

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER06-881-000 ER06-881-001 ER06-881-002 ER06-881-003
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ORDER CONDITIONALLY ACCEPTING INTERCONNECTION AGREEMENT

(Issued September 18, 2006)

1. On April 21, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an unexecuted Large Generator Interconnection Agreement (Interconnection Agreement) among itself, Power Partners Midwest, LLC (Power Partners) as Interconnection Customer, and Northern States Power Company (Northern States) as Transmission Owner (April 21 Filing). In this order, we conditionally accept the Interconnection Agreement, to become effective April 22, 2006, and direct a compliance filing. We condition our acceptance on the Midwest ISO's bringing the Interconnection Agreement into compliance with the Midwest ISO's Order No. 2003 *pro forma* Large Generator Interconnection Agreement,¹ subject to the outcome of the proceedings in Docket Nos. ER06-18 and ER06-192.²

¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,846 (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), *appeal docketed sub nom. National Association of Regulatory Utility Commissioners v. FERC*, Nos. 04-1148, *et al.* (D.C. Cir. Apr. 29, 2004 and later).

² Docket No. ER06-18 involves the Midwest ISO's proposed revisions to its Open Access Transmission and Energy Markets Tariff (Tariff) to incorporate its Transmission Expansion Planning protocols and to institute its transmission expansion cost allocation
(continued)

I. Background

2. The filed Interconnection Agreement provides for the interconnection of a new 200 MW wind generation plant to Northern States' proposed Nobles County, Minnesota substation. It provides for the design, permitting, and construction of \$1,100,000 of Transmission Provider Interconnection Facilities and \$37,635,000 of Network Upgrades. The Midwest ISO states that the Interconnection Agreement "follows" the *pro forma* Large Generator Interconnection Agreement in Attachment X to the Midwest ISO Tariff.³

3. The Midwest ISO states, however, that the Interconnection Agreement is being filed unexecuted because the parties have been unable to agree on two provisions. These provisions are: first, the payment schedule provisions; and second, the provisions regarding what happens if the generator requests that the Transmission Owner suspend construction and later asks it to resume. In its April 21 Filing, the Midwest ISO requests that the Commission accept the Interconnection Agreement.⁴ It also requests waiver of the Commission's prior notice requirement to allow an effective date of April 22, 2006.

4. On June 9, 2006, the Director, Division of Tariffs and Market Development – Central, acting under delegated authority, issued a deficiency letter (Deficiency Letter) seeking additional information relating to the proposed Interconnection Agreement, including information about Northern States' credit policy and practices. In response to the Deficiency Letter, the Midwest ISO, with input from Northern States, made a supplemental filing on July 10, 2006, as amended on July 11, 2006 and July 20, 2006 (collectively, the Supplemental Filing).

policy, which allocates costs of new transmission projects and system upgrades. Docket No. ER06-192 involves the Midwest ISO's proposal to substitute for its existing Attachment R of its Tariff, the Commission's *pro forma* Small Generator Interconnection Procedures and Small Generator Interconnection Agreement, with certain modifications.

³ April 21 Transmittal Letter at 1. Since the April 21 Filing, the Midwest ISO's proposed revisions to its *pro forma* Interconnection Agreement to reflect the revisions ordered by the Commission in Docket No. ER05-1475 have been accepted by the Commission. *See Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,223, *order on compliance*, Docket No. ER05-1475-005 (July 13, 2006) (unpublished letter order).

⁴ As discussed in greater detail below, in subsequent supplemental filings, Northern States states that it would be willing to defer the resolution of the payment schedule provisions and the Midwest ISO states that it has no objection to that proposal.

II. Notice of Filing and Responsive Pleadings

5. Notice of the Midwest ISO's April 21 Filing was published in the *Federal Register*, 71 Fed. Reg. 26,950 (2006), with interventions and protests due on or before May 12, 2006. A timely motion to intervene and comments was filed by Xcel Energy Services Inc., on behalf of its utility operating company affiliate, Northern States (referred to as Northern States in this order). A timely motion to intervene and protest was filed by Power Partners. On May 26, 2006, Northern States submitted an answer to Power Partners' protest. On June 6, 2006, Power Partners filed a reply to the answer.

6. Notice of the July 10 and July 11 Supplemental Filings was published in the *Federal Register*, 71 Fed. Reg. 41,794 (2006), with interventions and protests due on or before July 31, 2006. On July 21, 2006, Power Partners filed a "reply" to the July 10 Supplemental Filing.⁵ Notice of the July 20 Supplemental Filing was published in the *Federal Register*, 71 Fed. Reg. 43,142 (2006), with interventions and protests due on or before August 10, 2006. None was filed.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Northern States' May 26 answer or Power Partners' June 6 reply.

B. Analysis

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

⁵ Although it is styled as a "reply," we will treat Power Partners' July 21 filing as a timely protest to the July 10 Supplemental Filing.

need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs and the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.⁶

10. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for nonconforming agreements.⁷ 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 require a nonconforming interconnection agreement.⁸

11. The Commission analyzes such nonconforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the nonconforming agreement. We note that a Transmission Provider seeking a case-by-case specific deviation from a *pro forma* interconnection agreement bears a burden higher than the “consistent with or superior to” standard or the standard for independent entities to obtain variations; these standards are used by the Commission in evaluating variations between the Transmission Provider’s *pro forma* documents and the *pro forma* documents adopted by the Commission in Order No. 2003. A Transmission Provider seeking a deviation from its approved *pro forma* interconnection agreement must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.⁹

⁶ See Order No. 2003 at P 10 (“[I]t has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues.”); *see, e.g., PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 8, *order on compliance*, 111 FERC ¶ 61,461 (2005) (*PJM*); *El Paso Electric Company*, 110 FERC ¶ 61,163, at P 4 (2005).

⁷ See Order No. 2003 at P 913-15.

⁸ Order No. 2003-B at P 140 (“[E]ach Transmission Provider submitting a nonconforming agreement for Commission approval must explain its justification for each nonconforming provision and provide a redline document comparing the nonconforming agreement to the effective *pro forma* [Interconnection Agreement].”).

⁹ *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,270, at P 9 (2005) (citing *PJM*, 111 FERC ¶ 61,098, at P 9 (2005)).

12. In contrast, provisions that are to be negotiated between the parties must be shown to be just and reasonable under section 205 of the FPA. The *pro forma* Interconnection Agreement does not dictate the terms and conditions of every provision, allowing certain provisions to be negotiated by the parties. The just and reasonable standard applies unless the *pro forma* Interconnection Agreement sets forth a more specific standard.¹⁰

13. Appendix B of the Interconnection Agreement contains two provisions that are in dispute. The proposed provision regarding the “Milestones” and the terms and conditions that differ from the Midwest ISO’s *pro forma* Interconnection Agreement as to post-suspension procedures are both rejected, as discussed below. Accordingly, the Commission will conditionally accept the Interconnection Agreement, subject to the Midwest ISO re-filing it, within 30 days of the issuance of this order, to conform with the Midwest ISO’s *pro forma* Interconnection Agreement, subject to the outcome of Docket Nos. ER06-18 and ER06-192.

1. Milestones and Payment Schedule

a. The April 21 Filing

14. In Appendix B, “Milestones,” of the Midwest ISO *pro forma* Interconnection Agreement, the Transmission Owner and Interconnection Customer are to set forth critical milestones and responsibilities, including the form of and schedule for security payments. In this proposed Interconnection Agreement, Northern States requires Power Partners to provide 50 percent cash payments for significant construction activities before Northern States starts those activities. These cash payments would be due at various times over a four-year transmission permitting and construction process. The remaining 50 percent of the costs and cost commitments would be recovered through a form of security chosen by Power Partners, and reasonably acceptable to Northern States, and provided at least 30 days before design, procurement, installation, or construction begins, pursuant to Article 11.5. Such security would then be reduced on a dollar-for-dollar basis for payments made by Power Partners pursuant to the Milestones listed in Appendix B.

b. Arguments

15. Power Partners asserts that a Transmission Owner may only propose changes “consistent with or superior to” Midwest ISO’s *pro forma* Interconnection Agreement and that the proposed provisions fail to meet that standard.¹¹ It argues that Northern

¹⁰ *Southern Company Services, Inc.*, 116 FERC ¶ 61,231, at P 26 (2006).

¹¹ Power Partners May 12 Protest at 3 (citing Order No. 2003).

States' request for certain payments set forth in the Appendix B Milestones in the form of cash, rather than in the form of an irrevocable letter of credit, is contrary to Article 11.5 of the Interconnection Agreement.¹² Power Partners contends that while Article 11.5 allows parties to vary the section's provisions in Appendix B, the substitution of other forms of assurance of payment requires mutual agreement by the parties.

16. Power Partners argues that this requirement exposes it, for extended periods of time, to being a major unsecured creditor of Northern States if Northern States experiences financial distress. It states that it has offered to provide Northern States an irrevocable letter of credit in a form issued by a financial institution that should be reasonably acceptable to Northern States. Power Partners further states that Northern States "may draw down by sight draft as expenses are incurred" and "could call on the

¹² Article 11.5, "Provision of Security," from the Midwest ISO's *pro forma* Interconnection Agreement states (in relevant part):

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 initial element of the Transmission Owner's Interconnection Facilities, Transmission Owner's System Protection Facilities, Network Upgrades, Distribution Upgrades or Stand-Alone 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 and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in Article 12.1 for designing, engineering, . . . constructing, procuring and installing the applicable portion of Transmission Owner's Interconnection Facilities, Transmission Owner's System Protection Facilities, Network Upgrades, Distribution Upgrades or Stand-Alone Network Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes.

security for payment ‘dollar for dollar’ for all expenditures for the covered Network Upgrades and Interconnection Facilities, as such expenditures are incurred by [Northern States].”¹³

17. Northern States notes that Articles 11.2 and 11.3 of the Interconnection Agreement¹⁴ obligate Power Partners to fund all Network Upgrades and Interconnection Facilities. Northern States defends its proposed provisions in proposed Milestones 5a-5h, which state that Power Partners must “make graduated and measured cash progress payments, which are necessary for [Northern States] to pay internal and third-party costs of permitting, design engineering, procurement and construction activities of agreed Interconnection Facilities as costs are incurred.”¹⁵ It says that the Interconnection Customer should have to meet Northern States’ creditworthiness requirements. Finally, Northern States states that this requirement “is comparable with other large generator interconnection projects underway or in place on the [Northern States] system or on the

¹³ April 21 Transmittal Letter at 3.

¹⁴ Article 11.2, “Transmission Owner’s Interconnection Facilities,” from the Midwest ISO’s *pro forma* Interconnection Agreement states:

Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Owner’s Interconnection Facilities described in Appendix A at the sole expense of the Interconnection Customer.

Article 11.3, “Network Upgrades, System Protection Facilities and Distribution Upgrades,” from the Midwest ISO’s *pro forma* Interconnection Agreement states (in relevant part):

The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades and/or Generator Upgrades. Transmission Owner shall provide the Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if the Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner’s System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by the Interconnection Customer.

¹⁵ Northern States May 12 Comments at 3-4.

systems of other Xcel Energy utility operating companies for Interconnection Customers with similar credit worthiness.”¹⁶

18. Northern States also argues that Power Partners’ reliance on Article 11.5 is misplaced because that provision makes it clear that the security requirement is separate from the payment requirements in Articles 11.2 and 11.3. It asserts that Article 11.5 “does nothing to eliminate Power Partners’ responsibility to fund the construction that is necessary to facilitate its interconnection request, as contemplated by Articles 11.2 and 11.3 of the Interconnection Agreement.”¹⁷ Northern States further argues that Article 11.4 is merely a requirement that the Interconnection Customer demonstrate its ability to pay for the necessary upgrades once construction begins.

19. Finally, Northern States asserts that the Commission has stated that the security requirement is not in lieu of payment, but is instead reduced as payments are made: “the security amount is reduced on a dollar-for-dollar basis for payments made to the Transmission Provider, thereby protecting the Interconnection Customer from having to provide too much security.”¹⁸

20. The Deficiency Letter required Northern States to provide a detailed description of its credit policy to justify the need for the 50 percent cash advance. In the Supplemental Filing, Northern States acknowledges that no formal credit standard or policy has been adopted to date. However, Northern States argues that the particular circumstances of these Network Upgrades – the estimated costs for Network Upgrades and the immediacy of the milestones driven by the “fast track schedule” of the project – warrant the funding and advance payment requirements and initial credit evaluation it set forth in Appendix B. Northern States states that its initial credit and business evaluation was based on Good Utility Practices and that it considered “the unknown commercial requirements and potential business and financial risks for the Network Upgrades on the fast track critical path schedule for this project.”¹⁹ The potential risks cited by Northern States include: “unknown project spending curve risk,” “performance risk and third party credit exposure risk,” “suspension duration risk,” and “Good Utility Practices obligations.”²⁰

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7-8.

¹⁸ April 21 Transmittal Letter at 3 (citing Order No. 2003 at P 596).

¹⁹ Supplemental Filing at 4.

²⁰ *Id.* at 7-8.

21. Northern States maintains that it needs the 50 percent cash advance because Power Partners failed to provide a proposed irrevocable letter of credit for Northern States' approval within the advance time required under Article 11.5. Northern States also states that it "does not know at this time whether or not other forms of security may be acceptable to it when and if [Power Partners] ends the suspension now in effect."²¹

22. Further, Northern States asserts that while Power Partners interprets Article 11.5 to require a mutual agreement between Interconnection Customer and Transmission Owner to provide for cash advances, Northern States' interpretation is that Article 11.3 allocates responsibility for payment of funding obligations for Network Upgrades to the Interconnection Customer (unless the Transmission Owner has elected to do so) and that cost allocation provisions in that article would allow it to require up to 100 percent cash advances for Network Upgrades.²²

23. Northern States states, however, that it is willing to defer the resolution of this issue until the existing suspension of the project (under an April 11, 2006 suspension notice for the Interconnection Agreement given to the Midwest ISO and Northern States by Power Partners) is lifted. At that point, Northern States says that it will "redetermine the Milestones and Network Upgrade estimates to perform a final credit evaluation of the payment and security upgrade appropriate to this project."²³ The Midwest ISO has no objection to that proposal.²⁴

24. In its July 21 pleading, Power Partners continues to protest the proposed provision. Power Partners argues that the Commission should not defer resolution of the dispute over the cash prepayment requirement until after the project is no longer suspended and the final credit evaluation. That approach "would leave in place [the Interconnection Agreement] language barring security in any form with respect to more than \$18,000,000 in required cash prepayments."²⁵

²¹ *Id.* at 9.

²² *Id.* at 3

²³ *Id.* at 2.

²⁴ *Id.* at 11.

²⁵ Power Partners July 21 Protest at 2.

25. Power Partners also states that the Supplemental Filing does not provide any rationale for rejecting security in a form acceptable to the Transmission Owner for all milestone payment requirements, as provided in Article 11.5 of the Interconnection Agreement. In response to Northern States' assertion that Power Partners has not presented a form of letter of credit to Xcel as required by section 11.5, Power Partners says that the time for submission under section 11.5 has not passed.

26. Power Partners asks the Commission to direct Northern States to replace its proposed language in Appendix B with alternative language concerning security:

Transmission Customer may substitute for up to the specified sum, an irrevocable letter of credit in such substituted amount, which Transmission Owner may draw upon by sight draft, in a form and with a financial institution acceptable to Transmission Owner, or other security reasonably acceptable to Transmission Owner.²⁶

c. Commission Determination

27. At the outset, we find that the issue presented in this case is not whether the Interconnection Customer should initially fund all Network Upgrades and Interconnection Facilities; all parties agree that it should.²⁷ The issue is whether in this case cash advances can be required of the Interconnection Customer.

28. Because the proposed language regarding "Milestones" is part of a provision that under the Midwest ISO's *pro forma* Interconnection Agreement is to be negotiated between the parties, it is subject to the standard set forth in Article 11.5. Under that Article, the form of security is determined "at Interconnection Customer's selection" in a form "reasonably acceptable to Transmission Provider" and "consistent with the Uniform Commercial Code."²⁸ Thus, the standard for review of this provision is whether Northern

²⁶ *Id.* at 3.

²⁷ The Interconnection Customer could receive subsequent crediting for Network Upgrades to the extent provided for under the Midwest ISO *pro forma* Interconnection Agreement and Large Generator Interconnection Procedures and Attachment FF.

²⁸ Midwest ISO *pro forma* Interconnection Agreement at Article 11.5, *supra* note 12. We note that the "consistent with or superior to" standard cited by Power Partners is not controlling here. As noted above, that standard is used to evaluate a Transmission Provider's proposed deviation from the Commission's *pro forma* Interconnection

States is reasonable in rejecting the form of security offered by Power Partners. Northern States points to an “extremely fast track schedule to meet the Customer’s requirements” as well as estimated costs of \$37,635,000 for Network Upgrades presented in this transaction as reasons for why its credit and business evaluation determined that 50 percent cash advances were required.²⁹

29. As to why an irrevocable letter of credit or other form of assurance would not satisfy its credit policy, Northern States indicates that, “[n]o proposed irrevocable letter of credit was submitted for . . . review and approval within the advanced time required under Article 11.5 of the Interconnection Agreement”³⁰ We assume that Northern States refers to, among other events, the earliest March 1, 2006 milestone to “proceed with design and procurement of all necessary Transmission Owner Interconnection Facilities” from Appendix B as a basis for asserting that the time period for receiving a letter of credit has expired. If that is the case, Northern States does not allege that it has performed any of the specific work in milestones under Appendix B that would rely on such a security pursuant to Article 11.5. Moreover, because this Interconnection Agreement has been suspended by the customer and some of the milestones listed in Appendix B have expired, it appears that Appendix B may be revised, if the suspension is lifted.

30. Northern States cannot know now whether a letter of credit will be provided within the period of time required under Article 11.5 (subject to the earliest milestones), in a reasonably acceptable form, if the suspension of the Interconnection Agreement is lifted in the future. In fact, Northern States concedes that it is possible for a letter of credit for this interconnection to be in an acceptable form (e.g., a documentary letter of credit providing direct bank payment to Northern States vendors and contractors).³¹

Agreement in establishing its own *pro forma* Interconnection Agreement. *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,237, at P 17, *order on reh’g and compliance*, 112 FERC ¶ 61,281, at P 14 (2005); *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,048, at P 15 (2005); *see also PJM*, 111 FERC ¶ 61,098, at P 7-10 (2005).

²⁹ Supplemental Filing at 4.

³⁰ *Id.* at 2.

³¹ *Id.* at 8.

31. Finally, even if Northern States were to reasonably find unacceptable the form of the letter of credit and propose cash advances to address such risk, Northern States does not explain why cash advances would be required for every milestone, given existing protections in the *pro forma* Interconnection Agreement.³² Thus, we find that the proposal to require 50 percent cash advances is unsupported. We will require that Appendix B be revised accordingly.

32. We deny Northern States' request that we defer action until Power Partners revokes its suspension, as we find that the proposed language in Appendix B is unsupported.

2. Procedures Post-Suspension

a. The April 21 Filing

33. Appendix B of the Midwest ISO *pro forma* Interconnection Agreement does not specifically address what happens if the Interconnection Customer requests that the Transmission Owner suspend construction and later asks it to resume. Northern States offers the following proposed language in paragraph 2 of Appendix B:

In the event Interconnection Customer suspends work pursuant to Article 5.16, this [Interconnection Agreement] will be suspended for all purposes and all Milestones and cost estimates set forth in these Appendices will be abrogated. In such circumstance, upon revocation of Suspension and at

³² We note that, under Article 12 of the Midwest ISO's *pro forma* Interconnection Agreement, all the parties (including the Transmission Owner) to an Interconnection Agreement will invoice each other for amounts due by the other parties for the preceding month, such payments being due within 30 calendar days of receipt by the party being billed. If a billing dispute occurs, the Transmission Provider will continue to provide service *only* if the Interconnection Customer pays all amounts not in dispute and pays amounts in dispute portion to either the Transmission Owner, Transmission Provider, or into an escrow account. Thus, even if there is a billing dispute between the parties, Northern States will receive whatever it is entitled to as Transmission Owner because for Power Partners to continue to receive service from the Midwest ISO, Power Partners must pay all disputed amounts (to Northern States, the Midwest ISO, or into an escrow account). Given this protection, neither the Midwest ISO nor Northern States has explained what risks require 50 percent cash payments for milestones that span four years.

Interconnection Customer's sole expense, the requested Interconnection service will be restudied (if necessary) in light of all relevant circumstances existing at that time. In such event, and at Interconnection Customer's sole expense Transmission Provider will prepare a revised schedule and Milestones, revised cost estimates, and updated cost responsibility, payment and security requirements for the design, procurement, construction, installation, and testing of any Transmission Owner's Interconnection Facilities, Stand-Alone Network Upgrades and Network Upgrades found to be necessary at that time. Upon Interconnection Customer's acceptance of revised appendices based upon such circumstances, Transmission Provider will proceed with the work on the revised Milestones.³³

34. The Midwest ISO notes that Power Partners submitted a letter to the Midwest ISO and Northern States asking them to suspend work under Article 5.16 of the Interconnection Agreement on April 11, 2006.³⁴

b. Arguments

35. Northern States offers the language in paragraph 2 of Appendix B because the *pro forma* does not address "the necessary steps that must occur to re-examine the Milestones when an Interconnection Customer requests to come out of suspension" and "confirms that upon resumption of the Interconnection Customer's project, all relevant circumstances will be taken into account before the project resumes (*e.g.*, possible restudy of the interconnection)."³⁵ Northern States argues that the proposed language does not alter Power Partners' obligations, but rather clarifies the effects of a suspension by the Interconnection Customer when there are changed conditions:

The requested language does no more than recognize that the world does not stand still during suspension and an interconnection customer who suspends its interconnection

³³ April 21 Filing, Proposed Original Service Agreement No. 1694, Appendix B, at Original Sheet No. 84.

³⁴ April 21 Transmittal Letter at 4, n.4.

³⁵ *Id.* at 4.

agreement accepts the risk that changes in the transmission system during a suspension may well result in changed costs, different construction requirements, and revised construction timelines.³⁶

36. Northern States also argues that this language is consistent with Order No. 2003, which recognizes that a “one-size-fits-all” approach is not appropriate for the procedures to follow upon resumption of work.³⁷ Northern States argues that the added language is intended to clarify that if Power Partners wants to end the suspension, the project will resume once consideration is given to “all relevant circumstances.”

37. Northern States further asserts that Article 5.16 recognizes that the Interconnection Customer is solely responsible for all costs associated with a suspension and is not guaranteed that the cost or timing of its interconnection will remain fixed during the suspension. It says that this is consistent with the Commission’s statement in Order No. 2003-A that “[i]f another interconnection customer is ready to proceed with its project, it should be allowed to use capacity that has been earmarked for a higher queued interconnection customer that has suspended its project.”³⁸

38. Again, Power Partners argues that a Transmission Owner may only propose changes that are “consistent with or superior to” the *pro forma* Interconnection Agreement, and that the proposed modification fails to meet that standard.³⁹ It states that Article 5.16 is clear and need not be modified to address a suspension by Power Partners. Power Partners argues that Northern States’ proposed language is unclear and may create additional burdens:

[F]or example, the requested language in Appendix B might later be interpreted to require the Interconnection Customer to pay for additional system impact studies and for additional Network or Interconnection Facilities as a result of the

³⁶ Northern States May 12 Comments at 9.

³⁷ *Id.* at 10 (citing Order No. 2003-A at P 322).

³⁸ *Id.* at 11 (citing Order No. 2003-A at P 318).

³⁹ Power Partners May 12 Protest at 3 (citing Order No. 2003).

Transmission Owner's accommodation of later-queued interconnection requests.⁴⁰

Power Partners argues that, under the proposed revisions, "a suspending Transmission Customer may lose rights that it has under the [Interconnection Agreement] as executed, or may be required to pay for additional facilities, as a result of its suspension."⁴¹

c. Commission Determination

39. As indicated above, if a Transmission Owner wants a provision that does not conform to the relevant *pro forma* Interconnection Agreement, it must demonstrate that reliability concerns, novel legal issues or other unique factors call for the nonconforming provision.⁴² We find that Northern States⁴³ has not justified the post-suspension provisions.

40. Article 5.16.3 of the Midwest ISO's *pro forma* Interconnection Agreement (Effect of Suspension; Parties Obligations) already states that the Transmission Owner will provide the Interconnection Customer with a revised schedule for the design, procurement, construction, installation and testing of the Transmission Owner's Interconnection Facilities and Network Upgrades, taking into account circumstances as they exist when suspension is revoked. As Northern States notes, these circumstances may include the fact that the project's capacity may be used by another interconnection customer that is ready to proceed with its project. The Transmission Owner may

⁴⁰ April 21 Transmittal Letter at 4.

⁴¹ Power Partners May 12 Protest at 5.

⁴² See Order No. 2003 at P 913-15; *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,270, at P 9 (2005).

⁴³ The filing party is responsible for explaining the unique circumstances of the interconnection and why these circumstances necessitate the filing of a nonconforming interconnection agreement. Order No. 2003-B at P 140 ("[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision."); *PJM*, 111 FERC ¶ 61,098, at P 8 (2005). Here, the filing party, the Midwest ISO, appears not to take a direct position on the proposed nonconforming provisions. Accordingly, we rely on the arguments of Northern States, as stated in the April 21 Transmittal Letter and Northern States' filed comments, as the available support for the nonconforming provisions.

reasonably find that developing such a revised schedule requires restudy, depending on the circumstances at the time when the suspension is lifted and consistent with sections 6.4, 7.6 and 8.5 of the Midwest ISO's Large Generator Interconnection Procedures.

41. Furthermore, Article 5.16.3 states that when there is a suspension, the Interconnection Customer shall be responsible for only those costs specified in Article 5.16 (Suspension).

42. Finally, this circumstance could occur with any other customer and is not unique to Power Partners' situation.

3. Requested Effective Date

43. The Midwest ISO requests that the Commission waive its 60-day notice requirement under the Commission's regulations, and make the proposed Interconnection Agreement effective on April 22, 2006. We find that good cause exists to grant the Midwest ISO's request.⁴⁴

The Commission orders:

(A) The proposed Interconnection Agreement is hereby conditionally accepted, effective April 22, 2006, subject to the outcome of Docket Nos. ER06-18 and ER06-192, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to file a revised Interconnection Agreement within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴⁴ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993) (explaining that the Commission will grant waiver of notice for a service agreement under an umbrella tariff if the agreement is filed within 30 days after service commences).