

125 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. Docket No. ER06-22-003

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 13, 2008)

1. This order accepts the compliance filing by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) of a revised Large Generator Interconnection Agreement (Interconnection Agreement) between itself, Endeavor Power Partners, LLC (Endeavor) and Interstate Power and Light Company (Interstate) (Compliance Interconnection Agreement). The Compliance Interconnection Agreement makes the changes required by the Commission in the August 18, 2006 order in these proceedings¹ and certain other changes. In addition, this order rejects Endeavor's claim that the Compliance Interconnection Agreement unduly discriminates against it.

Background

A. Endeavor's Original Interconnection Agreement and Revision of Midwest ISO's *pro forma* Interconnection Agreement

2. Endeavor's obtaining an Interconnection Agreement for its generating facility, Project G426, is intertwined with Midwest ISO's revising its *pro forma* Interconnection Agreement to permit generators, in certain situations, to receive Energy Resource

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,155 (2006) (Rehearing Order). This order granted rehearing of the Commission's March 10, 2006 order that had rejected two interconnection agreements concerning Midwest ISO and Interstate, one with Endeavor for Project No. G426 and the other with a different company. See P 4, *infra*.

Interconnection Service or Network Resource Interconnection Service on a conditional or temporary basis, if the system can accommodate the interconnection without upgrades.²

3. The original, unexecuted Interconnection Agreement for Endeavor's Project G426 (Original Interconnection Agreement) contained various provisions that did not conform to Midwest ISO's then-existing *pro forma* Large Generator Interconnection Agreement (*pro forma* Interconnection Agreement).³ Not at issue between the parties was the non-conforming language, in section 4.1, that would allow Endeavor to receive conditional Network Resource Interconnection Service until a higher-queued project goes into service. The language was intended to address the situation where, because of constraints on the transmission system, an interconnection customer seeking Network Resource Interconnection Service will not qualify for such service until additional studies or transmission system upgrades are completed. Conditional Network Resource Interconnection Service would allow Endeavor to receive this higher form of interconnection service, if available, prior to completion of the additional studies or the system upgrades.

4. The Commission rejected the Original Interconnection Agreement because section 4.1 deviated from the *pro forma* Interconnection Agreement.⁴ Although the Commission recognized the potential benefits of conditional Network Resource Interconnection Service, i.e., leaving a project's queue position undisturbed while making more efficient use of the transmission system, it found that Midwest ISO had not justified making these benefits available only to Endeavor and not to other, similarly situated, interconnection customers. The Commission stated that Midwest ISO could propose to modify its *pro forma* Interconnection Agreement to allow all customers to apply for

² The Midwest ISO Transmission and Energy Markets Tariff (Tariff) defines Energy Resource Interconnection Service as "The interconnection of a Generation Resource to the Transmission System or distribution system, as applicable, to be eligible to deliver the Generation Resource's electric output using the existing firm or non-firm capacity of the Transmission System on an as available basis." It defines Network Resource Interconnection Service as "The interconnection of a Generation Resource to the Transmission System in a manner that would allow it to qualify as a Network Resource without additional Network Upgrades."

³ Midwest ISO's *pro forma* Interconnection Agreement, as well as its Large Generator Interconnection Procedures (Interconnection Procedures), are in Attachment X of the Midwest ISO Open Access Transmission and Energy Markets Tariff (Tariff).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,256 (2006).

conditional Network Resource Interconnection Service. Alternatively, Midwest ISO would have to remove the non-conforming language from the Original Interconnection Agreement.⁵

5. On August 18, 2006, the Commission granted rehearing.⁶ The Commission noted that Midwest ISO had filed a proposal to amend its *pro forma* Interconnection Agreement to include the conditional interconnection service provisions of section 4.1. The Commission accepted the Original Interconnection Agreement, conditioned on the outcome of the proceeding on Midwest ISO's proposed revisions to its *pro forma* Interconnection Agreement.⁷

6. On September 29, 2006, the Commission conditionally accepted Midwest ISO's proposed revisions to its *pro forma* Interconnection Agreement and Interconnection Procedures, with a few minor exceptions.⁸ The revisions to section 4.1 of the Midwest ISO *pro forma* Interconnection Agreement, although similar to the conditional service provisions in the Original Interconnection Agreement, were not identical. The revisions to the *pro forma* Interconnection Agreement did not include language regarding transmission studies specific to Endeavor, nor did they discuss how a portion of the Endeavor generating facilities could be designated for conditional Network Resource Interconnection Service.

⁵ *Id.* P 8.

⁶ Rehearing Order at P 6, citing the reasons given in *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,009 (2006). There, the proposed Interconnection Agreement contained the same, non-conforming section 4.1. Noting the benefits of higher level interconnection service on a conditional basis, and also that Midwest ISO must go through its stakeholder process before filing to amend its *pro forma* Interconnection Agreement, the Commission accepted the non-conforming Interconnection Agreement on the condition that Midwest ISO file to amend its *pro forma* Interconnection Agreement to conform with section 4.1, and that the Commission accept the amendment.

⁷ Rehearing Order at 6.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,306 (2006). On compliance, Midwest ISO filed a revised version of the *pro forma* Interconnection Agreement, which was accepted. *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER06-1315-001 (Dec. 19, 2006) (unpublished letter order).

B. The Compliance Interconnection Agreement

7. Midwest ISO filed the Compliance Interconnection Agreement, on January 18, 2007, to comply with the Rehearing Order. The Compliance Interconnection Agreement is nearly identical to the final version of the *pro forma* Interconnection Order. It also includes a few other minor revisions to the Midwest ISO *pro forma* Interconnection Agreement that had been pending when the Original Interconnection Agreement was filed, but were since accepted.⁹

Notice of Filing and Responsive Pleadings

8. Notice of the filing of the Compliance Interconnection Agreement was published in the *Federal Register*, 72 Fed. Reg. 4,256 (2007), with interventions and protests due on or before February 8, 2007. On February 9, 2007, Endeavor filed a motion to intervene out-of-time and to protest. On February 27, 2007, Midwest ISO filed an answer to Endeavor's protest.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ we will grant Endeavor's unopposed, late intervention and protest, given the absence of any undue prejudice or delay and its interest in this proceeding.

10. Rule 213(a) of the Commission's Rules of Practice and Procedure¹¹ prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making.

⁹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,134 (2006) (order accepting revisions to *pro forma* Interconnection Agreement and Interconnection Procedures, subject to modification).

¹⁰ 18 C.F.R. § 385.214 (2008).

¹¹ *Id.* § 385.213(a)(2).

B. Nature of Service**1. Endeavor's Protest**

11. Endeavor¹² is dissatisfied with Midwest ISO's changes to section 4.1 in the Compliance Interconnection Agreement that eliminate what Endeavor characterizes as its option to convert its conditional Energy Resource Interconnection Service to conditional Network Resource Interconnection Service. It points out that, in the Original Interconnection Agreement, section 4.1 has a checkmark for Energy Resource Interconnection Service, as opposed to Network Resource Interconnection Service, and that following the checkmark is text offering Endeavor conditional Energy Resource Interconnection Service or Network Resource Interconnection Service:

to the extent the Generating Facility is determined to meet the classification of NR Interconnection Service, the Parties agree to so amend this Article 4.1 following completion of the additional studies.

Endeavor points out that section 4.1 of the Original Interconnection Agreement then goes on to describe how portions of the generating facility would be classified as Network Resource Interconnection Service, thus supporting Endeavor's contention that it has the option to convert to Network Resource Interconnection Service. In contrast, section 4.1 of the Compliance Interconnection Agreement has only a checkmark for Energy Resource Interconnection Service and no expanded text.

12. Endeavor argues that the Original Interconnection Agreement automatically became effective and binding on the parties, without the need for Midwest ISO to file a Compliance Interconnection Agreement, when the Commission conditionally accepted it on rehearing and then accepted the revisions to the Midwest ISO *pro forma* Interconnection Agreement concerning conditional interconnection service. In other words, Endeavor argues that its Original Interconnection Agreement is "grandfathered" and need not conform to the slightly different, revised Midwest ISO *pro forma* Interconnection Agreement. It asserts that the Rehearing Order shows that the Commission intended to give Endeavor the option to convert to Network Resource Interconnection Service because the Commission conditioned its approval of the Original Interconnection Agreement only on Midwest ISO filing a proposed amendment to its *pro forma* Interconnection Agreement and Commission acceptance of that amendment.

¹² Endeavor is joined in its Protest by Osceola Windpower, LLC, the current owner of the G426 generating facility. The Commission authorized the transfer in *Endeavor Power Partners, LLC*, 118 FERC ¶ 62,007 (2007).

13. Alternatively, Endeavor argues that application of section 4.1 to Endeavor is unduly discriminatory. Endeavor cites compliance filings by Midwest ISO in three dockets concerning Central Illinois Public Service Company (Central Illinois) and Union Electric Company (Union Electric), operating subsidiaries of the Ameren Corporation (Ameren).¹³ Endeavor states that, in the Interconnection Agreements for the two Central Illinois projects, neither Energy Resource Interconnection Service nor Network Resource Interconnection Service is checked, so that these projects enjoy the option as to which service to choose. With regard to the Union Electric Interconnection Agreement, Network Resource Interconnection Service is checked, with the option to ultimately select Energy Resource Interconnection Service status.

14. Endeavor interprets new section 4.1.2.3 in the Compliance Interconnection Agreement as providing it with the right to obtain conditional Network Resource Interconnection Service (to the extent that available capacity can provide such service) without Endeavor losing its place in the interconnection queue. However, Endeavor is concerned by a February 6, 2007 e-mail message in which Midwest ISO states that the Compliance Interconnection Agreement is for Energy Resource Interconnection Service, and that Midwest ISO's Large Generator Interconnection Process allows for conversion to Network Resource Interconnection Service only by making a new interconnection request and being evaluated for Network Resource Interconnection Service.¹⁴ Endeavor understands this to mean that it has no opportunity to receive Network Resource Interconnection Service unless it submits a new interconnection request and goes to the end of the interconnection queue. Endeavor objects that such treatment is unduly discriminatory, compared to the three Ameren customers. It asks the Commission to either: (1) direct Midwest ISO to make a compliance filing in which neither Energy Resource Interconnection Service nor Network Resource Interconnection Service is checked in section 4.1 or else Network Resource Interconnection Service is checked, or (2) interpret section 4.1.2.3 as providing Endeavor the option of obtaining Network Resource Interconnection Service without forfeiting its place in the queue.

2. Midwest ISO's Answer

15. Midwest ISO answers that it filed the Compliance Interconnection Agreement because the revisions ultimately adopted as amendments to its *pro forma* Interconnection Agreement did not duplicate the exact language of the Interconnection Agreements filed

¹³ Endeavor cites the amended Interconnection Agreements that Midwest ISO filed in Docket Nos. ER06-30-003 and ER06-1059-001 (Central Illinois) and Docket No. ER06-216-002 (Union Electric). These amended Interconnection Agreements were accepted by unpublished letter orders on March 16, 2007 and February 23, 2007.

¹⁴ Endeavor Protest, Attachment A.

for Endeavor, Central Illinois, or any of the other Interconnection Agreements pending at that time. Midwest ISO understood the Commission's orders requiring amendment of the *pro forma* Interconnection Agreement and incorporation of the revised provisions in pending Interconnection Agreements to mean that all customers must receive access to the conditional Energy Resource Interconnection Service/Network Resource Interconnection Service option in a consistent fashion. For this reason, it was necessary to make compliance filings for the Endeavor Interconnection Agreement and the other pending Interconnection Agreements. Had Midwest ISO not done so, it states, the various interconnection projects whose Interconnection Agreements were to be accepted upon Commission acceptance of Midwest ISO's revisions to its *pro forma* Interconnection Agreement would have had differing provisions governing conditional Energy Resource Interconnection Service or Network Resource Interconnection Service.

16. Midwest ISO defends its designation of Energy Resource Interconnection Service in the Compliance Interconnection Agreement. The designation results from Endeavor's statement, in a June 22, 2006 e-mail message, that it had decided to request Energy Resource Interconnection Service. The e-mail message states:

[Endeavor] has decided to request Energy Resource Interconnection Request (*sic*) (ERIS) for the G426 [Interconnection Agreement]. It is our understanding that with this option, no further studies will be required for the project; but we may still be able to apply for a NRIS at some later date when the NRIS limitations have been resolved.¹⁵

Midwest ISO had informed Endeavor, in a March 25, 2006 e-mail message,¹⁶ that the project could not be granted Network Resource Interconnection Service because the Deliverability Study Report had concluded that the project failed the Network Resource test. In this e-mail message, Midwest ISO gave Endeavor the choice of continuing with a Network Resource Interconnection Service request and performing additional studies, or choosing an Energy Resource Interconnection Service request, which would not require additional studies. Midwest ISO states that it considered Endeavor to have elected Energy Resource Interconnection Service based on the June 22, 2006 e-mail message. Midwest ISO states further that a future request by Endeavor for Network Resource Interconnection Service will be governed by the Interconnection Procedures in accordance with the now-accepted provisions of the *pro forma* Interconnection Agreement, which provides conditional Energy Resource Interconnection Service and Network Resource Interconnection Service to all customers on equal terms.

¹⁵ Midwest ISO Answer, Attachment 1.

¹⁶ Midwest ISO Answer, Attachment 2.

17. Midwest ISO points out that section 4.1 in the Original Interconnection Agreement simply showed its willingness to amend the section if the Endeavor generating facility met the classification for Network Resource Interconnection Service based on then-pending studies. It states that the section did not provide for conversion to Network Resource Interconnection Service beyond such pending studies.¹⁷ Midwest ISO maintains that, while section 4.1 in the Original Interconnection Agreement did not specify “separate interconnection request,” the Midwest ISO Interconnection Procedures require a new interconnection request for Midwest ISO to perform the necessary studies to consider a request to convert to Network Resource Interconnection Service after election of Energy Resource Interconnection Service. Midwest ISO continues that nothing in section 4.1 of the Original Interconnection Agreement guaranteed Endeavor a permanent right to convert to Network Resource Interconnection Service after electing Energy Resource Interconnection Service without affecting its queue position.

18. Midwest ISO denies that it is treating Endeavor in an unduly discriminatory manner. The fact that neither Network Resource Interconnection Service nor Energy Resource Interconnection Service is selected in the check boxes in section 4.1 for Central Illinois’ Interconnection Agreements does not affect Endeavor’s election, made in the June 22, 2006 e-mail message, not to pursue Network Resource Interconnection Service. Midwest ISO states that the compliance filings for the Ameren operating companies did not alter previous elections that those entities had made. The details and elections were unique to each company’s circumstances and were ultimately subject to the outcome of studies on the availability of Network Resource Interconnection Service. Because of evolving use of conditional Energy Resource Interconnection Service and Network Resource Interconnection Service in Interconnection Agreements, customers’ use of the check box to elect either Network Resource Interconnection Service or Energy Resource Interconnection Service varied among Interconnection Agreements; the details of each situation were described in each Interconnection Agreement and accompanying appendices. Concerning the Ameren operating companies’ Interconnection Agreements, Midwest ISO states that, for one project, studies indicated that network upgrades were no longer needed for interconnection service, so that the Network Resource Interconnection

¹⁷ Midwest ISO highlights section 4.1 text stating:

To the extent Interconnection Customer desires to obtain NR service for any portion of the Generating Facility in addition to that supported by such additional studies, Interconnection Customer will be required to request such additional NR Interconnection Service by requesting further studies to determine the required network upgrades in accordance with the LGIP.

Service is no longer conditional. It states further that the other Ameren Interconnection Agreements merely maintained the services elected by the customers. Midwest ISO concludes that to grant Network Resource Interconnection Service to Endeavor without a new interconnection request and study, as required by the Midwest ISO Tariff, would discriminate in favor of Endeavor.

3. Commission Determination

19. We will accept the Compliance Interconnection Agreement. Contrary to Endeavor's protest, the language in the original Interconnection Agreement did not automatically become effective and binding when the Commission conditionally accepted the Original Interconnection Agreement on rehearing. In that order, the Commission clearly stated that acceptance of the Original Interconnection Agreement was conditioned on the outcome of the then-pending *pro forma* Interconnection Agreement proceeding.¹⁸ Thus, when that proceeding produced language different from the Original Interconnection Agreement, Midwest ISO had to modify the Original Interconnection Agreement to agree with the revised *pro forma* Interconnection Agreement. Otherwise, the condition in the Rehearing Order would not have been satisfied. The Rehearing Order's lack of a directive to make a compliance filing was an oversight.

20. We also reject Endeavor's claims of discriminatory treatment. The fact that other customers received Network Resource Interconnection Service and Endeavor did not receive Network Resource Interconnection Service, does not mean that Endeavor was treated in an unduly discriminatory manner. We do not agree that the text of the Original Interconnection Agreement gave Endeavor the indefinite ability to switch freely back and forth between services. Nor were other customers granted this option. Once Midwest ISO had determined, based on studies, that Network Resource Interconnection Service was unavailable for Endeavor on a conditional basis, as it notified Endeavor in the March 25, 2006 e-mail message, Endeavor had to choose either Energy Resource Interconnection Service or Network Resource Interconnection Service. We agree with Midwest ISO that Endeavor's June 22, 2006 e-mail message shows that it chose Energy Resource Interconnection Service. Therefore, any later service request would be a new request for service. As Midwest ISO explains, Network Resource Interconnection Service studies determined the outcome of each Network Resource Interconnection Service request. Under the Interconnection Agreements, if Network Resource Interconnection Service is not available on a conditional basis, the customer must either proceed with its Network Resource Interconnection Service request or choose Energy

¹⁸ Rehearing Order, 116 FERC ¶ 61,555 at P 6.

Resource Interconnection Service. This was true for Endeavor and Midwest ISO's other customers, including the three Ameren customers cited by Endeavor. Accordingly, we find Endeavor's claims of undue discrimination to be unfounded.

The Commission orders:

The Compliance Interconnection Agreement is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.