

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. ER05-926-000 ER05-933-000 ER05-949-000 (Not Consolidated)
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ORDER ACCEPTING SERVICE AGREEMENTS, SUBJECT TO CONDITIONS

(Issued July 1, 2005)

1. In this order, we conditionally accept two executed and one unexecuted 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 re-filing the Interconnection Agreements to conform with the Midwest ISO *pro forma* interconnection agreement adopted in response to Order No. 2003.¹ 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.

I. Background

2. The three Interconnection Agreements involve various wind generation Interconnection Customers seeking to interconnect to the transmission systems of various Transmission Owners belonging to Midwest ISO. In Docket No. ER05-926-000, the Interconnection Customer is Zilkha Renewable Energy Midwest IV, LLC (Zilkha), and the Transmission Owner is Interstate Power and Light Company. The parties request an

¹ 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. ¶ 31,146 (2005) (Order No. 2003-C).

effective date of April 11, 2005. The Interconnection Customer in Docket No. ER05-933-000 is Java, LLC (Java), and the Transmission Owner is Montana-Dakota Utilities Company (Montana-Dakota). The parties request an effective date of October 8, 2004. In Docket No. ER05-949-000, the Interconnection Customer is Power Partners Midwest, LLC (Power Partners), and the Transmission Owner is Northern Indiana Public Service Company. The parties request an effective date of April 18, 2005.

3. Midwest ISO states that the Interconnection Agreements are based on the form of Large Generator Interconnection Agreement provided in Attachment X of Midwest ISO's Open Access Transmission and Energy Markets Tariff.² Additionally in each of the three Interconnection Agreements, the parties have negotiated "deviations" from Midwest ISO's TEMT stating that the changes meet the Commission's "consistent with or superior to" standard. These non-conforming changes include: (1) deletion of Article 30 and using Article 29 in lieu of Article 30 where previously Article 29 had been reserved; (2) addition of a paragraph in the "Recitals" briefly detailing the role of the parties to the Interconnection Agreement; (3) clarification that the parties "notify" others of the Commercial Operation Date rather than reflect the parties' "agreement" as to the actual Commercial Operation Date; (4) revision of Appendix A to clarify where the generating facility is identified and described; (5) correction of the definition of loss to include "indemnified"; (6) revision of Article 2.3.1 to clarify the circumstances giving rise to termination of the Interconnection Agreement; (7) clarification of Article 5.7 as to when requests for progress reports must be fulfilled; (8) revision of Article 5.11 to establish a pointer for the location of technical drawings, information and documents; (9) revision of Article 5.14 to clarify responsibilities of the parties regarding permitting; (10) revision of Article 7.4 to clarify responsibility for metering equipment; (11) revision of Article 9.7.1.2 to require that copies of outage schedules be provided to the Transmission Owner as well as the Transmission Provider; (12) revision of Article 9.7.6 to clarify power quality standards; (13) revision of Article 11.3 concerning what the parties must do if the transmission owner elects to fund Network Upgrades; (14) revision of Article 18.2 concerning liability for consequential damages; (15) revision of Article 18.3 to clarify when parties may self-insure; (16) revision of Article 22.1 to permit the parties to retain one copy of Confidential Information; and (17) various other non-substantive editorial changes.

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

4. Midwest ISO points out that although it has filed the Interconnection Agreements based on the form of Large Generator Interconnection Agreement provided in Attachment X to the TEMT, certain parts of the agreements bridge with Attachment R. Attachment R is referenced primarily concerning negotiations and studies which were initiated prior to the institution of Attachment X.

5. The Interconnection Agreement in Docket No. ER05-933-000 is unexecuted. An unexecuted agreement was filed by the parties on October 27, 2004, based on Attachment R which was rejected by the Commission on December 21, 2004.³ In response to the December 21, 2004, Order Midwest ISO submitted the Interconnection Agreement consistent with Attachment X of its TEMT.

6. 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

7. Notice of the filing in Docket No. ER05-926-000 was published in the *Federal Register*, 70 Fed. Reg. 25,563 (2005), with interventions and protests due on or before May 23, 2005. Zilkha filed a timely motion to intervene.

8. Notice of the filing in Docket No. ER05-933-000 was published in the *Federal Register*, 70 Fed. Reg. 25,817 (2005), with interventions and protests due on or before May 25, 2005. Java filed a timely motion to intervene, as well as comments. Montana-Dakota filed a timely motion to intervene and protest. Java and Midwest ISO both filed answers to Montana-Dakota's protest.

9. Notice of the filing in Docket No. ER05-949-000 was published in the *Federal Register*, 70 Fed. Reg. 29,300 (2005), with interventions and protests due on or before May 31, 2005. None was filed.

10. In its protest, Montana-Dakota argues that Article 11.4 requires it to reimburse the Interconnection Customer for the funds advanced by the Interconnection Customer for Network Upgrades without a guarantee that it will ever receive transmission revenue. Montana-Dakota states that under this circumstance it would need to collect Network Upgrade costs from its native load customers, which it argues, receive no benefit from the interconnection. Montana-Dakota notes that Midwest ISO is currently developing criteria and allocation methods that address such transmission expansions. However, Montana-Dakota states that it declines to execute the Interconnection Agreement until it

³ See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,312 (2004).

is assured that the Regional Expansion Criteria and Benefits Task Force-proposed benefit-based allocation or any other proposed transmission revenue reimbursement mechanism adequately protects it and its native load customers. Montana-Dakota explains that if the electric power from Java's wind facility is delivered outside of the Montana-Dakota pricing zone, the transmission revenue attributable to the delivery will be paid to the Transmission Owner in the load sink.

11. Montana-Dakota asks the Commission to reject the crediting language of Article 11.4 of the Interconnection Agreement and defer the development of crediting language until such time as the Commission acts on Midwest ISO's proposal regarding the financing of network upgrades. Montana-Dakota states in its protest that the issue regarding the manner in which Network Upgrade costs will be allocated need not be resolved now. It proposes Midwest ISO incorporate a crediting mechanism consistent with what is approved by the Commission in its action on the filing made by Midwest ISO in response to recommendations of its Regional Expansion Criteria and Benefits Task Force.

III. Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely unopposed motions to intervene of Zilkha and Java serve to make them parties to the respective proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2004), prohibits an answer to a protest and an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept to accept Java's and Midwest ISO's answers and will, therefore, reject them.

13. In Order No. 2003, the Commission required Transmission Providers (such as Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.⁴ 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.⁵

⁴ See Order No. 2003.

⁵ See *Id.* at P 10.

14. 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 agreement.⁶ 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.⁷

15. 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.⁸ 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.⁹

16. The Commission will conditionally accept the Interconnection Agreements, subject to Midwest ISO’s re-filing of the agreements to conform with its *pro forma* Interconnection Agreement that was in effect when the proposed Interconnection Agreements were filed 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.¹⁰ We grant the Midwest ISO’s request for waiver of our prior notice requirement given that the Interconnection Agreements were filed within 30 days of their effective dates, and allow the agreements to become effective on the dates specified, as requested.¹¹

⁶ *Id.* at P 913-15.

⁷ Order No. 2003-B at P 140.

⁸ *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).

⁹ *See PJM Order* at P 9.

¹⁰ Simply stating that the parties “negotiated” for or “agreed” to the non-conforming changes is not sufficient justification. *See PJM Order* at n. 13.

¹¹ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).

17. The stylistic and non-substantive deviations from Midwest ISO's *pro forma* interconnection agreement are rejected, as are the non-conforming terms and conditions negotiated by the parties. Consistent with the *PJM Order*, we also reject the deletion of non-applicable terms from the Interconnection Agreement as being unnecessary.¹² 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.¹³

18. Midwest ISO also proposes several non-conforming provisions to "bridge" the transition between its pre-Order 2003 processing of interconnection requests and its post-Order No. 2003 processing of interconnection requests.¹⁴ 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.

19. With regard to the protest filed by Montana-Dakota, we reject the changes in crediting language being proposed as insufficiently supported nonconforming changes. The protested portions of the Interconnection Agreement follow Midwest ISO's *pro forma* interconnection agreement. As the Commission has explained in the *PJM Order*, nonconforming changes must be due to unique circumstances or other operational reasons that necessitate the changes proposed. There are no such circumstances here. The Midwest ISO is currently considering, through its stakeholder process, whether to change its policy on transmission revenue assignment on a generic basis. Montana-Dakota's concerns are best addressed through that stakeholder process, not on a case-by-case basis and we will not pre-judge the outcome of that process here.

The Commission orders:

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

¹² *Id.* at P 14.

¹³ *See, e.g., Sierra Pacific Power Co.*, 111 FERC ¶ 61,415 (2005).

¹⁴ 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 Order No. 2003 compliance filing, interconnection requests are processed according to Attachment X to its tariff.

(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.