

111 FERC ¶ 61,421  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-636-000 ER05-636-001 ER05-662-000 ER05-662-001 ER05-864-000 ER05-881-000 (Not Consolidated)
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ORDER ACCEPTING SERVICE AGREEMENTS,  
SUBJECT TO CONDITIONS

( Issued June 17, 2005)

1. In this order we conditionally accept four executed interconnection service agreements (Interconnection Agreements) among the Midwest Independent Transmission System Operator, Inc., (Midwest ISO), certain Midwest ISO Transmission Owners, and Interconnection Customers. We condition our acceptance on Midwest ISO's bringing the Interconnection Agreements into compliance with Midwest ISO's Order No. 2003 *pro forma* interconnection agreement. Alternatively, Midwest ISO may elect to withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions.<sup>1</sup> This order benefits customers because it ensures the smooth processing of interconnection agreements and ensures Interconnection Customers the benefits of standardized interconnection terms and conditions.

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<sup>1</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 61,401 (2005) (Order No. 2003-C).

## I. Background

2. The four Interconnection Agreements involve various wind Interconnection Customers seeking to interconnect to the transmission systems of various transmission owners belonging to Midwest ISO. American Transmission Company, LLC (American Transmission) is the transmission owner involved in three of the Interconnection Agreements. The three Interconnection Customers involved are: Columbia Community Windpower LLC (Columbia), Darlington Wind Farm LLC (Darlington); and Forward Energy LLC (Forward Energy). The transmission owner involved in the fourth agreement is Interstate Power and Light Company (Interstate Power) and the Interconnection Customer is High Prairie Wind Farm I LLC (High Prairie). The parties request an effective date of January 26, 2005 for the Columbia project, February 23, 2005 for the Darlington project, April 5, 2005 for the Forward Energy project, and April 11, 2005 for the High Prairie project.

3. Midwest ISO states that the parties to each of the Interconnection Agreements negotiated "deviations" from the Midwest ISO *pro forma* interconnection agreement.<sup>2</sup> The non-conforming provisions include: (1) incorporating American Transmission's credit requirements as an appendix; (2) requiring black start capability; (3) eliminating construction and financing provisions that do not apply to the specific interconnections at issue; (4) recognizing that some interconnection studies were conducted before the Order No. 2003 study process; (5) requiring the Interconnection Customers to provide reactive power; (6) requiring the Transmission Owners to repay the Interconnection Customer within 90 days of commercial operation of the facility instead of giving the Interconnection Customer credits against its transmission service; (7) including a new "whereas" clause to the recitals section; (8) revising the consequential damages and limitation of liability provisions<sup>3</sup>; and (9) changing the insurance provision. The parties also propose to revise a number of definitions and various editorial changes. Midwest ISO states that the changes were negotiated to reflect the specific needs of the parties involved, or that the changes met the Commission's "consistent with or superior to" standard.

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<sup>2</sup> The Midwest ISO *pro forma* interconnection agreement was found in Attachment X to the Midwest ISO's Open Access Transmission Tariff (OATT), but has been transferred to Midwest ISO's Open Access Transmission and Energy Market Tariff (TEMT), which superseded the OATT effective April 1, 2005.

<sup>3</sup> Midwest ISO cites our decision in *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,164 (2005), as giving it authority to include different liability provisions in the Interconnection Agreements than are in the Midwest ISO *pro forma* interconnection agreement.

4. Midwest ISO also requests waiver of the Commission's prior notice requirements to allow the Interconnection Agreements to go into effect on the dates requested.

## **II. Notice of Filings**

5. Notices of the filings in Docket Nos. ER05-636-000 and ER05-636-001 were published in the *Federal Register*, 70 Fed. Reg. 11,003 and 70 Fed. Reg. 22,656 (2005), with interventions and protests due on or before March 16, 2005 and May 11, 2005, respectively. None were filed.

6. Notices of the filings in Docket Nos. ER05-662-000 and ER05-662-001 were published in the *Federal Register*, 70 Fed. Reg. 12,674 and 70 Fed. Reg. 24,570 (2005), with interventions and protests due on or before March 22, 2005 and May 16, 2005, respectively. Darlington filed a timely motion to intervene on March 22, 2005.

7. Notice of the filing in Docket No. ER05-864-000 was published in the *Federal Register*, 70 Fed. Reg. 24,569 (2005), with interventions and protests due on or before May 17, 2005. Wisconsin Electric Power Company filed a timely motion to intervene.

8. Notice of the filing in Docket No. ER05-881-000 was published in the *Federal Register*, 70 Fed. Reg. 24,780 (2005), with interventions and protests due on or before May 19, 2005. High Prairie filed a timely motion to intervene.

## **III. Discussion**

10. In Order No. 2003, the Commission required Transmission Providers (such as the Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.<sup>4</sup> The use of *pro forma* documents ensures that Interconnection Customers receive non-discriminatory service and that all Interconnection Customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.<sup>5</sup>

11. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming

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<sup>4</sup> See Order No. 2003.

<sup>5</sup> See *id.* at P 10 ("it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues").

agreement.<sup>6</sup> The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.<sup>7</sup>

12. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming agreement.<sup>8</sup> We note that the “consistent with or superior to” standard, which Midwest ISO uses to justify several of its non-conforming provisions, is one of the standards under which the Commission evaluates modifications to its *pro forma* interconnection agreement and interconnection procedures. A Transmission Provider seeking a case-specific deviation from a *pro forma* interconnection agreement bears an even higher burden to justify and explain what makes the interconnection unique and what operational concerns or other reasons necessitate the changes.<sup>9</sup>

13. The Commission will conditionally accept the executed Interconnection Agreements, subject to Midwest ISO's re-filing of the agreements to conform with its *pro forma* Interconnection Agreement that was in effect on the day the Interconnection Agreements were executed within 30 days of the issuance of this order, as discussed below. Alternatively, Midwest ISO may elect to withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions. We grant the parties' request for waiver of our prior notice requirement, and allow the agreements to become effective on the dates specified, as requested.

14. The stylistic and non-substantive deviations from Midwest ISO's *pro forma* interconnection agreement are rejected, as are the other non-conforming terms and conditions negotiated by the parties.<sup>10</sup> Consistent with the *PJM Order*, we also reject the deletion of non-applicable terms from the Interconnection Agreement as being

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<sup>6</sup> *Id.* at P 913-15.

<sup>7</sup> Order No. 2003-B at P 140 ("each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision").

<sup>8</sup> *See, e.g., PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098 at P 9 (2005) (*PJM Order*); *see also El Paso Electric Co.*, 110 FERC ¶ 61,163 at P 4 (2005).

<sup>9</sup> *See PJM Order* at P 9.

<sup>10</sup> Simply stating that the parties "negotiated" for or "agreed" to the non-conforming changes is not sufficient justification. *See PJM Order* at n. 13.

unnecessary.<sup>11</sup> Midwest ISO characterizes other changes as correcting mistakes or omissions in Midwest ISO's currently effective *pro forma* interconnection agreement. These changes are also rejected. If Midwest ISO wishes to change a provision of its *pro forma* interconnection agreement, it must file to make the change on a generic basis.<sup>12</sup>

15. Midwest ISO also proposes several non-conforming provisions to "bridge" the transition between its pre-Order No. 2003 processing of interconnection requests and its post-Order No. 2003 processing of interconnection requests.<sup>13</sup> This includes allowing the Interconnection Customers to select a higher level of interconnection service (which was not available under Attachment R), pending the completion of further studies. Midwest ISO also proposes several non-conforming provisions reflecting that several interconnection studies were completed under the Attachment R process. These changes are accepted as changes necessitated by the transition from Attachment R to Attachment X.

16. Finally, the Commission recognizes that reliability and safety are paramount concerns and that non-conforming provisions may sometimes be necessary to preserve them.<sup>14</sup> Therefore, while we reject the non-conforming provisions proposed by the Midwest ISO that relate to reactive power requirements and black start capability (including the various definitional changes), we do so without prejudice to the parties re-filing these changes with an explanation as to why they are operationally necessary. If it does so, Midwest ISO must show (via a system impact study) why it is necessary that these particular Interconnection Customers provide black start capability and/or reactive power support.

The Commission orders:

(A) The Interconnection Agreements are accepted for filing, subject to the conditions discussed in the body of this order.

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<sup>11</sup> *Id.* at P 14 ("[i]f a provision of a contract is not applicable, it is not applicable. Unless confusion is likely, modifications to a pro forma agreement that "clarify" matters not in doubt are not necessary.")

<sup>12</sup> *See, e.g., Sierra Pacific Power Co.*, 111 FERC ¶ 61,415 (2005).

<sup>13</sup> Before the approval of Midwest ISO's Order No. 2003 compliance filing, interconnection requests in Midwest ISO were processed according to Attachment R to its tariff. After the approval of Midwest ISO's of Order No. 2003 compliance filing, interconnection requests are processed according to Attachment X to its tariff.

<sup>14</sup> *See, e.g., PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at P 17 (2005).

(B) The requests for waiver of the Commission's prior notice requirement is hereby granted, as discussed in the body of this order.

(C) Midwest ISO is directed to make a compliance filing, as discussed in the body of this order, within 30 days.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.