

133 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER09-1581-004
ER09-1581-005

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 5, 2010)

1. On May 20, 2010, the Commission denied rehearing and granted clarification of an earlier order in this proceeding¹ that conditionally accepted an unexecuted Amended and Restated Generator Interconnection Agreement (Amended GIA) among Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Northern States Power Company, and Community Wind North LLC (Community Wind) (together, the Parties).² The Commission also dismissed a compliance filing that Midwest ISO had submitted in order to comply with the Initial Order, and ordered Midwest ISO to submit a compliance filing further revising the Amended GIA.

2. In this order, the Commission addresses a request for clarification of the Rehearing Order submitted by NextEra Energy Resources, LLC (NextEra), on behalf of its operating subsidiary Story Wind, LLC (Story Wind). This order also addresses the compliance filing submitted by Midwest ISO in accordance with the Rehearing Order. As discussed below, we will clarify the Rehearing Order and accept Midwest ISO's compliance filing, effective August 14, 2009.

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009) (Initial Order).

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165 (2010) (Rehearing Order).

I. Background

3. On December 9, 2008, the Parties executed a temporary interconnection agreement (Temporary GIA) for Community Wind's 30 megawatt wind generation project (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 Midwest ISO's Generator Interconnection Procedures in Attachment X of the Midwest ISO Tariff.³ Since the body of the Temporary GIA conformed to the *pro forma* GIA, the Temporary GIA was reported in Midwest ISO's Electric Quarterly Report in accordance with Order No. 2003.⁴

4. On August 13, 2009, Midwest ISO filed the Amended GIA with the Commission. The agreement was filed unexecuted because the parties could not agree on provisions relating to Community Wind's responsibility for the costs of a particular network upgrade, the Brookings County-Twin Cities transmission line (Brookings Line).⁵ Appendix A of the Amended GIA provided that Community Wind shared in the cost responsibility for the Brookings Line and included a table estimating that 100 percent of the total cost of the Brookings Line would be allocated to a subset of projects in the same study group (the Group 5 projects), including Story Wind. Appendix A also provided that the Group 5 projects' obligations to simultaneously secure and fund the Brookings Line would be the subject matter governed by a future multi-party facilities construction agreement.

5. In the Initial Order, the Commission accepted the Amended GIA, effective August 14, 2009, on the condition that Midwest ISO revise the Amended GIA.⁶ The

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

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 915 (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 As planned, the Brookings Line is a 230-mile, 345-kV transmission line that will connect Brookings County, South Dakota, with eastern Minnesota.

⁶ Initial Order, 129 FERC ¶ 61,019 at P 29.

Commission explained that Midwest ISO's Tariff uses the "but for" standard for the purpose of allocating the cost of network upgrades, and that, under that standard, an interconnection customer can only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of the generator.⁷ The Commission found that Midwest ISO had failed to provide any evidence that the Brookings Line would not be constructed but for the interconnection of Community Wind and the other Group 5 projects.⁸ Accordingly, the Commission directed Midwest ISO to revise the Amended GIA to remove unsupported language relating to any responsibility of Community Wind or the Group 5 projects for the cost of the Brookings Line.⁹

6. Several parties requested rehearing or clarification of the Initial Order. In addition, on November 9, 2009, Midwest ISO submitted the compliance filing directed by the Initial Order, which contained a revised Amended GIA that omitted any reference to the Brookings Line and returned the Amended GIA to the status of a provisional GIA.¹⁰

7. In the Rehearing Order, the Commission clarified that the "but for" standard limits the cost responsibility of an interconnection customer or reasonably constituted group of interconnection customers to the cost of upgrades that would not be necessary but for the interconnection of the customer or the group.¹¹ At the same time, the Commission recognized that the Tariff affords Midwest ISO discretion when determining what facilities should be built to accommodate the interconnection of a project or a group of projects to consider both the needs of the relevant interconnection customers and certain

⁷ *Id.* P 23.

⁸ Under the Midwest ISO's Generator Interconnection Procedures, interconnection customers may be grouped together for the purpose of conducting interconnection studies. The Midwest ISO followed this procedure for the Group 5 projects, which have requested interconnection in southwest Minnesota, northwest Iowa, and eastern South Dakota. The initial studies were performed in 2006 and 2007 and the study reports were posted during the summer and fall of 2007.

⁹ Initial Order, 129 FERC ¶ 61,019 at P 29.

¹⁰ The Tariff was recently amended, and now refers to temporary GIAs as provisional GIAs. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,301 (2009).

¹¹ Rehearing Order, 131 FERC ¶ 61,165 at P 20.

system-wide needs.¹² Thus, the Commission explained that Midwest ISO could determine that a large upgrade, such as the Brookings Line, should be built because it will accommodate the interconnection of a group of projects while addressing other system-wide needs, but that the cost responsibility of the group would remain limited to the cost of the facilities that would not be needed but for the group's interconnection.¹³

8. The Commission also explained that its concern in the Initial Order was that the record evidence did not support allocating 100 percent of the costs of the Brookings Line to the Group 5 projects, but the language of the Amended GIA was not sufficient to limit the cost responsibility of Community Wind and the other Group 5 projects in accordance with the "but for" standard. The Commission stated that it had not intended to suggest that Midwest ISO should remove all references to the Brookings Line or return the Amended GIA to the status of a temporary or provisional GIA. Accordingly, the Commission dismissed the compliance filing submitted in response to the Initial Order and directed Midwest ISO to further revise the language of Appendix A to correctly describe the risk that Community Wind and the other Group 5 projects face regarding construction of the Brookings Line. In particular, the Commission directed Midwest ISO to revise sections 2(ii) and 2(iii) of Appendix A to make them consistent with section 2(i), which referred to a future multi-party facilities construction agreement, and to revise all three sections to clarify that Community Wind only shares cost responsibility for the Brookings Line to the extent that the Brookings Line would not have been necessary but for the interconnection of the Group 5 projects. The Commission also directed Midwest ISO to remove Table 5 from Appendix A because Midwest ISO had failed to demonstrate that 100 percent of the costs of the Brookings Line should be allocated to the Group 5 projects and the cost estimates contained therein were of little value in light of the fact that restudy of the Group 5 projects was required.¹⁴

9. Midwest ISO submitted a compliance filing as directed by the Rehearing Order. NextEra filed a request for clarification of the Rehearing Order.

¹² *Id.* P 21.

¹³ *Id.* P 22.

¹⁴ *Id.* P 44. As explained in the Rehearing Order, Midwest ISO stated that restudy of the Group 5 projects was necessary due to the withdrawal of higher-queued generators. *Id.* P 26, 28.

II. Discussion

A. Procedural Matters

10. Notice of Midwest ISO's compliance filing was published in the *Federal Register*, 75 Fed. Reg. 38,803 (2010), with interventions and protests due on or before July 9, 2010. None was filed.

B. Substantive Matters

1. Request for Clarification

a. NextEra's Request for Clarification

11. In its request for clarification, NextEra asks that the Commission clarify that it has not ruled that Story Wind should bear any specific costs for the Brookings Line or any other facility that may result from Midwest ISO's restudy.¹⁵ NextEra notes that Story Wind has a GIA that was executed in July 2008 and based on a facilities study that was completed in April 2008, but that neither Story Wind's facilities study nor its GIA specified that Story Wind had any cost responsibility for the Brookings Line or a comparable facility. NextEra states that both the Initial Order and the Rehearing Order failed to address NextEra's argument that Midwest ISO could not charge Story Wind for any such costs based on the facts and circumstances surrounding Story Wind's GIA. According to NextEra, the Commission should clarify that other generators, such as Story Wind, are not prejudiced by any finding in the order concerning Community Wind and may raise all arguments when Midwest ISO proposes to amend Story Wind's or any other project's GIA.¹⁶

b. Commission Determination

12. We clarify that the Rehearing Order did not address the specific cost responsibility of Story Wind for the Brookings Line or any other facility that Midwest ISO's restudy determines should be built to accommodate the interconnection of the Group 5 projects. But the Rehearing Order did clarify that the "but for" standard, in the context of Midwest ISO's Tariff, limits the cost responsibility of a reasonably constituted group of interconnection customers to the cost of the upgrades that would not be necessary but for the interconnection of the group. In other words, if Midwest ISO determines through its

¹⁵ NextEra Request for Clarification at 4.

¹⁶ *Id.* at 5-6.

study process that a particular facility should be built to accommodate the interconnection of the Group 5 projects,¹⁷ then the group will be required to fund the portion of the facility that would not be necessary but for their interconnection. Nevertheless, to the extent that Midwest ISO seeks to impose such costs on Story Wind in a future proceeding before the Commission, the Rehearing Order does not preclude NextEra from raising appropriate arguments at that time.

2. Compliance Filing

a. Midwest ISO's Filing

13. In its compliance filing, Midwest ISO proposes to revise sections 2(i), 2(ii), and 2(iii) of Appendix A to the Amended GIA. The revised language provides that Community Wind shares in the cost responsibility for Common Use Upgrades and/or Shared Ownership Common Use Upgrades¹⁸ – which may include an appropriate portion of the Brookings Line and related transmission system upgrades – that would not have been necessary but for the interconnection of Community Wind and the Group 5 projects as identified in Midwest ISO's restudy. As revised, the sections also provide that the Group 5 projects' obligations to secure and fund the Common Use Upgrades and/or Shared Ownership Common Use Upgrades will be governed by a separate, future multi-party facilities construction agreement.¹⁹ In addition, Midwest ISO proposes to delete

¹⁷ In the Rehearing Order, the Commission recognized that the Tariff directs Midwest ISO to use its study process to identify network upgrades that both ensure that a group of interconnection customers can interconnect reliably *and* promote efficiency. At the same time, the Commission recognized that the cost responsibility of a group of interconnection customers remains limited to that portion of a network upgrade that would not be necessary but for the interconnection of the group. *See* Rehearing Order, 131 FERC ¶ 61,165 at P 21-22.

¹⁸ The Amended GIA distinguishes among several types of network upgrades: Common Use Upgrades, Shared Ownership Common Use Upgrades, and network upgrades. The Amended GIA refers to the Brookings Line as a Shared Ownership Common Use Upgrade. *See* Compliance Filing, Original Sheet Nos. 99-105; Rehearing Order, 131 FERC ¶ 61,165 at P 32 n.47.

¹⁹ Compliance Filing, Original Sheet Nos. 90-92.

Table 5 and to make a number of minor revisions to Appendix A to reflect the revisions made to section 2 and the deletion of Table 5.²⁰

b. Commission Determination

14. We find that Midwest ISO has complied with the Commission's directives in the Rehearing Order. Accordingly, we will accept Midwest ISO's filing, effective August 14, 2009, as requested.

The Commission orders:

(A) NextEra's request for clarification is granted, as discussed in the body of this order.

(B) Midwest ISO's proposed revisions to the Amended GIA are hereby accepted for filing, effective August 14, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ *Id.*, Original Sheet Nos. 102, 104, 108.