

141 FERC ¶ 61,203
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. Docket No. ER13-112-000

ORDER CONDITIONALLY ACCEPTING FACILITIES
CONSTRUCTION AGREEMENT AND DIRECTING COMPLIANCE FILING

(Issued December 11, 2012)

1. On October 12, 2012, the Midwest Independent Transmission System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA) and section 35.12 of the Commission's regulations,¹ (October 12 Filing) an executed nonconforming Facilities Construction Agreement (Agreement)² among MISO, Minnkota Power Cooperative, Inc. (Minnkota),³ and Great River Energy

¹ 16 U.S.C. § 824d (2006); 18 C.F.R. § 35.12 (2012).

² The Facilities Construction Agreement is designated as MISO FERC Electric Tariff, Midwest ISO Agreements [SA 2488, Minnkota Power Coop - GRE FCA, 0.0.0](#).

³ Minnkota, a generation and transmission cooperative with service areas in North Dakota and Minnesota, receives financing from the U.S. Department of Agriculture Rural Utilities Service and, accordingly, is not regulated by the Commission as a public utility. *See* section 201(f) of the FPA, 16 U.S.C. § 824(f) (2006). Minnkota's open access transmission tariff and accompanying generator interconnection procedures and agreements have not been filed with the Commission under the Commission's "safe harbor" procedures for reciprocity tariffs. *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 190-195, *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

(Great River)⁴ (collectively, Filing Parties). For the reasons discussed below, we will conditionally accept the Agreement to become effective October 13, 2012, as requested, subject to a compliance filing.

Proposed Agreement

2. The Filing Parties state that Minnkota, in studying a generator interconnection request for the Langdon Wind Project (Wind Project), in Pembina County, North Dakota, determined that the interconnection would require upgrades on the neighboring transmission system belonging to Great River.⁵ Minnkota is also the transmission provider for the Wind Project pursuant to certain interconnection agreements among itself and the Wind Project interconnection customers.

3. The Filing Parties state that the Agreement follows the MISO *pro forma* Facilities Construction Agreement⁶ in Attachment X of the MISO Tariff except for several non-conforming revisions. The Filing Parties argue that, except for the nonconforming revisions to Articles 3.2.2.1, 3.2.2.2, 3.2.2.3 and 3.2.2.4, the other revisions, in Article 1.7, Article 1.17, and Article 3.2.1, track nonconforming revisions previously accepted by the Commission in similar circumstances.⁷ The revisions in Article 1.7, “Commercial Operation Date,” reflect that the underlying generator interconnection agreement (GIA) is not a three-party GIA, under Attachment X of the MISO Tariff, but rather consists of several interconnection agreements between Minnkota and certain Wind Project interconnection customers who are interconnecting to the Minnkota transmission system. The revisions in Article 1.17, “[Definition of] Interconnection Agreement or GIA,” reflect that the underlying interconnection agreements are between the Wind Project interconnection customers and Minnkota.

⁴ Great River, a generation and transmission cooperative, provides wholesale electric service to distribution cooperatives in Minnesota and Wisconsin. The Great River transmission system is under the functional control of MISO, which provides transmission and interconnection service for the system.

⁵ Great River would need to replace one 230-115 kV 75 MVA transformer with a 236-118 kV 140 MVA transformer at an estimated cost of \$2,634,293. October 12 Filing at Original Sheet No. 34.

⁶ The *pro forma* Facilities Construction Agreement is included in MISO's Tariff. See MISO FERC Electric Tariff, Fifth Revised Volume No. 1, Attachment X at Section 11.

⁷ October 12 Filing, Transmittal Letter at 2.

4. The Filing Parties state that the revisions in Article 3.2.1 delete reference to Shared Network Upgrades because such upgrades are inapplicable to non-MISO interconnections. In Article 3, the revisions also delete Articles 3.2.2.1 through 3.2.2.4 (Crediting Provisions), whose provisions relate to repayments and crediting for the cost of Network Upgrades pursuant to Attachment FF of the MISO Tariff. Instead, crediting would be addressed by the provisions of Minnkota's Interconnection Agreement Template (Minnkota Interconnection Template).⁸

5. The Filing Parties acknowledge that the Commission has previously declined to approve similar revisions related to Article 3.2,⁹ finding that MISO had not met its burden to show that deletion of the Crediting Provisions was necessary due to reliability concerns, novel legal issues, or other unique factors. Here, the Filing Parties submit, such factors exist. They contend that the legal circumstances surrounding the Agreement differ from those of the facilities construction agreement at issue in *Bishop Hill*. Here, the underlying interconnection of the Wind Project occurs on the Minnkota transmission system which is outside of MISO's functional control and therefore, they argue, not subject to repayment under Attachment FF of the MISO Tariff. Thus, they argue that payments for upgrades related to interconnections on the Minnkota transmission system should be addressed under Minnkota's procedures, i.e., the Minnkota Interconnection Template.

6. The Filing Parties distinguish their situation from that in *Bishop Hill* by asserting that in *Bishop Hill* the underlying interconnection occurred on a transmission system under the functional control of PJM Interconnection LLC (PJM) and the underlying service agreement for interconnection of the Bishop Hill project to the PJM transmission system did not contain the same language as the Minnkota Interconnection Template, which specifically provides that transmission upgrades or cost responsibility for an interconnection to the Minnkota transmission system shall be at the sole expense of the Interconnection Customer. This difference, they submit, presents a novel legal issue that is unique to the few occasions when a non-MISO interconnection causes the need for upgrades on a transmission system under the functional control of MISO, and justifies the nonconforming revisions used in this case.

⁸ Article 11.1, "Cost Responsibility for Affected System Impact Upgrades," of the Minnkota Interconnection Template provides: "Any Affected System transmission upgrades or cost responsibilities shall be at the sole expense of the Interconnection Customer."

⁹ The Filing Parties cite *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,223, at PP14-15 (2011) (*Bishop Hill*).

7. The Filing Parties note that Commission staff, acting under delegated authority, has previously accepted such nonconforming revisions.¹⁰ The Filing Parties further state that, while one party in *Bishop Hill* opposed the nonconforming revisions, here the parties to the Agreement have mutually agreed to remove the Crediting Provisions, and approval of the nonconforming revisions will preserve the Filing Parties' expectations that the Wind Project interconnection customers would be responsible for the upgrades on the Great River-owned transmission system addressed in the Agreement.

8. The Filing Parties request that the Commission waive the 60-day prior notice requirement of section 35.3(a) of the Commission's regulations¹¹ and make the Agreement effective October 13, 2012 to provide certainty to the Filing Parties as to the status of the Agreement.

Notice of Filing and Responsive Pleading

9. Notice of the October 12 Filing was published in the *Federal Register*, 77 Fed. Reg. 64,499-03 (2012), with interventions and protests due on or before November 2, 2012. Otter Tail Power Company (Otter Tail) filed a timely motion to intervene.

Commission Determination

Procedural Matter

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214 (2012), Otter Tail's timely, unopposed motion to intervene serves to make it a party to this proceeding.

Substantive Matters

11. We will conditionally accept the proposed Agreement, effective October 13, 2012 as requested, subject to revision.

12. The Commission recognized, in Order No. 2003, that standardized interconnection procedures and corresponding *pro forma* interconnection agreements reduce opportunities for undue discrimination, expedite the development of new generation, promote system reliability, and ensure just and

¹⁰ The Filing Parties acknowledge that actions taken by Commission staff by delegated authority do not constitute precedent binding the Commission in future cases. October 12 Filing, Transmittal Letter at 5.

¹¹ 18 C.F.R. § 35.3(a) (2012).

reasonable rates.¹² However, the Commission has also stated that, “there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.”¹³ Under such circumstances, the filing party must not only identify how those portions of the nonconforming agreement differ from the *pro forma* agreement, but it must also “explain why the unique circumstances of the interconnection require” a nonconforming agreement.¹⁴ We find that the Filing Parties have demonstrated that the proposed deviations in the Agreement concerning Articles 1.7, 1.17, and 3.2.1 are necessary under the circumstances in this case.

13. However, we find that the Filing Parties have not carried their burden to demonstrate that deletion of the Crediting Provisions is necessary due to reliability concerns, novel legal issues, or other unique factors. We are not persuaded by the distinction made by the Filing Parties that, unlike *Bishop Hill*, the differing conditions in the underlying interconnection agreements present a novel issue. Interconnection of the Wind Project itself does not raise unusual reliability concerns or involve other unusual technical characteristics that require changes to the transmission pricing provisions in MISO’s Attachment FF. Nor are there novel legal issues involved. While the underlying interconnection occurs on the Minnkota transmission system, the upgrades that are the subject of the Agreement will be constructed on, and will affect, the Great River transmission system, which is under MISO’s functional control. The Filing Parties have not demonstrated how the location of the underlying interconnection requires a cost recovery mechanism other than that which is provided in the *pro forma* Facilities Construction Agreement.¹⁵ While the Filing Parties argue that the repayment provisions that should govern are those contained in the Minnkota Interconnection Template, we disagree. We find that the repayment provisions that would apply

¹² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 11 (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), *cert. denied*, 552 U.S. 1230 (2008).

¹³ *PJM Interconnection, LLC*, 111 FERC ¶ 61,163, at P 10 (2005) (citing Order No. 2003 at PP 913-915).

¹⁴ *Id.*

¹⁵ *See Bishop Hill*, 137 FERC ¶ 61,223 at P 15.

are those in MISO's Tariff, not repayment provisions included in a non-jurisdictional entity's interconnection agreement.¹⁶

14. We also find unpersuasive the argument that the change is warranted because the Filing Parties have agreed to deletion of the Crediting Provisions. That parties to a jurisdictional agreement have agreed to something does not require that we accept whatever terms they may have agreed to,¹⁷ particularly where the Commission has expressed a policy in favor of a standard format, except in novel or unique circumstances. Here there are no unique or novel circumstances that warrant non-standard Crediting Provisions. This fact pattern is not unique, but would be repeated in any instance where a non-MISO interconnection causes a need for upgrades on a transmission system under the functional control of MISO.

15. Consistent with the Commission's previous findings in *Bishop Hill*, we find that the Filing Parties have not demonstrated how the location of the underlying interconnection of the Wind Project within the Minnkota footprint or the terms of the Minnkota Interconnection Template require a cost recovery mechanism other than that which is provided in MISO's Tariff.¹⁸ Therefore, we shall conditionally accept the Agreement, subject to MISO filing a revised

¹⁶ We note that if the facilities are constructed as planned, the Wind Project interconnection customers would not be eligible for reimbursement under the crediting provisions of Attachment FF because the upgrades in question are all at 230 kV or below. According to the provisions of section III.A.2.d of Attachment FF, the interconnection customer is reimbursed 10 percent of the costs of its interconnection-related network upgrades rated at or above 345 kV and remains responsible for all other interconnection-related network upgrades costs incurred under Attachment X.

¹⁷ *Fla. Power & Light Co.*, 98 FERC ¶ 61,325, at P 9 (2002) (citing *Pa. Elec. Co. v. FERC*, 11 F.3d 207, 210 (D.C. Cir. 1993); *Laclede Gas Co. v. FERC*, 997 F.2d 936, 946 (D.C. Cir. 1993); *Tejas Power Co. v. FERC*, 908 F.2d 998, 1003 (D.C. Cir. 1990)).

¹⁸ We also reject the Filing Parties' argument that we should accept the Agreement because it is similar to another nonconforming agreement that was accepted by delegated letter authority. Actions taken by the Commission staff by delegated authority do not constitute precedent binding the Commission in future cases. *See, e.g., PJM Interconnection, LLC*, 111 FERC ¶ 61,163, at P 12 (2005) (rejecting arguments that the Commission should accept a nonconforming agreement because it resembles another agreement that was accepted by delegated letter authority).

Facilities Construction Agreement that retains the Crediting Provisions of the *pro forma* Facilities Construction Agreement.

The Commission orders:

(A) The Agreement is hereby conditionally accepted, as discussed in the body of this order, to become effective October 13, 2012, as requested.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.