

137 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-188-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING GENERATOR
INTERCONNECTION AGREEMENT SUBJECT TO REFUND AND FURTHER
COMMISSION ORDER

(Issued December 23, 2011)

1. On October 25, 2011, Midwest Independent Transmission System Operator, Inc (MISO) filed a Generator Interconnection Agreement (GIA) among Northern States Power Company, a Minnesota corporation (NSP or Transmission Owner),¹ Prairie Rose Wind, LLC (Prairie Rose or Interconnection Customer)² and MISO (collectively, Parties).³ MISO notes that the GIA is provisional in nature in accordance with section 11.5 of its Generator Interconnection Procedures, and that it includes a request for “net zero” interconnection service, a form of Energy Resource Interconnection Service (ERIS). In this order, we conditionally accept the GIA, suspend it for a nominal period, and make it effective subject to refund and subject to a further order.

¹ Northern States Power Company is a subsidiary of Xcel Energy Services Inc.

² Prairie Rose, a subsidiary of Geronimo Wind Energy, LLC, owns and intends to operate the Prairie Rose Wind Farm located in southwest Minnesota.

³ The Parties executed the GIA on October 11, 2011. MISO designated the Agreement as Original Service Agreement No. 2406 under its FERC Electric Tariff, Fifth Revised Vol. No. 1 (Tariff).

I. Background and Other Related Proceedings

2. As early as 2005, MISO began studying a limited number of interconnection requests under an assumption that interconnection service that had been previously approved for one specific generation facility could be shared by one or more other generators. MISO further developed its policy, posting the policy on its website in 2008, to allow an existing generator and a new generator (which may have different owners) to coordinate their operations provided that the combined output from both facilities does not exceed the interconnection rights of the existing generator at the point of interconnection. MISO has called this “Net Zero Interconnection,” since it results in a net zero incremental MW injection at the point of interconnection.

3. On July 15, 2011, in Docket No. EL11-53-000, Shetek Wind Inc., Jeffers South LLC, and ALLCO Renewable Energy Limited (complainants) filed a complaint under FPA section 206⁴ requesting that the Commission find that MISO’s processing of certain generator interconnection applications and interconnection agreements is unjust and unreasonable, in violation of MISO’s Tariff, Commission regulations, and the non-discrimination requirements of the FPA. The complainants argue that MISO’s Tariff does not provide for an interconnection customer to receive interconnection service based on the existence or operating characteristics of a different generator, and that the Net Zero policy allows Net Zero generators to be studied in an accelerated manner and to avoid paying for upgrades that they would otherwise be responsible for absent the sharing of interconnection capacity. Specifically, complainants contend that the policy often results in the transmission owner’s favored wind project displacing another wind project, allowing lower-queued projects to jump over other projects that entered the queue at an earlier date, thus permitting the Net Zero generators to avoid building network upgrades and shifting network upgrade costs to other projects, or otherwise receiving treatment inconsistent with MISO’s Tariff. The complainants ask the Commission to allow parties to seek a restudy if they believe they were harmed in certain ways and to direct MISO to discontinue processing of interconnection applications under the Net Zero policy unless and until Tariff revisions are approved by the Commission.

4. On November 1, 2011, in Docket No. ER12-309-000, MISO filed revisions to Attachment X of its Tariff to further reform its Generator Interconnection Procedures (GIP). This queue reform filing includes eight distinct components, one of which

⁴ 16 U.S.C. § 824e (2006).

incorporates Net Zero Interconnection Service into MISO's Tariff. In its filing, MISO maintains that its Net Zero policy is permissible under the current Tariff.⁵

II. MISO's Filing

5. On October 25, 2011, MISO filed the instant GIA among itself, NSP, and Prairie Rose. Prairie Rose is a Minnesota limited liability company that owns and intends to operate the 200 MW Prairie Rose Wind Farm located in Rock and Pipestone Counties, Minnesota. The GIA is provisional in nature in accordance with section 11.5 of MISO's GIP.⁶ Under the GIA, Prairie Rose proposes to share, pursuant to MISO's Net Zero policy, existing interconnection capacity at the Split Rock substation with the existing generator, i.e., NSP's Angus Anson natural gas combined-cycle peaking plant in Sioux Falls, South Dakota. Pursuant to the Net Zero policy, the output of the Prairie Rose wind facility and the Angus Anson peaking plant will not exceed the existing facility's study limit of 392 MW.

6. MISO explains that the GIA is submitted as a non-conforming agreement because of the change to section 4.1, Interconnection Product Options, requesting Net Zero Interconnection Service, a form of Energy Resource Interconnection Service (ERIS). MISO believes the non-conforming language is consistent with MISO's Tariff. MISO further maintains that the Net Zero policy promotes a more efficient use of the transmission system. The Prairie Rose Wind Farm was designated as Project J183 in MISO's interconnection queue (and is among the projects identified in the complaint in Docket No. EL11-53-000 as being improperly studied and processed based on the Net Zero policy).

7. MISO requests waiver of the prior notice requirement so that the GIA may become effective as of October 26, 2011.

III. Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 69,264 (2011), with interventions and protests due on or before November 15, 2011. Prairie Rose, Xcel Energy Services Inc., on behalf of its utility operating company affiliates Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation (Xcel), and Shetek Wind Inc., Jeffers South LLC

⁵ MISO, Application, Docket No. ER12-309-000, Ex. 1 at 36 (filed Nov. 1, 2011).

⁶ Section 11.5 of MISO's GIP permits provisional generator interconnection agreements to be used prior to the completion of all necessary upgrades.

and Allco Renewable Energy Limited (Joint Protestors) filed timely motions to intervene and comments or protests.⁷ On November 30, 2011, Midwest ISO Transmission Owners filed a motion to intervene out-of-time.⁸

9. In their pleading, Joint Protestors included a motion to consolidate the instant proceeding with the complaint (in which they are the complainants) filed in Docket No. EL11-53-000. Joint Protestors assert that there is a direct and necessary link between the terms of the GIA and the complaint, and that consolidating the proceedings would facilitate a complete evaluation of all relevant facts and would further administrative efficiency. MISO, Xcel, and Prairie Rose filed answers opposing the motion to consolidate because, among other things, consolidation would be administratively inefficient and the proceedings do not involve issues of common law and fact. In addition, MISO and Prairie Rose argue that Joint Protestors' motion to intervene should be denied asserting that Joint Protestors' motion to intervene does not

⁷ Joint Protestors initially filed their pleading on November 9, 2011; on November 15, 2011, they filed a revised pleading, which superseded the earlier filing. On November 16, 2011, Xcel filed a motion for extension of time to file an answer, which the Commission denied.

⁸ Midwest ISO Transmission Owners for purposes of this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

meet the criteria for intervention in Rule 214 of the Commission's Rules of Practice and Procedure.⁹

10. In separate pleadings on November 30, 2011, MISO, Xcel, and Prairie Rose filed motions for leave to answer Joint Protestors' protest and answers. Also, on November 30, 2011, Midwest ISO Transmission Owners filed an answer opposing Joint Protestors' motion to consolidate and an answer to the protest. On December 13, 2011, Joint Protestors filed a motion for leave to answer and answer to the pleadings filed on November 30, 2011. On December 21, 2011, Prairie Rose filed a motion for leave to answer and answer to Joint Protestors' December 13, 2011 answer.

11. Joint Protestors argue that the GIA should be rejected for both procedural and substantive reasons. Procedurally, Joint Protestors contend that the filing is incomplete because it has failed to comply with the requirements of sections 35.1(a) and (g) of the Commission's regulations to include all the necessary terms and conditions governing the GIA, such as the coordination agreement between NSP and Prairie Rose, as well as evidence of the study limit of the Angus Anson plant.¹⁰ Substantively, Joint Protestors claim that MISO's Tariff simply does not provide for a Net Zero interconnection, and they characterize the filing as a *de facto* amendment to the Tariff.¹¹

12. Joint Protestors claim that the gateway substantive issue in this case is whether NSP has under its interconnection agreements the right to generate during non-peak times as MISO and NSP contend. Joint Protestors aver that NSP does not possess the right to operate the Angus Anson plant during non-peak periods because it is a peaking plant, not a baseload plant. Joint Protestors allege that NSP knew its peaker plant would be studied assuming that it was operating only at peak times and that required network upgrades would be based on the plant being turned off in non-peak times. Joint Protestors thus maintain that NSP avoided millions of dollars in network upgrades because its peaker plant was only seeking to operate during peak times.¹² Joint Protestors also allege that the plant has used up whatever transferable rights that

⁹ 18 C.F.R. § 385.214(b)(2) (2011).

¹⁰ 18 C.F.R. § 35.1(a), (g) (2011); Joint Protestors' Protest at 14-17.

¹¹ Joint Protestors' Protest at 49.

¹² *Id.* at 19-21.

it may have had,¹³ and that an earlier expansion of the plant was not studied with summer off-peak models.¹⁴

13. Joint Protestors assert that the GIA does not conform to MISO's Tariff and was processed in violation of the Tariff and the Commission's regulations for the following reasons: (1) MISO does not exercise independent control over NSP's facilities as required by the Commission's regulations;¹⁵ (2) the GIA is governed by agreements to which MISO is not a party;¹⁶ (3) MISO's Tariff does not permit one generator to apply for interconnection service based upon the purported rights of another generator;¹⁷ (4) the GIA was processed in violation of the Tariff and does not contain the necessary upgrades for interconnection;¹⁸ (5) the GIA is a variable assignment of another generator's rights which is not permitted by the *pro forma* GIA;¹⁹ (6) the GIA constitutes an amendment to the terms of the GIA applicable to Angus Anson and should necessitate that the Angus Anson GIAs conform to the current *pro forma* GIA and that the Angus Anson plants be restudied;²⁰ and (7) MISO is allowing NSP to circumvent the Tariff by involving a third party, Prairie Rose, when this type of interconnection effects a substantive change in the operating characteristics of the generator, and thus should require NSP to file a new interconnection application and conduct new studies.²¹ In addition, Joint Protestors argue that MISO must demonstrate that a deviation from the *pro forma* interconnection agreement is operationally necessary, and MISO has not met that burden.²²

¹³ *Id.* at 34-37.

¹⁴ *Id.* at 37-39.

¹⁵ *Id.* at 23-24.

¹⁶ *Id.* at 24.

¹⁷ *Id.* at 24-27.

¹⁸ *Id.* at 27-28.

¹⁹ *Id.* at 28.

²⁰ *Id.* at 28-29.

²¹ *Id.* at 29-30.

²² *Id.* at 17-18.

14. Joint Protestors further allege that MISO's Net Zero policy: (1) violates the Commission's open access regulations in that NSP controls the point of interconnection and is attempting to provide access to a generator outside an open access transmission tariff;²³ (2) is anti-competitive and leaves market control to the vertically integrated Utilities;²⁴ and (3) will harm renewable energy development.²⁵ As a result of less transmission being built and less renewable energy being implemented, Joint Protestors request that the Commission perform an environmental impact statement to evaluate possible environmental effects of the Net Zero policy, pursuant to the Commission's regulations implementing the National Environmental Policy Act.²⁶

15. In their comments, Prairie Rose and Xcel express their support for the Net Zero interconnection policy and ask the Commission to support both the policy and the GIA. Xcel states Net Zero Interconnection Service is an effective use of existing transmission system and generation interconnection capacity, thereby facilitating interconnection of additional wind generation resources in the MISO region.

16. In its answer to the protest, MISO states that Joint Protestors' points have little or no merit, bear little or no relationship with the GIA, or are more appropriately addressed in the pending complaint proceeding. Xcel makes similar points in its answer. The Midwest ISO Transmission Owners respond that the Joint Protestors' numerous allegations that the use of the Net Zero construct favors incumbent utilities are unfounded and are beyond the scope of the proceeding. Prairie Rose asserts in its answer that the GIA is reasonable and consistent with MISO's *pro forma* Tariff, and that rejection would unduly prejudice Prairie Rose. Xcel and Prairie Rose state that, if the Commission is not inclined to accept the GIA at this time, the Commission should

²³ *Id.* at 39-45.

²⁴ *Id.* at 45-46.

²⁵ *Id.* at 46-49. For example, Joint Protestors state that NSP indicated to Minnesota Public Utilities Commission that Prairie Rose will see no curtailment because Angus Anson is deliverable as a network resource 24 hours a day, seven days a week and that that status is extended to Prairie Rose. Joint Protestors further assert that the 100 percent Network Resource Interconnection Service status of the existing plant could be extended to the Net Zero plant such that the latter would become exempt from [real-time security-constrained economic] dispatch.

²⁶ *Id.* at 50-51 (citing 18 C.F.R. § 380.4(a)(15) (2011)).

instead approve the agreement subject to the outcome of MISO's queue reform proceeding.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene of Xcel and Prairie Rose serve to make them parties to this proceeding. We will also accept Midwest ISO Transmission Owners' motion to intervene out-of-time given their interest in the proceeding, the early stage of the proceeding, and absence of any undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers to Joint Protestors' protest because they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept Joint Protestors' answer filed December 13, 2011 or Prairie Rose's answer filed December 21, 2011, and will, therefore, reject them.

Joint Protestors' Motions to Intervene and to Consolidate

19. In their November 15 pleading, Joint Protestors state that good cause exists to grant them leave to intervene in this proceeding, arguing that "[a]s the complainants in EL11-53-000, and as the developer of electric generation projects within the MISO region, the Joint Protestors have direct and significant interests in the outcome of this proceeding, and such interests cannot be adequately represented by any other party hereto."²⁷ MISO and Prairie Rose assert that Joint Protestors' motion to intervene does not meet the criteria for intervention in Rule 214 of the Commission's Rules of Practice and Procedure.²⁸

20. Joint Protestors also move to consolidate the two proceedings, noting that the GIA is the first Net Zero interconnection agreement that the Commission has been asked to consider based on MISO's Net Zero policy. They assert that there is a direct and necessary link between the terms of the GIA and the complaint in Docket No.

²⁷ Joint Protestors' Protest at 14.

²⁸ 18 C.F.R. § 385.214(b)(2) (2011).

EL11-53-000, and that consolidating the proceedings will facilitate a complete evaluation of all relevant facts and will further administrative efficiency. MISO, Prairie Rose, and Xcel oppose the motion to consolidate on the basis that consolidation would not promote administrative efficiency. They argue that the two proceedings were initiated at different times, are in different procedural phases, and involve different parties. Prairie Rose and Xcel assert that the two proceedings lack common issues of fact and law. In addition, Prairie Rose contends that consolidation would unduly prejudice it, in that there are critical deadlines facing its project and it cannot afford any delays.

21. Joint Protestors are competitors for interconnection service, and their participation is otherwise in the public interest given that they are the complainants in the pending Docket No. EL11-53-000 proceeding challenging the Net Zero policy that is being implemented here in the GIA and have otherwise demonstrated their interest in the outcome of this proceeding.²⁹ Accordingly, Joint Protestors' timely contested motion to intervene will be granted. However, we will deny their motion to consolidate. The Commission has previously found formal consolidation to be inappropriate in cases where the two dockets at issue are not being set for a trial-type evidentiary hearing,³⁰ and here we are not setting the GIA for a trial-type evidentiary hearing.

B. Substantive Matters

22. The justness and reasonableness of MISO's proposed Net Zero policy is presently pending before the Commission in other proceedings. In the present proceeding, the question before us is whether this particular GIA, which includes the Net Zero policy as a non-conforming provision, is just and reasonable.

23. Given that the issues raised by this GIA may well be affected by the Commission's decisions in the pending complaint proceeding in Docket No. EL11-53-000, as well as informed by our action in the pending queue reform proceeding in

²⁹ 18 C.F.R. § 385.214(b)(2)(ii) (2011).

³⁰ See, e.g., *Startrans IO, LLC*, 122 FERC ¶ 61,253 (2008) (finding formal consolidation inappropriate where a trial-type evidentiary hearing is not required to resolve common issues of law and fact and where consolidation will not ultimately result in greater administrative efficiency); *Cal. Pub. Utils. Comm'n*, 132 FERC ¶ 61,047 (2010) (finding formal consolidation unnecessary where two related petitions were addressed simultaneously via a single Commission order and no hearing was ordered).

Docket No. ER12-309-000, we will accept and suspend the GIA for a nominal period, and make it subject to refund, and subject to a further order.

The Commission orders:

(A) The GIA is hereby conditionally accepted and suspended for a nominal period, and made effective October 26, 2011, as requested, subject to refund and to a further order, as discussed in the body of this order.

(B) Joint Protestors' motion to consolidate is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.