

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The Midwest Independent Transmission
System Operator, Inc.

Docket No. ER05-75-000

ORDER REJECTING INTERCONNECTION AND OPERATING AGREEMENT

(Issued December 21, 2004)

Introduction

1. In this order, we reject, without prejudice, the Interconnection and Operating Agreement (Agreement) filed by Midwest Independent Transmission System Operator, Inc. (Midwest ISO) because it is not consistent with the tariff on file. As we find below, Midwest ISO may re-file a revised Agreement that is consistent with the Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIP) contained in its Open Access Transmission Tariff (OATT). This order benefits customers because it ensures that interconnection terms and conditions are just and reasonable.

Background

2. On October 27, 2004, Midwest ISO filed an Agreement executed by Superior Renewable Energy, LLC (Interconnection Customer); Montana-Dakota Utilities Co. and Midwest ISO. According to the Agreement, the Interconnection Customer intends to have a 50.4 MW electric generating facility in Walworth County, South Dakota.

3. The proposed Agreement is based on Attachment R to Midwest ISO's OATT, which was in effect until July 8, 2004. On that day, the Commission, among other things, accepted and made immediately effective, the proposed Attachment X to the Midwest

ISO OATT.¹ Attachment X contains Midwest ISO's LGIA and LGIP applicable to generators of greater than 20 MW and is consistent with Order Nos. 2003 and 2003-A.² The July 8 Order provided that Attachment R would continue to apply only to generators equal to or smaller than 20 MW.

4. Midwest ISO states that negotiations for the proposed Agreement were based on Attachment R and were essentially complete by July 8, 2004, leaving only issues related to appendices and insurance to be resolved. Midwest ISO contends that revising the Agreement to be consistent with the LGIA in Attachment X would "unduly prejudice" the Interconnection Request.

Notice of Filing and Intervention

5. Notice of Midwest ISO's filing was published in the *Federal Register*,³ with comments, protest, and interventions due on or before November 17, 2004. The Western Area Power Administration filed a timely motion to intervene raising no substantive issues. No protests were filed.

Discussion

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2004), the timely, unopposed motion to intervene serves to make the party that filed it a party to the proceeding.

¹ See, Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,027, *order on reh'g*, 109 FERC ¶ 61,085 (2004) (July 8 Order).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), *reh'g pending*. An order on the pending rehearing is being issued concurrently with this order.

³ 69 Fed. Reg. 65,166 (2004).

7. In keeping with its ongoing effort to remedy undue discrimination, the Commission in Order No. 2003 directed all public utilities that own, control, or operate jurisdictional transmission facilities to append to their OATTs a Final Rule LGIP and Final Rule LGIA. The Commission left open the option for independent entities, such as Midwest ISO, to propose variations to the *pro forma* LGIP or *pro forma* LGIA.

8. We will reject the proposed Agreement because it is not consistent with the LGIA and LGIP in Midwest ISO's OATT that was in effect when the proposed Agreement was executed and later filed. We note that the Agreement was executed on October 8, 2004 and submitted to the Commission on October 27, 2004, three months after the July 8, 2004 effective date of Attachment X to Midwest ISO's OATT.

9. Midwest ISO offered no support for its statement that the Interconnection Customer will be unduly prejudiced if Midwest ISO files a revised Agreement that is consistent with Attachment X. The re-filing of a revised agreement in this instance will not affect the Interconnection Customer's position in the queue, nor will additional studies be required if the Interconnection Customer requests the same interconnection and operating service.

10. Accordingly, we reject the proposed Agreement, without prejudice to Midwest ISO filing a revised Agreement that is consistent with Attachment X of its OATT.

The Commission orders:

Midwest ISO's Agreement is hereby rejected, without prejudice, as discussed in the body of the order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.