compounded because the 235 MW figure was used as a basis for the ATCLLC 2010 Study, which in turn is the basis for the Proposed Interconnection Agreement's limitation on transmission capacity.

¹⁶ 18 C.F.R. § 385.214 (2010).

¹⁷ 18 C.F.R. § 385.213(a)(2) (2010).

¹⁸ See LSP-Whitewater Protest at 5.

27. LSP-Whitewater objects to being held responsible for making a new interconnection request, to paying for any new interconnection studies, and to paying for any additional Network Upgrades. LSP-Whitewater asserts that the Original Interconnection Agreement contemplated the interconnection and delivery of the full output of the Facility (278.75 MW). It also points out that it funded the construction of interconnection facilities on its side of the delivery point “of a size to accommodate the full output of its generating facilities”¹⁹ and all upgrades to the transmission system necessary because of the existence of the Facility. Lastly, LSP-Whitewater asserts that the Facility has been delivering more than 248.5 MW to the grid over the past 13 years.²⁰

28. LSP-Whitewater states that the Interim Interconnection Agreement is already on file with the Commission and that the Facility is operating and delivering power to the grid in accordance with that agreement. Therefore, LSP-Whitewater argues, there is no need to implement the Proposed Interconnection Agreement in its unexecuted form. It asserts that early effectiveness of the Proposed Interconnection Agreement, and the resulting contractual limitation of the deliverability of power from the Facility, could cause LSP-Whitewater financial harm.

29. Wisconsin Electric conditionally protests the filing. Wisconsin Electric states that because of its currently-effective base PPA with LSP-Whitewater, it is entitled to 236.5 MW of capacity (at 90 degrees Fahrenheit, 50 percent relative humidity) and all associated energy and ancillary services. In addition, Wisconsin Electric asserts that under a separate stand-alone PPA, it purchases an additional 12 MW of capacity and all associated energy, for a total of 248.5 MW. Wisconsin Electric maintains that it has contractual rights to purchase the maximum net generating capacity, including as adjusted for ambient conditions, up to the maximum net generating capacity of 278.75 MW. According to Wisconsin Electric, it has historically used the full available capacity of the unit. However, Wisconsin Electric notes that because capacity under Module E is adjusted for ambient conditions, the contractual rights of Wisconsin Electric will be preserved if 236.5 MW of capacity is deemed aggregate deliverable and 12 MW of capacity is deemed locally deliverable.²¹

30. Wisconsin Electric is also concerned that language in the Proposed Interconnection Agreement might be interpreted to limit its ability to utilize the Midwest ISO transmission system to deliver more than 248.5 MW from the Facility on an “as available” basis. It seeks, at a minimum, a Commission order that directs Midwest ISO

¹⁹ Section 2, Original Interconnection Agreement.

²⁰ LSP-Whitewater Protest at 8.

²¹ Wisconsin Electric Conditional Protest at 3 and 6.

and ATCLLC to modify the Proposed Interconnection Agreement such that the bold language of section 1b of Appendix A, as shown below, is deleted.

Section 1b of Appendix A to the Proposed Interconnection Agreement states:

The Total Net Capacity of the Generating Facility is 248.5 MW **across all seasons and all temperatures;** equivalent to the ERIS limit. The NRIS limit is 236.5 MW.

b. Midwest ISO and ATCLLC Answer

31. Midwest ISO and ATCLLC reiterate that the Proposed Interconnection Agreement tracks Midwest ISO's *pro forma* GIA and that the Parties have agreed on all elements set forth in the Proposed Interconnection Agreement and the Appendices, except for the amount of NRIS available under the Proposed Interconnection Agreement. They assert that neither the Original nor the Interim Interconnection Agreement provide sufficient support for the LSP-Whitewater Facility to operate above the levels supported by verified studies. They maintain that LSP-Whitewater cannot demonstrate that the upgrades it funded permit reliable operation of its Facility above the limits in the Proposed Interconnection Agreement. They further contend that LSP-Whitewater should not be permitted to avoid study requirements needed to determine the appropriate level and type of Interconnection Service based on the Original Interconnection Agreement (to which neither Midwest ISO nor ATCLLC is a party). Midwest ISO and ATCLLC assert that LSP-Whitewater admits that neither its Original Interconnection Agreement with Wisconsin Electric nor its Interim Interconnection Agreement with ATCLLC specifies a maximum capacity output for its Facility, and that LSP-Whitewater has provided no study to support its proposal.²²

32. Midwest ISO and ATCLLC point out that ATCLLC, on its own initiative and at its own expense, performed an impact study to validate the conclusions of Wisconsin Electric's 1994 Study that was never completed. Midwest ISO and ATCLLC point out that the ATCLLC 2010 Study utilized 248.5 MW as output of the Facility because this is the capacity level identified in the 1993 PPA for certain conditions. Since the Original Interconnection Agreement reflected upgrades based upon the 1994 Study to support the 1993 PPA at this level, ATCLLC and Midwest ISO considered this output level as a starting point to determine whether operation can be accomplished in compliance with current reliability standards.

33. Midwest ISO and ATCLLC state that the Mandatory Reliability Standards require that parties have sufficient studies to support the output of generators in order to provide

²² See Midwest ISO and ATCLLC Answer at 5.

adequate protection for the Bulk Electric System. They point out that past performance is not a sufficient guarantee of future results.²³

34. According to Midwest ISO and ATCLLC, LSP-Whitewater's disagreement with the Midwest ISO 2005 Study and the ATCLLC 2010 Study does not invalidate those studies or permit operation that is not based on any study at all. They point out that the Midwest ISO Tariff distinguishes NRIS from ERIS and so does the ATCLLC 2010 Study, which supports the NRIS and ERIS amounts included in the Proposed Interconnection Agreement. Thus, they argue, the Tariff requires further study to determine if a higher level of ERIS and NRIS is appropriate.²⁴

35. Midwest ISO and ATCLLC contend, that LSP-Whitewater's argument that the Proposed Interconnection Agreement cannot be substantively different from the Original Interconnection Agreement and the Interim Interconnection Agreement, does not address the fact that the Bulk Electric System reliability is now governed by mandatory NERC Reliability Standards. According to Midwest ISO and ATCLLC, the Interim Interconnection Agreement needs to be updated or changed to include definitive identification of verified permissible megawatt capacity.²⁵

36. Midwest ISO and ATCLLC assert that the requested effective date reasonably limits LSP-Whitewater's output until appropriate studies are completed. They point out that the limit in the Proposed Interconnection Agreement will not deny LSP-Whitewater all operation, but would limit its output in the interest of system reliability.²⁶

2. Deficiency Letter

a. LSP-Whitewater Response

37. Commission Staff requested that LSP-Whitewater explain how the upgrades that were built to accommodate an output of 247 MW, as indicated in the 1994 Study, permit LSP-Whitewater to use a full output of 278 MW. LSP-Whitewater states that the Facility

²³ *Id.* at 11-12. For example, they point out that historical usage depends on the operation of other generators, whereas for planning purposes, all generation is assumed to be in full operation in order to determine a reliable level of operation for each Generating Facility. *Id.* at 12.

²⁴ *Id.* at 13.

²⁵ *Id.* at 14.

²⁶ *Id.* at 16.

was designed and later upgraded to accommodate a nominal output of approximately 278 MW. LSP-Whitewater argues that the “Committed Capacity” under the 1993 PPA is an adjusted level of capacity based on 236.5 MW at 90 degrees Fahrenheit and 50 percent humidity; at those reference conditions, the Facility is capable of delivering an additional 12 MW of capacity. LSP-Whitewater argues that, “therefore, pursuant to the interconnection obligations under the 1993 PPA, [Wisconsin Electric] had to study that amount of capacity, not the 247 MW contemplated in the 1994 Study.”²⁷

38. Further, Commission Staff asked LSP-Whitewater to respond to Midwest ISO and ATCLLC’s statement that LSP-Whitewater had “reviewed and confirmed the appropriate modeling information” in regards to the 2010 Study. LSP-Whitewater states in its response that the statement was incorrect. LSP-Whitewater claims that ATCLLC never contacted LSP-Whitewater to review and confirm the appropriate modeling information regarding the 2010 Study. LSP-Whitewater argues that after completing the 2010 Study, ATCLLC verbally advised LSP-Whitewater of the results and provided LSP-Whitewater with a copy of the results in March 2010. However, LSP-Whitewater asserts that it provided appropriate equipment characteristics to ATCLLC pursuant to requests initiated by ReliabilityFirst Corporation which were unrelated to the 2010 Study.

b. ATCLLC Response

39. Commission Staff asked ATCLLC to describe how it determined the maximum allowable generation in the impact study. ATCLLC states that it included all LSP-Whitewater generator characteristics included in the annual MOD-010 and MOD-012 data submissions to ReliabilityFirst Corporation, except for the net megawatt output level used in ATCLLC’s impact study. ATCLLC states that LSP-Whitewater, Midwest ISO and ATCLLC discussed the appropriate net megawatt output to be modeled by ATCLLC and Midwest ISO and points to email correspondence that it believes confirms LSP-Whitewater’s request that the Facility be modeled at 248.5 MW of capacity interconnection rights.²⁸

40. Additionally, Commission Staff asked ATCLLC to explain how it determined the ERIS amount for the LSP-Whitewater generator. ATCLLC states that it does not determine whether an entity is entitled to ERIS or NRIS because Midwest ISO makes the determination under the terms of its Tariff.

²⁷ LSP-Whitewater Response at 6.

²⁸ MISO and ATCLLC Amended Response at 2.

c. Midwest ISO Response

41. Commission Staff asked Midwest ISO to describe how it performed its 2005 Study to determine the total amount of NRIS. Midwest ISO states that it uses a summer peak rating to determine NRIS and ensure reliability under Order No. 2003.²⁹ Midwest ISO explains that Order No. 2003 requires that Midwest ISO study the transmission system “at peak load, under a variety of severely stressed conditions,” to determine the appropriate level of NRIS. Midwest ISO states that it uses summer peak load to account for “severely stressed conditions” on Midwest ISO’s transmission system and to ensure that generators receive appropriate NRIS consistent with the safe and reliable operation of the Midwest ISO’s Transmission System.

42. Midwest ISO explains that if an asset owner notified Midwest ISO during the 2005 Study process that it believed the net summer peak output value listed for its Generating Facility was inaccurate, Midwest ISO would have asked the asset owner to provide support for the higher net summer peak output level. If the information provided supported the higher value, Midwest ISO would have revised the value to reflect the higher new summer peak output value. Midwest ISO argues that LSP-Whitewater did not provide study results supporting LSP-Whitewater’s request for a higher level of NRIS. Accordingly, Midwest ISO contends that the NRIS that LSP-Whitewater can reliably receive pursuant to this GIA remains 235 MW based on the results of the 2005 Study.

43. Midwest ISO states that it determined the amount of NRIS for the LSP-Whitewater Facility consistent with how it determines NRIS amounts for all the other generators in its footprint.

44. Finally, Midwest ISO and ATCLLC state that an appropriate level of output under current system conditions can best be determined by further discussion among the parties. They request that the Commission initiate settlement procedures.

d. LSP-Whitewater Comments

45. LSP-Whitewater also filed separate comments on ATCLLC’s and Midwest ISO’s responses to the deficiency letter. LSP-Whitewater challenges Midwest ISO’s assertion

²⁹ *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).

that LSP-Whitewater confirmed through a review process with ATCLLC representatives the summer net maximum output level for the Facility at 235 MW. LSP-Whitewater also disputes that Midwest ISO, in developing study models for the 2005 Study, notified it of the results and provided information regarding the study process and results and deadlines for comments and changes. LSP-Whitewater insists that it was not aware of any communication from Midwest ISO regarding the Facility's summer maximum net rating.³⁰ LSP-Whitewater argues that there is no justification for limiting the Facility's interconnection rights.

3. Subsequent Filing to Amend Summer Maximum Net Output Level (Docket No. ER10-2972-000)

a. Protest

46. Wisconsin Electric filed a protest that adopts by reference the arguments that it raised in its conditional protest in Docket Nos. ER10-1732-000 and ER10-1733-000. Wisconsin Electric repeats its claim from that protest that the new Interconnection Agreement appears not to change the status quo permitting Wisconsin Electric to use the full available capacity of the unit as it has been able to historically. Wisconsin Electric states that Midwest ISO has declined to provide such explicit assurance, despite Wisconsin Electric's explanation that the LSP-Whitewater Facility has not been subject to the new limitations that are being proposed unless a real-time operational transmission constraint required limiting the output of the Facility.

47. Wisconsin Electric notes that in review of the scope of the ATCLLC 2010 Study, the ATCLLC indicates that it will include the Sugar Creek wind farm and that the wind farm will be modeled at 105 MW of output. On September 29, 2010, Midwest ISO filed a Notice of Termination among ATCLLC, enXco Development Corporation and itself.³¹ Wisconsin Electric submits that including the Sugar Creek wind farm facility (which is the subject of the termination in that docket) in the modeling studies likely caused the proposed restriction on the amount of output allowed from the LSP-Whitewater Facility. Wisconsin Electric asserts that given the proximity of the Sugar Creek wind farm to the LSP-Whitewater Facility, the assumptions regarding a 105 MW injection from a non-existing facility would likely have dramatic impacts on the results. Therefore, Wisconsin Electric argues that ATCLLC may have incorrectly modeled the LSP-Whitewater Facility's output at 235 MW in the 2010 ATCLLC study.

³⁰ LSP-Whitewater Comments on Data Responses at 3.

³¹ Wisconsin Electric Response at 6 citing Docket No. ER10-3197-000.

b. Midwest ISO and ATCLLC Answer

48. In response to LSP-Whitewater, Midwest ISO and ATCLLC argue that from a reliability perspective, Midwest ISO may only rely on an output level that has been studied. They claim that any responses or comments from LSP-Whitewater or Wisconsin Electric are not relevant if they are not supported by study results.³²

49. Midwest ISO and ATCLLC assert that the relevant consideration is whether study results demonstrate that the higher output levels meet the appropriate reliability criteria at this time. They argue that LSP-Whitewater has not produced such study results and, until Midwest ISO receives a new Interconnection Request, Midwest ISO can only accept the output level that was demonstrated to have been studied reliably (i.e., the 2005 Study). According to Midwest ISO and ATCLLC, in providing an initial output amount in 2005, Midwest ISO necessarily relied on the input of generators in establishing levels in Midwest ISO's 2005 Study and Midwest ISO cannot take responsibility for each generator's input into that process. Generators within the region were on notice of the start of the energy market in Midwest ISO's footprint.

50. Lastly, Midwest ISO and ATCLLC contend that regardless of the input used in Midwest ISO's 2005 Study, the paramount consideration now is ensuring that the output of the Facility complies with current standards and the transmission system as it exists today. After reviewing the responses filed by the parties, Midwest ISO and ATCLLC believe that an appropriate level of output under current system conditions can best be determined by further discussion among the parties and that Settlement Judge procedures are appropriate in this instance.³³

4. Hearing and Settlement Judge Procedures

51. The Proposed Interconnection Agreement, as amended, and the Notice of Termination raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. The issues to be investigated at hearing include, but are not limited to, whether the LSP-Whitewater Facility was studied for NRIS and ERIS at the correct megawatt levels in the 2005 Study and the ATCLLC 2010 Study and whether an additional study is necessary.

52. Our preliminary analysis indicates that the Proposed Interconnection Agreement, as amended, and the Notice of Termination have not been shown to be just and

³² See Midwest ISO and ATCLLC Answer at 2-3.

³³ *Id.* at 3.

reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Proposed Interconnection Agreement, as amended, and the Notice of Termination for filing and suspend them for a nominal period. For good cause shown, we will make the Proposed Interconnection Agreement, as amended, and the Notice of Termination effective on July 8, 2010,³⁴ subject to refund, and set the Proposed Interconnection Agreement, as amended, and the Notice of Termination for hearing and settlement judge procedures.

53. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.

54. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Proposed Interconnection Agreement, as amended, is hereby accepted for filing and suspended for a nominal period, to become effective July 8, 2010, as requested, subject to refund, as discussed in the body of this order.

(B) The Notice of Termination of the Interim Interconnection Agreement is hereby accepted for filing and suspended for nominal period, to become effective July 8, 2010, as requested, subject to refund, as discussed in the body of this order.

³⁴ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,349, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

³⁵ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's web site contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) 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 the Proposed Interconnection Agreement, as amended, and the Notice of Termination. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all power and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, 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, NE, 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.