

156 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER16-2173-000

ORDER ACCEPTING GENERATOR
INTERCONNECTION AGREEMENT SUBJECT TO CONDITION

(Issued September 9, 2016)

1. On July 11, 2016, Midcontinent Independent System Operator, Inc. (MISO) filed an unexecuted Generator Interconnection Agreement (Agreement) between Duke Energy Indiana, LLC, (Duke Indiana) as the Interconnection Customer, Duke Energy Business Services, LLC, on behalf of Duke Indiana, as Transmission Owner, and MISO as Transmission Provider (collectively, the Parties). In this order, we accept the Agreement effective July 12, 2016 subject to condition.¹

I. Background

2. MISO filed the Agreement unexecuted because the Parties disagree over the applicability of two of the milestones in Appendix B of the Agreement, given Duke Indiana's position as both Interconnection Customer and Transmission Owner. MISO explains that milestones 1a and 1b give effect to Articles 11.5 (Initial Payment)² and 11.6

¹ MISO July 11, 2016 Transmittal Letter at 1 (Filing). MISO requests that the Commission accept the Agreement subject to the outcome in Docket No. ER16-696, *et al.* The Commission issued an order on Docket No. ER16-696 on August 9, 2016. *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,098 (2016).

² Article 11.5 of the Agreement provides, in part, that:

Interconnection Customer shall elect . . . to make either 1) an initial payment equal to twenty (20) percent of the total cost of Network Upgrades... (if the In-Service Date is less than or equal

(continued ...)

(Provision of Security)³ of the Commission-approved *pro forma* Generator Interconnection Agreement (GIA).

3. MISO asserts that, under the *pro forma* GIA, the Interconnection Customer must either pay the initial payment milestone of “20% of all Network Upgrades and Transmission Owner Interconnection Facilities,”⁴ which, in this case, is \$346,817, or provide “100% security, *i.e.*, a guarantee, surety bond, letter of credit or other reasonably acceptable form of security,”⁵ which, in this case, is \$1,734,084.⁶

4. MISO states that Duke Indiana requests clarification that these milestones do not require the Interconnection Customer to provide the security referenced in Articles 11.5 and 11.6 of the Agreement if Duke Indiana receives a waiver of these provisions from the Commission. MISO argues that, to comply with its tariff and the Commission-approved *pro forma* GIA, the Agreement must memorialize this choice even if the Interconnection

to five (5) years of the initial payment date); or 2) an initial payment equal to ten (10) percent of the total cost of Network Upgrades. . . (if the In-Service Date exceeds the initial payment date by more than five (5) years); or 3) the total cost of Network Upgrades . . . in the form of security pursuant to Article 11.6.

³ Article 11.6 of the Agreement provides, in part, that:

Unless otherwise provided in Appendix B, at least thirty (30) Calendar Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of an element, *not otherwise funded under Article 11.5* of the . . . Network Upgrades . . ., Interconnection Customer shall provide Transmission Owner, at Interconnection Customer’s selection, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Owner. . . .Such security for payment shall be in an amount sufficient to cover the applicable costs and costs commitments, in addition to those funded under Article 11.5, required of the Party responsible for building the facilities pursuant to the construction schedule developed in Appendix B

⁴ Filing at 2 (citing Agreement, Appendix B at § 2.A.1a).

⁵ *Id.* (citing Agreement, Appendix B at § 2.A.1b).

⁶ *Id.*

Customer and Transmission Owner are the same entity and no actual fund transfer will take place. MISO's reasoning is that, even in this situation, entities can still provide 100 percent security that is "reasonably acceptable" to the transmission owner.⁷ MISO further states that memorializing this choice ensures that projects where the Interconnection Customer and Transmission Owner are the same are subject to the same transparency and treatment as projects involving separate entities.⁸ MISO further asserts that not to require the Interconnection Customer to provide security referenced in the *pro forma* GIA Articles 11.5 and 11.6 would be construed as preferential treatment not given to projects where the Interconnection Customer is not the Transmission Owner.

5. MISO requests waiver of the Commission's prior notice requirements to allow the Agreement to become effective on July 12, 2016.

III. Notices of Filings and Protest

6. Notice of MISO's filing was published in the *Federal Register*, 81 Fed. Reg. 46,669 (2016), with interventions and protests due on or before August 1, 2016. Wisconsin Electric Power Company (Wisconsin Electric) filed a timely motion to intervene. Duke Indiana filed a timely motion to intervene, protest, and request for waiver.

7. Duke Indiana argues that, because it is both the Interconnection Customer and the Transmission Owner, consistent with Commission precedent, Duke Indiana is not going to apply the security provisions of Articles 11.5 and 11.6 of the Agreement to itself.⁹ Duke Indiana states that, according to *PG&E*, when the Interconnection Customer and Transmission Owner are identical, the Commission may waive provisions of the Transmission Provider's GIA that require Interconnection Customers to post security.¹⁰ Consistent with this precedent, Duke Indiana seeks waiver and asks the Commission to require MISO to re-word milestones 1a and 1b to state that they are not applicable to the Agreement. Duke Indiana's preference is for the following strikethrough revisions:

⁷ *Id.* (citing Agreement, Appendix B at § 2.A.1b).

⁸ *Id.* at 2.

⁹ Duke Indiana Protest at 2 (citing *Pac. Gas and Elec. Co.*, 128 FERC ¶ 61,175 (2009) (*PG&E*)).

¹⁰ *Id.* at 3 (citing *PG&E*, 128 FERC ¶ 61,175).

No.	Description	Date
1a.	Provide initial payment of \$346,817 (20% of all Network Upgrades and Transmission Owner Interconnection Facilities) to Transmission Owner (GIA 11.5)	N/A <u>Because Interconnection Customer and Transmission Owner are identical, no security is being provided.</u>
1b.	Provide 100% security, <i>i.e.</i> , a guarantee, surety bond, letter of credit or other reasonably acceptable form of security to Transmission Owner, in the amount of \$1,734,084 (GIA 11.6).	30-Calendar Days from Effective Date <u>Because Interconnection Customer and Transmission Owner are identical, no security is being provided.</u>

8. Duke Indiana requests waiver of Articles 11.5 and 11.6 of the Agreement and believes that it has met the Commission's waiver standards because it has acted in good faith and the waiver request is limited to the situation where Duke Indiana is both the Transmission Owner and Interconnection Customer. Duke Indiana also argues that it is unnecessary and arguably legally infeasible for one company to provide itself security. Duke Indiana also states that the waiver harms no third party.¹¹

9. Finally, Duke Indiana also states that it believes that this problem is capable of repetition, as MISO is largely composed of integrated utilities. Duke Indiana notes that, in *PG&E*, the Commission suggested that transmission providers should change their *pro forma* GIA to address this situation.¹² Duke Indiana suggests that the Commission should consider asking MISO to make such a filing. Alternatively, the Commission could indicate that in all cases where the Transmission Owner and Interconnection Customer are identical, the security (and reimbursement, if applicable) provisions of the GIA are inapplicable and can be ignored without the filing of a waiver request. Duke Indiana states that this alternative approach is consistent with Commission precedent that indicates that any inapplicable provision of a GIA can be ignored.¹³

IV. Discussion

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make Wisconsin Electric and Duke Indiana parties to this proceeding.

¹¹ *Id.* at 4.

¹² *Id.* (citing *PG&E*, 128 FERC ¶ 61,175 at P 20).

¹³ *Id.* at 4-5 (citing *MidAmerican Energy Co.*, 116 FERC ¶ 61,018, at P 11 (2006)).

11. At the outset, we note that the requested revisions revising milestones 1a and 1b in Appendix B of the Agreement (such that Articles 11.5 and 11.6 do not apply) would result in a non-conforming agreement. The Commission's standard for case-specific deviations from *pro forma* text includes addressing unique factors¹⁴ and would be properly implemented here as we have accepted this specific treatment previously.

12. In *PG&E*, the Commission found the situation where an entity "is both the Transmission Provider and Interconnection Customer to be a unique circumstance that necessitates a non-conforming agreement."¹⁵ Duke Indiana likewise is both the Transmission Owner and Interconnection Customer. In *PG&E*, the Commission explained that the funding and security provisions at issue exist to protect the transmission owner from financial risk associated with the construction of interconnection facilities or upgrades requested by an independent interconnection customer. For this reason, since the Interconnection Customer and Transmission Owner here are the same entity, that protection is unnecessary and, in any event, the requirement to provide security to oneself would be impractical and could potentially cause confusion. Accordingly, it would not be just and reasonable to accept the agreement without requiring the revisions as requested by Duke Indiana.¹⁶

13. Therefore, we will accept the Agreement subject to the condition that MISO revise the Agreement to adopt Duke Indiana's proposed revisions to Appendix B of the Agreement. We direct MISO to submit a compliance filing within 30 days of this order to amend Appendix B of the Agreement accordingly.¹⁷

14. Finally, we grant MISO waiver of the prior notice requirement, for an effective date of July 12, 2016, as requested.

¹⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,066, at P 35 (2007), which requires an explanation of how the "non-conforming provisions are necessary due to reliability concerns, novel legal issues or other unique factors."

¹⁵ *PG&E*, 128 FERC ¶ 61,175 at P 16.

¹⁶ *Id.*

¹⁷ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. See *City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

The Commission orders:

(A) The Agreement is hereby accepted, effective July 12, 2016, as requested, subject to condition, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.