

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER07-666-000

ORDER CONDITIONALLY ACCEPTING SMALL GENERATOR
INTERCONNECTION AGREEMENT AND REJECTING CERTAIN REQUESTED
NON-CONFORMING PROVISIONS

(Issued May 25, 2007)

1. In this order, the Commission will conditionally accept in part and reject in part the Small Generator Interconnection Agreement (SGIA)¹ among the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) as the Transmission Provider, Hardin Hilltop, LLC (Hilltop) as the Interconnection Customer, and Interstate Power and Light Company (Interstate Power) as the Transmission Owner, effective November 14, 2006, as requested.² We condition our acceptance on the outcome of the proceeding in the Midwest ISO's Order No. 2006 compliance filing pending before the Commission in Docket No. ER06-192-000, *et al.*, and on the compliance filings ordered below.

¹ The Commission adopted the *pro forma* SGIA and SGIP in Order No. 2006. *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order on clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending*, *Consolidated Edison Company of New York, Inc., et al. v. FERC*, Nos. 06-1018, 06-1031, 06-1032, 06-1036 (D.C. Cir.).

² *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

I. Background

2. Order No. 2006 requires all public utilities to adopt standard rules for interconnecting new sources of electricity no larger than 20 megawatts (small generators).³ Order No. 2006 standardized the general terms and conditions for small generator interconnection service, just as Order No. 2003 standardized the terms and conditions for large generator interconnection service.⁴ The Commission's *pro forma* SGIA and Small Generator Interconnection Procedures (SGIP) are designed to reduce interconnection time and costs for interconnection customers and transmission providers, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and types of new generation that will compete in the wholesale electricity market, facilitate development of non-polluting alternative energy sources, and mitigate undue discrimination.⁵

3. As required by Order No. 2006, the Midwest ISO filed a proposed *pro forma* SGIP and SGIA to be included in Attachment R of the Midwest ISO's Transmission Energy and Markets Tariff. The Commission then issued Order No. 2006-A, revising the Commission's *pro forma* SGIP and SGIA, and Order No. 2006-B, further revising its *pro forma* SGIP and SGIA. In Order No. 2006-B, the Commission directed independent transmission providers to amend their pending filings in cases where the Commission had not yet acted on the provider's Order No. 2006 or Order No. 2006-A compliance filings. The Midwest ISO filed amendments to its Order No. 2006 compliance filing in Docket Nos. ER06-192-001 (October 2006 Amendment) and ER06-192-002 (November 2006 Amendment).

³ For purposes of this order, public utilities are entities that own, control, or operate facilities used for transmitting electric energy in interstate commerce, as defined by the Federal Power Act (FPA), 16 U.S.C. § 824(e) (2000).

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *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 (2007).

⁵ Order No. 2006 at P 1.

II. The Instant Filing

4. On March 27, 2007, the Midwest ISO filed an executed SGIA among the Midwest ISO, Hilltop and Interstate Power. The SGIA involves the interconnection of seven 2.1 MW wind turbines and related equipment (collectively, Small Generating Facility) for a total capacity of 14.7 MW and related equipment. Each turbine and its associated equipment will be owned by a separate Iowa limited liability company, each of which will interconnect with the facilities owned by the Interconnection Customer.

5. The Midwest ISO states that the SGIA is based on its proposed *pro forma* SGIA as it existed when the SGIA was originally negotiated. The SGIA shows non-conforming provisions compared to the most current version of the Midwest ISO's *pro forma* SGIA filed in Docket No. ER06-192-000, *et al.* The categories of the non-conforming provisions in the SGIA include: (1) those associated with the unique characteristics of the Small Generating Facility and (2) those associated with new or pending *pro forma* SGIP and SGIA Filings.

6. The Midwest ISO requests waiver of the Commission's 60-day prior notice requirement in order to permit an effective date of November 14, 2006.

III. Notice of Filing

7. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 16,777 (2007), with interventions and protests due on or before April 17, 2007. None were filed.

IV. Discussion

8. When a non-conforming interconnection agreement is filed with the Commission, a filing party must clearly identify the portions of the agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.⁶ 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.⁷ A Transmission Provider seeking a case specific deviation from a *pro forma* interconnection agreement bears the

⁶ Order No. 2003-B at P 140 ("each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision").

⁷ See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098 at P 9 (2005) (PJM Order); see also *El Paso Electric Company*, 110 FERC ¶ 61,163 at P 4 (2005).

burden to justify and explain what makes the interconnection unique and what operational concerns or other reasons necessitate the changes.⁸

A. Non-Conforming Provisions to Account for Unique Ownership Structure

9. The Midwest ISO states that the proposed SGIA includes non-conforming provisions necessary to reflect the unique ownership structure of the Small Generating Facility. Each of the limited liability companies own one wind turbine and related equipment instead of the Interconnection Customer owning all seven turbines and related equipment. Certain revisions would delineate the relationship between the Interconnection Customer and the owner of each wind turbine.⁹ Other revisions would require the Interconnection Customer to ensure that the Small Generating Facility is operated in accordance with the SGIA.¹⁰ Finally, the Midwest ISO proposes to revise the Terms of Glossary (Attachment 1) to provide uniform use of terms throughout the SGIA and clarify the responsibilities of the Interconnection Customer.¹¹

10. The Commission has previously permitted similar deviations as a result of this type of ownership structure, including provisions that establish the relationship between the Interconnection Customer and the wind generation facilities, as well as requiring that the Interconnection Customer “cause” the action to be undertaken.¹² Given the unique characteristics of the interconnection, the Commission will accept the Midwest ISO’s

⁸ See PJM Order at P 9.

⁹ Revisions to Articles 1.2, 1.3, 1.8.2, 2.1.1 and 3.4.5 distinguish the Interconnection Customer from the owner of the Small Generating Facility.

¹⁰ Revisions to Articles 1.5.2, 1.5.4, 1.6, 1.8.1 and 2.2.2 require the Interconnection Customer to “cause” the action required in these provisions because the Interconnection Customer does not itself own or operate the wind turbines.

¹¹ Revisions are made to the terms “Interconnection Customer,” and “Small Generating Facility.” Additionally, Midwest ISO proposes to add the term “Small Generating Company.”

¹² See *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,270 (2005).

proposed deviations subject to the outcome of the Midwest ISO's Order No. 2006 compliance filing in Docket No. ER06-192-000, *et al.*

B. Revisions Associated with New or Pending Pro Forma SGIP and SGIA Filings

1. Crediting Provisions for Network Upgrades

11. The Midwest ISO proposes language¹³ to reference Attachment FF (Transmission Expansion Planning Protocol) of the Tariff that provides for cost sharing of network upgrades. The Midwest ISO states that the proposed language is consistent with revisions that were accepted in Docket No. ER06-1418-000, subject to the outcome of Docket Nos. ER06-18-000 and ER06-192-000.¹⁴

12. The Midwest ISO, however, states that the instant interconnection agreement does not include other revisions that the Midwest ISO proposed in its October 2006 Amendment.¹⁵ This, explains the Midwest ISO, is because the instant interconnection agreement was negotiated prior to the October 2006 Amendment. Therefore, Midwest ISO requests that this agreement be accepted subject to the revisions pending in the October 2006 Amendment and commits to revise the agreement to conform to the results of the determination in that proceeding.

¹³ See article 5.2.1. (Repayment of Amounts Advanced for Network Upgrades). The Midwest ISO also renumbered the articles to add a new article 5.2.1.1 (formerly 5.2.1.2) and delete the original article 5.2.1.1 of the SGIA, which contained the repayment provisions that are now found in Attachment FF and Attachment GG (Network Upgrade Charges) of the Tariff.

¹⁴ *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,115(2006).

¹⁵ The language that would be non-conforming (when compared to the language proposed by the Midwest ISO in its amended compliance to Order No. 2006) is found in articles 5.2.1 and 5.2.1.1. In article 5.2.1, the Midwest ISO adds references to “the Affected System operator” to replace “any Affected System Owner”; replaces “otherwise refunded” with “repaid”; and deletes “The” before “Interconnection Customer.” Similarly, in article 5.2.1.1, the Midwest ISO changed “any applicable Affected System operators” to “Affected System operator.”

13. The Commission will accept the proposed revisions pertaining to cost allocation for Network Upgrades because this language was previously conditionally accepted in Docket No. ER06-1418-000. Our acceptance here is conditioned on the outcome of Docket No. ER06-192-000.

14. Regarding the remaining proposed changes in Article 5 that the Midwest ISO states are inconsistent with its pending October 2006 Amendment due to the timing of negotiations,¹⁶ the Commission will allow the Midwest ISO to correct this language once we have acted on the Midwest ISO's Order No. 2006 compliance filing. Therefore, the Commission will accept this language subject to the outcome of Docket No. ER06-192, *et al.*

2. Offer of Conditional Energy Resource Interconnection Service

15. In Docket No. ER06-1483-000, the Commission accepted the Midwest ISO's proposal to revise its *pro forma* SGIP to add language that would allow Interconnection Customers with Small Generating Facilities to enjoy Energy Resource Interconnection Service (ERIS) on a conditional basis until a higher queued project goes into service.¹⁷

16. The Midwest ISO states that though the instant interconnection agreement does not reflect conditional ERIS, in Attachment 5, the Midwest ISO submits that the instant interconnection agreement is subject to the most current revisions of the SGIP and that conditional ERIS would be available to the Interconnection Customer under the SGIP, if appropriate.

17. The Commission previously accepted the language that allows Interconnection Customers with Small Generating Facilities to enjoy ERIS on a conditional basis in the proceeding in Docket No. ER06-1483-000.¹⁸ Therefore, if the Interconnection Customer intends to utilize the conditional ERIS to the extent appropriate, its SGIA must be amended to note that conditional ERIS is being taken.

¹⁶ *Id.*

¹⁷ *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER06-1483-000, (Nov. 2, 2006) (unpublished letter order).

¹⁸ *Id.*

3. Revisions to Reflect the Nature of a Three Party Agreement

18. The Midwest ISO also proposes non-conforming provisions to reflect the nature of a three-party agreement among the Interconnection Customer, the Midwest ISO (as the Transmission Provider) and the Transmission Owner. The Midwest ISO states that the Commission recently conditionally accepted similar proposed deviations in Docket No. ER06-1536.¹⁹

19. Consistent with our order in Docket No. ER06-1536-000, the Commission will conditionally accept the proposed revisions²⁰ on the outcome in Docket No. ER06-192, *et al.* The Commission will require that the Midwest ISO file, within 30 days of the date of an order either approving or directing further revisions to the *pro forma* SGIA in Docket No. ER06-192, *et al.*, any necessary revisions to the instant interconnection agreement in order to conform to the revisions required in Docket No. ER06-192, *et al.*²¹

4. Miscellaneous Changes

20. Lastly, the Midwest ISO states that in its Order No. 2006 compliance proceeding, the Midwest ISO inadvertently deleted the last four sentences of the paragraph in Article 3.4.1, "Emergency Conditions." The Midwest ISO states that in the instant

¹⁹ Citing *Midwest Independent System Operator, Inc.*, 117 FERC ¶ 61,229 (2006).

²⁰ These non-conforming changes are found in the definitions of "Affected System," "Distribution System," "Distribution Upgrades," "Network Upgrades" and "Transmission Provider" as well as articles 1.5.5, 1.8.3, 3.3.3, 3.4.4, 5.3, 5.5, 6.2, 7.1, 7.1.1, 7.3.2, 7.4, 7.6.1, 9.1, 9.2, 9.2.1, 9.3, 10.1, 12.5, 12.7, 12.10, 12.11.1 and 12.12.

²¹ We note that certain changes sought in this proceeding to reflect the nature of a third party agreement, are different from both language proposed in Docket No. ER06-192, *et al.*, and from language that was accepted in Docket No. ER06-1536-000, subject to the outcome of Docket No. ER06-192, *et al.* For example, in Article 9.1, the Midwest ISO has requested variously "information provided by one Party to ~~the~~any other Party" (Docket No. ER06-192), "information provided by one Party to ~~the other~~another Party" (Docket No. ER06-1536) and "information provided by one Party to ~~any~~the other Party" (Docket No. ER07-666). Similarly, in Article 9.2, the Midwest ISO has requested variously, "after notice to the other Parties" (Docket No. ER06-192), "after notice to ~~the other~~another Party," (Docket No. ER06-1536) and "after notice to the other PartiesParty," (Docket No. ER07-666).

interconnection agreement it has omitted the last four sentences and commits to revise this interconnection agreement to conform to the *pro forma* SGIA as approved in Docket No. ER06-192, *et al.*²²

21. The Commission finds that the Midwest ISO's proposed deletion of the last four sentences in Article 3.4.1 is an unsupported non-conforming change. The Midwest ISO proposes to retain interim language here that comports with an apparent mistake in another proceeding (*i.e.*, its Order No. 2006 compliance proceeding). However, it appears that the proposed deletion here is inconsistent with the November 2006 Amendment in that same proceeding (Docket No. ER06-192-002) wherein the Midwest ISO proposed to *reinstate* the four sentences in question. Therefore, the Commission will not accept this deletion but require instead that the Midwest ISO make a compliance filing, within 30 days of the date of this order, reinstating the *pro forma* Order No. 2006 language pertaining to communications that occur between parties during Emergency Conditions. For any further change to the language, the Midwest ISO must seek to amend this interconnection agreement.

22. As noted previously, our acceptance of this interconnection agreement is based on the outcome of another proceeding. Insofar as the proposed interconnection agreement reflects revisions to the Midwest ISO's *pro forma* SGIA that are pending before the Commission in ER06-192, the Commission directs the Midwest ISO to file, within 30 days of the date of an order either approving or directing further revisions to the Attachment R *pro forma* SGIA in these proceedings, any necessary revisions to the interconnection agreement to conform to the revisions required by those orders.

23. The Commission finds that good cause exists to grant the Midwest ISO's request for waiver of the 60-day prior notice requirement²³ to permit an effective date of November 14, 2006.

The Commission orders:

(A) The Interconnection Agreement is hereby conditionally accepted for filing, as discussed above, effective November 14, 2006, subject to the outcome of the proceeding in Docket No. ER06-192-000, *et al.*, and subject to the compliance filings ordered herein.

²² The Commission notes that the language that the Midwest ISO proposes to delete here pertains to communications between parties during Emergency Conditions.

²³ 18 C.F.R. § 35.3 (2006); *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

(B) The Midwest ISO is directed to make a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.