

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER06-433-000  
ER06-433-002

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING  
INTERCONNECTION AGREEMENT, SUBJECT TO  
THE OUTCOME OF RELATED PROCEEDING

(Issued May 26, 2006)

1. On December 30, 2005, as supplemented on March 30, 2006, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an unexecuted Large Generator Interconnection Agreement (Interconnection Agreement) among Midwest ISO as Transmission Provider, Twin Creeks Wind LLC (Twin Creeks) as Interconnection Customer, and American Transmission Company LLC (ATC) as Transmission Owner. The proposed Interconnection Agreement governs the interconnection of Twin Creeks' 98 megawatt generating facility, comprised of 49 wind turbines rated 2.0 megawatts each, to ATC's transmission system. In this order, we accept and suspend the Interconnection Agreement, to become effective December 31, 2005, subject to refund and subject to conditions and the outcome of another proceeding, as discussed below.

**I. Background**

2. In Docket No. ER05-1475, Midwest ISO filed various proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT) Attachment X, which contains Midwest ISO's Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA). By order dated February 13, 2006, the Commission conditionally accepted those proposed revisions and directed a compliance filing.<sup>1</sup> Midwest ISO made a compliance filing, and by order dated May 22, 2006, the Commission conditionally accepted the compliance filing, and directed further modifications to Midwest ISO's *pro forma* LGIA.<sup>2</sup>

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,134 (2006) (February 13 Order).

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,223 (2006) (May 22 Order).

3. Midwest ISO states that the proposed Interconnection Agreement includes the proposed revisions to Midwest ISO's *pro forma* LGIA that were pending before the Commission in Docket No. ER05-1475 on the date that the Interconnection Agreement was filed, with certain deviations, as discussed below. Midwest ISO states that the proposed Interconnection Agreement was filed unexecuted because certain deviations requested by the Transmission Owner involve issues pending before the Commission in Docket No. ER05-1475.

## **II. Notice of Filing And Responsive Pleadings**

4. Notices of Midwest ISO's December 20, 2005 and March 30, 2006, filings were published in the *Federal Register*, 71 Fed. Reg. 3,075 and 19,720 (2006), with comments, interventions and protests due on or before January 20, 2006 and April 20, 2006, respectively. ATC filed a timely motion to intervene and Twin Creeks filed a timely motion to intervene and protest. Midwest ISO filed an answer to Twin Creeks' protest.

## **III. Discussion**

### **A. Procedural Matters**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the 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) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Midwest ISO's answer.

### **B. Analysis**

6. In Order No. 2003,<sup>3</sup> the Commission required Transmission Providers (such as Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents. The use of *pro forma*

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<sup>3</sup> See *Standardization of Generator Interconnection Agreement and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

documents ensures that Interconnection Customers receive non-discriminatory service and that all Interconnection Customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.<sup>4</sup>

7. At the same time, the Commission has recognized that there will be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for non-conforming agreements.<sup>5</sup> The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.<sup>6</sup> The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming agreement. Based on this policy, as discussed below, the Commission accepts in part the proposed Interconnection Agreement, subject to conditions and the outcome of Docket No. ER05-1475, to become effective December 31, 2005.

#### **1. Article 9.6.1 (Power Factor Design Criteria)**

8. Midwest ISO states that Article 9.6.1 of the proposed Interconnection Agreement has been modified to allow ATC to apply the power factor design requirements consistently applied to all generators in its control area, namely that the generator be capable of maintaining power factors at the Point of Interconnection over 0.95 leading to 0.90 lagging. It states that the System Impact Study for Twin Creeks' wind generator demonstrated a need for a reactive power requirement of 0.925 leading to 0.9449 lagging and that, as a result of the study, Twin Creeks should be required to meet the power factor capability range applicable to all Interconnection Customers and consistently applied in ATC's control area.

9. In its protest, Twin Creeks requests that the standards for wind generators in Appendix G to the *pro forma* LGIA adopted by the Commission in Order Nos. 661 and

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<sup>4</sup> See Order No. 2003 at P 10 ("it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues").

<sup>5</sup> Order No. 2003 at P 913-15; *PJM Interconnection, LLC*, 111 FERC ¶ 61,098 at P 8 (2005).

<sup>6</sup> Order No. 2003-B at P 140.

661-A<sup>7</sup> be incorporated into the proposed Interconnection Agreement. It argues that the standards associated with Appendix G are superior to the changes proposed by Midwest ISO and ATC in Article 9.6.1 of the proposed Interconnection Agreement, in that the standard in Appendix G “provides for specific operational parameters for wind farms.”<sup>8</sup>

### **Commission Conclusion**

10. We will conditionally accept the non-conforming provisions in Article 9.6.1 of the proposed Interconnection Agreement. In Order No. 2003-A, the Commission decided that the power factor design criteria of Article 9.6.1 of the *pro forma* LGIA should not generally apply to wind generators.<sup>9</sup> Thus, the power factor design criteria in Article 9.6.1 may be applied to a wind generator only if shown to be operationally necessary to address safety or reliability concerns by a System Impact Study.<sup>10</sup>

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<sup>7</sup> *Interconnection for Wind Energy*, Order No. 661, 70 Fed. Reg. 34,993 (June 16, 2005), FERC Stats. & Regs. ¶ 31,186 (2005), *order on reh’g*, Order No. 661-A, 70 Fed. Reg. 75,005 (Dec. 19, 2005), FERC Stats. & Regs. ¶ 31,198 (2005); *see also Order Granting Extension of Effective Date and Extending Compliance Date*, 70 Fed. Reg. 47,093 (Aug. 12, 2005), 112 FERC ¶ 61,173 (2005); *Notice Extending Compliance Date*, issued Oct. 28, 2005; *Notice Extending Compliance Date*, issued Dec. 22, 2005.

<sup>8</sup> Twin Creeks Protest at 4.

<sup>9</sup> Order No. 2003-A at P 407.

<sup>10</sup> See *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,016 at P 21 (2006). We note that in Order Nos. 661 and 661-A, the Commission adopted specific power factor requirements for wind generators in Appendix G to the *pro forma* LGIA, applicable to interconnection agreements signed, or unexecuted agreements filed with the Commission, on or after January 1, 2006, on a case-by-case basis, if the Transmission Provider shows based on a System Impact Study that it is needed to ensure the safety or reliability of the transmission system. In that case, the power factor requirements for wind generators in Appendix G to the *pro forma* LGIA apply without the need for non-conforming provisions in the LGIA. Proposed revisions to Midwest ISO’s *pro forma* LGIA to comply with Order Nos. 661 and 661-A were conditionally accepted, to become effective for LGIAs signed or filed in unexecuted form or as non-conforming agreements on or after February 19, 2006. *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,270, *reh’g pending* (2006) (March 17 Order). Because the proposed Interconnection Agreement was filed unexecuted before January 1, 2006, Appendix G of the *pro forma* LGIA does not apply.

11. Here, Midwest ISO has demonstrated that it is necessary for this wind generator to have additional reactive power capability. The System Impact Study for Twin Creeks' wind generator demonstrates a need for a reactive power requirement of 0.925 leading to 0.9449 lagging to address reliability concerns. As a result of the study, we will accept the proposal to apply the reactive power design criteria of Article 9.6.1 of the *pro forma* LGIA to the wind generator, subject to one condition.

12. Article 9.6.1 of the proposed Interconnection Agreement reflects the requirement in Article 9.6.1 of Midwest ISO's *pro forma* LGIA that the generator be capable of *continuous* dynamic operation throughout the power factor design range. The System Impact Study shows that reactive power capability for Twin Creeks' wind generator need be capable of dynamic operation, which can be achieved through installation of STATCOM devices. These STATCOM devices achieve dynamic capability through a series of switched shunt capacitors or reactors controlled by semiconductor devices; while not capable of *continuous* dynamic operation over the entire range, they would provide sufficient dynamic capability within the portion of shunt capacitance or reactance that has been switched. Accordingly, Midwest ISO is directed to file, within 30 days of the date of this order, revisions to Article 9.6.1 of the Interconnection Agreement to delete the word "continuous" from the provision requiring dynamic operation, because *continuous* dynamic operation is not shown to be necessary by the System Impact Study to address safety or reliability concerns.

13. As noted above, technical requirements for wind generators adopted in Order Nos. 661 and 661-A do not apply to the proposed Interconnection Agreement, as Twin Creeks requests. However, the modifications we require here should address the concerns expressed by Twin Creeks. With respect to the power factor range of 0.95 leading to 0.90 lagging applicable to generators in ATC's control area, Order No. 661 adopted a power factor standard of 0.95 leading to 0.95 lagging applicable to wind generators where the System Impact Study demonstrates that it is needed for safety or reliability.<sup>11</sup> However, the Commission, in Order No. 661-A, also provided that where a Transmission Provider has a different power factor range in its *pro forma* LGIA, and wishes to apply that same range to wind generators, it may seek a variation from the Commission under the variation standards adopted by the rule.<sup>12</sup> Midwest ISO sought such a variation from Order No. 661 in Appendix G of its *pro forma* LGIA to apply a different power factor range if it has established different requirements that apply to all generators in a particular control area on a comparable basis, as it has in the ATC control area. In the March 17 Order, the Commission accepted this variation in Appendix G of Midwest ISO's *pro forma* LGIA.<sup>13</sup> Thus, if Appendix G of Midwest ISO's *pro forma*

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<sup>11</sup> Order No. 661 at PP 50-57.

<sup>12</sup> Order No. 661-A at P 50.

<sup>13</sup> March 17 Order at P 30.

LGIA applied to the instant Interconnection Agreement, Twin Creeks would be subject to the same power factor range we approve here.

14. We also note that Midwest ISO did not alter the last sentence of Article 9.6.1 of the proposed Interconnection Agreement, which reflects Article 9.6.1 of Midwest ISO's *pro forma* LGIA and states that the power factor design criteria of Article 9.6.1 shall not apply to wind generators. This contradicts the proposed non-conforming power factor design provisions discussed above and seems to be simply an oversight. Midwest ISO must eliminate this sentence in its compliance filing to remove any ambiguity from the Interconnection Agreement.

## **2. Article 11.4.1 (Repayment of Amounts Advanced for Network Upgrades)**

15. The transmission pricing provisions of Midwest ISO's *pro forma* LGIA largely reflect the default pricing provisions adopted in Order No. 2003 and Order No. 2003-A. Article 11.4.1 provides that the Interconnection Customer is entitled to cash repayment of amounts advanced for network upgrades on a dollar for dollar basis for the non-usage sensitive portion of transmission charges, including interest. Further, the Interconnection Customer, Transmission Owner and Transmission Provider may adopt an alternative payment schedule that is mutually agreeable to the parties so long as the Transmission Owner, within 5 years of the generator's commercial operation date, has either returned to the Interconnection Customer any amounts advanced for network upgrades and not previously repaid, or declared that it will continue to provide payments on a dollar for dollar basis for the non-usage sensitive portion of transmission charges or on an alternative schedule that is mutually agreeable and provides for return of all amounts advanced for network upgrades not previously repaid.

16. Midwest ISO proposes modifications to Article 11.4.1, at ATC's request, that reflect ATC's policy of reimbursing Interconnection Customers in cash, within 90 days of commercial operation, for amounts previously advanced by the Interconnection Customer for the construction of network upgrades.

## **Commission Conclusion**

17. We will reject this non-conforming provision because it is unnecessary. Article 11.4.1 of the *pro forma* LGIA provides the flexibility to accommodate American Transmission's full repayment of amounts advanced for network upgrades within 90 days of the generator's commercial operation date. We see nothing in the *pro forma* LGIA that would preclude American Transmission from continuing to provide full repayment within 90 days.<sup>14</sup> Accordingly, Midwest ISO is directed to file, within 30 days of the

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<sup>14</sup> See *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,016 at P 35 (2006).

date of this order, revisions to Article 11.4.1 of the Interconnection Agreement to remove the provisions reflecting ATC's specific policy for reimbursing Interconnection Customers for amounts previously advanced by the Interconnection Customer for the construction of network upgrades

### **3. Article 18.1 (Limitation of Liability)**

18. ATC proposes certain modifications to Article 18.1, which Midwest ISO does not support. It states that the proposed changes are similar to those proposed by ATC in Docket No. ER05-1475. ATC requests that Article 18 be modified to change the limitation of liability to a negligence standard during the period when Interconnection Facilities and Network Upgrades are being constructed.

### **Commission Conclusion**

19. In the February 13 Order, the Commission refused to adopt ATC's proposed modifications to Article 18.1 of Midwest ISO's *pro forma* LGIA to change the limitation of liability to a negligence standard during the construction phase, and we will do so here for the same reasons.

### **4. Article 18.4 (Insurance)**

20. Midwest ISO proposes to reduce the Excess Public Liability Insurance requirement in Article 18.4.4 of its *pro forma* LGIA from \$20 million to \$6 million, at Twin Creeks' request. It states that both Twin Creeks and ATC agree that requiring \$20 million in Excess Public Liability Insurance would be excessive for a project of this size and nature.<sup>15</sup> It states that both Twin Creeks and ATC also contend that this deviation from the *pro forma* LGIA is superior to the *pro forma* and reflects the specific nature of this particular Interconnection Agreement.

21. In its March 30 amendment, Midwest ISO states that it is neutral regarding requests to reduce the minimum insurance requirements applicable to a particular Interconnection Customer. It states that it allows the Transmission Owner to consider an Interconnection Customer's request for such a reduction. If the Transmission Owner agrees to reduce the amount, Midwest ISO requires that the Transmission Owner ensure that similarly situated Interconnection Customers are treated in a non-discriminatory manner by giving them the same option.

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<sup>15</sup> In its March 30 amendment, Midwest ISO states that the Interconnection Customer indicated that a \$20 million "public liability" policy would cost an estimated \$243,000 annually, whereas a \$6 million policy would cost approximately \$73,000 annually.

22. ATC states that it considers an Interconnection Customer's request for reduced insurance requirements based on the size of the generating facility, the type of construction needed, and the risk to the Transmission Owner associated with the construction of the facilities. After considering all of these factors and based on its experience in constructing these facilities, ATC may allow an Interconnection Customer to reduce the amount of insurance required by the project. ATC cites to five pre-Order No. 2003 interconnection agreements that include minimum insurance requirements below \$20 million for generators below 100 MW.

### **Commission Conclusion**

23. We recognize that the type of provision filed here can provide benefits. However, these benefits should be made available to all Interconnection Customers, in a transparent, non-discriminatory manner. Midwest ISO has failed to justify acceptance of this provision as a non-conforming provision in an individual LGIA; it has not shown that the non-conforming provision is necessary to reflect extraordinary circumstances associated with this interconnection. The fact that ATC included minimum insurance requirements below \$20 million for generators below 100 MW in certain pre-Order No. 2003 interconnection agreements is neither here nor there; Order No. 2003 applies to interconnection agreements, such as this one, filed on or after its effective date.

24. Therefore, in order to ensure that all similarly situated Interconnection Customers are treated on a consistent and fair basis, as Order No. 2003 requires, we will reject the non-conforming minimum insurance requirements in Article 18.4.4 of the proposed Interconnection Agreement. Midwest ISO may propose to amend its *pro forma* LGIA under the consistent with or superior to or independent entity standards to include insurance requirements tailored to the circumstances of individual large generator interconnections in a transparent and not unduly discriminatory manner. If it does not do so, it must file a revised Interconnection Agreement to remove the non-conforming provisions of 18.4.4 within 30 days of the date of this order.

## **5. Related Proceedings**

25. Insofar as the proposed Interconnection Agreement reflects the proposed revisions to Midwest ISO's *pro forma* LGIA that are at issue in Docket Nos. ER05-1475, the Commission accepts and suspends for a nominal period the proposed Interconnection Agreement. We will make it effective December 31, 2005, subject to refund and subject to the outcome of Docket Nos. ER05-1475.<sup>16</sup> Midwest ISO is directed to file, within 30 days of the date of this order, revisions to the proposed Interconnection Agreement

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<sup>16</sup>*Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (waiver of prior notice requirement will be granted for service agreements filed within 30 days after the commencement of service).

that reflect the modifications ordered in the February 13 Order and the May 22 Order. Further, Midwest ISO is directed to file, within 30 days of the date of an order either approving directing further revisions to the Attachment X *pro forma* LGIA in Docket No. ER05-1475, any necessary revisions to the proposed Interconnection Agreement to conform to the revisions required by that order.

The Commission orders:

(A) Midwest ISO's Interconnection Agreement filing is hereby conditionally accepted for filing, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to submit a compliance filing consistent with this order within 30 days of the date of this order, and further compliance filings as necessary, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

