

140 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-2257-000

ORDER CONDITIONALLY ACCEPTING AMENDED GENERATOR
INTERCONNECTION AGREEMENT

(Issued September 14, 2012)

1. On July 18, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (MISO) submitted for filing an unexecuted amended generator interconnection agreement (Amended GIA) between and among MISO as Transmission Provider, Barton Windpower LLC (Barton) as Interconnection Customer, and ITC Midwest LLC (ITC Midwest) as Transmission Owner.² MISO requests: (1) conditional acceptance of the Amended GIA subject to any subsequent revisions to the MISO *pro forma* generator interconnection agreement (GIA) accepted by the Commission in Docket No. ER12-309-000, *et al.*; and (2) waiver of the Commission's 60-day prior notice requirement.³
2. In this order we conditionally accept the Amended GIA effective July 19, 2012, as requested.

¹ 16 U.S.C § 824d (2006).

² Midwest Independent Transmission System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, [SA 2017, Barton Windpower-ITC Midwest GIA, 0.0.0.](#)

³ 18 C. F. R. § 35.3(a) (2012).

I. Background

3. Barton has developed a wind generation facility in Iowa that is operating pursuant to the terms of a generator interconnection agreement entered into by MISO, Barton, and ITC Midwest on December 1, 2008 (Original GIA). The Amended GIA modifies the Original GIA to, among other things, consolidate into a single 160 megawatt (MW) project what was previously two 80 MW projects governed by the Original GIA, and revises the system upgrades required to reliably interconnect the combined generating facility to the transmission system. MISO states that the parties also have updated the body of the Amended GIA to conform to MISO's *pro forma* GIA, including revisions accepted by the Commission on March 30, 2012 in Docket No. ER12-309-000, *et al.*⁴ and revisions filed by MISO in its April 30, 2012 compliance filing in that docket. MISO also requests that the Commission waive its 60-day notice requirement and notes in support of its request that MISO, Barton, and ITC Midwest support an effective date of July 19, 2012 for the GIA.⁵

4. MISO states that it filed the Amended GIA unexecuted because Barton is concerned that its generating facility is not receiving treatment comparable to that afforded the Crane Creek generating facility, which Barton asserts is similarly situated.⁶ Specifically, MISO states that Barton is concerned its facility is subject to quarterly operating limits and potential exposure to future network upgrade costs that Wisconsin Public Service Corporation (WPSC), the owner of the Crane Creek facility, seeks to avoid. MISO states that Barton seeks comparable treatment to any order or settlement issued in Docket No. ER12-1928-000, a condition to which MISO did not agree.

II. Notice and Responsive Filings

5. Notice of MISO's Filing was published in the *Federal Register*, 77 Fed. Reg. 43,821 (2012), with comments, interventions, and protests due on or before August 8, 2012. EcoEnergy LLC, WPSC, Interstate Power and Light Company, and ITC Midwest filed timely motions to intervene. Barton also filed a timely motion to intervene and protested MISO's Filing.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, *order on reh'g and compliance filing*, 139 FERC ¶ 61,253 (2012).

⁵ MISO Transmittal Letter at 3.

⁶ The Crane Creek facility, designated as G551 in MISO's interconnection queue, is the subject of a pending Commission proceeding in Docket No. ER12-1928-000.

6. On August 15, 2012, WPSC filed a motion to file comments and comments in response to Barton's protest. On August 22, 2012, MISO filed a motion for leave to answer and answer to Barton's protest.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer and WPSC's comments because those pleadings have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Application of Quarterly Operating Limits to the Barton Facility

a. Protest

9. Barton states that MISO has imposed and continues to impose quarterly injection limits on its generating facility under the Original GIA, and that Barton would continue to operate subject to quarterly injection limits under the Amended GIA. However, Barton states that it is concerned that it has not received, and will continue not to receive, treatment for its generating facility comparable to what WPSC receives for its Crane Creek facility.⁷

10. Barton asserts that it and WPSC are similarly-situated interconnection customers, and accordingly Barton and WPSC should receive equal interconnection rights for their respective projects to prevent unduly discriminatory treatment under the FPA.⁸ In support of its assertion, Barton notes that its interconnection requests for its facility (G540 and G548) and WPSC's interconnection request for the Crane Creek facility

⁷ Barton Protest at 1-2.

⁸ *Id.* at 3.

(G551) were part of the same “Group Five Study Group.”⁹ As a result, both its and WPSC’s interconnection requests were studied together and, pursuant to the results of MISO’s Group Five re-study, require many of the same system upgrades for reliable interconnection of their projects. Furthermore, Barton states that it and WPSC executed their original GIAs for their respective projects at approximately the same time and have been operating under their respective GIAs since their facilities began operating.¹⁰

11. Barton explains that its facility has been subject to – and absent Commission action will continue to be subject to – quarterly operating limits that are unduly discriminatory and prejudicial. Barton notes that WPSC has challenged in Docket No. ER12-1928-000 MISO’s Filing of an amended GIA for the Crane Creek facility, and specifically that WPSC seeks rejection of MISO’s proposed revisions to the system upgrades required to interconnect the Crane Creek facility.¹¹ According to Barton, if the Commission agrees with WPSC, WPSC will be permitted to continue to operate under the existing Crane Creek GIA without quarterly injection limits. Barton requests that, should the Commission rule for WPSC and allow the Crane Creek facility to continue to operate without quarterly injection limits, it also require MISO to eliminate the quarterly injection limits for the Barton facility.¹² Barton requests that, in any event, the Commission “equalize the interconnection rights of Barton and WPSC by applying similar operating conditions to both projects.”¹³

⁹ The Group Five projects consist of interconnection requests in southwest Minnesota, northwest Iowa, and eastern South Dakota. MISO’s generator interconnection procedures (GIP) provide that generator interconnection projects may be studied as a group for the purpose of conducting interconnection studies. MISO conducted the generator interconnection system impact studies as a group for the Group Five projects. The initial studies were performed in 2006 and 2007 and the study reports were posted during the summer and fall of 2007. In late 2009, MISO indicated that restudy of the Group Five projects was necessary due to the withdrawal of higher-queued generators, including some members of Group Five. *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165, at P 28 (2010).

¹⁰ Barton Protest at 4.

¹¹ *Id.* at 5.

¹² *Id.* at 5-6.

¹³ *Id.* at 7.

b. Answer and Comments

12. WPSC takes no position on Barton's request that the Commission require MISO to apply to the Barton facility the same operating conditions that MISO applies to the Crane Creek facility. However, WPSC does oppose Barton's alternative request that the Commission require MISO to apply to the Crane Creek facility the same quarterly operating limits that MISO applies to the Barton facility.¹⁴

13. In support of its opposition, WPSC presents what it characterizes as "material differences" between the Crane Creek and Barton facilities. Chief among these differences, according to WPSC, is that the Barton Original GIA is "provisional" rather than "permanent," which grants to MISO the authority to impose the aforementioned quarterly operating limits on generation output, while the Crane Creek GIA is "permanent," thereby precluding MISO from imposing similar operating limits on the Crane Creek facility.¹⁵ WPSC further states that Barton bilaterally executed its Original GIA in 2008 and was fully aware of the temporary nature of its Original GIA, as Appendix A of the Original GIA states that, "[a]t the interconnection customer's request, the Transmission Provider is providing this GIA *as a temporary GIA for limited operation ...* under Section 11.5 of the Transmission Provider's Generation Interconnection Procedures."¹⁶ WPSC also notes that Barton did not protest this provision of the Original GIA, nor did it file in 2009 a timely objection to the Crane Creek GIA, which includes conditions for the transition of the Crane Creek GIA from provisional to permanent status.¹⁷

14. In its answer, MISO echoes the key distinction identified by WPSC, stating that the Barton facility is subject to quarterly operating limits under section 11.5 of MISO's GIP because it is governed by the "provisional" Original and Amended GIAs.¹⁸ In

¹⁴ WPSC Comments at 1.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 3 (quoting Original GIA, app. A (emphasis added)).

¹⁷ *Id.* According to WPSC, that transition occurred on June 15, 2009.

¹⁸ MISO Answer at 3. Section 11.5 of the MISO GIP provides that:

Upon the request of Interconnection Customer, and prior to completion of requisite Network Upgrades or Stand Alone Network Upgrades, Transmission Provider may provide a provisional Generator Interconnection Agreement for limited

(continued...)

contrast, MISO notes, the Crane Creek facility is no longer subject to the quarterly operating limits authorized by section 11.5 because its GIA is no longer “provisional” in nature.¹⁹ MISO ultimately concludes that Barton has not demonstrated that its facility is similarly situated to the Crane Creek facility and requests that the Commission deny Barton’s protest.²⁰

c. Commission Determination

15. We deny Barton’s request that we direct MISO to “equalize the interconnection rights of Barton and WPSC by applying similar operating conditions to both projects.”²¹ We find that Barton’s protest addresses issues that are not raised by the proposed amendments to the Amended GIA and are therefore beyond the scope of this proceeding.

16. Barton asserts that: (1) under the Original GIA, “MISO has imposed and continues to impose quarterly injection limits on Barton”;²² (2) under the Crane Creek GIA, WPSC’s Crane Creek facility “has not been subject to quarterly injection limits”;²³ and (3) as a result Barton has “suffered from the unduly discriminatory and prejudicial imposition of the quarterly operating limits.”²⁴ As a result, and notwithstanding that Barton might “continue to operate subject to quarterly injection limits” under the Amended GIA,²⁵ Barton’s protest and the filings by MISO and WPSC make clear that any differing treatment between the Barton and Crane Creek facilities predated, and in

operation at the discretion of Transmission Provider based upon the results of available studies. . . . The maximum permissible output of the Generating Facility in the provisional [GIA] will be updated on a quarterly basis. . . .

MISO, FERC Electric Tariff, Attachment X (7.0.0), §11.5.

¹⁹ MISO Answer at 3-4.

²⁰ *Id.* at 5.

²¹ Barton Protest at 7.

²² *Id.* at 1.

²³ *Id.* at 5.

²⁴ *Id.*

²⁵ *Id.* at 2.

fact is unrelated to, the revisions proposed in the Amended GIA.²⁶ We accordingly deny Barton's protest as beyond the scope of this proceeding and conditionally accept the Amended GIA, subject to any subsequent revisions to the MISO *pro forma* GIA accepted by the Commission in Docket No. ER12-309-000, *et al.*

2. Waiver of 60-Day Prior Notice Requirement

17. We shall grant waiver of the 60-day prior notice requirement for good cause shown, and make the Amended GIA effective July 19, 2012.²⁷

The Commission orders:

The Amended GIA is hereby conditionally accepted effective July 19, 2012, subject to any subsequent revisions to the MISO *pro forma* GIA accepted by the Commission in Docket No. ER12-309-000, *et al.*

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ That MISO's authority to impose the quarterly operating limits challenged by Barton arises from section 11.5 of the MISO GIP, rather than from either the Original or Amended GIA, further demonstrates that Barton's protest is primarily a challenge to either MISO's GIP or MISO's application of its GIP to Barton. Such a challenge is properly brought through a proceeding initiated under FPA section 206.

²⁷ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).