

114 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Docket No. ER05-1475-000
Inc. ER05-1475-001
ER05-1475-002
ER05-1475-003

ORDER ACCEPTING PROPOSED REVISIONS TO *PRO FORMA* LARGE
GENERATOR INTERCONNECTION PROCEDURES AND LARGE GENERATOR
INTERCONNECTION AGREEMENT, SUBJECT TO MODIFICATIONS

(Issued February 13, 2006)

1. In this order, we accept for filing, to be effective November 16, 2005, proposed revisions to Attachment X, the *pro forma* Large Generator Interconnection Procedures and Agreement, of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) Transmission and Energy Markets Tariff (TEMT),¹ subject to further modifications as discussed below.

I. The Midwest ISO's September 2005 Filings

2. On September 12, 2005, as amended September 15 and 16, 2005, the Midwest ISO filed, pursuant to section 205 of the Federal Power Act (FPA),² proposed revisions to its Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA). The Midwest ISO amended its filing on

¹*Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005). The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. In turn, the TEMT defines "Transmission Provider" as the Midwest ISO or any successor organization. *See* TEMT, Module A, section 1.320, Second Revised Sheet No. 133. For clarity, we will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

² 16 U.S.C. § 824d (2000).

September 15, 2005, to correct a “heading reference.”³ On September 16, 2005, it amended its filing to correct omissions from the definition of Loss and to insert the new subsection title “Limitation of Liability” in article 18 of the LGIA.⁴

3. The Midwest ISO’s revisions to Attachment X include many non-substantive changes. The Midwest ISO states that these revisions are to: (1) correct typographical errors; (2) consistently use terms throughout Attachment X; and (3) provide non-substantive changes to improve the provisions of the LGIP and LGIA.

4. In its transmittal letter, the Midwest ISO states that recent Commission orders instructed the Midwest ISO that changes to individual service agreements, even if stylistic or non-substantive, should be addressed on a generic basis.⁵ The Midwest ISO further states that although the revisions to Attachment X proposed here are primarily intended to “clean-up” the interconnection procedures, there are other substantive changes being proposed.⁶ The Midwest ISO proposes substantive revisions to the following portions of the LGIA: article 5.16 (Suspension), which is modified to add new sections 5.16.2 (Effect of Missed Interconnection Customer Milestones) and 5.16.3 (Effect of Suspension; Parties Obligations); article 7 (Metering); article 18 (Indemnity, Consequential Damages and Insurance); and Appendix A (Interconnection Facilities, System Protection Facilities, Distribution Upgrades, Generator Upgrades and Network Upgrades), Appendix B (Milestones), and Appendix C (Interconnection Details). The Midwest ISO asserts that it made these revisions to clarify certain provisions to improve Attachment X.

5. The Midwest ISO states that its proposed revisions to Attachment X incorporate requests from stakeholders involved in negotiations of interconnection agreements, the Midwest ISO’s own internal review of its processes, and the Tariff Working Group comments. The Midwest ISO states that most of its proposed revisions that deviate from the *pro forma* interconnection agreement arose in the context of individual interconnection agreement negotiations when transmission owners or interconnection customers identified defects with, or improvements to, the Midwest ISO *pro forma*

³ Docket No. ER05-1475-001.

⁴ Docket No. ER05-1475-002.

⁵ See *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,421 at P 14 (2005); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,002 at P 17 (2005); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,067 at P 13 (2005).

⁶ Transmittal Letter at 3.

interconnection agreement. In addition, the Midwest ISO states that it has identified improvements to or regional variations needed for the *pro forma* interconnection agreement based upon its operational experience.

6. The Midwest ISO states that the proposed revisions are consistent with or superior to the provisions of Order No. 2003,⁷ or meet the “independent entity variation standard.”⁸ Therefore, the Midwest ISO requests that the Commission accept its proposed modifications to Attachment X, stating that the proposed revisions meet the independent entity variation standard.

II. Notice of Filings and Responsive Pleadings

7. Notice of the September 12, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 56,676 (2005), with comments, interventions, and protests due on or before October 3, 2005. Notice of the September 15 and 16, 2005 filings was published in the *Federal Register*, 70 Fed. Reg. 56,678 (2005) with comments, interventions, and protests due on or before October 6, 2005.

8. On October 3, 2005, Wisconsin Electric Power Company (WEPCO) filed a timely motion to intervene, and American Transmission Company L.L.C. (ATC) filed a timely motion to intervene and protest. On October 6, 2005, Horizon Wind Energy, L.L.C. (Horizon) and Alliant Energy Corporate Services, Inc. (Alliant) filed motions to intervene and protests. On October 18, 2005, the Midwest ISO filed an answer to the protests.

9. On November 15, 2005, the Commission issued a letter order requesting additional information from the Midwest ISO. On December 15, 2005, the Midwest ISO submitted its response. Notice of the December 15, 2005 filing was published in the *Federal Register*, 71 Fed. Reg. 109 (2006), with comments, interventions, and protests due on or before January 5, 2006. ATC and Horizon filed timely protests.

⁷ See *Standardization of Generator Interconnection Agreement and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats & Regs. ¶ 31,190 (2005); see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

⁸ See Order No. 2003 at P 26 and 827.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Alliant notes that its motion to intervene is out-of-time with respect to Docket No. ER05-1475-000, which had a comment date of October 3, 2005, but timely with respect to the other two Docket Nos., which had a comment date of October 6, 2005. Similarly, Horizon's motion to intervene was filed after the October 3, 2005 comment date. However, because the filings in the later two dockets amend the September 12 filing, we will allow the intervention of Alliant and Horizon in all three dockets.

11. In their October 6 protests, Alliant and Horizon failed to include a Statement of Issues as required by Order No. 663.⁹ Order No. 663 amended Rule 203 of the Commission's Rules of Practice and Procedure to require that any pleading, including protests, must include a specifically identified section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying. Any issues not so listed in a separate section will be deemed to have been waived. Order No. 663 became effective September 23, 2005. For this reason, we deem Alliant and Horizon to have waived the issues in their October 6 protests. However, we note that Horizon's January 5, 2005 protest included a Statement of Issues section and, therefore, the issues raised in the January 5 protest will not be deemed to have been waived.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of the Midwest ISO because it has provided information that assisted us in our decision-making process.

B. Analysis

13. The Commission accepts the Midwest ISO's filing, subject to modification and the compliance filing we order below, effective November 16, 2005.¹⁰ We accept the

⁹ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 Fed. Reg. 55,723 (September 23, 2005), FERC Stats. & Regs. ¶ 31,193 (2005).

¹⁰ We note that although the Midwest ISO requested an effective date of

Midwest ISO's non-substantive edits to correct typographical errors and improve consistency as minor changes consistent with the Commission's directives.¹¹ The revisions proposed by the Midwest ISO¹² appropriately clarify the LGIP and LGIA listed in Attachment X.

14. We approve the revisions proposed by the Midwest ISO in its answer.¹³ We direct the Midwest ISO to submit a compliance filing, within 30 days of the date of this order, making the typographical revisions to Attachment X as proposed in its answer.¹⁴ Those revisions add clarity and consistency to the tariff, but do not substantially alter its meaning. However, as is discussed herein, the Midwest ISO has not defined "Energy Markets Tariff" in Module A, and therefore, we require the Midwest ISO to use the defined term "Tariff" or simply use the lower-case form "energy markets tariff" throughout Attachment X.¹⁵

September 13, 2005, it did not request waiver of the 60-day prior notice requirement. Upon request, the Commission may grant waiver of the 60-day prior notice requirement in certain circumstances, such as for good cause shown. *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992). Separately, we note that the Midwest ISO did request a waiver of Rule 2010 to permit it to provide electronic service of the filings. 18 C.F.R. § 385.2010 (2005). The Commission will grant this requested waiver. The request is consistent with Order No. 653, which revised the Commission's regulations to require senders and recipients to serve documents upon one another by electronic means, with the exception of those who are unable to receive such service unless the parties agree otherwise. *Electronic Notification of Commission Issuances*, 110 FERC 61,110 (2005) (Order No. 653); *order on reh'g*, 111 FERC ¶ 61,021 (2005).

¹¹ *See Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,421 at P 14 (2005); *see also Southern Company Services, Inc.*, 109 FERC ¶ 61,070 at P 81-82 (2004).

¹² Transmittal Letter at 4 – 7.

¹³ Midwest ISO Answer at 3 – 4.

¹⁴ *See Id.*

¹⁵ Second Revised Sheet No. 1714Z.57.

C. Definitions

15. At the outset, we direct the Midwest ISO to make its Attachment X more user friendly and consistent by making the definitions used in the LGIA and in the LGIP identical - just as the Commission's *pro forma* LGIA and LGIP contain identical definitions. For example, the Midwest ISO uses the term "Dispute Resolution" and defines it in its LGIA,¹⁶ and the Midwest ISO also uses "Dispute Resolution" in its LGIP,¹⁷ but does not define it. Thus, to conform in this example, the Midwest ISO must modify its LGIP to include the definition of "Dispute Resolution." Finally, even where a defined term is not used in the LGIA, but is used in the LGIP, the definition for such term must be included in both the LGIA and LGIP.

1. Definition of Distribution System

a. Background

16. The Midwest ISO proposed no change to the definition of "Distribution System" that was previously accepted by the Commission, effective July 8, 2004.¹⁸

b. Comments and Protests

17. ATC faults the Midwest ISO's proposal for failing to modify the term "Distribution System" so that it applies to stand-alone transmission companies. ATC notes that the Midwest ISO has three independent transmission companies (ITCs) within its region that collectively comprise almost 30 percent of the transmission facilities to which new generators may seek to interconnect. ATC notes that the definition of "Distribution System" refers to a Transmission Owner's facilities and ATC is defined not to be a Transmission Owner so the definition does not apply. ATC suggests that the Midwest ISO revise the definition as follows (new language in underline):

¹⁶ Second Revised Sheet Nos. 1714Z.42 – 43.

¹⁷ Third Revised Sheet No. 1714X.

¹⁸ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027 (2004); See also *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,085 (2004).

Distribution System shall mean the Transmission Owners facilities, or the Distribution System of another party that is interconnected with Transmission Owner's Transmission System, and equipment, if any, connected to the Transmission System...

ATC notes that making this change would make the definition apply to stand-alone transmission companies, as well as those situations where there is more than one distribution system interconnected to the transmission system.

c. The Midwest ISO's Answer

18. The Midwest ISO states that it does not oppose ATC's proposed additional language to the definition of Distribution System.

d. Commission Determination

19. We agree with ATC that the definition of "Distribution System" requires revision to make it apply to stand-alone transmission companies or ITCs. The definition of "Distribution System" uses the term "Transmission Owner," which we note specifically excludes ITCs.¹⁹ The Midwest ISO is currently the only Regional Transmission Organization (RTO) with three stand-alone transmission companies in its territory, so it is appropriate to include a change in the definition to accommodate this regional variance as an independent entity variation. Therefore, we find that the addition of the proposed language makes the definition applicable to the affected parties. Accordingly, we direct the Midwest ISO to revise its LGIP and LGIA in Attachment X,²⁰ within 30 days of the date of this order.

D. Terms and Conditions

1. Article 9.6.1 (Power Factor Range)

a. Background

20. The Midwest ISO has retained the power factor design criteria from Order No. 2003 that states that an interconnection customer shall design a generating facility

¹⁹ See definition of Transmission Owner, TEMT Module A, section 1.319, Second Revised Sheet No. 133.

²⁰ LGIP at Third Revised Sheet No. 1697 and LGIA at Second Revised Sheet No. 1714Z.43.

capable of maintaining a composite power delivery at continuous rated power at all power factors over 0.95 leading and 0.95 lagging.²¹

b. Comments and Protests

21. ATC protests the Midwest ISO's proposed power factor range, arguing that article 9.6.1 of the LGIA should be changed to reflect a power factor range from 0.95 leading to 0.90 lagging for the Midwest ISO region. ATC notes that the Commission has previously stated that the power factor range can vary from the *pro forma*, so long as it is applied on a comparable basis.²² ATC notes that it has entered into more than 40 generator–transmission interconnection agreements with all types of generators, and all classes of market participants. ATC states that it has uniformly required that the generator be capable of operating within a power factor range of 0.95 leading (when a facility is consuming reactive power from the transmission system) to 0.90 lagging (when a facility is supplying reactive power to the transmission system). ATC believes that consistent application of this power factor range, which it notes existed prior to the Midwest ISO's inception and Order No. 2003, will prevent future generators from “leaning” on existing generators for their reactive power needs.

c. The Midwest ISO's Answer

22. In its answer, the Midwest ISO states that rather than adopt ATC's requested language, the Midwest ISO supports ATC including its power factor range of 0.95 leading to 0.90 lagging as a deviation from the *pro forma* LGIA in interconnection agreements involving ATC provided that ATC demonstrates that this different power factor will apply to all generators on a comparable basis. The Midwest ISO requests that the Commission accept a proposed revision, provided in its answer, to article 9.6.1, which allows ATC to provide deviations to the power factor range on a case-specific basis.

d. Commission Determination

23. The Midwest ISO proposed changes on a generic basis to apply to all tariff users, not a single party. The Midwest ISO has appropriately adopted the Commission's power factor range listed in Order No. 2003 of 0.95 lagging to 0.95 leading in article 9.6.1 of the LGIA.

²¹ LGIA at First Revised Sheet No. 1714Z.86.

²² Order No. 2003 at P 542 (“If a Transmission Provider wants to adopt a different power factor requirement, Final Rule LGIA Article 9.6.1 permits it to do so as long as the power factor requirement applies to all generators on a comparable basis.”).

24. However, in accordance with Order No. 2003²³ and to accommodate the power factor range that ATC uses for all non-wind generators in its zone, we will require that Midwest ISO include language in its pro forma LGIA either stating the power factor range that applies in the ATC control area or referencing a page on the Midwest ISO website for power factor ranges that apply in specific control area(s). We will ensure comparable treatment of generators in ATC by accommodating this difference through language in the *pro forma* LGIA rather than through the appendices of individual interconnection agreements.

2. **Article 18 (Indemnity, Consequential Damages and Insurance)**

a. **Background**

25. The Midwest ISO proposes to revise article 18 (Indemnity, Consequential Damages and Insurance). The Midwest ISO states that this revision is proposed in accordance with the Commission's February 16 Order on section 10 of the TEMT.²⁴ The Midwest ISO states that the revisions incorporate the definitions provided in section 10 of the tariff, remove inconsistencies, and account for circumstances unique to a particular party. In the February 16 Order, we allowed the Midwest ISO to modify its liability provisions to afford to the Midwest ISO and its Transmission Owners the same level of liability protection that state commissions located in the Midwest ISO region traditionally afford their utilities.²⁵ We further extended the same liability protection to owners and operators of generation facilities acting in good faith to implement the Midwest ISO's directives.²⁶ Thus, the new language would apply liability protection available under the TEMT to the generation interconnection context.

26. The Midwest ISO proposes that a new article 18.1 to address Limitation of Liability that would read as follows:

Limitation of Liability. A Party shall not be liable to another Party or to any third party or other person for any damages arising out of actions under this LGIA, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of Interconnection Service, except as provided in this

²³ See Article 9.6.1 of the *pro forma* LGIA.

²⁴ See *Midwest Independent Transmission System Operator*, 110 FERC ¶ 61,164 (2005) (February 16 Order).

²⁵ *Id.* at P 19.

²⁶ *Id.* at P 29, 34.

Tariff. The provisions set forth in the Tariff shall be additionally applicable to Interconnection Customer acting in good faith to implement or comply with the directives of the Transmission Provider or Transmission Owner under this LGIA.

27. The Midwest ISO then re-numbers subsequent paragraphs in article 18 of the LGIA. The Midwest ISO proposes to eliminate repetitive language, now in article 18.2, by replacing certain text with the defined term Loss. Thus, article 18.2 would read as follows:

Indemnity. An Indemnifying Party shall at all times indemnify, defend and hold the other Parties harmless from Loss.

28. The Midwest ISO proposes that the definition for Loss read as follows:²⁷

Loss shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under this LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

29. The Midwest ISO also proposes to add language to article 18.4 (Insurance) to accommodate self-insured entities (*i.e.*, "an approved surplus lines carrier").

30. In its December 15, 2005 response to the Commission's November 15, 2005 letter order requesting additional information, the Midwest ISO states that although the proposed language differs from the exact language of the Commission's pro forma LGIA, the language comports with the concepts and standards, set forth in Order No. 2003 and its progeny, where the Commission explained that the "indemnification of one Party by another must be comprehensive and must include any liability the indemnified Party faces as a result of the indemnifying Party's misdeeds."²⁸ The Midwest ISO states that

²⁷ This definition of Loss incorporates consolidated modifications as proposed by the Midwest ISO on September 16, 2005, in Docket No. ER05-1475-002 and as further agreed to by the Midwest ISO in its answer.

²⁸ The Midwest ISO December 15 Supplemental Response at 3, citing Order No. 2003-A at P 455.

the proposed language in article 18.1 and 18.2 provides comprehensive protection for any liability the Indemnified Party faces for the Indemnifying Party's misdeeds in performance of its obligations under the LGIA.²⁹

b. Liability Protection During Construction

i. Comments and Protests

31. ATC argues that the proposed changes to article 18 are contrary to the Commission's previous orders and do not go far enough to resolve liability issues that could adversely affect either the Transmission Owner or the Interconnection Customer. ATC believes that article 18 should be modified to change the limitation of liability to a negligence standard during the period when Interconnection Facilities and Network Upgrades are being constructed.³⁰

32. ATC asserts that the Midwest ISO is proposing to apply the same liability protections afforded to transmission service while, ATC argues, the Commission has noted that interconnection presents a greater risk of damage than transmission service. As an example, ATC explains that under Midwest ISO's proposal, ATC and its customers would be required to pay for acts of ordinary negligence by an Interconnection Customer's subcontractor that damages ATC's facilities. ATC argues that the Midwest ISO proposal fails to recognize that during the interconnection construction process, the risk of damage to transmission facilities is significantly greater than during ordinary operating times.³¹

ii. The Midwest ISO Answer

33. Regarding ATC's protest, the Midwest ISO answers that its proposal comports with Commission policy in Order No. 2003 to provide protection for ordinary acts of negligence (but not gross acts of negligence), to retain the bilateral nature of the provision, and to apply both to construction and non-construction activities.

²⁹ *Id.* at 4.

³⁰ ATC citing *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,067 (2005).

³¹ ATC's October 3 Protest at 15-16 and ATC's January 5 Protest at 3.

iii. Commission Determination

34. In general, we find the Midwest ISO's proposed changes to articles 18, 18.1 and 18.2 acceptable under the independent entity variation standard because they essentially: (1) retain the same substantive indemnification concepts as in the LGIA; and (2) clarify that the TEMT liability provision applies in the interconnection context, consistent with our February 16 order accepting the TEMT liability limitation.

35. In response to ATC, we agree that Order No. 2003 explained that there is increased risk in the interconnection context. These statements were made in the context of whether to apply a different indemnification standard to interconnection than is generally applicable to transmission service under the pro forma open access transmission tariff. Ultimately, we decided that it was appropriate to provide for indemnification from liability arising from obligations under the LGIA even in cases where there was negligence because the risk exposure can drive up interconnection costs.³² In other words, the increased risk of interconnection lead us to provide each party with more protection, not less. Moreover, the Midwest ISO is simply acting consistent with our decision in the February 16 Order that protection from liability, even in cases of negligence, is appropriate for anyone following the Transmission Provider's directives. Therefore, here we accept the Midwest ISO's proposed language under the independent entity variation standard because it provides protection consistent with that afforded in Order No. 2003, and the TEMT liability provisions provide a basis for concluding that these variations are based on a regional practice.

c. Providing Broad Liability Protection for Interconnection Customer

i. Comments and Protests

36. Horizon states that the Midwest ISO's proposed article 18.1 protects Interconnection Customers to the extent that such customers are "acting in good faith to implement or comply with the directives of the Transmission Provider or Transmission Owner under this LGIA."³³ Horizon contends that article 18.1 fails to adequately protect Interconnection Customers (in a manner comparable to the protection afforded to

³² See Order No. 2003 at P 636.

³³ Horizon January 5 Protest at 4 (citing MISO LGIA, Article 18.1).

Transmission Owners and Transmission Providers) from the increased risk of liability in the interconnection context. Thus, Horizon proposes that article 18.1 be modified as follows:³⁴

Limitation of Liability. A Party shall not be liable to another Party or to any third party or other person for any damages arising out of actions under this LGIA, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of Interconnection Service, except in cases of gross negligence or intentional wrongdoing by the Party sought to be held liable. as provided in this Tariff. ~~The provisions set forth in the Tariff shall be additionally applicable to Interconnection Customer acting in good faith to implement or comply with the directives of the Transmission Provider or Transmission Owner under this LGIA.~~

ii. Commission Determination

37. We accept the Midwest ISO's proposed revisions to article 18 and the definition of Loss, as further modified in the Midwest ISO's answer, under the independent entity variation standard,³⁵ because it provides protection consistent with that afforded in Order No. 2003. We find that revisions in article 18, with the modifications discussed herein, properly apply our findings in the February 16 Order extending both indemnification protection and liability protection to Interconnection Customers acting under the Midwest ISO's LGIA.

38. We agree with Horizon that the LGIA must afford all the parties equally broad protections for interconnection work performed under the LGIA. However, we disagree with Horizon's proposed revision because it omits the language that clarifies that the Interconnection Customer warrants this protection as long as it acts in good faith. We clarify that to the extent that an Interconnection Customer performs work in good faith under its LGIA, regardless of whether it does so pursuant to the Transmission Provider's or Transmission Owner's "directive," that Interconnection Customer will have the same broad liability protection afforded the Transmission Owner. We direct the Midwest ISO to revise this provision to clarify that the provisions set forth in the tariff apply to all actions taken by the Parties to implement or comply with its obligations under the LGIA,

³⁴ Horizon's January 5 Protest at 3-5.

³⁵ See Order No. 2003 at P 26.

regardless of whether the obligation is preceded by a specific directive. The Midwest ISO also should clarify the provision so that it applies to Transmission Providers and Transmission Owners as well.

39. Regarding the proposed revision to the definition of Loss,³⁶ we find that the consolidated revisions, as proposed and agreed to by the Midwest ISO, harmonize the definition with the previous indemnity provision in article 18 by encompassing all the types of claims. The revisions also clarify that Loss does not include damages, losses or claims arising out of acts or omissions by an indemnifying party under the LGIA, in cases of gross negligence or intentional wrongdoing by the indemnified party.

40. The Midwest ISO is directed to file revised tariff sheets reflecting all of the changes it has agreed to adopt, and those other changes specified here. Additionally, we direct the Midwest ISO to file revised tariff sheets making the definition of Loss identical between the LGIP and the LGIA through a compliance filing, within 30 days of the date of this order.

4. Appendix B (Milestone Tables) and Article 11.5 (Provision of Security)

a. Background

41. The Midwest ISO proposes to add three tables to Appendix B (Milestones) to the LGIA. The first table applies to the Interconnection Customer and contains descriptions of requirements and the associated dates for those requirements. One example of the required milestones to be included in the table is the article 11.5 requirement that the Interconnection Customer provide the Transmission Owner with a form of financial security at least 30 days prior to commencement, design, procurement and construction of a discrete interconnection facility or upgrade.

42. The second table contains similar information but applies to the Transmission Owner. An example of information included in the table is the article 12.2 requirement to refund to the Interconnection Customer any overpayment of estimated costs.

43. The third table is presently empty and would apply to an Affected System Owner for an interconnection.

³⁶ See *supra* P 27 & n.30.

b. Comments and Protests

44. ATC's concern lies with the nexus between the proposed table for the Interconnection Customer and article 11.5 of the LGIA. ATC argues that the proposed Table for the Interconnection Customer in Appendix B will contain milestones and dates that are negotiated. Whereas article 11.5 of the LGIA, asserts ATC, is general in nature, addressing the obligation of the Interconnection Customer to provide financial security to the Transmission Owner at least 30 days prior to commencement, design, procurement and construction of a discrete interconnection facility or upgrade. ATC suggests that without modification there would be an "un-reconcilable conflict" between the provisions in Appendix B as proposed and article 11.5 and that in the event of such conflict the language of article 11.5 will prevail. ATC specifically requests that article 11.5 be modified to include the following introductory phrase, "Unless otherwise provided in Appendix B,...."³⁷

c. The Midwest ISO's Answer

45. In response, the Midwest ISO disagrees that Attachment X creates an un-reconcilable conflict with the provisions of Appendix B, but it does not oppose ATC's proposed revision, and agrees to adopt the language ATC proposed for article 11.5.³⁸

d. Commission Determination

46. The Commission finds that the tables may assist the parties in meeting their obligations. However, we will require certain changes. For each activity listed, wherever possible, the tables should refer the reader to the LGIA article or LGIP section describing the activity.³⁹ We also require that the Applicant remove an activity that appears to be erroneously listed as both a responsibility of the Transmission Owner in the Transmission Owner Milestones table and of the Interconnection Customer in the Interconnection

³⁷ ATC at 11-14.

³⁸ Midwest ISO Answer at 6-7.

³⁹ For example, the Transmission Owner table does not include references for refunding overpayment of estimated costs (article 12.2) or for providing comments on Interconnection Customer's final design and specifications (article 5.10.1).

Customer Milestones table. In fact, this activity belongs only to the Interconnection Customer and is properly included only on the Interconnection Customer Milestone table.⁴⁰

47. We find that ATC's suggested revision to article 11.5 is necessary to indicate the specific date that would prevail in the event of a disagreement between the parties and accept the Midwest ISO's commitment to modify article 11.5 accordingly as an independent entity variation. We direct the Midwest ISO to submit a compliance filing modifying article 11.5 and Appendix B within 30 days of the date of this order.

5. New Articles 5.16.2 (Effect of Missed Interconnection Customer Milestones) and 5.16.3 (Effect of Suspension: Parties Obligations)

a. Background

48. The Midwest ISO proposes new articles 5.16.2 (Effect of Missed Interconnection Customer Milestones) and 5.16.3 (Effect of Suspension: Parties Obligations), which address when Milestones as listed in Appendix B are missed.

49. The Midwest ISO asserts that the proposed language in article 5.16.2 clarifies interconnection customer's responsibilities to notify parties of a suspension. The Midwest ISO states that it has seen instances where the status of a project has been unknown for a long period of time, possibly affecting the study status of lower-queued interconnections, because the interconnection customer failed to notify parties of a suspension and the transmission owner failed to follow article 17 default procedures or otherwise act to terminate the agreement.⁴¹ New article 5.16.2 would read as follows:

Effect of Missed Interconnection Customer Milestones. If Interconnection Customer fails to provide notice of suspension pursuant to Article 5.16, but Interconnection Customer fails to fulfill or complete any Interconnection Customer Milestones provided in Appendix B ("Milestone"), this constitutes a Breach under this LGIA. Depending upon the consequences of the Breach and effectiveness of the cure, the Transmission Owners' Milestones may be revised

⁴⁰ See the first activity listed under Row 7, "Interconnection Facilities to Transmission Owner and Transmission Provider for comment (LGIA 5.10.1)" on the Transmission Owner Milestones table.

⁴¹ Transmittal letter at 10.

consistent with Reasonable Efforts, and in consideration of all relevant circumstances. Parties shall employ Reasonable Efforts to maintain their remaining respective Milestones.

50. The Midwest ISO states that the new article 5.16.3 (Effect of Suspension; Parties Obligations) was requested by stakeholders (both Transmission Owners and Interconnection Customers) to clarify the LGIP and LGIA suspension process, the effect of suspension, the obligations of parties during the suspension period, and the recommencing of work following the suspension period. Article 5.16.3 would specify the cost responsibilities where an Interconnection Customer suspends its project and would allow the Interconnection Customer to have additional flexibility in determining how it desires to proceed. New article 5.16.3 would read as follows:

Effect of Suspension; Parties Obligations. In the event that Interconnection Customer suspends work pursuant to this Article 5.16, all construction duration, timelines and schedules set forth in Appendix B shall be suspended during the period of suspension. Should Interconnection Customer request that work be recommenced, Transmission Owner shall be obligated to proceed with Reasonable Efforts and in consideration of all relevant circumstances including regional outage schedules, construction availability and material procurement in performing the work as described in Appendix A and Appendix B. Transmission Owner will provide Interconnection Customer with a revised schedule for the design, procurement, construction, installation and testing of the Transmission Owner's Interconnection Facilities and Network Upgrades. Upon any suspension by Interconnection Customer pursuant to Article 5.16, Interconnection Customer shall be responsible for only those costs specified in this Article 5.16.

51. In consideration of the Interconnection Customer's interest to provide input in revising milestones, the Midwest ISO proposes, in its answer, to modify the second to the last sentence of article 5.16.2 to read as follows:

Depending upon the consequences of the Breach and the effectiveness of the cure, the Transmission Customer's Milestones may be revised, following consultation with the Interconnection Customer, consistent with Reasonable Efforts, and in consideration of all relevant circumstances.⁴²

52. The Midwest ISO, in its answer, does not propose to further modify article 5.16.3.

⁴² Midwest ISO Answer at 10 and 11.

b. Commission Determination

53. We accept the Midwest ISO's new articles 5.16.2 and 5.16.3, subject to the Midwest ISO further revising article 5.16.2, as discussed below. We accept these variations under the independent entity variation standard.

54. We find that the first sentence of article 5.16.2 should be corrected to replace "but" with "and." We also accept in part and reject in part the Midwest ISO's proposed revision to require that the Transmission Owner consult with the Interconnection Customer prior to revising the Transmission Owners' Milestones. We find that the Midwest ISO's proposed language gives proper consideration to the Customer's interests as the Transmission Owner revises its Milestones. However, article 5.16.2 should be further revised to reference article 17, which addresses when a Breach is cured, and should read as directed below. We direct the Midwest ISO to, within 30 days of the date of its order, submit a compliance filing revising article 5.16.2 as follows (underlined text is the new addition):

Depending upon the consequences of the Breach and the effectiveness of the cure pursuant to Article 17, the Transmission Customer's Milestones may be revised, following consultation with the Interconnection Customer, consistent with Reasonable Efforts, and in consideration of all relevant circumstances.

6. Appendices A and C to the LGIA

a. Background

55. The Midwest ISO proposes, at the request of stakeholders, to revise Appendix A to provide a convenient "fill in the blank" format to describe the Generating Facility, delineate the Point of Interconnection, and identify and describe relevant Interconnection Facilities to be constructed by the Parties per their agreement, with descriptions and cost justifications to be provided in attached exhibits. The revisions also include a request for a single-line diagram. The Midwest ISO further proposes to revise Appendix C to request that parties provide additional drawings, information and documents pursuant to article 5.11 of the LGIA.⁴³

⁴³ Transmittal letter at 12 and Second Revised Sheet Nos. 1714Z.124, 1714Z.124A, 1714Z.125, 1714Z.126, 1714Z.128 and 1714Z.128A.

b. Commission Determination

56. We accept these variations under the independent entity variation standard as providing additional detail and improving the usefulness of these Appendices.

7. Article 7.1 (General) and Article 7.4 (Testing of Metering Equipment)

a. Background

57. The Midwest ISO proposes to clarify and reorganize articles 7.1 (General) and 7.4 (Testing of Metering Equipment). The proposed changes: (1) clarify the purposes of

Article 7; (2) indicate that the Metering Party is the party that installs the Metering Equipment; and (3) adopt the Commission's Standard LGIA provisions which were omitted from the Midwest ISO pro forma agreement.⁴⁴

b. Commission Determination

58. We will accept the proposed variations under the independent entity standard and note that most of the proposed changes merely reinstate previously accepted language that was inadvertently removed in subsequent filings made by the Midwest ISO to Attachment X.⁴⁵

⁴⁴ Transmittal letter at 11 and Second Revised Sheet No. 1714Z.83.

⁴⁵ *Supra* n. 16.

The Commission orders:

The Midwest ISO's revised tariff sheets are hereby accepted, effective November 16, 2005, subject to modifications and a compliance filing due within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting in part with a statement to be issued later.

(S E A L)

Magalie R. Salas,
Secretary.