

149 FERC ¶ 61,129
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. ER14-2916-000

ORDER ON GENERATOR INTERCONNECTION AGREEMENT

(Issued November 18, 2014)

1. On September 19, 2014, Midcontinent Independent System Operator, Inc. (MISO) filed, under section 205 of the Federal Power Act (FPA),¹ public and nonpublic versions of an executed Generator Interconnection Agreement (Agreement) between Courtenay Wind Farm, LLC (Courtenay), Otter Tail Power Company (Otter Tail), and MISO (together, Parties) (September 19 Filing). In this order, we accept MISO's September 19 Filing, subject to the outcome of the proceeding in Docket No. ER12-309, and give notice, pursuant to section 388.112(d) of the Commission's regulations,² that the Commission is considering the release of certain information contained in the filing for which MISO claims privileged status and that MISO has 30 days from the date of this order to file written comments to show cause why the information should not be made public, as explained below.

I. Background

2. The Agreement states that Courtenay intends to interconnect a proposed wind generating facility in Stutsman County, North Dakota, to Otter Tail's existing transmission system. MISO states that the Agreement conforms to the *pro forma* Generator Interconnection Agreement on file with the Commission and contains revisions

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 388.112(d) (2014).

that the Commission conditionally accepted in Docket No. ER12-309.³ MISO requests that the Commission accept the Agreement subject to any subsequent revisions to be accepted by the Commission in Docket No. ER12-309.⁴

3. MISO states that the Parties assert that Exhibit A2-1 qualifies as Critical Energy Infrastructure Information (CEII) pursuant to sections 388.112 and 388.113⁵ of the Commission's regulations.⁶ MISO states that Exhibit A2-1 of the Agreement contains diagrams of system maps that provide detailed information about existing critical transmission system infrastructure.

4. Appendix A, Exhibits A5 and A9, and Appendix B, Tables 1 and 2 of the nonpublic version of the Agreement contain dollar amounts of cost estimates for each task of the work and scheduled payments (Cost Information). The Cost Information is withheld and labeled as "privileged" in the public version of the agreement. MISO states that the Parties assert that the Cost Information is exempt from mandatory disclosure under the Freedom of Information Act (FOIA) Exemption No. 4 because release of the Cost Information would likely cause substantial harm to the competitive positions of Otter Tail and Courtenay in the transmission development market, and that this harm outweighs the public interest of disclosing the Cost Information.⁷ MISO also claims that the Commission has previously recognized the confidentiality of such information.⁸

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, *order on reh'g and compliance*, 139 FERC ¶ 61,253 (2012), *order conditionally accepting compliance*, 145 FERC ¶ 61,260 (2013) (GIP Orders). In these orders, the Commission conditionally accepted a series of revisions to Attachment X, Generator Interconnection Procedures (Attachment X), of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff. On February 3, 2014, in Docket No. ER12-309-006, MISO filed additional revisions to Attachment X in compliance with the GIP Orders. These revisions are pending before the Commission.

⁴ September 19 Filing, Transmittal at 1.

⁵ 18 C.F.R. § 388.113(c)(1) (2014).

⁶ September 19 Filing, Transmittal at 2.

⁷ 5 U.S.C. § 552 (2012).

⁸ September 19 Filing, Transmittal at 2 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER10-1098-000 (June 24, 2010) (delegated letter order);

(continued...)

5. MISO asks the Commission to grant waiver of the Commission's 60-day prior notice requirement⁹ and to make the Agreement effective September 20, 2014.¹⁰

II. Notice and Responsive Filing

6. Notice of MISO's September 19 Filing was published in the *Federal Register*, 79 Fed. Reg. 58,757 (2014), with interventions and protests due on or before October 10, 2014. None were received.

III. Discussion

Commission Determination

7. We accept the Agreement for filing, to become effective September 20, 2014, as requested, subject to the outcome of the proceeding in Docket No. ER12-309. However, we give notice, pursuant to 18 C.F.R. § 388.112(d), that the Commission is considering the release of the Cost Information in Appendix A, Exhibits A5 and A9, and Appendix B, Tables 1 and 2. MISO has 30 days from the date of this order to respond with a more detailed written explanation than that provided with the filing to articulate more completely why the Cost Information therein should not be made public.

8. MISO claims that the Cost Information is exempt from mandatory disclosure under FOIA Exemption No. 4. FOIA Exemption No. 4 protects from public disclosure trade secrets and commercial or financial information that is privileged or confidential.¹¹ A person requesting that material be treated as privileged information "must include in its filing a justification for such treatment,"¹² and the request must be supported with specificity rather than vague and speculative assertions of harm.¹³ MISO states that, according to the Parties, disclosure of the Cost Information would likely result in

Midwest Indep. Transmission Sys. Operator, Inc., Docket No. ER10-839-000 (Apr. 12, 2010) (delegated letter order)).

⁹ 18 C.F.R. § 35.3(a) (2014).

¹⁰ September 19 Filing, Transmittal at 3.

¹¹ 5 U.S.C. § 552(b)(4) (2012); *see also* 18 C.F.R. § 388.107(d) (2014).

¹² 18 C.F.R. § 388.112(b)(1) (2014).

¹³ *See, e.g., Algonquin Gas Transmission, LLC*, 130 FERC ¶ 61,011, at P 48 (2010).

substantial harm to the competitive positions of Courtenay and Otter Tail in the transmission development market, and that the potential substantial harm that could result from the public disclosure of the Cost Information outweighs the public interest in disclosing it. However, MISO does not explain nor provide any examples of how the disclosure of the Cost Information could cause the Parties substantial harm. MISO's justification lacks the specificity to warrant a finding that the Cost Information should be exempted under FOIA Exemption No. 4.

The Commission orders:

(A) MISO's September 19 Filing is hereby accepted, effective September 20, 2014, subject to the outcome of Docket No. ER12-309, as discussed in the body of this order.

(B) MISO is hereby given notice that the Commission is considering the release of the Cost Information that MISO seeks to protect from disclosure, and that MISO has 30 days from the date of this order to file written comments to show cause why the information should not be made public, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.