

129 FERC ¶ 61,019
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. ER09-1581-000

ORDER CONDITIONALLY ACCEPTING AMENDED AND RESTATED
GENERATOR INTERCONNECTION AGREEMENT

(Issued October 9, 2009)

1. On August 13, 2009, pursuant to section 205 of the Federal Power Act (FPA),¹ the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Amended and Restated Generator Interconnection Agreement (Amended GIA) among the Midwest ISO, Northern States Power Company (NSP), as transmission owner, and Community Wind North LLC (Community Wind) as interconnection customer (collectively, the Parties).² We accept the Amended GIA effective August 14, 2009, but we condition our acceptance on the Midwest ISO modifying the Amended GIA to remove any reference to cost responsibility for the Brookings County-Twin Cities 345 kV transmission line (Brookings Line).

I. Background

2. On December 9, 2008, the Parties executed a temporary interconnection agreement (Temporary GIA) involving Project No. G586, a 30 MW wind generation project consisting of twelve wind turbines that will each generate 2.5 MW (Generating Facility). The Temporary GIA provided for the limited operation of the Generating Facility prior to the completion of related interconnection studies pursuant to section 11.5 of the Midwest ISO's Generator Interconnection Procedures (GIP) in Attachment X of

¹ 16 U.S.C. § 824d (2006).

² *Midwest Indep. Transmission Sys. Operator, Inc.*, Filing of Amended and Restated Generator Interconnection Agreement, Docket No. ER09-1581-000 (filed August 13, 2009) (Filing).

the Midwest ISO Tariff.³ Since the body of the Temporary GIA conformed to the *pro forma* GIA, the Temporary GIA was reported in the Midwest ISO's Electric Quarterly Report in accordance with Order No. 2003.⁴

3. Following completion of the related interconnection studies, Community Wind requested that the Temporary GIA be amended to include the updated study results. Despite extensive negotiations, the Parties have been unable to agree on revisions to the provisions of the appendices relating to Community Wind's responsibility for the costs of certain network upgrades. With negotiations at an impasse, Community Wind asked the Midwest ISO to file the Amended GIA unexecuted pursuant to section 11.3 of the GIP.

II. The Filing

4. The Midwest ISO requests that the Commission accept the Amended GIA, which provides for the interconnection of the Generating Facility at NSP's Yankee substation. The Midwest ISO states that the body of the Amended GIA conforms to the Midwest ISO's *pro forma* GIA that was in effect at the time that the Temporary GIA was executed, but that the appendices have been updated to provide cost estimates for network upgrades and contingencies that may affect Community Wind's cost responsibility.⁵ The Midwest ISO requests that the Commission waive the 60 day prior notice of filing requirement and make the Amended GIA effective as of August 14, 2009 in order to provide certainty to the Parties as to the status of the agreement.

5. Under Appendix A of the Amended GIA, Community Wind agrees to share in the cost responsibility for the Shared Ownership Common Use upgrades, including the Brookings Line, which is a 230-mile, 345-kV transmission line that will connect Brookings County, South Dakota, with eastern Minnesota.⁶ Section 2 explains that the Midwest ISO is in the process of developing a *pro forma* Multi-Party Facilities Construction Agreement (MPFCA) that will become an appendix to the Midwest ISO's

³ Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1, Appendix X (August 25, 2008) (Tariff).

⁴ *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).

⁵ Filing, Transmittal Letter at 3.

⁶ *Id.* at Original Sheet No. 91.

tariff,⁷ and that the MPFCA will set forth requirements for Community Wind and other Group 5 projects⁸ to provide security and funding for the Shared Ownership Common Use Upgrades identified in Appendix A. Further, section 2(i) provides that the respective obligations of Community Wind and the affected Group 5 projects “to fund such . . . Shared Ownership Common Use Upgrades will . . . be the subject matter governed by” a future MPFCA.⁹ The Amended GIA estimates that the total cost of the Brookings Line will be \$700 million, and allocates the costs of the line to 19 Group 5 generators, including Community Wind. The Amended GIA estimates that Community Wind will be responsible for 2.5 percent of the total cost of the Brookings Line or \$15 million.¹⁰ However, Community Wind’s responsibility for the cost of the Brookings Line is subject to: (1) the outcome of proposed revisions to Midwest ISO’s regional cost sharing methodology that are pending before the Commission;¹¹ (2) whether any of the other 18

⁷ On August 21, 2009, in Docket No. ER09-1619-000, the Midwest ISO filed a proposal to revise its GIP to include a proposed *pro forma* MPFCA. According to the Midwest ISO, the MPFCA is designed to address situations where multiple interconnection customers cause the need and share the cost responsibility for common use upgrades to accommodate their interconnection requests. *Midwest Indep. Transmission Sys. Operator, Inc.*, Electric Tariff Filing regarding Attachment X – Generator Interconnection Procedures, Docket No. ER09-1619-000, Transmittal Letter at 9 (filed August 21, 2009) (MPFCA Filing).

⁸ The Group 5 projects consist of 32 individual interconnection requests totaling approximately 2,039 MW in Southwest Minnesota, Northwest Iowa, and Eastern South Dakota. The Midwest ISO’s GIP in Attachment X provides that generator interconnection projects may be studied as a group for the purpose of conducting interconnection studies. The Midwest ISO conducted the generator interconnection system impact studies as a group for the Group 5 projects. The initial studies were performed in 2006 and 2007 and the study reports were posed during the summer and fall of 2007. As discussed below, the Amended GIA estimates that the costs of the Brookings Line will be funded by nineteen Group 5 projects, including Community Wind.

⁹ Filing, Appendix A § 2(i).

¹⁰ *Id.* Appendix A, Table 5.

¹¹ On July 9, 2009, the Midwest ISO filed proposed amendments to its tariff in Docket No. ER09-1431-000 to revise the method for allocating the cost of network upgrades for generation interconnection projects. Under the proposal, an interconnection customer would pay 90 percent of the cost of any network upgrades for facilities rates at or above 345 kV, such as the Brookings Line. *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-1431-000, at 15-16 (filed July 9, 2009) (Cost Allocation Filing).

Group 5 projects assigned the costs of the Brookings Line drop out of the interconnection queue; and (3) any changes in the scope or funding of the Brookings Line.

6. The Midwest ISO states that Community Wind declined to execute the Amended GIA because of the inclusion of the language concerning Community Wind's responsibility for funding the Brookings Line.¹² The Midwest ISO states that Community Wind objects to the disputed language on the basis that the Brookings Line is not necessary to provide interconnection service for the Generating Facility and that the proposed language imposes a new obligation on Community Wind to pay an unknown cost.¹³ According to the Midwest ISO, Community Wind asserts that inclusion of the proposed language makes it difficult to finance the project because developers and lenders are unable to bear the potential cost exposure of such a large upgrade.

7. The Midwest ISO argues that inclusion of the disputed provisions is appropriate, necessary, and consistent with Commission precedent. Citing Order Nos. 2003 and 2003-A, the Midwest ISO states that the Commission has recognized that each interconnection customer takes the business risk that its responsibility for funding network upgrades may change if certain contingencies occur, including the withdrawal of other interconnection customers, and that known contingencies for possible financial risk should be addressed in each interconnection agreement.¹⁴ The Midwest ISO explains that the Brookings Line is properly included because it is a known contingency for Community Wind's interconnection project and others in the same group study. The Midwest ISO points out that the study results for the Group 5 projects have not yet resulted in agreements that allocate responsibility for the costs of the upgrades needed to accommodate the interconnection of the projects. The Midwest ISO also notes that Community Wind and other stakeholders are currently negotiating the terms and conditions of funding and constructing the Brookings Line. It anticipates that Community Wind will enter into a MPFCA with other generators to share in the costs of the line and that, if the negotiations are successful, the Midwest ISO anticipates amending the Amended GIA to reflect the resulting cost obligations. The Midwest ISO believes that the ongoing negotiations provide an efficient and effective means to resolve the matter.

8. The Midwest ISO also contends that the reference to the Brookings Line in the Midwest ISO Transmission Expansion Plan for 2008 (MTEP08) will not prevent Community Wind from having to share in the costs of the line. The Midwest ISO explains that the Brookings Line was included in MTEP08, and adds that the reference to

¹² See Filing, Transmittal Letter at 4 n. 6.

¹³ *Id.* Transmittal Letter at 4-5.

¹⁴ *Id.* Transmittal Letter at 6.

the Brookings Line in MTEP08 meant that the project had not yet been validated for possible designation as a Baseline Reliability Project¹⁵ eligible for regional cost sharing under the Midwest ISO tariff.¹⁶ According to the Midwest ISO, the reference to the Brookings Line in MTEP08 does not rule out the possibility that Community Wind will bear its share of the costs because the Brookings Line “is required primarily for the delivery of new wind energy resources, [and] is not a Baseline Reliability Project.”¹⁷

III. Notice of Filing and Responsive Pleadings

9. Notice of the Midwest ISO’s filing was published in the *Federal Register*, 74 FR 42893 (2009), with interventions and protests due on or before September 3, 2009. Community Wind, Otter Tail Power Company, Missouri River Energy Services, and Renewable Energy Systems America, Inc., filed motions to intervene. Buffalo Ridge Power, LLC (Buffalo Ridge), Iberdrola Renewables, Inc. (Iberdrola), Great River Energy (Great River), Xcel Energy Services (Xcel), Wind Capital Group, LLC (Wind Capital), the American Wind Energy Association and Wind on the Wires (together, AWEA and WOW), Edison Mission Energy (Edison), on behalf of Community Wind, and NextEra, on behalf of its operating subsidiary Story Wind LLC (Story Wind), filed timely motions to intervene and comments.

10. On September 18, 2009, the Midwest ISO, Xcel, and Great River each filed a motion for leave to answer and answer to the comments submitted in the proceeding. On September 29, 2009, Edison filed a motion for leave to answer and answer.

11. Several protesters argue that the Commission should reject the proposed cost allocation of the Brookings Line and order the Midwest ISO to modify the Amended GIA to remove any reference to the responsibility of Community Wind and other Group 5 projects for the costs of the line.¹⁸ More specifically, Buffalo Ridge states that the proposed cost allocation subverts Order No. 2003 by holding Group 5 projects responsible for a network upgrade that is not necessary for their interconnection and that the Midwest ISO has provided no evidence that the Group 5 projects benefit from the

¹⁵ Baseline Reliability Projects are eligible for regional cost sharing and are designated by the Midwest ISO after meeting specified criteria.

¹⁶ Filing, Transmittal Letter at 4 n. 6.

¹⁷ *Id.* Transmittal Letter at 7 (citing MTEP08 at 7).

¹⁸ Edison Protest at 1, 27; NextEra Protest at 12; Buffalo Ridge Protest at 3, 15; AWEA and WOW Protest at 12.

facility to an extent that warrants them bearing such costs.¹⁹ Similarly, AWEA and WOW argue that the proposed allocation of costs does not represent a reasonable balance between cost causers and beneficiaries, and express concern that the Midwest ISO is attempting to thrust unidentified costs onto interconnection customers through an unexecuted agreement with just one of those customers.²⁰ Edison, NextEra, AWEA and WOW argue that generators may only be allocated the costs for upgrades that would not have been made but for their interconnection.²¹

12. Edison, NextEra,²² AWEA and WOW state that the Brookings Line is being developed as part of the CapX2020 initiative, which is designed to support the growing demand for electricity in Minnesota and the surrounding region.²³ They point out that the Minnesota Public Utilities Commission initially imposed a number of conditions on the Brookings Line when granting the required certificate of need, but modified those restrictions on reconsideration because it recognized that the line will promote regional

¹⁹ Buffalo Ridge Protest at 5, 9-11 (citing *Illinois Commerce Commission v. FERC*, 2009 U.S. App. LEXIS 18311 at 13-14 (7th Cir. 2009) (stating that “FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members”).

²⁰ AWEA and WOW Protest at 7, 11-12.

²¹ Edison Protest at 15 (citing *New York Indep. Sys. Operator, Inc.*, 97 FERC ¶ 61,113, at 61,573 (2001) (*NYISO*)); AWEA and WOW Protest at 8-10; NextEra Protest at 13-14.

²² In addition, NextEra argues that the Midwest ISO has failed to meet its obligations under Order No. 2003-A. NextEra argues that Order No. 2003-A requires the Midwest ISO to provide an estimate of the costs of any network upgrades that were assumed in the interconnection studies for the interconnection customer that are an obligation of an entity other than the interconnection customer and that have not been constructed. Directing the Commission to the interconnection agreement between Story Wind, ITC Midwest LLC and the Midwest ISO, NextEra notes that, despite the fact that the Amended GIA estimates that Story Wind will be required to pay \$39.2 million or 5.61 percent of the total cost of the Brookings Line, the Midwest ISO did not include an estimate of the costs of such network upgrades in Story Wind’s interconnection agreement. NextEra Protest at 23-24.

²³ Edison Protest at 21; AWEA and WOW Protest at 10; NextEra Protest at 13; Buffalo Ridge Protest at 7. CapX2020 is an initiative of eleven transmission-owning utilities in the Minnesota region, including Xcel and Great River Energy, to expand the transmission grid to meet increasing demand and to support renewable energy expansion by building four new transmission lines, including the Brookings Line.

and community reliability.²⁴ Edison notes that a study done by an engineer retained by several of the Group 5 projects reveals that the reliability concerns arising from the interconnection of the projects could be addressed by either adding shunt capacitors at strategic locations for \$18.8 million or installing a shorter transmission line for \$166.4 million.²⁵ Edison states that under Commission precedent the Midwest ISO can only require Community Wind to fund its proportionate share of the least cost alternative, which only costs \$18.8 million. Edison urges the Commission to: (1) direct the Midwest ISO to revise the Amended GIA to substitute Community Wind's responsibility for the line with its share of the lowest cost alternative; (2) direct Midwest ISO to re-study the Group 5 projects in 30 days, taking the alternatives into consideration, and revise the Amended GIA accordingly; or (3) set the Amended GIA for hearing and settlement judge procedures.²⁶ Iberdrola makes a similar request and asks the Commission to appoint a settlement judge to initiate settlement procedures to determine the appropriate allocation of costs associated with the line.²⁷

13. Xcel and the Midwest ISO argue that the Amended GIA merely provides an estimate of Community Wind's responsibility for the costs of the Brookings Line, which is required by Order No. 2003-A.²⁸ Great River maintains that providing a greater degree of certainty is unnecessary and impractical.²⁹ Great River, Xcel, and the Midwest ISO argue that litigating allocation of the costs of the Brookings Line in this proceeding could have an adverse effect on ongoing stakeholder negotiations and would implicate issues that go beyond the scope of the Amended GIA.³⁰

14. Xcel argues that the alternative study Edison mentions does not provide an appropriate basis for cost allocation because: (1) it would be inconsistent with coordinated regional planning for NSP to construct both the alternatives advocated by the study and the Brookings Line; and (2) the study is flawed because it is only oriented toward resolving stability limitations, ignores thermal limitations, and assumes the

²⁴ Edison Protest at 20 (citing *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, Order Granting And Denying Motions For Reconsideration, And Modifying Conditions, Docket No. ET-2, E-002, at 12 (August 10, 2009)).

²⁵ *Id.* at 26.

²⁶ *Id.* at 28.

²⁷ Iberdrola Protest at 1, 7.

²⁸ Xcel Initial Comments at 10; Midwest ISO Answer at 6.

²⁹ Great River Comments at 4-7.

³⁰ Great River Answer at 6; Xcel Answer at 7-8; Midwest ISO Answer at 6-8.

existence of a transmission line, the Storden Line, that is no longer planned and two 30 MVAR capacitors that were never installed.³¹ Xcel states that the CapX2020 utilities have not changed their view of the Brookings Line or asked the Midwest ISO to change the proposed treatment of the line.³² Xcel states that the utilities believe that the Brookings Line should be treated as a Baseline Reliability Project because it is designed to serve multiple needs beyond the interconnection of particular generators.³³ Xcel states that while the Midwest ISO has the power to classify the project as it has done,³⁴ NSP is not inclined to assign all, or even most, of the costs of the Brookings Line to the Group 5 projects.³⁵

15. In response, Edison argues that Xcel's admission that the Brookings Line is designed to serve multiple needs demonstrates that the Brookings Line is not necessary for the interconnection of Community Wind.³⁶ Edison argues that Xcel's claim that the alternative study is inconsistent with regional planning confuses the regional planning process with the generator interconnection process. Edison also asserts that it is not suggesting that NSP should build both the Brookings Line and the alternative upgrades, but that Community Wind can only be held responsible for its proportionate share of the lowest cost alternative if the Brookings Line is built.³⁷ Edison notes that the alternative study only addressed stability limitations because the Midwest ISO has indicated that the Brookings Line is only designed to remedy stability limitations.³⁸ In addition, Edison

³¹ Xcel Answer at 10-11.

³² *Id.* at 4-5.

³³ Xcel states that the allocation of the costs of the Brookings Line shows the limitations of the MTEP process and the current method of allocating costs in the Midwest ISO. Xcel states that it supports the creation of a new permanent regional expansion criterion and benefits cost allocation method that accounts for the need of vertically integrated utilities to recover new investment in transmission facilities. Xcel Initial Comments at 11-13.

³⁴ Xcel Answer at 5-7; Xcel Initial Comments at 11 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009)).

³⁵ Xcel Answer at 11.

³⁶ Edison Answer at 4-5.

³⁷ *Id.* at 4-6.

³⁸ *Id.* at 6-7.

points out that no final decision has been made about the Storden Line and that the study did not assume that the capacitors were installed but, instead, proposed to install them.³⁹

16. Xcel urges the Commission to defer acceptance of the provisions assigning responsibility for the costs of network upgrades until the Commission makes a determination regarding the Midwest ISO's proposal to modify its generation interconnection cost allocation methodology in Docket ER09-1431-000. Xcel argues that the Commission should also defer action on the reasonableness of the obligation to execute a MPFCA until the Commission makes a determination on the tariff changes proposed in Docket No. ER09-1619-000, including the *pro forma* MPFCA.⁴⁰ Xcel also recommends that the Commission defer action on the Amended GIA for five months to allow time for the various stakeholder processes to reach a resolution and require the Midwest ISO to report on the progress of stakeholder discussions 60 and 120 days after the initial Commission order. Xcel states that the Commission can institute hearing and settlement procedures if the negotiations have not made sufficient progress at that time.⁴¹ In addition, Xcel asks the Commission to order the Midwest ISO to defer filing of other Group 5 generator interconnection agreements that are pending execution or are going to be filed on an unexecuted basis because failure to do so would cause all affected parties to incur substantial and unnecessary costs.⁴²

17. Edison argues that the Commission should not defer action on the Amended GIA for two reasons. First, Edison contends that the proceedings and negotiations that Xcel identified do not address the network upgrades Community Wind should be responsible for under the Amended GIA, which is the central issue in dispute in this proceeding.⁴³ Second, only by promptly directing the Midwest ISO to remove cost responsibility for the Brookings Line or to re-study the Community Wind project can the Commission avoid further delays and possible abandonment of the Community Wind project.⁴⁴

18. A number of protesters argue that the costs of the Brookings Line should be allocated regionally. Edison argues that the Midwest ISO has the option of expanding the

³⁹ *Id.* at 8-9.

⁴⁰ Xcel Initial Comments at 10.

⁴¹ Xcel Answer at 9.

⁴² *Id.* at 12.

⁴³ Edison Answer at 4, 9-11. Edison asserts that the ongoing discussions about the Brookings Line will not progress until the Commission rejects the proposed allocation of the costs of the Brookings Line.

⁴⁴ *Id.* at 12-13.

definition of a Baseline Reliability Project to include the Brookings Line.⁴⁵ NextEra, AWEA and WOW argue that the Brookings Line should be classified as a Baseline Reliability Project, Regionally Beneficial Project, or Other Project.⁴⁶ Buffalo Ridge simply argues that the costs of the Brookings Line should be rolled-in on a regional or system-wide basis.⁴⁷ On the other hand, Great River argues that the Commission would be ignoring the clear provisions of Attachment FF if it ordered the Midwest ISO to classify the project as requested by the protesters.⁴⁸

19. Several protesters also argue that the Amended GIA is unreasonable because it subjects Community Wind and other Group 5 projects to a large, open-ended, and unreasonable contingent cost obligation.⁴⁹ They argue that the Amended GIA threatens to halt development of wind generation in the region by placing the entire cost of the Brookings Line on Community Wind and other Group 5 projects. Edison argues that the Commission should limit Community Wind's cost responsibility to the estimated cost of network upgrades in the Amended GIA.⁵⁰

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits answers unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO, Xcel, Great River and Edison because they assisted us in our decision-making process.

B. Substantive Matters

22. We conditionally accept the Amended GIA, subject to the Midwest ISO revising the agreement, as discussed below. We also find good cause exists to grant the Midwest

⁴⁵ Edison Protest at 29.

⁴⁶ NextEra Protest at 3; AWEA and WOW Protest at 10.

⁴⁷ Buffalo Ridge Protest at 13.

⁴⁸ Great River Answer at 3-4.

⁴⁹ Edison Protest at 30-32, 34-38; Wind Capital Comments at 2-3.

⁵⁰ Edison Protest at 33-34.

ISO's request for waiver of the 60-day prior notice requirement to permit an effective date of August 14, 2009, one day after the filing.⁵¹

23. Under the Midwest ISO's tariff, interconnection customers may only be required to fund the costs of network upgrades that are necessary for their interconnection. The Midwest ISO's tariff uses the "but for" standard for the purpose of allocating the cost of network upgrades.⁵² Under that standard, "generation developers are to be allocated the costs for transmission system upgrades that would not have been made but for the interconnection of the developers, minus the cost of any facilities that the ISO's regional plan dictates would have been necessary anyway for load growth and reliability purposes."⁵³ In other words, under the Midwest ISO's tariff, a generator can only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of the generator.⁵⁴

24. The Midwest ISO attempts to require Community Wind to share in the costs of the Brookings Line with other generator interconnection customers on the basis that an interconnection customer must fund the cost of all network upgrades needed to support that customer's in-service date.⁵⁵ The Midwest ISO asserts, without supporting its conclusion, that the Brookings Line is "required primarily for the delivery of new wind energy resources."⁵⁶ Under the Amended GIA, the Midwest ISO allocates the cost of

⁵¹ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992).

⁵² The Midwest ISO has adopted the language of the *pro forma* LGIA adopted in Order No. 2003. Compare Order No. 2003, FERC Stats. & Regs. ¶ 31,146, Appendix C § 1 (defining network upgrades as "the additions, modifications, and upgrades to the Transmission Provider's Transmission System *required* at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System" (emphasis added)), *with* Tariff, Attachment X § 1 (defining network upgrades as the "additions, modifications, and upgrades to the Transmission System *required* at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility to the Transmission System" (emphasis added)). See also, *id.* § 8.4 (stating that the Interconnection Facilities Study must specify and estimate the cost of the *required* equipment and construction work needed to physically and electrically connect the Interconnection Facilities to the Transmission System (emphasis added)).

⁵³ *NYISO*, 97 FERC at 61,573.

⁵⁴ Tariff, Appendix FF § III.A.2.d.3(b).

⁵⁵ Filing, Transmittal Letter at 6 (citing Order No 2003-A, ¶ 31,160 at P 320).

⁵⁶ *Id.* at 7.

the Brookings Line to Community Wind and 18 other Group 5 projects without the Midwest ISO providing any evidence that the Brookings Line would not have been built but for the interconnection of these generation projects. The Commission finds that, based on the information that the Midwest ISO has provided in this docket, the allocation of the costs of the Brookings Line to Community Wind has not been shown to be just and reasonable, and must be rejected. We reject the Midwest ISO's proposal without prejudice to the Midwest ISO re-filing a proposal to allocate the costs of the Brookings line with appropriate support.

25. We will deny the requests of several protesters to set the Amended GIA for hearing or settlement judge procedures. The Midwest ISO has provided no evidence that the Brookings Line would not be constructed but for the interconnection of Community Wind and other Group 5 projects. Therefore, setting the Amended GIA for hearing and settlement procedures is unnecessary.

26. The Commission rejects the argument that it should defer action on the Amended GIA for the Community Wind project pending the outcome of other Commission proceedings and ongoing stakeholder discussions for two reasons. First, the outcome of the proceedings identified by Xcel will not address the issue of whether the costs of the Brookings Line can be allocated to Community Wind or other Group 5 projects. In Docket No. ER09-1431-000, the Midwest ISO has proposed changes to the method that it uses to allocate the costs of network upgrades. Under the current Midwest ISO tariff, interconnection customers are required to pay the entire cost of network upgrades upfront. If, after achieving commercial operation, the interconnection customer designates its facility as a network resource or enters into a contract with a term of at least one year to supply capacity or energy to a network customer, then 50 percent of the costs of network upgrades will be repaid to the interconnection customer.⁵⁷ Under the Midwest ISO's proposal, the interconnection customer will be repaid 10 percent of the costs once commercial operation has been achieved, rather than 50 percent of such costs.⁵⁸ Thus, while the proceedings in Docket No. ER09-1431-000 may impact Community Wind's eligibility for reimbursement of the costs of network upgrades, the proceedings do not address whether Community Wind can be required to fund the costs of the Brookings Line in the first place.

27. Likewise, the Midwest ISO's proposed revisions to its GIP in Docket No. ER09-1619-000 does not address the question of whether Community Wind can be obligated to share in the costs of the Brookings Line. In that proceeding, the Midwest ISO has proposed to revise its GIP to include two new *pro forma* agreements: (1) a facilities construction agreement for a single interconnection customer; and (2) a MPFCA to

⁵⁷ Tariff, Attachment FF, section III.A.2.d.

⁵⁸ Cost Allocation Filing, Transmittal Letter at 15.

address the situation where multiple interconnection customers cause the need and share the cost responsibility for common use upgrades to accommodate their interconnection requests.⁵⁹ While that proceeding may impact any MPFCA that Community Wind and the other affected stakeholders ultimately enter into relating to the Brookings Line, those *pro forma* agreements are not relevant to the disposition of this case.

28. Second, deferring action on the agreement, as Xcel requests, pending the outcome of the ongoing stakeholder negotiations for the MPFCA is unnecessary. As the Midwest ISO has failed to meet its burden in demonstrating that the provisions of the Amended GIA relating to the Brookings Line are just and reasonable, we must reject the provisions of the Amended GIA relating to the Brookings Line and this order does not foreclose further discussions.

29. Accordingly, we will accept the filing, subject to the Midwest ISO making a compliance filing within 30 days to remove the unsupported language relating to any cost responsibility of Community Wind or other Group 5 projects for the costs of the Brookings Line.

The Commission orders:

(A) The Amended GIA is hereby accepted as conditioned in the body of the order, to become effective August 14, 2009, as requested.

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

By the Commission. Commissioner Kelly concurring in part and dissenting in part with a separate statement to be issued at a later date.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁹ MPFCA Filing, Transmittal Letter at 5.