

138 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-165-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING GENERATOR
INTERCONNECTION AGREEMENT, SUBJECT TO REFUND, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 19, 2012)

1. On October 21, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act¹ and section 35.12 of the Commission's regulations,² an unexecuted Generator Interconnection Agreement (Interconnection Agreement). The Interconnection Agreement is between MISO, as Transmission Provider, ITC Midwest LLC (ITC Midwest), as Transmission Owner, and EcoHarmony West Wind LLC (EcoHarmony), as Interconnection Customer, and concerns Project G746 (EcoHarmony Project). The Interconnection Agreement submitted by MISO conforms to the *pro forma* Generator Interconnection Agreement of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).³ However, EcoHarmony requested that MISO submit the Interconnection Agreement unexecuted due to EcoHarmony's disagreement with the applicability of certain provisions in the Interconnection Agreement and in Attachment X (Generator Interconnection Procedures) of the MISO Tariff. In this order, we conditionally accept the Interconnection Agreement, subject to a compliance filing, and suspend it for a

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.12 (2011).

³ MISO, FERC Electric Tariff (0.0.0).

nominal period, to become effective December 21, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. EcoEnergy LLC (EcoEnergy) is a commercial scale wind development company that is sponsoring the EcoHarmony Project. The EcoHarmony Project will be a wind farm with a maximum capacity of 200 megawatts (MW), located in Fillmore County, Minnesota. The EcoHarmony Project will interconnect via a 161 kV radial line to the 161 kV Lansing-Harmony line owned by ITC Midwest.

3. On February 15, 2007, EcoEnergy submitted its Interconnection Request for the EcoHarmony Project. MISO informed EcoEnergy that the EcoHarmony Project would be placed in the Definitive Planning Phase Group 1, effective August 3, 2010. On November 15, 2010, MISO completed the System Impact Study for the EcoHarmony Project. Subsequently, on May 31, 2011, MISO and ITC Midwest completed the Facilities Study. On June 23, 2011, MISO, ITC Midwest, and EcoEnergy began negotiations of the Interconnection Agreement. However, after approximately one month of negotiating, MISO declared that the parties had reached an impasse on unresolved issues. At EcoEnergy's request, MISO submitted the Interconnection Agreement in unexecuted form on October 21, 2011.

II. Notice of Filing and Responsive Pleadings

4. Notice of MISO's October 21, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 67,433 (2011), with protests and interventions due on or before November 14, 2011. ITC Midwest filed a timely motion to intervene. EcoEnergy filed a timely motion to intervene and protest.

5. On November 29, 2011, MISO and ITC Midwest filed answers to EcoEnergy's protest. On December 13, 2011, EcoEnergy filed an answer to MISO's and ITC Midwest's answers.

6. On December 20, 2011, Commission staff issued a deficiency letter requesting further information from MISO (Deficiency Letter). On January 19, 2012, MISO submitted its response to the deficiency letter (Supplemental Filing). Notice of the Supplemental Filing was published in the *Federal Register*, 77 Fed. Reg. 4292 (2012), with comments due on or before February 8, 2012. EcoHarmony filed a timely motion to intervene. EcoHarmony and EcoEnergy (collectively, Joint Commenters) filed comments in response to the Supplemental Filing. On March 7, 2012, ITC Midwest filed an answer to Joint Commenters' comments.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make those entities that filed 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) (2011), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept MISO's, ITC Midwest's, and EcoEnergy's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

8. For the reasons set forth below, we conditionally accept the Interconnection Agreement, subject to a compliance filing, and suspend it for a nominal period, to become effective December 21, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures.

1. Applicability of Section 7.4 of Attachment X of the MISO Tariff

a. Filing

9. MISO proposed to change the Point of Interconnection for the EcoHarmony Project from a new substation on ITC Midwest's Lansing-Harmony line, as set forth in the original Interconnection Request, to the Dairyland Power Cooperative's (Dairyland) Harmony substation. EcoEnergy requested that the Point of Interconnection revert back to the original Point of Interconnection. The Interconnection Agreement specifies that the Point of Interconnection will be ITC Midwest's Lansing-Harmony line as originally contemplated by the parties. However, the Interconnection Agreement invokes section 7.4 of Attachment X of the MISO Tariff to allocate to EcoEnergy the additional cost of the Network Upgrades necessary to accommodate EcoEnergy's interconnection request to the Lansing-Harmony line.⁴

⁴ The last paragraph of section 7.4 of Attachment X states:

If the Interconnection System Impact Study indicates that changing the Point of Interconnection can lower the cost of Network Upgrades without raising the total costs of Interconnection Facilities and Network Upgrades, then the Transmission Provider may change the Point of Interconnection. If the Interconnection Customer requests in writing to revert back to the

(continued...)

b. Protest

10. EcoEnergy states that MISO's proposed change in Point of Interconnection is patently unreasonable and inconsistent with the MISO Tariff. EcoEnergy argues that it reasonably relied on statements from MISO and ITC Midwest in planning for a Point of Interconnection with the ITC Midwest Lansing-Harmony line. EcoEnergy states that, early in the interconnection process, it asked MISO if the EcoHarmony Project could interconnect to Dairyland's Harmony substation, and MISO passed the question to ITC Midwest. EcoEnergy states that ITC Midwest responded that connecting at Dairyland's Harmony substation would not be possible because, at that time, Dairyland was not a member of MISO. EcoEnergy argues that errors from the Transitional Period Feasibility Analysis during the implementation of MISO's Queue Reform delayed the interconnection process for the EcoHarmony Project, which allowed Dairyland the opportunity to become a member of MISO. EcoEnergy states that ITC Midwest suggested a Point of Interconnection at the new substation on the ITC Midwest Lansing-Harmony line. EcoHarmony states that, as a result of these discussions, it proposed a Point of Interconnection at the new substation on the ITC Midwest Lansing-Harmony line.

11. EcoEnergy states that, in October 2010, the same representative from ITC Midwest who previously suggested that EcoEnergy should interconnect to a new substation on ITC Midwest's Lansing-Harmony line suggested that it would be against Good Utility Practice to interconnect the EcoHarmony Project at Lansing-Harmony line rather than at Dairyland's Harmony substation. EcoEnergy argues that ITC Midwest's revised position on the Point of Interconnection for the EcoHarmony Project is inconsistent with its earlier treatment of at least two other projects for which ITC Midwest allowed a new substation to be built near an existing substation.⁵ Further, EcoEnergy states that interconnecting at the Lansing-Harmony line was a significant factor in its continuing development efforts and that it initiated a two-year process of pursuing and acquiring the necessary permits and easements to interconnect its project to that Point of Interconnection. EcoEnergy claims that ITC Midwest's proposed change would alter the risk profiles EcoEnergy had created based on the previous information

original Point of Interconnection after the Point of Interconnection was modified by the Transmission Provider, then the additional cost of the Network Upgrades necessary to accommodate the Interconnection Request will be treated as Interconnection Facilities for cost allocation and refund purposes.

⁵ EcoEnergy November 14, 2011 Protest at 9.

given by ITC Midwest.⁶ EcoEnergy states that the change in the Point of Interconnection would increase its costs by approximately \$5,436,241, plus approximately \$1,638,483 in tax gross-up costs.⁷

12. EcoEnergy argues that section 7.4 of Attachment X does not apply to the EcoHarmony Project. EcoEnergy argues that section 7.4 only applies to projects in the System Planning and Analysis Phase. EcoEnergy argues that the EcoHarmony Project had already advanced to the Definitive Planning Phase Group 1 before MISO gave any indication it intended to change the Point of Interconnection. EcoEnergy states that section 8 (Definitive Planning Phase) of Attachment X applies to projects in the Definitive Planning Phase, and, unlike the provision provided in section 7.4 for projects in the System Planning and Analysis Phase, section 8 does not contain any language that allows MISO to change the Point of Interconnection for a project. In support, EcoEnergy references MISO's filings in the generator queue reform proceeding in Docket No. ER12-309-000 in which MISO mentions the absence of any provision in section 8 of Attachment X that would allow for a change to the Point of Interconnection. In that proceeding, MISO proposes new language in sections 8.3 (Scope of System Planning and Analysis Review) and 8.5 (Interconnection Facilities Study Procedures) to, prospectively, allow a change of Point of Interconnection for a project in the Definitive Planning Phase under certain circumstances.⁸

13. EcoHarmony also argues that the language in section 7.4 requires that MISO demonstrate that an alternative Point of Interconnection would be less expensive in the System Impact Study before MISO may change the Point of Interconnection. EcoEnergy argues that MISO has not provided any analysis showing that interconnection at Dairyland's Harmony substation would be less costly than interconnection to the Lansing-Harmony line.⁹ EcoEnergy states that the first time MISO purported to apply section 7.4 to change the Point of Interconnection for the EcoHarmony Project was in an email message sent on March 31, 2011, 136 days after the completion of the System Impact Study.¹⁰

⁶ *Id.* at 8-11.

⁷ *Id.* at 5.

⁸ *Id.* at 6-8.

⁹ *Id.* at 11-12.

¹⁰ *Id.* at 6.

14. EcoEnergy also conditionally protests certain provisions of the Interconnection Agreement if the Commission determines that section 7.4 of Attachment X does apply to the EcoHarmony Project and, therefore, the change in the Point of Interconnection is acceptable. Specifically, EcoEnergy argues that ITC Midwest has not justified collection of the proposed tax gross-up amounts from EcoEnergy and, even if the Commission determines that collection of a tax-gross-up amount is permissible, ITC Midwest's calculation of the tax-gross-up amount appears to be overstated.¹¹ EcoEnergy also asserts that interconnecting to the Lansing-Harmony line would only accelerate the process of rebuilding a line that would otherwise have been rebuilt pursuant to MISO's Midwest Transmission Expansion Plan 2011 (MTEP11). In addition, EcoEnergy argues that the estimate of "incremental" Network Upgrade costs required for EcoEnergy to interconnect to the Lansing-Harmony line for which EcoEnergy would not be reimbursed is overstated.¹² EcoEnergy further argues that the Commission should require MISO to specify in the Interconnection Agreement the Financial Transmission Rights associated with any Network Upgrade costs not reimbursed to EcoEnergy.¹³

c. Answers

15. MISO argues that it has properly applied section 7.4 of Attachment X to the EcoHarmony Project. MISO argues that while section 7.4 is a subpart of section 7 (System Planning and Analysis Phase), rather than section 8 (Definitive Planning Phase), these headers alone do not determine the applicability of section 7.4. MISO states that it is clear from Attachment X that a System Impact Study may impact a project in the Definitive Planning Phase. Specifically, MISO argues that section 8 states that the Definitive Planning Phase "will be composed of a System Planning and Analysis Review, which may be an Interconnection System Impact Study or Re-study, and an Interconnection Facilities Study."¹⁴ MISO also argues that the EcoHarmony Project "was subjected to a restudy" of its System Impact Study for the Definitive Planning Phase Group 1.¹⁵ MISO states that the costs for network upgrades to Dairyland's

¹¹ *Id.* at 20-22.

¹² *Id.* at 22-24.

¹³ *Id.* at 25.

¹⁴ MISO November 29, 2011 Answer at 6-7.

¹⁵ *Id.* at 7.

Harmony substation and the Lansing-Harmony line will be considered when it completes a re-study of Definitive Planning Phase Group 1.¹⁶

16. MISO argues that the statement in Exhibit A9 of the Interconnection Agreement that MISO has determined that connecting at the Point of Interconnection at the Lansing-Harmony line is more expensive than connecting at Dairyland's Harmony station is sufficient to satisfy the requirements of section 7.4. MISO states that it has relied upon estimates conducted by Dairyland and these estimates are sufficient to warrant a change in Point of Interconnection. MISO states EcoEnergy always understood that the cost analysis it received from Dairyland was "merely" an estimate and that increased costs were a known risk. MISO notes that Exhibit A9 of the Interconnection Agreement states: "These calculations will be adjusted by amending this agreement if necessary when the final detailed information becomes available."¹⁷

17. ITC Midwest supports MISO in its application of section 7.4 of Attachment X. ITC Midwest asserts that the need for MISO's application of section 7.4 arose as part of the System Impact Study review process. ITC Midwest states that MISO circulated a copy of the draft thermal System Impact Study results and a copy of the stability model for the EcoHarmony Project to area transmission owners, including ITC Midwest, for review and comment. ITC Midwest states that it responded to MISO's request for comment indicating that it is counter to Good Utility Practice to construct a new switching station within 1/2 mile of an existing facility (i.e., Dairyland's Harmony substation) and would be contrary to the interest of ITC Midwest's customers to build a new switching station so close to Dairyland's Harmony substation. ITC Midwest avers that MISO then took appropriate action to invoke section 7.4 of Attachment X.¹⁸

18. In response to EcoEnergy's claim that ITC Midwest's actions in this case are inconsistent with ITC Midwest's treatment of prior projects for which ITC Midwest allowed a new switching station to be built near an existing substation, such as Projects G573/G574/G575, ITC Midwest states that, similar to the EcoHarmony Project, Projects G573/G574/G575 desired to interconnect to the MISO transmission system and the closest facilities to those projects were not MISO facilities. ITC Midwest argues that it cannot require an interconnection customer to connect to non-MISO facilities and thus section 7.4 of Attachment X was not applicable to those projects. Further, ITC Midwest argues that section 7.4 of Attachment X is also not applicable to Project G604, as relied

¹⁶ *Id.* at 7, 10.

¹⁷ *Id.* at 8-9 (citing Interconnection Agreement, Ex. A9).

¹⁸ ITC Midwest November 29, 2011 Answer at 4.

upon by EcoEnergy in its protest, because changing the point of interconnection for Project G604 would have increased the cost of Network Upgrades.¹⁹

19. In response to EcoEnergy's arguments regarding reliance on statements made by ITC Midwest regarding an appropriate interconnection to the MISO system, ITC Midwest states that such information is for general reference only and any work performed prior to completion of the MISO studies was at the sole risk of EcoEnergy.²⁰ MISO and ITC Midwest state that Dairyland was not a member of MISO until June 2010. Accordingly, prior to that time, MISO did not have responsibility for evaluating and processing requests for interconnection to Dairyland's transmission system.²¹

20. In response to EcoEnergy's conditional protest, MISO first argues that the incremental costs incurred by EcoEnergy as a result of interconnecting to Dairyland's Harmony substation are not excessive and the EcoHarmony Project would pay the actual costs to interconnect at the Lansing-Harmony line.²² Second, MISO and ITC Midwest argue that interconnecting to the Lansing-Harmony line would not accelerate the process of rebuilding a line that would otherwise have been rebuilt because the inclusion of the "Lansing-Harmony 161kV Rebuild" in Appendix C of MISO's MTEP11 is not a binding commitment by the transmission owner to build the project and the rebuild discussed in Appendix C of MTEP11 applies to the portion of the line in Iowa and not in Minnesota.²³ Lastly, MISO asserts that Financial Transmission Rights have never been listed in the text of any interconnection agreement and explains that Financial Transmission Rights are only available to EcoEnergy to the extent EcoEnergy is not reimbursed for its costs for Network Upgrades at the Point of Interconnection. MISO further argues that it is impossible to specify the Financial Transmission Rights in the Interconnection Agreement because they are not known until the Network Upgrades are constructed and MISO will determine the incremental Financial Transmission Rights after the facilities are installed and the Financial Transmission Right analysis is performed.²⁴

¹⁹ *Id.* at 5-6.

²⁰ *Id.*

²¹ MISO November 29, 2011 Answer at 9; ITC Midwest November 29, 2011 Answer at 2.

²² MISO November 29, 2011 Answer at 12-13.

²³ *Id.* at 13-14; ITC Midwest November 29, 2011 Answer at 11-12.

²⁴ MISO November 29, 2011 Answer at 14.

21. In response to EcoEnergy's conditional protest regarding the tax gross-up dispute, ITC Midwest contends that the tax gross-up is appropriate. ITC Midwest maintains that it has made a good faith determination that the non-reimbursable payments made to ITC Midwest by EcoEnergy for the EcoHarmony Project should be reported as income and subject to taxation. Furthermore, ITC Midwest argues, according to Internal Revenue Code Section 61, all payments from EcoEnergy to ITC Midwest are considered gross income unless specifically excluded by the Internal Revenue Service. Therefore, ITC Midwest argues that the payments are included in taxable gross income and subject to gross-up.

22. ITC Midwest also argues that EcoEnergy's claim that the payments to ITC Midwest should be treated as being for Interconnection Facilities for tax purposes is false. ITC Midwest states that changing the classification from Network Upgrades to Interconnection Facilities in order to determine cost allocation does not change ITC Midwest's approach to determining the proper tax treatment for the payment. Even if ITC Midwest did consider the non-reimbursable payments as taxable, ITC Midwest claims that EcoEnergy is still mistaken that the amount is overstated. ITC Midwest states that it has calculated the tax gross-up amount using the formula provided, considering the amount of current taxes imposed on the excess of gross income realized by the transmission owner over the present value of future tax deductions for depreciation.²⁵

23. In its answer, EcoEnergy argues that MISO's and ITC Midwest's answers fail to justify application of section 7.4 of Attachment X to the EcoHarmony Project. EcoEnergy contends that MISO and ITC Midwest do not deny that: (1) the System Impact Study for the EcoHarmony Project, completed on November 15, 2010, makes no reference to section 7.4 or any alternative point of interconnection; (2) MISO has never conducted a detailed engineering analysis or cost estimate for alternative Point of Interconnection at Dairyland's Harmony substation; (3) MISO had a completed System Impact Study and was months into the Definitive Planning Phase before it made any reference to an alternative Point of Interconnection; (4) EcoEnergy was initially told that Dairyland's Harmony substation was unavailable for interconnection; and (5) engineering errors by MISO delayed the interconnection process.²⁶

24. EcoEnergy indicates that MISO and ITC Midwest have different arguments for why section 7.4 of Attachment X is applicable to the EcoHarmony Project. EcoEnergy states that, on the one hand, MISO points to the Definitive Planning Phase Group 1 re-

²⁵ ITC Midwest November 29, 2011 Answer at 8-10.

²⁶ EcoEnergy December 13, 2011 Answer at 4.

study it has started pursuant to a separate Commission directive in another proceeding.²⁷ EcoEnergy states that, on the other hand, ITC Midwest suggests that MISO was correct in its application of section 7.4 because of comments ITC Midwest made to MISO on the draft System Impact Study for the EcoHarmony Project.²⁸ EcoEnergy states that neither MISO nor ITC Midwest identifies any System Impact Study that references Dairyland's Harmony substation as an alternative Point of Interconnection for the EcoHarmony Project as plainly required by the language in section 7.4.²⁹

25. EcoEnergy argues that MISO's suggestion that section 7.4 may be applied upon completion of the Definitive Planning Phase Group 1 "cost allocation review," which MISO characterizes as a restudy, is inconsistent with the position that MISO took in initiating that review—that "changes to [Point of Interconnection] and project size are not permitted by the tariff." EcoEnergy also argues that the condition precedent for application of section 7.4 of Attachment X "cannot be satisfied without identifying *and* studying the potential alternative [Point of Interconnection] and including the results in the System Impact Study."³⁰ If not, EcoEnergy asserts that the affected interconnection customer would have no basis for making a business assessment of the alternative(s).³¹

26. EcoEnergy also argues that the cost estimate provided by Dairyland to "determine cost allocation"³² ignores the plain language of section 7.4 of Attachment X and the threshold requirement for MISO to determine that "changing the point of interconnection can lower the cost of Network Upgrades without raising the total costs of Interconnection Facilities and Network Upgrades." EcoEnergy states that any such determination logically requires a cost analysis for interconnection at both of the proposed points of interconnection.³³

²⁷ *Id.* at 5 (citing MISO November 29, 2011 Answer at 7; *Midwest Indep. Trans. Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009), *reh'g denied*, 131 FERC ¶ 61,165, *order on reh'g and compliance filing*, 133 FERC ¶ 61,011 (2010)).

²⁸ *Id.* (citing ITC Midwest November 29, 2011 Answer at 4).

²⁹ *Id.*

³⁰ *Id.* at 6 (emphasis in original).

³¹ *Id.* at 5-6.

³² *See* MISO November 29, 2011 Answer at 13.

³³ EcoEnergy December 13, 2011 Answer at 6-7.

27. EcoEnergy disputes ITC Midwest's arguments that section 7.4 of Attachment X is applicable because of general references to the possibility of connecting at Dairyland's Harmony substation during the review process for the EcoHarmony Project and that the costs of all work performed by EcoEnergy to advance the EcoHarmony Project were understood to be incurred at EcoEnergy's risk until completion of the MISO study process. EcoEnergy states that unless comments made by Transmission Owners are adopted by an *ad hoc* reviewing committee and by MISO, then they remain comments and not findings. EcoEnergy also disputes ITC Midwest's suggestion that MISO (or ITC Midwest) can change any and all of the parameters for an interconnection at any point in the process. It states this would counteract the efforts of an interconnection customer to fulfill its M2 and M3 milestones for project development and would be unjust and unreasonable because section 7.4 provides no such blanket authority after the completion of a System Impact Study. In fact, EcoEnergy states that MISO's proposed revisions to sections 8.3 and 8.5 of Attachment X in the interconnection queue proceeding in Docket No. ER12-309 to allow MISO authority, prospectively, to change the point of interconnection of a project in the Definitive Planning Phase of the interconnection process illustrates that no such blanket authority exists under section 7.4 of Attachment X.³⁴

d. Comments on Supplemental Filing

28. Joint Commenters argue that the communications provided by MISO in its Supplemental Filing are incomplete. Joint Commenters provide additional emails that indicate that MISO did not perform a re-study of its System Impact Study for the EcoHarmony Project considering the Dairyland Point of Interconnection. Therefore, argue Joint Commenters, MISO did not follow the tariff requirements for invocation of section 7.4 to permit a change in the Point of Interconnection.³⁵ Joint Commenters state that their additional emails illustrate that, while an alternative Point of Interconnection was discovered, it was not identified in the System Impact Study, only conjectured outside the scope of a System Impact Study. Additionally, Joint Commenters state that MISO did not provide to the Commission "any studies and/or study reports for [the EcoHarmony Project] including a restudy and/or restudy report which indicated that changing the [Point of Interconnection] for [the EcoHarmony Project] can lower the cost of Network Upgrades without raising the total costs of Interconnection Facilities and Network Upgrades" except for a preliminary estimate conducted by Dairyland outside of the scope of a System Impact Study. Instead, argue Joint Commenters, MISO provided

³⁴ *Id.* at 8-9.

³⁵ Joint Commenters February 8, 2012 Protest, App. 1.

an ITC Midwest Facilities Study Report³⁶ and the Dairyland Facility Study³⁷ for the EcoHarmony Project, which deal solely with the original Point of Interconnection on ITC Midwest's Harmony-Lansing line as requested by EcoEnergy. Joint Commenters state this is evidence that no formal re-study was conducted and further reason why MISO can not invoke section 7.4 of Attachment X in this case.³⁸

29. Joint Commenters also note that MISO has recently taken positions contradicting its stance in the current proceeding that section 7.4 permits a change to a point of interconnection after the completion of a System Impact Study and entrance into the Definitive Planning Phase. Joint Commenters state that, in Docket No. EL10-86-000, MISO relies upon the Commission's recent decision in *Southwest Power Pool Inc.*³⁹ where the Commission denied a request "to change the [point of interconnection] after the execution of a system impact study agreement based on language similar to that in the applicable version of the MISO [Large Generation Interconnection Agreement]."⁴⁰ Joint Commenters again argue that MISO should be held to the same standards as an interconnection customer and should not be permitted to impose additional costs on the EcoHarmony Project based only on undocumented estimates.⁴¹ Joint Commenters argue that, while the proposal to change the point of interconnection was requested by the interconnection customer in that case, there is no reason a different rule should apply to MISO with regard to changing a point of interconnection in this case. Joint Commenters state that MISO also admits that a restudy does not present an opportunity for a change to the point of interconnection, which is consistent with MISO's directives with regard to the restudy of the Definitive Planning Phase Group 1 brought up by EcoEnergy in its Answer.⁴²

³⁶ MISO Supplemental Filing, Attachment D.

³⁷ *Id.*, Attachment E.

³⁸ Joint Commenters February 8, 2012 Protest at 6.

³⁹ 135 FERC ¶ 61,186 (2011).

⁴⁰ *See* MISO, Initial Brief, Docket No. EL10-86-000, at 19-20 (filed Jan. 23, 2012).

⁴¹ *Id.* at 6-7.

⁴² Joint Commenters February 8, 2012 Protest at 4 (citing EcoEnergy Answer at App. 1).

30. Joint Commenters assert that MISO failed to provide and explain the cost calculations that were requested in the Deficiency Letter. Joint Protesters contend that this is evidence that no engineering or cost analysis had been performed to support MISO's claim that costs would be less for interconnecting the EcoHarmony Project at Dairyland's Harmony substation than on the Harmony-Lansing line. Additionally, Joint Commenters argue that the undocumented estimates on which MISO bases its claims were performed after the completion of the System Impact Study for the EcoHarmony Project and not revealed to EcoEnergy in a timely fashion.⁴³ Joint Commenters also argue that MISO contends that the cost analysis was never performed by EcoEnergy but MISO never requested any such analysis.⁴⁴

31. Joint Commenters also argue that MISO's claim that the cost of additional Interconnection Facilities would be the same as ITC Midwest's costs to re-build a portion of the Harmony-Lansing line to the substation for the EcoHarmony Project is unfounded. First, Joint Commenters argue that rebuilding a portion of the Harmony-Lansing line is unnecessary. However, even assuming a portion of the line must be rebuilt, Joint Commenters state that the rebuilding would be done within an existing right-of-way as opposed to the construction of a new radial line to Dairyland's Harmony substation that would involve the acquisition of new right-of-way and permits for green field construction.

e. **Commission Determination**

32. Section 7.4 of Attachment X provides, in relevant part:

If the Interconnection System Impact Study indicates that changing the Point of Interconnection can lower the cost of Network Upgrades without raising the total cost of Interconnection Facilities and Network Upgrades, then [MISO] may change the Point of Interconnection. If the Interconnection Customer requests in writing to revert back to the original Point of Interconnection after the Point of Interconnection was modified by [MISO], then the additional cost of the Network Upgrades necessary to accommodate the Interconnection Request will be treated as Interconnection Facilities for cost allocation and refund purposes.⁴⁵

⁴³ *Id.* at 7-8.

⁴⁴ *Id.* at 8.

⁴⁵ MISO, FERC Electric Tariff, Attachment X (5.5.0), § 7.4.

33. In this case, MISO changed the Point of Interconnection for the EcoHarmony Project from ITC Midwest's Lansing-Harmony line to Dairyland's Harmony substation. EcoEnergy, in turn, requested that the Point of Interconnection revert back to the original Point of Interconnection. In accordance with EcoEnergy's request, the Interconnection Agreement specifies that the Point of Interconnection will be ITC Midwest's Lansing-Harmony line as originally contemplated by the parties. However, the Interconnection Agreement invokes section 7.4 of Attachment X of MISO's Tariff to allocate to EcoEnergy the additional cost of the Network Upgrades necessary to accommodate EcoEnergy's interconnection request to the Lansing-Harmony line.

34. As discussed below, we find that MISO has not met the requirement of section 7.4 in order to change the Point of Interconnection for the EcoHarmony Project. Accordingly, we need not address protests that section 7.4 could not be invoked by MISO when the System Impact Study on the EcoHarmony Project was completed and it entered the Definitive Planning Phase Queue due to the location of section 7.4 of Attachment X in the Tariff.⁴⁶ Section 7.4 of Attachment X requires an "Interconnection System Impact Study [that] indicates that changing the Point of Interconnection can lower the cost of Network Upgrades without raising the total cost of Interconnection Facilities and Network Upgrades" before MISO can change the Point of Interconnection. The System Impact Study performed by MISO for the EcoHarmony Project does not include any such study. Thus, we find that MISO has failed to demonstrate that it met this necessary condition of section 7.4 of Attachment X. Therefore, section 7.4 of Attachment X is not applicable and MISO was not permitted to change the Point of Interconnection. We direct MISO to revise the Interconnection Agreement, as part of the compliance filing ordered below, to remove references to the application of section 7.4 of Attachment X and the associated denial of reimbursement for Network Upgrades for the EcoHarmony Project.⁴⁷

⁴⁶ In the queue reform proceeding in Docket No. ER12-309, MISO seeks to move the language at issue in section 7.4 of Attachment X to fall underneath section 8 (Definitive Planning Phase) at sections 8.3 and 8.5.

⁴⁷ In light of our determination that the application of section 7.4 of Attachment X to the EcoHarmony Project is not appropriate, we need not address the issues raised by EcoEnergy in its conditional protest.

2. In-Service Date and Commercial Operation Date

a. Filing

35. The unexecuted Interconnection Agreement incorporates a target In-Service Date of October 1, 2012 and a target Commercial Operation Date of December 1, 2012, as originally requested by EcoEnergy.

b. Protest

36. EcoEnergy contests both the In-Service Date and the Commercial Operation Date. EcoEnergy states that, while these were the original requested dates, EcoEnergy made it clear from the onset of the negotiations about the Interconnection Agreement that the unresolved issues relating to the applicability of section 7.4 could necessitate changes to those dates. EcoEnergy states that these dates are unachievable due to the unresolved issues with MISO and ITC Midwest. EcoEnergy states that the delays would preclude the EcoHarmony Project from receiving Production Tax Credits under current legislative provisions.⁴⁸ EcoEnergy states that Article 5.1 (Options) of the Interconnection Agreement, which is consistent with the *pro forma* Generator Interconnection Agreement, provides: “Unless otherwise agreed to between the Parties, Interconnection Customer shall select: 1) the In-Service Date, Initial Synchronization Date, and Commercial Operation Date. . . .” EcoEnergy states that there is no language in Article 5.1 of the Interconnection Agreement that precludes an interconnection customer from revising its proposed In-Service Date and Commercial Operation Date during the period allowed for the negotiations of the Interconnection Agreement. EcoEnergy argues that, in fact, the definition of In-Service Date in the Interconnection Agreement explains that it is the date at which the interconnection customer reasonably expects to begin use of the Transmission Owner’s facilities. EcoEnergy states it merely wants to revise the In-Service Date and Commercial Operation Date to conform to the definition.⁴⁹

37. Moreover, EcoEnergy states that section 4.4.4 of Attachment X (Modifications) provides that: “Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing.” Accordingly, argues EcoEnergy, section 4.4.4 permits an extension of the Commercial Operation Date

⁴⁸ EcoEnergy November 14, 2011 Protest at 12-14. EcoEnergy states that, under current law, projects must be in operation by December 31, 2012 to be eligible for Production Tax Credits. *Id.* at 13 (citing 26 U.S.C. § 45(d)(1) (2006)).

⁴⁹ *Id.* at 14-15.

even longer than three years when the extension would have no adverse impact on the queue. EcoEnergy states that MISO has not suggested that an extension of the In-Service Date or Commercial Operation Date for the EcoHarmony Project would have any adverse impact on any other interconnection customer, and no such assertion would be valid.⁵⁰

38. EcoEnergy also references the Commission's rejection of MISO's attempt to terminate the interconnection agreement for the Lakeswind Project by claiming the interconnection customer was in default because it had not provided the security specified in the interconnection agreement by the stated due date.⁵¹ EcoEnergy argues that, in that proceeding, the Commission agreed with the interconnection customer that a reevaluation of the interconnection agreement milestones were warranted because: (1) the interconnection customer continued to make good faith efforts to develop its project; (2) the extension of milestones by the interconnection customer would not disadvantage any other project; and (3) MISO had some responsibility to work with the interconnection customer to determine the impact of the restudy on the cost responsibility of the project and to reflect costs associated in the interconnection agreement.⁵² EcoEnergy states that, consistent with this precedent, it should be able to revise the In-Service Date and Commercial Operation Date set forth in the unexecuted Interconnection Agreement. EcoEnergy requests a three-year window to implement an in-service date with a 14-month notice to ITC Midwest within the three-year window, with the Commercial Operation Date set two months thereafter, and that Interconnection Customer milestones 3 through 17, set forth in Appendix B of the unexecuted Interconnection Agreement, be adjusted to commence 14 months prior to the designated in-service date. If the Commission determines that such flexibility cannot be granted, EcoEnergy requests an In-Service Date of October 1, 2013 and a Commercial Operation Date of December 1, 2013, with milestones 3 through 17 adjusted by one year.⁵³

c. Answers

39. MISO states that the In-Service Date and Commercial Operation Date do not need to be revised. It argues that any further delays would be *de facto* suspensions that are

⁵⁰ *Id.* at 15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,172, at P 13 (2010)).

⁵¹ *Id.* at 15-16 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 (2011) (*Lakeswind*)).

⁵² *Id.*

⁵³ *Id.* at 16.

inconsistent with MISO's efforts to reform its interconnection queue process. MISO states that it has sought rehearing of *Lakeswind* referenced by EcoEnergy and, depending on the result in that proceeding, MISO will consider whether extensions of these dates would be permitted.⁵⁴

40. With regard to EcoEnergy's claim that ITC Midwest's land ownership policy delayed EcoEnergy's progress to its detriment, ITC Midwest states that its land ownership policies in no way delayed the EcoHarmony Project because it was not a "last minute introduction" of its policy.⁵⁵

d. Commission Determination

41. At the outset, we note that, in the queue reform proceeding in Docket No. ER12-309, MISO seeks to reform its interconnection queue procedures and, among other things, proposes to revise section 4.4.4 of Attachment X so that once the interconnection customer enters the Definitive Planning Phase, the interconnection customer may no longer seek any extension of its Commercial Operation Date or In-Service Date. In that proceeding, MISO seeks an effective date of January 1, 2012. MISO states in this proceeding that EcoEnergy's requested extension of the Commercial Operation Date and In-Service Date would amount to a *de facto* suspension and would thwart its queue reform efforts. MISO also notes that pending before the Commission is a request for rehearing of *Lakeswind*.

42. However, the Interconnection Agreement was filed with the Commission, and proposed to take effect, before the effective date sought for the proposed Tariff changes in Docket No. ER12-309. Therefore, our basis for evaluating this filing is the tariff effective and on file at the time that the Interconnection Agreement was filed with the Commission and proposed to take effect.⁵⁶ EcoEnergy is not seeking to extend its

⁵⁴ MISO November 29, 2011 Answer at 10.

⁵⁵ ITC Midwest November 29, 2011 Answer at 7.

⁵⁶ We have previously found that the Tariff that should apply is the one that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted. *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 62 (2009). As to MISO's allusion to its pending request for rehearing of *Lakeswind*, we reject any implication that an order is not valid precedent while rehearing is pending. See 18 C.F.R. § 385.713(e) (2011); *Midwest Hydraulics, Inc.*, 120 FERC ¶ 61,247, at P 8 (2007) (stating that the Federal Power Act "expressly provides that the filing of a request for rehearing or a petition for judicial review does not operate as a stay of the order of which rehearing or judicial review is sought. Although a request for rehearing may make

(continued...)

commercial operation date or in-service date more than that permitted by the Tariff.⁵⁷

Accordingly, we will permit extensions of these dates. However, we require that Commercial Operation Dates and In-Service Dates be specified.⁵⁸ Therefore, as part of the compliance filing ordered below, we direct MISO to modify the Interconnection Agreement to extend the In-Service Date to October 1, 2013 and to extend the Commercial Operation Date to December 1, 2013 with milestones 3 through 17 adjusted by one year.

3. Control of Land for the Substation

a. Filing

43. Appendix A, section 3(a) of the proposed Interconnection Agreement, includes provisions that would impose on EcoEnergy an obligation to transfer to ITC Midwest ownership of land for the switching station to interconnect the EcoHarmony Project to the Lansing-Harmony line. The MISO Tariff is silent on the issue of the form that access rights should take.

b. Protest

44. EcoEnergy protests the Interconnection Agreement's obligation for EcoEnergy to transfer to ITC Midwest ownership of land for the switching station to interconnect the EcoHarmony Project to the Lansing-Harmony line. EcoEnergy argues that it reasonably

an order non-final and thus subject to potential revocation or modification, the request does not stay the effectiveness or enforceability of the order's provisions." (internal citations omitted)).

⁵⁷ See Tariff, Att. X, § 4.4.4 ("Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing.").

⁵⁸ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. P 31,146 at n.47 (2003) ("The draft interconnection agreement shall include: Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades; Appendix B, Milestones; Appendix C, Interconnection Details; Appendix D, Security Arrangements Details; Appendix E, Commercial Operation Date; and Appendix F, Addresses for Delivery of Notices and Billings."). See also *Large Generator Interconnection Procedures*, Appendix 1, No. 4.d (the interconnection customer provides the commercial operation date).

relied on ITC Midwest's prior policy that ITC Midwest would accept a perpetual easement on the land of the switching station in lieu of landownership.⁵⁹ EcoEnergy states that use of a perpetual easement is consistent with ITC Midwest's policy, at the beginning of the interconnection request process, that ITC Midwest would accept land easements in lieu of land ownership. EcoEnergy also states that it was told by ITC Midwest's real estate attorney at the time that a perpetual easement would be acceptable to ITC Midwest "as long as there were not restrictions, the lease was transferable to ITC [Midwest], and the project would be responsible for all costs associated."⁶⁰ EcoEnergy states that, during the course of negotiations for the Interconnection Agreement, ITC Midwest changed its policy of accepting perpetual easements and began to insist that EcoEnergy provide it title to the land for the switching station. EcoEnergy has continued to work with ITC Midwest to resolve this issue and EcoEnergy states that ITC Midwest advised that it is likely to grandfather the perpetual easement agreement. Because EcoEnergy and ITC Midwest were close to resolving this issue, EcoEnergy states that this would not be an issue before the Commission had MISO not abruptly ended the Interconnection Agreement negotiations.⁶¹

45. EcoEnergy also states that there is no language in the body of the Interconnection Agreement or in Attachment X of the MISO Tariff that specifies that an interconnection customer must transfer ownership of the land to the Transmission Owner that is used for the interconnection. EcoEnergy argues that, to the contrary, section 5.13 (Option to Build) of the Interconnection Agreement requires ITC Midwest to obtain necessary land rights upon request by EcoEnergy. Accordingly, EcoEnergy argues that imposition of the land ownership requirement in section 3(a) of Appendix A in the Interconnection Agreement is inconsistent with section 5.13 of the Interconnection Agreement.⁶²

c. Answers

46. ITC Midwest acknowledges that it formalized its policy to require land ownership and not perpetual land easements in February 2010 but that it advised EcoEnergy that it would require ownership of the land for the switching station in the Facilities Study for

⁵⁹ EcoEnergy November 14, 2011 Protest at 18. EcoEnergy states that it has arranged a perpetual easement agreement on the land for the switching station. *Id.* at 17.

⁶⁰ *Id.*, Rigas Aff. ¶ 3.

⁶¹ *Id.* at 17.

⁶² *Id.* at 18.

the G746 Project prior to commencement of the negotiation period.⁶³ ITC Midwest states that EcoEnergy was aware that the requirements for interconnection would be determined by the results of the Facilities Study. ITC Midwest argues that any efforts by EcoEnergy to procure leases, easements, or ownership of land prior to completion of MISO's studies were at EcoEnergy's own risk. Additionally, ITC Midwest states that its land ownership policy serves to ensure the reliable operation of its transmission facilities by ensuring access to all facilities for proper maintenance and repair.

47. EcoEnergy states that ITC Midwest's answer provides no contrary evidence to the Affidavit of Dr. Rigas that discussed communications from ITC Midwest to EcoEnergy, indicating a perpetual easement for the substation would be acceptable to ITC Midwest. EcoEnergy states that it did not overlook the reference to ITC Midwest's land ownership policy in the Facilities Study to the EcoHarmony Project but that this study was completed on May 31, 2011, following years of indications by ITC Midwest that a perpetual easement would be acceptable. As contained in the Rigas Affidavit, EcoEnergy contends that ITC Midwest never directly informed EcoEnergy that it had changed its policy on substation land control. EcoEnergy states that it is unreasonable for ITC Midwest to presume that mentioning a change in policy in the Facilities Study that was issued two weeks before commencement of the Interconnection Agreement negotiations should nullify the previous policy under which EcoEnergy worked with the ITC Midwest real estate department to secure the perpetual easement for the EcoHarmony Project on July 1, 2009. Additionally, EcoEnergy states that ITC Midwest's abrupt change in policy created uncertainty in the ability of the EcoHarmony Project to meet the 2012 in-service date.⁶⁴

d. Comments on Supplemental Filing

48. Similar to ITC Midwest, Joint Commenters state that EcoEnergy possesses no written communications between EcoEnergy and ITC Midwest from the 2009 time period regarding EcoEnergy's proposal to acquire a perpetual easement but contends that the verified Affidavit of Dr. Rigas describing his communications with ITC Midwest has been uncontested by MISO or ITC Midwest. Joint Commenters refer to MISO's Supplemental Filing that states that the earliest of the Facilities Studies expressing ITC Midwest's intent to own land upon which its facilities are located was provided to MISO in February 2010 with no developed policy about land ownership before then.⁶⁵ Joint

⁶³ ITC Midwest November 29, 2011 Answer at 7.

⁶⁴ EcoEnergy December 13, 2011 Answer at 13-14.

⁶⁵ See MISO Supplemental Filing, Transmittal Letter at 6.

Commenters state that there is no dispute that the first time ITC Midwest informed EcoEnergy of its requirements for ownership of the land for the EcoHarmony Project substation was in the May 31, 2011 Facilities Study Report for the EcoHarmony Project, which was about two years after EcoEnergy acquired the perpetual easement and one month prior to the commencement of negotiations.⁶⁶

49. Joint Commenters also argue that the email exchanges that took place during September 2011 support the Affidavit of Dr. Rigas that ITC Midwest was considering a waiver of its land ownership policy to allow a perpetual easement on the land. In Dr. Rigas' Affidavit, Dr. Rigas states that he discussed the status of an easement agreement on a September 26, 2011 telephone call with ITC Midwest representatives who indicated they would respond about the "document" within a week. When Dr. Rigas indicated that he wished to move forward with the easement issue on September 29, 2011, he received a response on September 30, 2011 indicating ITC Midwest may have been willing to go forward with a perpetual easement providing the terms were acceptable.⁶⁷

e. Answer to Comments on Supplemental Filing

50. ITC Midwest reiterates in its answer that there are no written records of the conversations that allegedly occurred in 2009 between ITC Midwest and EcoEnergy concerning an easement for the land on which the EcoHarmony substation would be built. ITC Midwest maintains that it does not believe that its employee would ever knowingly consider agreeing to an easement arrangement with EcoEnergy because of the risks associated with easements versus ownership. ITC Midwest states that its property rights under an easement would be perpetually dependent on EcoEnergy's ability and willingness to fulfill its obligations under the easement arrangement made with the landowner, and ITC Midwest's property rights could be extinguished at any time due to action or inaction by EcoEnergy.⁶⁸ In particular, ITC Midwest explains that the following issues would need to be worked out before any easement arrangement could be contemplated: (1) the easement would have to be with the landowner directly and could not be a sub-easement; (2) the easement would have to provide ITC Midwest with complete, unrestricted use of the property; and (3) EcoEnergy and the landowner would

⁶⁶ Joint Commenters February 8, 2012 Protest at 10.

⁶⁷ *Id.* at 11.

⁶⁸ ITC Midwest March 7, 2012 Answer at 2.

need to arrange for all easement payments to be made on some sort of a present value basis at the time the easement was executed.⁶⁹

51. With regard to the email exchange, ITC Midwest states that the email from different ITC Midwest employees concerning the easement resulted from EcoEnergy erroneously informing ITC Midwest that an ITC Midwest employee had already agreed to a perpetual easement arrangement in 2009. Further, ITC Midwest asserts that the references to a perpetual easement in those exchanges were preliminary.⁷⁰

f. Commission Determination

52. The ownership requirement for substation land in Appendix A, section 3(a) of the proposed Interconnection Agreement raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

53. Our preliminary analysis indicates that the requirement in the Interconnection Agreement that EcoEnergy must transfer ownership of the land for the EcoHarmony Project substation to ITC Midwest has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Interconnection Agreement for filing, suspend it for a nominal period, make it effective December 21, 2011, subject to refund, and set it for hearing and settlement judge procedures.

54. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁷² The settlement judge

⁶⁹ *Id.* at 3.

⁷⁰ *Id.* at 2-3.

⁷¹ 18 C.F.R. § 385.603 (2011).

⁷² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for

shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

4. Limitation of Network Resource Interconnection Service for the EcoHarmony Project

a. Filing

55. EcoEnergy had requested the EcoHarmony Project be evaluated at 200 MW of Network Resource Interconnection Service. The proposed Interconnection Agreement provides for 100 percent conditional Energy Resource Interconnection Service until necessary Network Upgrades are built, at which point the EcoHarmony Project will be granted 20 percent Network Resource Interconnection Service and 80 percent Energy Resource Interconnection Service. Specifically, Appendix A, section 1 of the unexecuted Interconnection Agreement states that:

[The] total conditional 200 MW [Energy Resource Interconnection Service] will become a 200 MW net [Energy Resource Interconnection Service] plus [Network Resource Interconnection Service] where the [Network Resource Interconnection Service] cannot exceed 40 MW upon completion of all needed facilities identified in this [Interconnection Agreement] and the ongoing interconnection restudies for Definitive Planning Phase 1 projects, unless studies indicate otherwise.

b. Protest

56. EcoEnergy states that it requested 100 percent Network Resource Interconnection Service for the EcoHarmony Project. Accordingly, it asserts that the selection of Energy Resource Interconnection Service in section 4.1 of the Interconnection Agreement is incorrect.⁷³

57. EcoEnergy argues that there is no basis for this limitation in any studies on the EcoHarmony Project. EcoEnergy argues that the System Impact Study for the

Settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁷³ Interconnection Agreement, App. A, § 1.

EcoHarmony Project indicates that the entire 200 MW output of the project would be deliverable for network purposes with the identified Network Upgrades in place.

58. EcoEnergy also states that there is not basis in MISO's Tariff or Business Practices Manuals for the proposed 40 MW limit on Network Resource Interconnection Service. EcoEnergy states that, at the time of the System Impact Study, section 5.1.1.1 of MISO's Generator Interconnection Business Practices Manuals provided that "[Network Resource Interconnection Service] will be granted for the amount for which a plant commits to build the Network Upgrades, up to the requested capability of the Interconnection request, as identified through deliverability analysis."⁷⁴ EcoEnergy states that because the deliverability analysis shows that the entire 200 MW output is deliverable with the indicated Network Upgrades in place, the Commission should require MISO to delete the 40 MW limitation on Network Resource Interconnection Service from section 1 of Appendix A. EcoEnergy asks that section 1 of Appendix A to the Interconnection Agreement be revised to reflect that the EcoHarmony Project will have 200 MW of Network Resource Interconnection Service upon completion of the facilities identified in the Interconnection Agreement.⁷⁵

c. Answers

59. MISO states that limiting Network Resource Interconnection Service for the EcoHarmony Project to 40 MW is appropriate. MISO states that the EcoHarmony Project is a wind farm and, therefore, it is appropriate that the Interconnection Agreement provides for conditional Energy Resource Interconnection Service only, subject to the construction of the necessary Network Upgrades. MISO states that this is consistent with the MISO process in place when the EcoHarmony Project was studied. MISO states that its practice at the time was to designate only up to 20 percent of wind farm output as Network Resource Interconnection Service for reliability purposes.⁷⁶ MISO states that the EcoHarmony Project was studied for a higher level of Network Resource Interconnection Service but this higher level could not be supported until all the

⁷⁴ EcoEnergy November 14, 2011 Protest at 19. EcoEnergy states that the same language remains in the Business Practices Manuals, but has been moved to section 5.2.2.1. *Id.*

⁷⁵ *Id.* at 19-20; EcoEnergy November 14, 2011 Protest, Gaffney Aff. ¶ 15.

⁷⁶ MISO November 29, 2011 Answer at 11-12. MISO states that upon the effective date of MISO's Dispatchable Intermittent Resource rules (proposed in Docket No. ER11-1991-000), MISO considers wind projects for higher levels of Network Resource Interconnection Service if it is supported by study results.

necessary Network Upgrades are in place. MISO states that if the EcoHarmony Project seeks 100 percent Network Resource Interconnection Service, EcoEnergy will have to submit a new interconnection request for the full 200 MW.⁷⁷

60. In its answer, EcoEnergy reiterates that at the time the EcoHarmony Project System Impact Study was completed, the language in effect in MISO's Business Practices Manual indicated the EcoHarmony Project is eligible for Network Resource Interconnection Service for the full output of its 200 MW facility. EcoEnergy argues that the Network Upgrades enumerated in Appendix A of the Interconnection Agreement will be completed before the EcoHarmony Project comes online. EcoEnergy argues that MISO's admission that the EcoHarmony Project was studied at higher levels than the 40 MW of Network Resource Interconnection Service it was granted is further proof that the language in MISO's Business Practices Manual utilized to complete the study, which became effective July 16, 2010, allowed MISO to study wind generators for Network Resource Interconnection Service at 100 percent of capacity.⁷⁸

61. EcoEnergy disputes MISO's claim that, if EcoEnergy is to gain 100 percent Network Resource Interconnection Service for its generator, it must submit a new interconnection request. It states that the original interconnection request, dated February 15, 2007, shows EcoEnergy requested 200 MW of Network Resource Interconnection Service.⁷⁹ EcoEnergy further states that section 7.5 of the System Impact Study conducted for the EcoHarmony Project finds that "this generator is determined to be fully deliverable for 200 MW, contingent upon the system upgrades identified in the System Impact Study (ERIS evaluation) being in service."⁸⁰ EcoEnergy disagrees with MISO's requirement of a new interconnection request and argues that the Commission should grant the EcoHarmony Project Network Resource Interconnection Service in the amount of 200 MW, subject to the completion of the required upgrades listed in the Interconnection Agreement.⁸¹

⁷⁷ MISO November 29, 2011 Answer at 12.

⁷⁸ EcoEnergy December 13, 2011 Answer at 10-12.

⁷⁹ *Id.* at 12-13.

⁸⁰ *Id.* at 12 (citing EcoEnergy November 14, 2011 Protest, Ex. 9).

⁸¹ *Id.* at 13.

d. Commission Determination

62. We find that it was MISO's policy to assume a capacity factor of 20 percent for wind plants at the time the System Impact Study was performed for the Project. Under the Business Practices Manual requirements at the time the EcoHarmony Project was studied, MISO designated only up to 20 percent of wind farm output as Network Resource Interconnection Service.⁸² Indeed, the System Impact Study report for the EcoHarmony Project at section 7.2, states that,

Since [the] Generator Deliverability Study is to ensure Resource Adequacy during system peak condition, wind generators are tested at 20 percent of their maximum output level. That is the maximum level that can be used to meet Resource Adequacy obligations under Module E of MISO's Tariff, unless the generator can demonstrate that the generator's capacity factor during summer peak conditions is greater than 20 percent."

EcoEnergy relies on the System Impact Study report to support its claim that the EcoHarmony project deserves to be granted 100 percent Network Resource Interconnection Service.⁸³ The sentence cited to by EcoEnergy states that the generator is determined to be "fully deliverable" for 200 MW, but also that the project is "...contingent upon the system upgrades identified in the System Impact Study (ERIS evaluation)..." EcoEnergy's interpretation that the language in section 7.5 provides for 200 MW of NRIS is inconsistent with the language within that same sentence describing the study as being an ERIS evaluation. It is also inconsistent with language elsewhere in the project's System Impact Study report as well as MISO's Business Practices Manual as noted above.

63. We find that, while MISO's current Business Practices Manual, effective July 16, 2010, allows for 100 percent Network Resource Interconnection Service, the System Impact Study for the EcoHarmony Project had started prior to July 16, 2010. The study methods established by MISO in the System Impact Study for the EcoHarmony Project included modeling wind generation "modeled at 20 percent (40 MW) out put for summer

⁸² MISO Business Practices Manual, BPM-004-r2, § 5.1.1.1 (Load Levels and Generation Dispatch).

⁸³ EcoEnergy cites to section 7.5 which states, "this generator is determined to be fully deliverable for 200 MW, contingent upon the system upgrades identified in the System Impact Study (ERIS evaluation) being in service."

peak.”⁸⁴ Section 3.1.1 of the System Impact Study states that the EcoHarmony Project “was modeled at 20 percent (40 MW) output for summer peak and 100 percent (200 MW) output for summer off-peak load.”⁸⁵ The results of MISO’s study at 100 percent output conditioned any additional Network Resource Integration Service deliverability on the Interconnection Customer demonstrating that its generator’s capacity factor during summer peak hours is over 20 percent.⁸⁶ Accordingly, we find it is just and reasonable for the Interconnection Agreement to provide for a maximum 40 MW Network Resource Interconnection Service, which is 20 percent of the 200 MW maximum capacity of the EcoHarmony Project.

The Commission orders:

(A) MISO’s proposed Interconnection Agreement is hereby conditionally accepted for filing and suspended for a nominal period, to become effective December 21, 2011, as requested, subject to refund, as discussed in the body of this order.

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

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission’s Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the Interconnection Agreement’s requirement that EcoEnergy transfer ownership of the land for the EcoHarmony Project substation to ITC Midwest. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

⁸⁴ MISO EcoHarmony System Impact Study, Project G746, § 3.1.1 (Model Development).

⁸⁵ *Id.*

⁸⁶ *Id.* § 7.2 (Deliverability Introduction).

and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.