

124 FERC ¶ 61,277  
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. ER08-1301-000  
ER08-1302-000

ORDER ACCEPTING AGREEMENTS

(Issued September 22, 2008)

1. Under section 205 of the Federal Power Act,<sup>1</sup> Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Large Generator Interconnection Agreement (Hardy LGIA) and an unexecuted Amended and Restated Generator Interconnection Agreement (Revised Umbrella IA) among itself, Michigan Electric Transmission Company, LLC (Michigan Electric), and Consumers Energy Company (Consumers Energy). In this order, we accept the Hardy LGIA and the Revised Umbrella IA, effective July 25, 2008, as discussed below.

**Background**

2. Consumers Energy owns and operates numerous generating facilities that are connected to Midwest ISO's transmission system and that receive interconnection service from Midwest ISO. Most of these interconnections are under a pre-Order No. 2003 non-*pro forma* umbrella Generator Interconnection Agreement (Existing Umbrella IA) among Consumers Energy, Michigan Electric, and Midwest ISO. Consumers Energy plans to increase the generating capacity at its Hardy Hydro Generating Facility (Hardy Facility), one of the plants originally covered by the Existing Umbrella IA, from 32.4 MW to 33.1 MW.

3. Midwest ISO states that it is making this filing based on its understanding that any increase in generation capacity from an existing generator requires a new LGIA conforming to the transmission provider's current *pro forma* LGIA.<sup>2</sup> As a result, Midwest ISO, after consulting with Michigan Electric and Consumers Energy, filed

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Midwest ISO Application at 3.

unexecuted copies of the Hardy LGIA and Revised Umbrella IA to reflect the increase in capacity to the Hardy Facility. Midwest ISO requests that the Commission make the Hardy LGIA and Revised Umbrella IA effective as of July 25, 2008. Midwest ISO states that due to their interrelated nature, the two agreements must take effect at the same time.

### **Notice of the Filing, Protest and Motion to Intervene**

4. Notice of Midwest ISO's filings was published in the *Federal Register*, 73 Fed. Reg. 45,754-55 (2008), with interventions and protests due on or before August 14, 2008. Michigan Electric filed a timely motion to intervene and Consumers Energy filed a timely motion to intervene and protest.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **Arguments Raised**

6. Midwest ISO explains that the Hardy LGIA, which conforms to Midwest ISO's *pro forma* LGIA, addresses the modifications to the Hardy Facility to increase the capacity from 32.4 MW to 33.1 MW. Midwest ISO states that the Revised Umbrella IA, among other minor revisions, deletes the Hardy Facility from that agreement.

7. Anticipating that Consumers Energy will argue that the capacity increase is *de minimis* and that no new Interconnection Agreement should be required, Midwest ISO states that neither it nor Michigan Electric opposes the idea of a *de minimis* exception. Midwest ISO and Michigan Electric agree that if the Commission determines that a *de minimis* exception should be permitted in this case, then the Commission should provide guidance as to the level of capacity increase that would be considered *de minimis* in the future. Michigan Electric points out that the Commission should be aware that the planned 0.7 MW increase in capacity is approximately a 6.5 percent increase in the capacity of the upgraded unit and approximately a 2.2 percent increase in the overall capacity of the Hardy Facility.

8. Consumers Energy argues that the Commission has never specifically ruled on whether a *de minimis* exemption is permissible. While Consumers Energy agrees with the general policy that there be a new *pro forma* LGIA for capacity upgrades at plants already connected to the grid, it argues that a new LGIA should not be required in this case. No network or interconnection upgrades are required, there is no perceptible effect on other plants in the queue, and the increase is so small as to be essentially undetectable for purposes of real-time operations. Therefore, Consumers Energy argues that the capacity increase should be considered a *de minimis* increase and that Consumers Energy should be allowed to revise its Existing Umbrella IA rather than filing a new *pro forma* LGIA.

9. Consumers Energy also contends that the notion of a *de minimis* exception is supported by the fact that the Commission has, since Order No. 2003,<sup>3</sup> allowed a generator to implement a capacity increase by merely amending its pre-Order No. 2003 interconnection agreement rather than submitting a new *pro forma* LGIA.<sup>4</sup> Consumers Energy points out that page 2 of the transmittal letter in Docket No. ER06-1442-000 indicates that the amendment provided for “changed characteristics of the generating equipment” and “increased megawatt output” and that the filing made revisions to “accommodate increased generating capacity.” Consumers Energy states that it is not aware of any problems that have arisen from the arrangement submitted and accepted for filing under delegated authority in that case.

10. Consumers Energy also argues that requiring a new LGIA in truly *de minimis* situations creates undue burdens and costs. Consumers Energy states that the parties began making arrangements for the capacity increase in March 2008 and that technical and legal personnel spent numerous hours trying to determine whether to amend the Existing Umbrella IA or to file a new LGIA. Consumers Energy states that once Midwest ISO decided it was going to develop and file the Hardy LGIA, a significant amount of time was then spent developing the Hardy LGIA Appendices for Hardy Facility-specific information and changing the terms of the Existing Umbrella GIA to the terms of a new *pro forma* LGIA for the Hardy Facility.

### **Discussion**

11. Consumers Energy argues that the increase in generation capacity should be considered *de minimis* and accommodated by leaving the Hardy Facility under its Umbrella IA. However, Order No. 2003 provides that when interconnection customers make new interconnection requests, these new interconnection requests must comply with the applicable Large Generator Interconnection Procedures (LGIP). Midwest ISO’s *pro forma* LGIP explicitly provides that any increase in generation capacity from an existing generator requires a new interconnection request and a new LGIA conforming to

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<sup>3</sup> *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, *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 (D.C. Cir. 2007).

<sup>4</sup> *American Transmission Company, LLC*, Docket No. ER06-1442-000 (October 25, 2006) (unpublished delegated letter order).

the transmission provider's current *pro forma* LGIA.<sup>5</sup> Insisting that parties file new *pro forma* LGIAs when electing to increase generation capacity, as already required, provides consistency and eliminates confusion.

12. We also reject Consumers Energy's argument that the Commission previously allowed an increase in generation by amending an existing interconnection agreement. The instance it cites in support is a delegated letter order. Such a letter order is not binding precedent.<sup>6</sup>

13. As discussed above, we find that Midwest ISO correctly filed the Hardy LGIA and the Revised Umbrella IA and accept the agreements for filing to be effective July 25, 2008, as requested.

The Commission orders:

The Hardy LGIA and Revised Umbrella IA are accepted for filing, effective July 25, 2008, as requested.

By the Commission. Commissioner Kelly concurring with a separate statement to be issued at a later date.  
Commissioner Moeller dissenting with a separate statement to be issued at a later date.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> See Midwest ISO *pro forma* Large Generator Interconnection Procedures, section 1 (defining an interconnection request as a request "to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the . . . Transmission System").

<sup>6</sup> See *Midwest Generation, LLC*, 95 FERC ¶ 61,231, at 61,799 (2001) ("actions taken by its staff pursuant to delegated authority 'do not constitute precedent binding the Commission in future cases' . . . ." (quoting *Phoenix Hydro Corp.*, 26 FERC ¶ 61,389, at 61,870 (1984), *aff'd*, *Phoenix Hydro Corp. v. FERC*, 775 F.2d 1187, 1191 (D.C. Cir. 1985))).