

149 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Midcontinent Independent System Operator, Inc.

Docket No. ER14-2754-000

ORDER CONDITIONALLY ACCEPTING UNEXECUTED GENERATOR
INTERCONNECTION AGREEMENT

(Issued October 31, 2014)

1. On September 2, 2014, Midcontinent Independent System Operator, Inc. (MISO), pursuant to section 205 of the Federal Power Act (FPA),¹ submitted for filing an unexecuted Amended and Restated Fourth Generator Interconnection Agreement (Fourth Restated GIA) among Hoopeston Wind, LLC (Hoopeston) as Interconnection Customer, Ameren Services Company as agent for Ameren Illinois Company (Ameren) as Transmission Owner, and MISO as the Transmission Provider. The Fourth Restated GIA revises the description of the generating facility to reflect a change in the vendor of the wind turbines to be installed at the generating facility by the Interconnection Customer. MISO requests waiver of the Commission's 60-day prior notice requirement² to permit an effective date of September 3, 2014.³ We accept the unexecuted Fourth Restated GIA to become effective September 3, 2014, as requested, subject to the outcome of the proceeding in Docket No. ER13-2157-002, as discussed below.

I. Background

2. In October 2009, the Commission accepted a proposal by MISO to revise Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to increase the cost responsibility of an interconnection customer to 100 percent of network upgrade costs, i.e., 100 percent participant funding, with a

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.3(a) (2014).

³ September 2, 2014 Transmittal Letter at 3.

10 percent reimbursement for projects that were 345 kV and above.⁴ At that time, MISO's Tariff provided three alternatives for funding the costs of network upgrades for generator interconnections. Attachment FF described two of these alternatives (Option 1 and Option 2), which were incorporated into MISO's *pro forma* GIA by reference, while Article 11.3 in MISO's *pro forma* GIA contemplated a third (the self-fund option).

3. Option 1 provided that for network upgrade costs subject to participant funding: (1) the interconnection customer provided up-front funding for network upgrades; (2) the transmission owner provided a 100 percent refund of the cost of network upgrades to the interconnection customer after the completion of the network upgrades; and (3) the transmission owner assessed the interconnection customer a monthly network upgrade charge over time to recover the cost of the network upgrades. The network upgrade charge included: (1) return on rate base, including general and common plant, (2) operations and maintenance expense, (3) depreciation expense, (4) taxes other than income taxes, and (5) income taxes calculated under Attachment GG of the tariff. Under Option 2, the transmission owner retains the interconnection customer's initial funding for the network upgrade costs that are subject to participant funding as a contribution in aid of construction, and the interconnection customer is assessed no further charges for such upgrades. Under the self-fund option, a transmission owner may finance the construction of the network upgrades itself.⁵

4. Ameren, Hoopeston, and MISO executed the original GIA on January 4, 2011. This GIA identified certain network upgrades whose costs were recovered under Option 1 of the MISO Tariff (Original Network Upgrades). Ameren, Hoopeston, and MISO executed a second GIA on May 17, 2011, that identified additional network upgrades (Incremental Network Upgrades) whose costs were also recovered under Option 1 of the Tariff.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 8 (2009).

⁵ The self-fund option was originally identified in Order No. 2003. See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 720 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at PP 618 and 658, *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).

5. On October 20, 2011, the Commission addressed a complaint in Docket No. EL11-30-000 by ordering the removal of Option 1 from Attachment FF, finding that, among other things, this option increased the costs directly assigned to the interconnection customer with no corresponding increase in service compared to other funding options.⁶ The Commission found that the fact that the Tariff gives the transmission owner the sole discretion to choose between Option 1 and Option 2 creates opportunities for undue discrimination “by affording a transmission owner the discretion to increase the costs of interconnection service by assigning both increased capital costs, as well as non-capital costs ... to particular interconnecting generators, but not others.”⁷ In that same order, the Commission also established that March 22, 2011, the filing date of the complaint, would serve as the effective date for the removal of Option 1 from the MISO tariff. On rehearing, the Commission clarified that its decision to remove Option 1 from MISO’s Tariff will not apply to agreements effective prior to March 22, 2011, which the Commission stated was a reasonable remedy that balances the interests of the parties, the need for regulatory certainty, and ease of administration.⁸

6. On August 14, 2013, as amended September 9, 2013, MISO submitted for filing an unexecuted amended and restated GIA (Restated Hoopeston GIA) among Hoopeston, Ameren, and MISO. MISO filed the interconnection agreement unexecuted at Hoopeston’s request because Hoopeston disputed Ameren’s proposed cost recovery. In the Restated Hoopeston GIA, Ameren elected to retain Option 1 to recover the costs for the Original Network Upgrades that were identified in the January 4, 2011 GIA and to self-fund the Incremental Network Upgrades that were identified in the May 17, 2011 GIA. On November 8, 2013, the Commission conditionally accepted the unexecuted Restated Hoopeston GIA subject to further modification, to become effective August 15, 2013, as requested.⁹

7. In its November 8, 2013 Order, the Commission found that Option 1 was, and should remain, in effect with regard to the Original Network Upgrades that were included

⁶ *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076, at P 34 (2011) (*E.ON*) order on reh’g, 142 FERC ¶ 61,048 (2013) (*E.ON* Rehearing Order).

⁷ *E.ON*, 137 FERC ¶ 61,076 at P 38.

⁸ *E.ON* Rehearing Order, 142 FERC ¶ 61,048 at P 34.

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,111, at P 2 (2013) (November 8 Order).

in the January 4, 2011 GIA, which was effective before March 22, 2011, the effective date under *E.ON* for the removal of Option 1 from the MISO Tariff.¹⁰ The Commission accepted the proposed self-funding for the recovery of costs of Incremental Network Upgrades that were added in the May 17, 2011 GIA, which was executed after March 22, 2011. However, the Commission found it unduly discriminatory for a transmission owner to recover costs other than the return of and on the capital costs of the network upgrades from an interconnection customer under the self-funding option, because an interconnection customer charged under Option 2 would only be required to pay for the capital costs of the network upgrades. Therefore, the Commission directed MISO to revise the agreement so that the self-fund option does not include the recovery of costs other than the return of and on the capital costs of the network upgrades.¹¹

8. According to MISO, this Fourth Restated GIA revises the description of the generating facility in the Restated Hoopeston GIA to reflect a change in the vendor of the wind turbines to be installed at the generating facility by Hoopeston.¹² MISO states that Hoopeston sought to install 43 Siemens SWT 2.3 101 wind turbines, each rated at 2.3 megawatts (MW). Specifically, on January 30, 2014, Hoopeston revised its interconnection request to install 49 Vestas V100 wind turbines, each rated at 2.0 MW, rather than 43 Siemens SWT 2.3 101 wind turbines rated at 2.3 MW each. In addition, Hoopeston has changed the location of its collection substation. MISO has designated this project as Project No. H094 in its interconnection queue.¹³

II. Notice and Responsive Filings

9. Notice of MISO's filing was published in the *Federal Register*, 79 Fed Reg. 53,700 (2014) with protests and interventions due on or before September 23, 2014.

10. On September 16, 2014, Hoopeston filed a motion to intervene and protest. On September 23, 2014, Ameren filed a motion to intervene. On October 1, 2014, Ameren filed a motion for leave to answer and answer.

¹⁰ *Id.* P 40.

¹¹ *Id.* P 41.

¹² September 2, 2014 Transmittal Letter at 2.

¹³ *Id.* at 1.

11. Hoopeston states that it is not protesting the revisions in the Fourth Restated GIA.¹⁴ According to Hoopeston, the essence of the revisions are a change in the vendor of the wind turbines, a change in the location of Hoopeston's collection substation, and additional revisions such as updating dates.

12. However, Hoopeston maintains that the Fourth Restated GIA still contains the sections and requirements that Hoopeston has objected to and that are the subject of Hoopeston's request for rehearing and protest, both pending Commission action, as set forth in Hoopeston's filings in Docket Nos. ER13-2157-002 and ER13-2157-003.¹⁵

13. Hoopeston states that it protests MISO's filing of the unexecuted Fourth Restated GIA because the filing does not comply with the Commission's November 8 Order.¹⁶ Hoopeston states it is reaffirming its objection to the use of Option 1 to fund the Original Network Upgrades and the requirement for Hoopeston to enter into a Facilities Service Agreement with Ameren that would govern the use of Option 1.

14. According to Hoopeston, the Fourth Restated GIA contains costs for the Article 11.3 self-funding option that are in violation of, and are not allowed by, the Commission in its November 8 Order.¹⁷ Hoopeston asserts that while the Commission directed MISO only to include the return of and on capital for the Incremental Network Upgrades contained in the GIA, Ameren seeks to collect a return on its equity and includes cost elements that are not for the return of and on the capital required for the Incremental Network Upgrades.

15. According to Hoopeston, the Commission has held that Option 1 pricing is unjust and unreasonable and it was unlawful and a repudiation of contract rights of Hoopeston for the Commission to permit Option 1 pricing for Original Network Upgrades that were prescribed by the May 17, 2011 GIA, the only viable and enforceable contract among the parties (the January 4, 2011 GIA having been superseded and agreed upon as of no further force and effect by the parties).

¹⁴ Hoopeston Protest at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 8.

16. Ameren argues that the Commission should deny Hoopeston's protest and accept MISO's filing.¹⁸ According to Ameren, Hoopeston has lodged arguments in this record that are outside the scope of this proceeding and are pending in another proceeding. Ameren maintains that the only changes to the GIA contained in MISO's instant filing were ministerial changes regarding the construction of the Hoopeston project that had nothing to do with the underlying cost assignment dispute in Docket No. ER13-2157-000. Ameren notes that Hoopeston acknowledges that those changes are not in dispute.

17. Ameren states that it appreciates that Hoopeston filed its protest to preserve its objection to the terms in the compliance version of the GIA.¹⁹ Similarly, Ameren reiterates its objection to Hoopeston's position on those issues and refers the Commission to Ameren's pleadings in Docket Nos. ER13-2157-002 and ER13-2157-003.

III. Commission Determination

18. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Ameren's answer because it has provided information that assisted us in our decision-making process.

20. We conditionally accept MISO's Fourth Restated GIA to become effective September 3, 2014, as requested, as discussed below.²⁰

21. In an order being issued concurrently in Docket Nos. ER13-2157-002 and ER13-2157-003, the Commission denies rehearing of the November 8 Order, provides clarification as to which costs may be recovered under the self-fund option, and conditionally accepts MISO's compliance filing.²¹ In that order, the Commission accepts MISO's compliance filing subject to further compliance to ensure that the self-fund option does not include the recovery of costs other than the return of and on the capital

¹⁸ Ameren Motion at 1.

¹⁹ *Id.* at 4.

²⁰ We find that MISO has shown good cause to grant waiver of the Commission's prior notice requirements.

²¹ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,099 (2014).

costs of the network upgrades. In that order, the Commission requires further compliance by MISO to separately state and support the components of the network upgrade charge of 12.82 percent, consistent with the clarifications provided therein. Inasmuch as the Fourth Restated GIA also applies the same fixed charge rate of 12.82 percent to the Incremental Network Upgrades, we will accept the Fourth Restated GIA here, subject to the outcome of the proceeding in Docket No. ER13-2157-002.

22. Insofar as MISO's Fourth Restated GIA reflects the same fixed charge rate as that in the compliance filing in Docket No. ER13-2157-002, the Commission directs MISO to file, within 45 days of the date of a final order in Docket No. ER13-2157 (i.e., no longer subject to rehearing), any necessary revisions to the Fourth Restated GIA to conform to the revisions required by the Commission in Docket No. ER13-2157-002.

The Commission orders:

(A) The Fourth Restated GIA is hereby conditionally accepted, to become effective September 3, 2014, as requested, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing, within 45 days of the date of a final order in Docket No. ER14-2157, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.