

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Jon Wellinghoff.

Midwest Independent Transmission  
Operator, Inc.

Docket No. ER06-1315-000

ORDER ACCEPTING TARIFF REVISIONS FOR FILING  
AND DIRECTING COMPLIANCE FILING

(Issued September 29, 2006)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revisions to Attachment X (Standard Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA)) of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (Midwest ISO TEMT). The proposed variation would allow an interconnection customer to receive a higher level of interconnection service on a conditional basis until a higher queued project goes into service and uses the available capacity. In this order, the Commission accepts the variation, but directs the Midwest ISO to submit a compliance filing providing further clarification.

**Background**

2. On October 11, 2005, the Midwest ISO submitted for filing an executed LGIA among the Midwest ISO, Union Electric Company d/b/a Ameren UE (Union Electric) and Central Illinois Public Service Company d/b/a AmerenCIPS (Central Illinois). That LGIA provided for the Midwest ISO to interconnect Union Electric's generating facility to Central Illinois's transmission system. The Commission determined<sup>1</sup> that Article 4.1

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,078 (2006) (January 27 Order).

of the LGIA did not conform to the Midwest ISO's Order No. 2003 *pro forma* LGIA.<sup>2</sup> The non-conforming provision would allow Union Electric to obtain conditional network resource interconnection service until a higher queued project goes into service. Once a higher-queued project goes into service, the generating facility might have to be re-designated to receive energy resource interconnection service (ERIS), or, alternatively, Union Electric could request to be re-studied to determine the amount of generating capacity that may receive network resource interconnection service (NRIS).

3. In the January 27 Order, the Commission said that a provision such as this may provide benefits by allowing an interconnection customer to receive a higher level of interconnection service conditionally, making use of available capacity without disturbing queue positions, and resulting in a more efficient use of the transmission system. However, we found that such a right must be offered in a manner that is not unduly discriminatory, that treats similarly situated interconnection customers consistently and fairly. We rejected the executed LGIA, noting that the Midwest ISO could either remove the non-conforming provision from the executed LGIA or file to amend its *pro forma* tariff to include the proposed provision.

4. On rehearing,<sup>3</sup> the Commission granted rehearing and conditionally accepted the executed LGIA, subject to the Midwest ISO either revising its *pro forma* LGIA to conform with Article 4.1 of the executed LGIA or removing the non-conforming provision from the executed LGIA within 90 days. It stated:<sup>4</sup>

We agree with the petitioners that the proposal to allow an interconnection customer to receive a higher level of interconnection service on a conditional basis can provide benefits. However, these benefits should be

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<sup>2</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003-C), *appeal docketed National Assoc. of Regulatory Utility Commissioners, et al. v. FERC*, No. 04-1148, *et al.* (D.C. Cir. May 3, 2004).

<sup>3</sup> *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,009 (2006) (Rehearing Order).

<sup>4</sup> *Id.* at P 10-11.

made available to all interconnection customers in a transparent, non-discriminatory manner, which the Midwest ISO now says it has been doing. The independence of the Midwest ISO and the fact that the Midwest ISO must go through its stakeholder process before it can file to amend its *pro forma* agreement, argue in favor of allowing this provision now. Therefore, we will waive our regulation at 18 C.F.R. § 35.28(f)(1)(ii) to permit this non-conforming provision. In order to ensure that the service continues to be offered to all customers, the Midwest ISO should file to amend its *pro forma* agreement to include this language.

The Rehearing Order also clarified that the Midwest ISO could propose to amend its *pro forma* tariff under the “independent entity standard” or the “consistent with or superior to standard” to include the proposed provision.<sup>5</sup>

5. In the filing now at hand, the Midwest ISO proposes to amend its *pro forma* LGIA to offer ERIS and NRIS on a conditional basis to all customers. The Midwest ISO asserts that this variation meets both the independent entity standard and the consistent with or superior to standard.

6. According to the Midwest ISO, the proposed revisions address the particular situation of the Midwest ISO as an independent entity. It notes that it is not uncommon for higher queued projects to drop out of the queue and ultimately not build their planned facilities. It states that the proposed revisions account for these circumstances by permitting lower queued projects to defer building Network Upgrades until it is definitely determined that such upgrades are needed. It further states that the proposed revisions are consistent with or superior to the existing provisions, and that the concept of conditional ERIS and NRIS is consistent with existing provisions in the LGIP and the LGIA, citing to the Commission’s findings in the January 27 Order.

7. The concept of conditional ERIS and NRIS, says the Midwest ISO, originates from section 3.2 of the LGIP and Article 5.9 of the LGIA, which allow limited operation of generating facilities and a lower form of interconnection service if only certain upgrades are completed. It states that the concept of conditional ERIS and NRIS expands on these principles and extends a lower form of interconnection service (conditional service) to all interconnection customers. This allows maximum use of the transmission system and ensures that Network Upgrades are constructed only when they are needed.

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<sup>5</sup> *Id.* at P 11, *citing* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827.

The Midwest ISO states that conditional ERIS or NRIS allows the interconnection customer to use all available energy/network resource capacity until a higher queued project goes into service and uses the available capacity. It further states:

Allowing the option of conditional ERIS and NRIS defers Network Upgrades until such time as it is finally determined that they are actually required in order to provide the requested interconnection service. The proposed revisions to the LGIP and LGIA assure that once a higher queued project goes into service and uses the available capacity on the transmission system, the lower queued project actually commits to the necessary studies and builds the Network Upgrades required to ensure the reliability of the Transmission System.<sup>6</sup>

8. In particular, the Midwest ISO's revisions would: revise sections 3.2.1.1 and 3.2.2.1 of the LGIP to indicate that ERIS and NRIS may be provided on a conditional basis; add a paragraph to Article 4.1.1.1 of the LGIA to describe conditional ERIS; and add a new subsection to Article 4 of the LGIA that describes conditional NRIS. Language added to Article 4 of the LGIA provides that conditional ERIS (or NRIS) may be granted to the extent there is such capacity available until such time as a higher queued project with a later service date affecting the same common elements is placed into service. The Midwest ISO's proposed language would also allow conditional NRIS to be converted to ERIS if either of the following events occurs:

- 1) The interconnection customer fails to fund necessary studies and Network Upgrades required to allow the interconnection customer's Generating Facility to receive NRIS upon completion of higher queued projects involving the same common elements; or
- 2) The higher queued project or planned and required Network Upgrades are placed in service and the Network Upgrades required to provide NRIS status to the interconnection customer's Generating Facility are not in service.

9. The Midwest ISO requests waiver of the 60-day notice requirement<sup>7</sup> to allow the proposed revisions to become effective on August 1, 2006, in order to expedite the processing of other interconnection agreements pending at the Commission that contain

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<sup>6</sup> Midwest ISO's Transmittal Letter at 5.

<sup>7</sup> 18 C.F.R. § 35.3 (2006).

conditional NRIS language that did not conform to the current *pro forma* LGIA and could be resolved by the proposed changes to the Midwest ISO's *pro forma* LGIA.<sup>8</sup> It explains that at least one of those projects may go into service before the expiration of the 90 day period given by the Rehearing Order.

### **Notice of Filing and Responsive Pleadings**

10. Notice of the Midwest ISO's filing was published in the *Federal Register*,<sup>9</sup> with motions to intervene and protests due on or before August 21, 2006.

11. Ameren Services Company, Inc. (Ameren) filed a timely motion to intervene and comments supporting the filing. The Midwest TDUs<sup>10</sup> filed a timely motion to intervene and protest. Timely motions to intervene, raising no substantive issues, were filed by: Xcel Energy Services Inc., on behalf of its utility operating company affiliates Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); the Midwest ISO Transmission Owners; Consumers Energy Company; and Endeavor Power Partners, L.L.C. On August 22, 2006, the Midwest Stand-Alone Transmission Companies (Transmission Companies)<sup>11</sup> filed a motion to intervene out-of-time and comments. On September 5, 2006, the Midwest ISO filed an answer. On September 12, 2006, Midwest Renewable Energy Projects, LLC (Midwest Renewable) filed a motion to intervene out-of-time and protest.

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<sup>8</sup> See Rehearing Order at P 8 & n.4 (noting pending proposed non-conforming provisions in Article 4.1 of Midwest ISO interconnection agreements in Docket Nos. ER06-216, ER06-435, ER06-22 and ER06-158).

<sup>9</sup> 71 Fed. Reg. 45,814 (2006).

<sup>10</sup> The Midwest TDUs include Great Lakes Utilities, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and Wisconsin Public.

<sup>11</sup> For purposes of this proceeding, Midwest Stand-Alone Transmission Companies include American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

## **Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>12</sup> the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. We will grant Transmission Companies' and Midwest Renewable's motions to intervene out-of-time, given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>13</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has aided us in our decision-making process.

## **Discussion**

13. The Rehearing Order gave the Midwest ISO the option to file under the independent entity standard or the consistent with or superior to standard. We find that the Midwest ISO's filing meets the independent entity standard. In view of this determination, it is unnecessary to address whether the filing also meets the consistent with or superior to standard.

### **A. Clarification As To Whether the Conditional Service Is Optional**

#### **1. Arguments**

14. The Midwest TDUs question proposed provisions stating that an interconnection customer "may be granted conditional [NRIS] service."<sup>14</sup> They contend that this language is unclear regarding whether an interconnection customer that needs the assurance of NRIS status on a permanent basis (*e.g.*, to support financing) can turn down conditional NRIS service and obtain regular NRIS service, with appropriate upgrades. They state that, while the Midwest ISO's transmittal letter treats it as optional,<sup>15</sup> the

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<sup>12</sup> 18 C.F.R. § 385.214 (2006).

<sup>13</sup> 18 C.F.R. § 385.213(a)(2) (2006).

<sup>14</sup> They cite proposed LGIA Article 4.1.2.3, which provides, "An Interconnection Customer seeking NR Interconnection Service for new or added capacity at a Generating Facility may be granted conditional NR Interconnection Service status. . . ." They also cite a similar provision in proposed Article 4.1.1.1.

<sup>15</sup> *See, e.g.*, Midwest ISO's Transmittal Letter at 5, describing a "lower queued project opting conditional service."

Midwest ISO also states that one of its goals of the revisions is “to ensure that only necessary Network Upgrades are constructed when needed.”<sup>16</sup> The Midwest TDUs assert that it is unclear whether the customer would retain the right to insist on unconditional NRIS.

15. In its answer, the Midwest ISO asserts that its proposal is clear, but proposes clarifying revisions if the Commission finds this necessary to avoid confusion. It proposes to revise pro forma LGIA Article 4.1.1.1 (regarding conditional ERIS) as follows (its proposed new language is italicized):

*At the request of the Interconnection Customer, Conditional ER Interconnection Service may be granted subject to, among other things, the system being able to accommodate the interconnection without upgrades, until such time as a higher queued project(s) with a later service date affecting the same common elements is placed into service.*

The Midwest ISO also proposes to revise pro forma LGIA Article 4.1.2.3 (regarding conditional NRIS) as follows (proposed new language in italics):

*At the request of the Interconnection Customer, Conditional NR Interconnection Service may be granted subject to, among other things, the system being able to accommodate the interconnection without upgrades, until such time as a higher queued project(s) with a later service date affecting the same common elements is placed into service.*

## **2. Commission Determination**

16. We believe that, except as discussed below, the clarifications in Midwest ISO’s Answer convey the idea that conditional interconnection service is not guaranteed or automatic but is optional. Under the Midwest ISO’s proposal, the interconnection customer’s request for ERIS or NRIS will be studied for those services but, at the customer’s request, can also be studied for conditional ERIS or conditional NRIS before the interconnection customer needs to decide how to proceed.

17. However, the Midwest ISO does not explain what it intends by “among other things” in the proposed clarifying revisions. Thus, it must submit a compliance filing that

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<sup>16</sup> *Id.*

either incorporates the proposed additional clarifying revisions in its Answer, without the words “among other things” or provides further explanation concerning what it means by “among other things.”

**B. Commitment to Fund Studies and Network Upgrades**

**1. Arguments**

18. Regarding the commitment by the lower queued interconnection customers to fund studies and upgrades in order to qualify for conditional ERIS or conditional NRIS, Midwest TDUs contend that it is not clear what the lower queued interconnection customer would be committing to build. It is unclear whether the customer would be committing to build the Network Upgrades that would have been required at the original in-service date, assuming that the higher queued project had already begun commercial operations, or whether the commitment would be a “blank check” for unknown new facilities needed at some future date; this could be an unacceptable risk. Midwest TDUs also argue that the filing is unclear as to whether proposed LGIA Article 4.1.2.3 concerning the commitment to fund necessary studies and upgrades “has any teeth.” They state that the language seems to envision that conditional NRIS customers can convert to ERIS if they decide not fund upgrades when higher queued projects go into service and that it seems to provide for new studies to be requested if that occurs.

**2. Commission Determination**

19. We find that the proposed tariff language is clear as to the responsibilities of an interconnection customer to fund studies and Network Upgrades related to taking ERIS or NRIS regardless of whether it is regular or conditional service. While a customer seeking ERIS or NRIS may, where studies show it to be physically possible, avail itself of the conditional service option to temporarily defer the need to fund upgrades identified as required for unrestricted ERIS or NRIS, it may not defer the funding of any of the studies themselves, as they must be performed in any event. If the interconnection customer does not follow through on this obligation, the Midwest ISO will be able to terminate conditional ERIS or convert conditional NRIS to regular ERIS.

20. If an interconnection customer selects regular (non-conditional) interconnection service, it must fund the studies and Network Upgrades based on the existing network and the proposed interconnection projects with higher queue priority. However, even if the interconnection customer chooses to exercise the conditional service option, it must still fund these studies, as explained above. It is possible that in the long run, the interconnection customer may have to pay more to get to its final service level by taking conditional interconnection service than if the customer had selected and waited for

regular interconnection service, due to the possibility of restudy and new Network Upgrades being identified. This is the risk that the interconnection customer assumes when it decides to take conditional interconnection service.

**C. Effects on Subsequent Customers within the Queue**

**1. Arguments**

21. Ameren, which supports the filing, argues that the proposed revisions would allow more efficient use of the available capacity and a higher level of interconnection service for the interconnection customer without disturbing queue positions.

22. Midwest TDUs contend that the proposed tariff language does not explain what would happen to subsequent interconnection customers if a customer higher in the queue is taking conditional interconnection service. They seek clarification concerning how Network Upgrades for the subsequent interconnection customer would be identified. For example, they ask whether it is assumed that the conditional NRIS customer will fund the Network Upgrades originally identified if the higher queued project ever comes on line, or if the next customer in the queue would face the same potential upgrades because the conditional customer can forego those upgrades and convert to ERIS. They also seek clarification concerning how these upgrades are treated for purposes of Midwest ISO's planning process.

**2. Commission Determination**

23. Because conditions in the interconnection queue are dynamic, it is impossible to account for all of the possible permutations of projects coming on line, being delayed for a period of time, or simply being abandoned that could affect projects that are lower in the queue. If parties wish to reduce their risk, they may choose regular NRIS. Parties are also free to raise their concerns before the Commission on a case-by-case basis if they are unable to resolve the issue among themselves.

**D. Cost Allocation for Generator Interconnection**

**1. Arguments**

24. Midwest TDUs contend that the language regarding funding in the proposed tariff language does not match up with the Midwest ISO's cost allocation policy, which is that the interconnection customer must pay half the cost of Network Upgrades associated with

its interconnection.<sup>17</sup> They cite proposed LGIA Article 4.1.2.3, which provides for conversion from conditional NRIS to ERIS if the interconnection customer fails to fund necessary studies and Network Upgrades. They also cite proposed LGIA Article 4.1.1.1, which provides that conditional ERIS shall be terminated if the interconnection customer fails to fund the Network Upgrades necessary to grant the interconnection customer's ERIS upon the completion of the higher queued projects involving the same common elements.

## **2. Commission Determination**

25. We disagree that the proposed language violates the Midwest ISO's approved cost allocation provision. We interpret the Midwest ISO's proposal to mean that conditional ERIS can only be terminated per the conditions of Article 4.1.1.1 of the LGIA if the interconnection customer fails to pay its share of the costs for necessary studies and Network Upgrades.

### **E. Technical Conference**

#### **1. Arguments**

26. The Midwest TDUs argue that the proposed changes are difficult to follow and unclear concerning the rights and obligations of interconnection customers. They request that the Commission hold a technical conference to better develop the terms and conditions or, at a minimum, require Midwest ISO to provide more clarifying information.

27. Transmission Companies take no position as to whether a technical conference should be convened. But they agree with the Midwest TDUs that the stakeholder process followed by the Midwest ISO for the instant filing was too limited. Transmission Companies request that, in the future, the Midwest ISO vet tariff filings related to interconnection services through a working group recently formed by transmission owners to address interconnection issues. They state that input from transmission owners and other stakeholders is necessary because interconnection agreements within the Midwest ISO are three-party agreements between the Midwest ISO, interconnection customers, and transmission owners.

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<sup>17</sup> They cite *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106, P 61 (2006), *reh'g pending*.

## 2. Commission Determination

28. We have addressed the issues raised by the Midwest TDUs in this order, either summarily or by directing the Midwest ISO to provide clarification. Thus, we deny the Midwest TDUs' request to convene a technical conference in this proceeding. To the extent that their concern about problems with management of the queue is a request to address matters other than the proposed tariff revisions, they raise issues beyond the scope of this proceeding.

### F. Efficient Use of Available Resources

#### 1. Arguments

29. Midwest Renewable does not oppose the concept underlying the Midwest ISO's filing. But it argues that the proposed language will place entities that are either lower in the queue or not in the queue at all at a competitive disadvantage compared with those entities taking conditional interconnection service. Midwest Renewable interprets the proposal as allowing lower queued interconnection customers with early in-service dates to take temporary interconnection service and defer funding of the Network Upgrades needed to support that interconnection service until higher queued projects with later in-service dates are completed. Midwest Renewable is concerned that the network resource's deferred Network Upgrade costs would not take into account the total cost of delivered power under such temporary service. By deferring consideration of Network Upgrade costs, certain higher-cost generating projects could displace lower-cost projects during the resource planning process because the planning process would not take into account the true cost to deliver the energy as part of the overall cost to consumers when determining the lowest cost provider. This would hamper competition and create inequities in the market, according to Midwest Renewable. Therefore, Midwest Renewable argues that the Commission should reject the proposed tariff revisions.

30. Alternatively, if the Commission accepts the Midwest ISO's filing, Midwest Renewable requests that the Commission address the Network Upgrade issue and specify that state commissions, in examining whether the lowest cost provider has actually been chosen for conditional network resource status, will include the deferred Network Upgrade costs in such calculations. Further, they request that the Commission mandate that generators taking advantage of temporary conditional network resource status pay for the required upgrades at the time of their interconnection.

#### 2. Commission Determination

31. Midwest Renewable's argument is speculative. The purpose of this proposal is to foster the efficient use of available resources, as discussed above.

32. Additionally, we reject Midwest Renewable's request that the Commission dictate to state commissions how they should exercise their authority as that request clearly extends beyond the Commission's jurisdiction.<sup>18</sup> Finally, the Commission will not require entities taking conditional interconnection service to pay for required upgrades at the time of their taking conditional service, as that would negate the value of this proposal. Entities taking interconnection service will only have to pay for any necessary Network Upgrades at the time that their conditional service ends and they decide to take unconditional (either ERIS or NRIS) interconnection service.

**G. Conclusion**

33. Accordingly, we will grant waiver of the 60-day notice requirement in order to expedite the processing of Midwest ISO's other interconnection agreements pending at the Commission and conditionally accept the proposed revisions for filing, without suspension or hearing, to become effective on August 1, 2006. We will also direct the Midwest ISO to submit a compliance filing within 30 days of the date of this order, as ordered below.

The Commission orders:

(A) The Midwest ISO's proposed revisions to the LGIP and *pro forma* LGIA are hereby conditionally accepted for filing, as discussed in the body of this order.

(B) The Midwest ISO is hereby to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>18</sup> Nothing in this order, however, precludes a state commission from seeking information related to the costs associated with interconnection from the utilities subject to its jurisdiction.