

127 FERC ¶ 61,295
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER08-1169-002

ORDER ON COMPLIANCE
AND REQUIRING FURTHER COMPLIANCE

(Issued June 25, 2009)

1. On September 24, 2008, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions to comply with the Commission's order¹ that conditionally accepted revisions to Attachment X, "Generator Interconnection Procedures" (Attachment X), of the Midwest ISO Tariff.² (September 24 Filing). For the reasons discussed below, we will accept in part and reject in part these revisions, and require further compliance filings.

I. Background

2. On December 11, 2007, the Commission held a technical conference (Technical Conference) to address the delays and backlogs in processing interconnection queues in regions managed by Regional Transmission Organizations (RTOs) and Independent

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183 (2008) (Queue Reform Order). The Commission's companion order on rehearing of the Queue Reform Order is being issued concurrently. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,294 (2009).

² As of January 6, 2009, Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT) became the Open Access Transmission, Energy, and Operating Reserve Markets Tariff (ASM Tariff). *See Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,321 (2008). This order uses "Tariff" to mean the TEMT or the ASM Tariff, whichever is in effect at the time written about.

System Operators (ISOs), and the need for these entities' interconnection procedures to advance the goals of Order No. 2003.³ The Commission's order⁴ resulting from the Technical Conference directed the RTOs and ISOs to report their efforts to improve queue processing. Midwest ISO's April 21, 2008 compliance report⁵ stated that Midwest ISO was consulting stakeholders about tariff revisions to address the problems. On June 26, 2008, Midwest ISO filed proposed revisions to Attachment X (June 26 Filing).

3. In the Queue Reform Order, the Commission conditionally accepted the proposed tariff revisions of the June 26 Filing. These revisions changed Midwest ISO's existing "first-come, first-served" approach to an approach based on the progress that the generation project is making towards coming on-line, essentially, a "first-ready, first-to-proceed" approach. The proposed revisions also changed the characteristics of the milestones that a generation project must meet in order to proceed toward interconnection, and the amounts and the timing of the monetary deposits accompanying each milestone. The revisions also introduced temporary Generator Interconnection Agreements that conditionally permit projects, ready to proceed, to use available transmission capacity based upon the results of available studies.

II. Notice and Responsive Filings

4. Notice of the September 24 Filing was published in the *Federal Register*, 73 Fed. Reg. 58,948 (2008), with interventions and protests due on or before October 15, 2008.

5. Timely motions to intervene with protests or adverse comments were filed by: FPL Energy, LLC (FPL Energy); Integrys Energy Group and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company, and Integrys Energy Services, Inc. (collectively, Integrys); and Renewable Power Markets Access, Inc. (Renewable Power). On November 12, 2008, Midwest ISO filed an answer to the comments and protests (Midwest ISO Answer).

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁴ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 (2008) (Technical Conference Order).

⁵ Midwest ISO's April 21, 2008 filing in Docket No. AD08-2-000.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities filing them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO Answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Temporary Interconnection Agreements, Subsection 11.5

7. As relevant here, the June 26 Filing proposed to add new subsection 11.5, "Special Considerations," to the *pro forma* Generator Interconnection Procedures. Under this subsection, Midwest ISO may review the results of available studies, and at its discretion, provide a temporary Generator Interconnection Agreement for limited operation in response to a request from an Interconnection Customer.⁶

8. FPL Energy argued that Midwest ISO should not set the operational limit in a temporary Generator Interconnection Agreement on an annual basis but on a real-time/day-ahead basis, and that operational limits should not be calculated based on worst-case scenarios. FPL Energy also expressed concern over whether Midwest ISO adequately distinguished between Network Resources and Energy Resources in the

⁶ See June 26 Filing at 24. As originally proposed, subsection 11.5 provided:

Upon the request of the Interconnection Customer, the Transmission Provider may provide a temporary Generator Interconnection Agreement for limited operation at the discretion of the Transmission Provider based upon the results of available studies. The operational limit in the temporary Generator Interconnection Agreement will be updated on an annual basis. The Interconnection Customer assumes all risks and liabilities with respect to changes which may impact the Generator Interconnection Agreement including, but not limited to, change in output limits and future Network Upgrade cost responsibilities.

context of the temporary Generator Interconnection Agreement, and whether it would avoid imposing inappropriate operational constraints on applicants for Energy Resources that are appropriate for Network Resources.⁷

9. In the Queue Reform Order, the Commission found that basing operational limits in a temporary Generator Interconnection Agreement on the worst case scenario may set an artificially low value. The Commission directed Midwest ISO to revise subsection 11.5 to provide for seasonal updates for the operational limits and to clarify the methodology used to set the operational limits. Additionally, insofar as the study and impact assumptions that Midwest ISO intends to use for temporary Generator Interconnection Agreements rely on the rationale that Energy Resource Interconnection Service (ERIS)⁸ customers should be limited to accommodate generation from Network Resource Interconnection (NRIS)⁹ customers, the Commission directed Midwest ISO to revise subsection 11.5 to include those study and impact assumptions.¹⁰

10. In the September 24 Filing, Midwest ISO revises subsection 11.5 to read (the underlining and strike-out below indicates revisions made to the tariff language in section 11.5 that was proposed in the June 26 Filing):

Upon the request of the Interconnection Customer, the Transmission Provider may provide a temporary Generator Interconnection Agreement for limited operation at the discretion of the Transmission Provider based upon the results of available studies. At a minimum, studies must be performed and Interconnection Customer must demonstrate that facilities that are necessary to meet the requirements of NERC [the North American Electric Reliability Corporation] or any applicable (i) Regional Entity, (ii) Regional Reliability Council, or (iii) Regional Reliability Organization, for the

⁷ FPL Energy July 17, 2008 Protest, in Docket No. ER08-1169-000, at 26-28 (FPL Energy July 2008 Protest).

⁸ Under ERIS, the generator utilizes the existing transmission system on an as-available basis. *See* Midwest ISO Tariff, Fourth Revised Volume, Definitions, § 1.197.

⁹ Under NRIS, the generator interconnects to the Transmission System in a manner that allows it to qualify as a Network Resource without additional Network Upgrades. *See id.*, § 1.453.

¹⁰ Queue Reform Order, 124 FERC ¶ 61,183 at P 129-130.

installation of a new generator must be in place prior to the commencement of generation from the Generating Facility. All required Interconnection Facilities must have been analyzed in an Interconnection Facilities Study, or already be interconnected to an existing Generating Facility that does not require changes to accommodate the Interconnection Customer's Interconnection Request. If at any time the Interconnection Customer misses any required milestone in the Generator Interconnection Procedures, or is considered in Breach of its non-temporary Generator Interconnection Agreement, then the temporary Generator Interconnection Agreement shall be deemed terminated and operation of the Generating Facility, or the interconnection of the Generating Facility to the Transmission System, shall cease.

The maximum permissible output of the Generating Facility operational limit in the temporary Generator Interconnection Agreement will be updated on an ~~annual~~ quarterly basis, and determined by finding the transfer limit of energy from the Point of Interconnection to the Transmission Provider's footprint on the base cases used to calculate Available Flowgate Capability as described in Attachment C of this tariff. Equipment must be installed by Interconnection Customer that will disconnect the Generating Facility from the Transmission System if the output of the Generating Facility exceeds the operational limit described above. The Interconnection Customer assumes all risks and liabilities with respect to changes which may impact the Generator Interconnection Agreement including, but not limited to, change in output limits and future Network Upgrade cost responsibilities.^[11]

11. Midwest ISO states that because of the complex analysis supporting temporary Generator Interconnection Agreements, it will continue to closely monitor this issue, and continue to work with stakeholders in the coming year to refine the methodology for setting operational limits.¹²

¹¹ September 24 Filing, Substitute Original Sheet No. 1714Y.01.

¹² *Id.*, cover letter at 7.

a. **Calculation of Operating Limits**

12. FPL Energy protests that the September 24 Filing's revision of subsection 11.5 fails to respond to the Commission's directive and FPL Energy's chief concern – that the operational limit of the temporary Generator Interconnection Agreement not be based on a single restrictive factor, and that more flexibility is required to allow more efficient dispatch and better use of the transmission grid. FPL Energy again states that flexible limits could accommodate wind generators, which, in their daily and seasonal cycles, often produce less energy when demand is high and available transmission capacity is limited, and conversely more energy when demand is low and available transmission capacity is greater. FPL Energy states that the September 24 Filing is unclear as to which new terms and conditions address the operational limits issue, as opposed to a single operating limit based on a worst-case scenario.

13. FPL Energy protests that the term "Transmission Provider's footprint" is undefined, and that it is unclear whether the term imposes on generators with ERIS a deliverability requirement that conflicts with the Queue Reform Order. FPL Energy recommends that Midwest ISO use an operational model rather than a planning model, because, says FPL Energy, the former more accurately reflects system conditions at the time when the Generating Facility enters into the temporary Generator Interconnection Agreement.¹³

14. Finally, FPL Energy points to the statement, in the September 24 Filing, that because of the complexities concerning temporary Generator Interconnection Agreements, Midwest ISO will work with stakeholders to refine the methodology used to set operational limits in the coming year. FPL Energy criticizes Midwest ISO for not giving timelines of when it might complete any such refinement of its methodology, or the approach it would take in that inquiry.¹⁴

15. Midwest ISO answers that, while the Commission agreed with FPL Energy that the operational limit should not be based only on a worst case scenario, it also agreed with Midwest ISO that using day-ahead or real-time conditions was overly burdensome.¹⁵ Additionally, the Commission did not mandate a particular approach to

¹³ FPL Energy Protest at 12-13.

¹⁴ *Id.* at 6 n.2

¹⁵ Midwest ISO Answer at 12, *citing* Queue Reform Order, 124 FERC ¶ 61,183 at P 130-31.

calculating operational limits.¹⁶ That Midwest ISO addresses operational limits differently from the manner requested by FPL Energy is not a failure to address FPL Energy's concerns about the June 26 Filing. Midwest ISO states that the Queue Reform Order does not require it to provide additional explanations about why it chose single seasonal limits rather than operating limits that may occur for very short durations.

16. We find that using quarterly updates of operational limits in a temporary Generator Interconnection Agreement is consistent with the Commission's directive in the Queue Reform Order. However, we find that Midwest ISO has not complied fully with the directive.¹⁷ We will require Midwest ISO, in a compliance filing, due 90 days from the date of issuance of this order (90-day Compliance Filing), to further clarify the methodology that it will use to set operational limits for temporary Generator Interconnection Agreements with ERIS, and to file revised tariff language, as applicable.

17. First, it appears that Midwest ISO could set the operational limits for the temporary ERIS based purely on peak or worst-case scenarios, contrary to the Commission's directive in the Queue Reform Order.¹⁸ We are concerned with the September 24 Filing's use of "base cases used to calculate Available Flowgate Capability as described in Attachment C." Attachment C of the Tariff states, "A power flow model is built for a peak condition for each of the time intervals for which these values are computed" ¹⁹ Thus, it appears that the power flow models that Midwest ISO would use to calculate operational limits are built for peak conditions (i.e., purely worst-case conditions). Setting operational limits on the basis of worst case scenarios may set an artificially low value for the operational limits on interconnection customers. Accordingly, in its 90-day Compliance Filing, Midwest ISO should explain the specific assumptions regarding the conditions that it will use to determine operational limits for temporary ERIS. This explanation must address how Midwest ISO incorporated peak and non-peak conditions into the power flow model. Midwest ISO should also show, in its 90-day Compliance Filing, that its study methodology is consistent with ERIS insofar as the Interconnection Customer would use the Transmission System on an "as available" basis. Again, as will be discussed below, it is unclear from the language in the September 24 Filing, what study assumptions Midwest ISO would use for a customer seeking temporary ERIS.

¹⁶ *Id.* at 12-13.

¹⁷ Queue Reform Order, 124 FERC ¶ 61,183 at P 130.

¹⁸ *Id.*

¹⁹ Attachment C of the Tariff at Third Revised Sheet No. 1068.

18. Second, we agree with FPL Energy that it is unclear what Midwest ISO intends by proposing the following language, “The maximum permissible output of the Generating Facility . . . will be . . . determined by finding the transfer limit of energy from the Point of Interconnection to the Transmission Provider’s footprint.” We find that “footprint” is overly broad and could be interpreted to suggest a deliverability requirement, which would be inconsistent with ERIS provided under Midwest ISO’s Tariff.

b. Determining Whether Additional Facilities are Required for the Request for Temporary Interconnection Service

19. As relevant here, Midwest ISO proposes the following language in subsection 11.5, “Special Considerations”:

At a minimum, studies must be performed and Interconnection Customer must demonstrate that facilities that are necessary to meet the requirements of NERC [the North American Electric Reliability Corporation], or any applicable (i) Regional Entity, (ii) Regional Reliability Council, or (iii) Regional Reliability Organization, for the installation of a new generator must be in place prior to the commencement of generation from the Generating Facility. All required Interconnection Facilities must have been analyzed in an Interconnection Facilities Study, or already be interconnected to an existing Generating Facility that does not require changes to accommodate the Interconnection Customer’s Interconnection Request.^[20]

20. Integrys protests that the term “studies,” in the first sentence cited above, “At a minimum, studies must be performed . . . ” is unclear. Integrys suggests replacing “studies” with “Interconnection Facilities Studies.” Integrys states that this change will specify which studies are involved in obtaining a temporary Generator Interconnection Agreement.²¹

21. Midwest ISO agrees that the term “studies” is undefined; however, because the Tariff uses the term throughout, Integrys’s suggested change is overly restrictive. Midwest ISO states that an interconnection customer who proceeds with a temporary

²⁰ September 24 Filing at proposed Substitute Original Sheet No. 1714Y.01 Superseding Original Sheet No. 1714Y.01.

²¹ Integrys Protest at 4.

Generator Interconnection Agreement may do so before completing an Interconnection Facilities Study, and may use other studies to demonstrate that it meets the criteria for a temporary Generator Interconnection Agreement.²²

22. FPL Energy objects that Midwest ISO is proposing for the first time to preclude temporary Generator Interconnection Agreements unless the Interconnection Customer is at an existing interconnection point or will be interconnected at a new interconnection point where at least an Interconnection Facilities Study has been completed. FPL Energy protests that this threshold requirement is a material change that goes beyond the scope of the Queue Reform Order's directed clarification. It states that the Applicable Reliability Standards²³ for a temporary Generator Interconnection Agreement can be met through studies other than an Interconnection Facilities Study, which can be performed much earlier in the project development timeline. FPL Energy urges that the availability of such other studies is a sufficient threshold. It asks the Commission to direct Midwest ISO to retain the language associated with the use of "available studies" that the Queue Reform Order accepted, and to reject Midwest ISO's new proposed language.²⁴

23. Midwest ISO disagrees that this proposed change goes beyond the scope of the clarification required by the Queue Reform Order. Information concerning the location and makeup of interconnection facilities is necessary for calculating an operational limit because it tells how the generator is connected to the grid. Without such knowledge, particularly about the breaker configuration, certain contingencies cannot be evaluated to

²² Midwest ISO Answer at 7.

²³ The September 24 Filing revises the definition of Applicable Reliability Standards, as defined in section 1, "Definitions," of the *pro forma* Generator Interconnection Agreement to state, at Third Revised Sheet No. 1714Z.41:

Applicable Reliability Standards shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under section 215 of the Federal Power Act relating to operation of the Transmission Provider in carrying out its Reliability Coordinator, Balancing Authority, Market Operator, Transmission Service Provider, and Planning Coordinator functions. In addition to FERC approved standards, any regional reliability criteria and/or standards relating to operation of the Transmission Provider in carrying out the functions listed above.

²⁴ FPL Energy Protest at 10.

create the appropriate operations guides for bus outages, breaker failures, and other NERC Category C²⁵ events that are typically addressed via operational steps. The proposed change responds to the Commission's directive to clarify the methodology used to set the operational limit.²⁶

24. We will accept the proposed compliance language subject to further revision.

25. We note that temporary interconnection service is being offered at the discretion of Midwest ISO. In the September 24 Filing, Midwest ISO provides necessary detail regarding how it will determine whether additional facilities are required to accommodate a request for temporary Generator Interconnection Service. Among other things, Midwest ISO proposes language stating that facilities that are needed to meet reliability requirements for the interconnection of the new generator must "be in place prior to the commencement of generation from the Generating Facility."²⁷ Midwest ISO also proposes language addressing the need for a new Facilities Study where Interconnection Facilities are not already interconnected.²⁸

26. Regarding FPL Energy's concern, we note that the purpose of temporary interconnection service is to "allow generators that are willing to accept risk to interconnect and operate before the Network Upgrades . . . are completed."²⁹ Midwest ISO's proposed tariff language entails no new substantive change to this service. Whether the interconnecting occurs at an existing point of interconnection or at a new point of interconnection, generators would be able to interconnect and generate at an operating limit prior to the completion of network upgrades.

27. We find that information regarding the location and makeup of the project's interconnection facilities is needed in order to calculate an operational limit for a temporary Generator Interconnection Agreement. The Interconnection Facilities Study is

²⁵ NERC categorizes transmission system standards under normal and emergency conditions. A Category C event results from the unexpected failure or outage of two or more components of the transmission system (e.g., the loss of two or more circuits on a multiple circuit tower line).

²⁶ Midwest ISO Answer at 11-12.

²⁷ See proposed revised subsection 11.5, first sentence.

²⁸ See proposed revised subsection 11.5, second sentence.

²⁹ Midwest ISO August 4, 2008 answer in Docket No. ER08-1169-000 (Midwest ISO August 2008 Answer) at 19.

needed when available studies indicate that the facilities at the chosen point of interconnection are unable to accommodate the request for temporary interconnection service.

28. That said, we find that the proposed tariff revisions to subsection 11.5 require further modifications.³⁰ First, we direct Midwest ISO to clarify the term “facilities” in a separate compliance filing due 30-days from the date of issuance of this order (30-day Compliance Filing). The term lacks necessary detail.³¹ Moreover, we find that the phrase, “At a minimum, studies must be performed and Interconnection Customer must demonstrate that facilities . . .” requires further clarification. We direct Midwest ISO, in the 30-day Compliance Filing, to revise the tariff to provide: “At a minimum, the Interconnection Customer must demonstrate, through available studies, that facilities . . .” We also direct Midwest ISO to replace the term “installation” with “interconnection,” as the latter term is more relevant to the situation.

29. Finally, we direct Midwest ISO to revise the first paragraph of subsection 11.5 to clarify that available studies are used to demonstrate that existing facilities are sufficient for the new generator and that only where available studies indicate that such is not the case is the Interconnection Facilities Study required. Accordingly, rather than stating: “All required Interconnection Facilities must have been analyzed in an Interconnection Facilities Study, or already be interconnected to an existing Generating Facility that does not require changes to accommodate the Interconnection Customer’s Interconnection Request,” Midwest ISO should revise its tariff to provide: “Where available studies indicate that such facilities that are required for the interconnection of a new generator are not currently in place, Transmission Provider will perform an Interconnection Facilities Study in order to confirm the facilities that are required for temporary interconnection service and to determine the details (e.g., configuration) of such facilities.” Midwest ISO is to include these revisions in the 30-day Compliance Filing.

c. Clarification to Criteria

30. Integrys asks the Commission to require Midwest ISO to clearly state the criteria under which a temporary Generator Interconnection Agreement is appropriate and

³⁰ Alternatively, Midwest ISO can provide an explanation of why such modifications are unnecessary or why they should be further modified.

³¹ We note that this temporary service is made available based on the Generating Facility producing under an operating limit. Thus, we would not expect “Network Upgrades” to be included in the list of facilities that Midwest ISO substitutes for “facilities.”

applicable. Because proposed subsection 11.5 is silent on this issue, says Integrys, the subsection leaves the interconnection customer without any indication of when to request a temporary Generator Interconnection Agreement. Integrys suggests that Midwest ISO revise the first sentence of subsection 11.5 to read:

Upon the request of the Interconnection Customer, and prior to completion of requisite Interconnection Facilities, Network Upgrades, or Stand Alone Network Upgrades, the Transmission Provider may provide a temporary Generator Interconnection Agreement³²

31. Midwest ISO answers that it is agreeable to incorporating Integrys's proposal, if so directed by the Commission, with the exception of the term "Interconnection Facilities." By definition, an interconnection customer needs those facilities to physically interconnect to the Transmission System.³³

32. While the language proposed by Integrys and agreed to by Midwest ISO was not explicitly directed by the Commission, we will nevertheless accept it as it clarifies the criteria that the Transmission Provider uses when evaluating whether to provide a temporary Generator Interconnection Agreement. We agree with Midwest ISO that requisite Interconnection Facilities must be installed prior to the issuance of a temporary Generator Interconnection Agreement and the commencement of generation. Accordingly, we direct Midwest ISO to revise subsection 11.5 as it recommends, i.e., as described by Integrys but excluding "Interconnection Facilities." This revision is to be included in the 30-day Compliance Filing.

d. Breach of Non-temporary Interconnection Agreement

33. FPL Energy protests the last sentence in the first new paragraph of subsection 11.5, which states that missing a milestone in the Generator Interconnection Procedures or otherwise breaching a non-temporary Generator Interconnection Agreement terminates the temporary Generator Interconnection Agreement and mandates that operation of the generator or interconnection to the Transmission System must cease. FPL Energy objects that this is not responsive to the Commission's directive in the Queue Reform Order, and may also conflict with other Generator Interconnection Procedures or Generator Interconnection Agreement provisions.³⁴ FPL Energy characterizes the

³² Integrys Protest at 4.

³³ Midwest ISO Answer at 6.

³⁴ FPL Energy Protest at 9, *citing* subsection 5.16.2, "Effect of Missed

provision as highly punitive. It states that the provision should be properly vetted in a filing under section 205 of the FPA,³⁵ not included in a compliance filing on different issues.³⁶

34. Midwest ISO answers that it is appropriate to mention circumstances that could cause a reduction in the operational limit of a project with a temporary Generator Interconnection Agreement because the Commission directed it to clarify the methodology used to set the operational limit, to describe the ongoing efforts to implement the new Generator Interconnection Procedures, and to calculate a new operational limit on a periodic basis. Furthermore, Midwest ISO asserts, requiring customers with temporary Generator Interconnection Agreements to proceed with upgrades in a timely manner is consistent with the requirement that an Interconnection Customer accept all risks and liabilities with respect to changes that affect its Generator Interconnection Agreement.³⁷

35. We agree with FPL Energy that this provision exceeds the clarifications required in the Queue Reform Order. The Commission did not require Midwest ISO to address the effect of missing a milestone in the Generator Interconnection Procedures or otherwise breaching a non-temporary Generator Interconnection Agreement. We will therefore require Midwest ISO to remove this provision in the 30-day Compliance Filing. However, our rejection of the provision is without prejudice to Midwest ISO proposing it again, under section 205 of the FPA, after consultation with stakeholders.

e. Disconnection Provision

36. Integrys protests subsection 11.5's new language requiring the Interconnection Customer to install equipment that automatically disconnects the generating facility from the transmission system if the facility's output exceeds the operational limit. Integrys states that this is inconsistent with reliable operation of the transmission system. Limiting generation based on studies of hypothetical system conditions when real-time

Interconnection Customer Milestones," of the Generator Interconnection Agreement, which provides that missing any milestone constitutes a breach by the interconnection customer of the Generator Interconnection Agreement, and Article 17, "Default," of the Generator Interconnection Agreement, which sets remedies if a breach occurs.

³⁵ 16 U.S.C. § 824d (2006).

³⁶ FPL Energy Protest at 8-9.

³⁷ Midwest ISO Answer at 10.

conditions allow for additional output is unjust, unreasonable, and unduly burdensome because the operational limits identified by studies may not, and often does not, occur during real-time operations. Integrys provides an example where immediate tripping of a unit with a temporary Generator Interconnection Agreement could negatively impact reliability. It states that increasing the output of a generator with a temporary Generator Interconnection Agreement beyond its operational limit may provide reliability and economic benefits to the transmission system, particularly during abnormal system conditions such as forced-outage of a generator or transmission line.³⁸

37. Midwest ISO answers that Integrys's protest misses the point that a temporary Generator Interconnection Agreement is intended only for limited operation based upon the results of available studies. The restriction on operational limits is necessary because these projects are proceeding outside the normal Generator Interconnection Procedures process, before all the studies needed to ensure reliability are complete. Operating limits of projects with temporary Generator Interconnection Agreements may change as higher-queued projects are connected and take the capacity that the project with the temporary Generator Interconnection Agreement is using. Removing the "absolute hard limit" would elevate generators with a temporary Generator Interconnection Agreement to the same level of service as generators that have completed the interconnection process. Midwest ISO states that situations such as in Integrys's example can be mitigated through proper engineering of the protection scheme consistent with Good Utility Practice.³⁹

38. We find that this provision exceeds the scope of the Queue Reform Order's directive to clarify the operational limit. We will require Midwest ISO to delete this provision in the 30-day Compliance Filing. Our rejection of this provision is without prejudice to Midwest ISO proposing it, under section 205 of the FPA, after consultation with stakeholders.

2. Fast Track Ability to Defer, Subsections 4.1 and 8.2

39. The Queue Reform Order directed Midwest ISO to revise subsection 8.2, "Eligibility for the Definitive Planning Phase," so that an interconnection customer reaching the Definitive Planning Phase via the fast track may also exercise the right to defer entering this phase for one cycle.⁴⁰ The September 24 Filing changes subsection 8.2 to read:

³⁸ Integrys Protest at 2-3.

³⁹ Midwest ISO Answer at 5-6.

⁴⁰ Queue Reform Order, 124 FERC ¶ 61,183 at P 155.

The Interconnection Customer ~~who has been through the System Planning and Analysis Phase~~ may opt to defer the start by one scheduled Definitive Planning Phase without having to go through the Interconnection Feasibility Study again.

40. Renewable Power states that these changes, while appropriate, do not go far enough in order to satisfy the Commission's directive that an interconnection customer reaching the Definitive Planning Phase via the fast track may also exercise the right to defer entering this phase for one cycle, and that the subsection still needs further change. It states that subsection 4.1, "General," under section 4, "Queue Position," needs conforming changes.

41. To accomplish the Commission's directive, Renewable Power recommends that subsection 8.2 be revised further as follows:

Should the Interconnection Customer neglect to provide the appropriate data and deposits by the second scheduled Definitive Planning Phase start date following the System Planning and Analysis Phase or the ~~first~~ second scheduled Definitive Planning Phase start date after the Interconnection Feasibility Study, the Interconnection Request shall be re-evaluated in the Interconnection Feasibility Study for an additional \$5,000 fee.

42. It recommends conforming revision of subsection 4.1 as follows:

(ii) the requirements of Section 8.2 for entry to the Definitive Planning Phase are not fulfilled within ten (10) Business Days prior to the start date, as designated in advance by the Transmission Provider, of the ~~first~~ second Definitive Planning Phase start following completion of the Interconnection Feasibility Study of the second Definitive Planning Phase start after the completion of System Planning and Analysis Phase, if applicable.

43. Midwest ISO answers that the Queue Reform Order did not direct it to make these changes. However, it finds Renewable Power's revisions to subsections 4.1 and 8.2 appropriate and will make them if so directed by the Commission.

44. We will accept the changes concerning fast-track deferral that Midwest ISO proposed in the September 24 Filing. These changes are consistent with the Commission's directive, "to revise section 8.2 of the proposed [Generator Interconnection Procedures] so that a customer reaching the Definitive Planning Phase

via the fast track may also exercise the right to defer entering this phase for one cycle.”⁴¹ Accordingly, we will require Midwest ISO to revise subsections 4.1 and 8.2 as Renewable Power has suggested, i.e., to replace “first” with “second.” These changes are to be made in the 30-day Compliance Filing.

3. Refunds, Subsection 3.6

45. The September 24 Filing, in subsection 3.6, “Withdrawal of Interconnection Customer,” replaces “and” with “or” before Roman numeral (ii) in the section’s last paragraph, so as to read:

The Transmission Provider shall (i) update the OASIS [Open Access Same-time Information System] Queue Position posting ~~and~~ or (ii) refund to the Interconnection Customer any portion of the Interconnection Customer’s deposit or study payment that exceeds the costs that the Transmission Provider has incurred or will incur as a result of the withdrawal as described in Section 13.3, including interest earned on the Interconnection Customer’s study deposit while held in Transmission Provider’s interest-bearing, money market account, or if such account does not exist, then the interest calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii).

46. Renewable Power points out that this revision directs Midwest ISO to choose between updating the OASIS Queue Position posting or refunding excess deposits to the interconnection customer. Thus, Midwest ISO will have the right to withhold all refunds upon a interconnection customer’s withdrawal from the queue.⁴² Renewable Power recommends that the last paragraph of subsection 3.6 revert to the language of the June 26 Filing. Midwest ISO agrees with Renewable Power’s suggested revision and states that it will make the indicated change if so directed by the Commission.

47. We agree with Renewable Power’s recommended revision. We will direct Midwest ISO to submit, in the 30-day Compliance Filing, revised tariff language that restores the last paragraph of subsection 3.6 to its text in the June 26 Filing.

⁴¹ *Id.* P 155.

⁴² Renewable Power Comments at 3.

48. The Commission incorrectly described the desired minor revision to subsection 3.6 when it directed Midwest ISO to replace “and” with “or” before Roman numeral (ii) in subsection 3.6.⁴³ The revision that the Commission intended to direct, one to which Midwest ISO had agreed, is replacement of “or” with “and” before Roman numeral (ii) in the third paragraph of this subsection. The intent of this change to the third paragraph is to require a withdrawing Interconnection Customer to pay costs prudently incurred before receipt of the notice of withdrawal and (not, or) those incurred as a result of the withdrawal. Therefore, we will direct Midwest ISO to change the third paragraph of subsection 3.6 to read as follows:

An Interconnection Customer that withdraws or is deemed to have withdrawn its Interconnection Request shall pay to the Transmission Provider all costs that the Transmission Provider prudently (i) incurs prior to the Transmission Provider’s receipt of notice described above and ~~or~~ (ii) will incur as a result of the withdrawal, including but not limited to restudy costs as described in Section 13.3.

4. Site Control, Section 1, Definitions

49. FPL Energy states that the September 24 Filing omits changes that Midwest ISO had agreed to make. In the initial proceeding, FPL Energy had proposed,⁴⁴ to which Midwest ISO had agreed,⁴⁵ revision of section 1, “Definitions,” at the definition for Site Control, to make clear that the project developer must have all the rights to all the land needed to operate the project, including the Interconnection Facilities. The existing definition of Site Control was to be expanded to state: “Such documentation must ~~include a reasonable determination of~~ give the necessary right to sufficient land area to support the size (in gross nameplate rating) and type of Generating Facility proposed and the required Interconnection Facilities.”⁴⁶ Requiring actual site control, says FPL Energy, should help reduce the number of speculative projects clogging the queue.⁴⁷

⁴³ See Queue Reform Order, 124 FERC ¶ 61,183 at Table: Minor Tariff Revisions.

⁴⁴ FPL Energy July 2008 Protest at 38.

⁴⁵ Midwest ISO August 2008 Answer at 65.

⁴⁶ *Id.* at 66.

⁴⁷ FPL Energy Protest at 14.

50. Midwest ISO answers that while the Queue Reform Order did not direct it to make these changes, it does not object to them and will make them if so directed by the Commission.

51. We will not direct Midwest ISO to change the definition of Site Control as requested by FPL Energy. We find that this change is beyond the scope of the compliance filing. In the Queue Reform Order, the Commission found that Midwest ISO's proposed milestones strike a reasonable balance between discouraging speculative projects from entering or remaining in the queue, and ensuring that those projects that are ready to proceed can do so.⁴⁸ The Commission required Midwest ISO to continue to evaluate whether a reasonable balance is being struck and to file reports on the effectiveness of the queue reforms. The Commission stated that based on these reports, it would consider whether changes are needed.⁴⁹ Thus, the Commission has given Midwest ISO the mechanism to evaluate whether the definition of Site Control needs to be revised. This compliance proceeding is not the proper forum for considering this change.

5. Minor Tariff Revisions

52. FPL Energy states that the September 24 Filing does not include certain minor changes to the Generator Interconnection Procedures, at subsections 5.1.1.1, 7.4, 8.3, and 8.5, that Midwest ISO had agreed to in the Midwest ISO Answer.⁵⁰

53. In the first paragraph of subsection 5.1.1.1, under "Queue Position for Pending Requests," the text reads:

All Interconnection Requests for which facilities study deposits have been received, including those in Generator Interconnection Agreement negotiation, will not be required to conform to the revised Generator Interconnection Procedures as of the effective date of Section 5.1, with the exception of the revised requirements identified in Appendix 6 to this Attachment X.

FPL Energy believes that the Midwest ISO meant "for which ~~facilities study deposits~~ Interconnection Facilities Study Agreement deposits have been received." Otherwise,

⁴⁸ Queue Reform Order, 124 FERC ¶ 61,183 at P 77.

⁴⁹ *Id.*

⁵⁰ FPL Energy Protest at 14-17.

this provision would cover many interconnection customers who are very early in the process.⁵¹

54. FPL Energy points out that, in each of subsections 7.4, 8.3, and 8.5 of the Generator Interconnection Procedures, the September 24 Filing does not include a sentence that FPL Energy had proposed for inclusion, to which Midwest ISO had agreed.⁵² The sentence clarifies that failure to submit additional deposits within the specified time frame results in loss of the Interconnection Customer's queue position. It states, "Interconnection Customers who fail to comply with the Transmission Provider's notice shall lose their Queue Position."

55. This sentence would apply to: (1) the second paragraph of subsection 7.4, "Interconnection System Impact Study Procedures," which provides for the Transmission Provider to notify the Interconnection Customer when events prevent it from completing the Interconnection System Impact Study within the expected time frame and to receive an additional deposit to cover the costs of performing the study; (2) the fourth paragraph of subsection 8.3, "Scope of System Planning and Analysis Review," which explains that if the study deposit provided by the Interconnection Customer is inadequate to complete the System Planning and Analysis Review, the Transmission Provider shall ask for an additional deposit equal to the difference between the original and revised amounts; and (3) the second paragraph of subsection 8.5, "Interconnection Facilities Study Procedures," which states that if the study deposit provided by the Interconnection Customer is inadequate to complete the Facilities Study, the Transmission Provider shall ask for an additional deposit equal to the difference between the original and revised amounts.

56. Midwest ISO answers that the Queue Reform Order did not direct it to make these changes. However, it will make these changes if the Commission so directs.

57. We will not direct Midwest ISO to replace "facilities study" with "Interconnection Facilities Study Agreement" because the latter is not a defined term in the Generator Interconnection Procedures. However, to ensure that the Tariff is clear, we will require Midwest ISO to revise subsection 5.1.1.1, in the 30-day Compliance Filing, such that "facilities study" becomes "Interconnection Facilities Study" since the latter is a defined term in the Generator Interconnection Procedures.

⁵¹ *Id.* at 15.

⁵² Midwest ISO Answer at 74, 77-78.

58. We reject FPL Energy's request that we add, to tariff subsections 7.4, 8.3, and 8.5, the sentence, "Interconnection Customers who fail to comply with the Transmission Provider's notice shall lose their Queue Position." Subsection 3.6, "Withdrawal," of the Generator Interconnection Procedures already makes this clear. It states:

[I]f the Interconnection Customer fails to adhere to all requirements of the [Generator Interconnection Procedures], except as provided in Section 13.5 (Disputes), the Transmission Provider shall deem the Interconnection Request to be withdrawn Withdrawal shall result in the loss of the Interconnection Customer's Queue Position.

Thus, there is no need to make the requested change.

6. Use of the term "Regional Entity"

59. Integrys states that the terms "Regional Reliability Council" and "Regional Reliability Organization" are unnecessary because these entities no longer exist. Integrys recommends that "Regional Entity" be used in their place.⁵³

60. Midwest ISO answers that the Tariff contains definitions for all of these terms. For this reason, inclusion of these terms in the Generator Interconnection Procedures is appropriate to ensure that the temporary Generator Interconnection Agreement complies with all applicable requirements.⁵⁴

61. We will permit Midwest ISO to include all of these terms in its Third Revised Volume No. 1 Tariff because these terms are defined under that tariff. However, for purposes of the Fourth Revised Volume No. 1 Tariff, which supersedes the Third Revised Volume No. 1 Tariff, effective January 6, 2009,⁵⁵ we find that the terms "Regional Reliability Council" and "Regional Reliability Organization" are not defined. Accordingly, we will require Midwest ISO to remove the terms "Regional Reliability Council" and "Regional Reliability Organization" from the currently effective tariff language in the 30-day Compliance Filing.

⁵³ Integrys Protest at 4.

⁵⁴ Midwest ISO Answer at 7.

⁵⁵ See *supra* note 2.

The Commission orders:

(A) Midwest ISO's September 24 Filing is hereby conditionally accepted in part and rejected in part, effective August 25, 2008, as discussed in the body of this order.

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

(C) Midwest ISO is hereby directed to make a second compliance filing within 90 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.