

130 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER10-495-000

ORDER CONDITIONALLY ACCEPTING AMENDED AND RESTATED
LARGE GENERATOR INTERCONNECTION AGREEMENT FOR FILING

(Issued February 19, 2010)

1. On December 23, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an unexecuted Amended and Restated Large Generator Interconnection Agreement (Amended LGIA) among Midwest ISO as transmission provider, MidAmerican Energy Company (MidAmerican) as transmission owner, and Pomeroy Wind Farm, LLC (Pomeroy Wind) as interconnection customer.¹ The Amended LGIA is unexecuted because of a dispute among the contracting parties concerning the commercial operation date. In this order, we conditionally accept the Amended LGIA for filing and direct a compliance filing.

I. Background

2. Pomeroy Wind is in the process of developing an 80 megawatt wind farm located in Pocahontas County, Iowa, which will interconnect with the MidAmerican transmission system at MidAmerican's existing 161 kV Pomeroy substation. In September 2006, MidAmerican entered into a bilateral interconnection agreement with Pomeroy Wind, which provided the terms for the interconnection (Original LGIA). Appendix B of the Original LGIA set forth milestones applicable to MidAmerican's performance, but did not set forth any interconnection customer milestones. As a conforming, executed agreement under MidAmerican's open access transmission tariff (OATT), the Original

¹ The Amended LGIA is designated as Original Service Agreement No. 2136 under the Open Access Transmission, Energy and Operating Reserves Market Tariff, Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1 (Tariff).

LGIA was included on MidAmerican's Electric Quarterly Report, which was filed with the Commission.

3. Shortly after the Original LGIA was executed in September 2006, Pomeroy Wind elected, pursuant to Article 5.16 of MidAmerican's OATT, to suspend work on its project under the Original LGIA on September 14, 2006. The suspension of work ceased nearly three years later on September 12, 2009.

II. The Filing

4. Upon the end of the suspension period for the Original LGIA, Pomeroy Wind and MidAmerican agreed to amend Appendix A of the Original LGIA to reflect an updated design and updated cost estimates of the interconnection facilities. Instead of approximately \$1.1 million in interconnection costs estimated in the Original LGIA, the Amended LGIA reflects a cost estimate of \$734,780. In addition, Midwest ISO states that as a result of MidAmerican's integration into Midwest ISO as a transmission owner in September 2009,² the Original LGIA needed to be revised to include Midwest ISO as a third party to the interconnection agreement.

5. On December 23, 2009, Midwest ISO filed the proposed Amended LGIA. Midwest ISO states that the Amended LGIA has been revised to include Midwest ISO as a party to the interconnection agreement and to track Midwest ISO's *pro forma* Generator Interconnection Agreement as well as to accommodate the circumstances of the interconnection. Midwest ISO requests waiver of the Commission's prior notice requirement to permit an effective date of December 23, 2009.

6. Midwest ISO proposes three substantive revisions to the Amended LGIA that have been agreed to by the parties, but that do not conform to Midwest ISO's *pro forma* Generator Interconnection Agreement. First, Article 4.1 of the Midwest ISO Tariff (Interconnection Product Options) has been revised to limit network resource interconnection service to the facilities within the MidAmerican local balancing authority area because the studies conducted for the Original LGIA were completed prior to MidAmerican becoming a Midwest ISO transmission owner and did not consider service across Midwest ISO. Second, Article 5.16 (Suspension) has been amended to provide that suspensions of work on the project by Pomeroy Wind under the Original LGIA while in the MidAmerican interconnection queue will be counted toward the three-year limit for suspension.

² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,046 (2009); *Midwest Indep. Transmission Sys. Operator, Inc. and MidAmerican Energy Co.*, 128 FERC ¶ 61,047 (2009); and *MidAmerican Energy Co.*, 128 FERC ¶ 61,048 (2009).

7. Third, Article 11.4.1 (Repayment of Amounts Advanced for Network Upgrade) has been revised to require that MidAmerican repay on a dollar-for-dollar basis the non-usage sensitive portion of the transmission service charges for the generating facility that are received by MidAmerican (assuming that an alternate repayment plan is not established). Midwest ISO states that MidAmerican would receive 100 percent of the payments for the non-usage sensitive portion of transmission service charges under the MidAmerican OATT for the Generating Facility; however, under the Midwest ISO Tariff, certain types of transmission service, such as point-to-point transmission service sourcing at the Generating Facility, would result in MidAmerican receiving only a percentage of the transmission service payment. Midwest ISO states that the proposed revision does not diminish the repayment that the interconnection customer is provided for its investment in the network upgrades. Midwest ISO notes that there are no network upgrades required and, as such, no payments are required by MidAmerican under the Amended LGIA.

8. Finally, Midwest ISO states that, as amendments to existing interconnection agreements that were initiated under the MidAmerican interconnection process and that track the MidAmerican pro forma LGIA are requested by the parties to those agreements, Midwest ISO and MidAmerican intend to use the body of the Amended LGIA as the template for amending other existing two-party LGIAs.

A. Commercial Operation Date Dispute, as Set Forth in the Filing

9. Midwest ISO states that the proposed revisions reflected in the Amended LGIA are uncontested, except that Midwest ISO and MidAmerican disagree with Pomeroy Wind on whether a commercial operation date is required to be included in Appendix B of the Amended LGIA. No commercial operation date was specified in the Original LGIA. In the Amended LGIA, Midwest ISO proposes to establish a commercial operation date of December 31, 2010. Midwest ISO describes the contracting parties' respective positions on this issue as follows.

10. Midwest ISO states that Pomeroy Wind requested an extension to its commercial operation date for an indefinite period. Thus, Pomeroy Wind refused to execute the Amended LGIA because it includes a commercial operation date of December 31, 2010 as well as other corresponding milestone dates that require performance by Pomeroy Wind.³ Pomeroy Wind stated that it remains committed to funding the interconnection facilities as outlined in the Original LGIA, but that it is under new ownership and it was not possible to achieve the proposed completion date in a commercially reasonable

³ These corresponding milestone dates include the in-service date, initial synchronization date.

manner. Therefore, Pomeroy Wind proposed an alternative commercial operation date of December 31, 2011, which was rejected by MidAmerican and Midwest ISO.

11. Midwest ISO states that MidAmerican did not object to a commercial operation date of December 31, 2010 for the Amended LGIA since the milestone schedule included in the Original LGIA was established based upon written documentation from Pomeroy Wind requesting a project in-service date of December 2007 which represents a typical period for the testing and commissioning of an 80 megawatt wind farm.

12. According to Midwest ISO, the failure of MidAmerican and Pomeroy Wind to include a commercial operation date in the Original LGIA was an oversight and the Amended LGIA cannot proceed without setting a date. Midwest ISO cites precedent that such date cannot go beyond the three-year extension permitted for commercial operation dates and argues that such a date would contribute to the delay and uncertainty of lower queued projects in Midwest ISO. Midwest ISO requests that the Commission accept the Amended LGIA as filed with a December 31, 2010 commercial operation date or, in the alternative, grant a “waiver” of the three-year limitation to extend the project to proceed with a later commercial operation date.

13. Midwest ISO states that under the framework established by Order No. 2003, an interconnection customer may suspend its interconnection agreement for a cumulative three year period and a comparable right to a three-year extension to the commercial operation date.⁴

14. Midwest ISO requests that the Commission make a finding of general harm to lower queued projects attributable to the delay and uncertainty for all lower queued projects that results from allowing Pomeroy Wind to remain indefinitely in the queue by extending its commercial operation date or suspension period beyond three years.⁵ Midwest ISO states that it is not aware of a specific lower queued project that will be harmed by a delay in the project’s commercial operation date, but it asks the Commission to find sufficient harm here and determine that an extension of such date beyond three years would be a material modification. Absent such a finding, Midwest ISO requests

⁴ *Citing Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 177 & P 409-10 (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).

⁵ Midwest ISO Transmittal Letter at 12, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183, at P 105-11 (2008).

that the Commission clarify that waiver of the three-year extension limit for a commercial operation date is appropriate in the circumstances presented here.⁶

III. Notice of Filing and Responsive Pleadings

15. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 Fed. Reg. 354 (2010), with motions to intervene and protests due on or before January 13, 2010. Pomeroy Wind filed a timely motion to intervene and protest. MidAmerican filed a timely motion to intervene and comments. On January 28, 2010, Midwest ISO filed an answer to Pomeroy Wind's protest. On February 4, 2010, Pomeroy Wind filed an answer to Midwest ISO's answer. On February 17, 2010, Midwest ISO filed an answer to Pomeroy Wind's answer.

16. Pomeroy Wind argues that a commercial operation date of December 31, 2011 is appropriate and permissible. It contends that since the parties to the Original LGIA did not include a commercial operation date,⁷ and no date was inserted in subsequent discussions prior to September 2009, a December 31, 2011 commercial operation date would be more in line with its bilateral Original LGIA with MidAmerican and more in line with the expectations of Pomeroy Wind's owners, inasmuch as Pomeroy Wind's owners specifically relied on the flexibility afforded by the absence of a commercial operation date in deciding to pursue development of the project. Further, Pomeroy Wind states that Midwest ISO has not made the required showing of harm to a lower queued customer.

17. Further, Pomeroy Wind disputes Midwest ISO's contention that the omission of a commercial operation date from the Original LGIA was an oversight. It cites Article 5.1 of the Original LGIA, which provides that "[u]nless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date, . . . and such dates . . . shall be set forth in Appendix B, Milestones." Pomeroy Wind interprets Article 5.1 to mean that the parties may agree to omit interconnection customer milestones. Pomeroy Wind states that it is extraordinarily unlikely that the contracting parties were unaware that a commercial operation date was not included. Instead, it is likely that the contracting parties had a meeting of the minds as to all other aspects of the Original LGIA but, because explicit agreement on customer milestones was considered impossible or

⁶ See March 20 Order, 122 FERC ¶ 61,252, at P 19 (2008) (noting that one-time waivers may be appropriate to expedite interconnection queue processing, particularly in the case of existing interconnection agreements).

⁷ Pomeroy also notes that its Original LGIA did not include an In-Service Date or an Initial Synchronization Date. Pomeroy Wind Protest at 10.

unnecessary, they decided to execute the agreement as is. It argues that the plain meaning of the Original LGIA is as it states and that Article 30.4 of both the Original LGIA and the Amended LGIA forbids the use of extrinsic evidence that predates or is concurrent with the agreement.

18. Pomeroy Wind also contends that inclusion of a commercial operation date is unnecessary. As support, it states that it has demonstrated a substantial commitment to completing the project, having invested approximately \$1 million in project development activities, acquired land, completed or nearly completed all major permitting activities, conducted necessary meteorological studies, designed the project layout, and completed geotechnical work. Further, project development activities are ongoing, and the project is seeking a power purchase agreement or a commercial buyer.

19. Pomeroy Wind states that its position involves “a modest request for an extension of one additional year in the [commercial operation date]” for its project and that it “is not requesting an ‘indefinite extension,’” as argued by Midwest ISO.⁸ It asserts that Midwest ISO has conceded that granting the additional one-year extension would cause no harm to lower queued customers.

20. Thus, Pomeroy Wind requests that the Commission reaffirm that extensions of commercial operation dates of greater than three years are permissible unless the transmission provider can show harm to a lower queued customer and that Midwest ISO has failed to make such a showing here. On that basis, Pomeroy Wind requests a commercial operation date of December 31, 2011 (with corresponding adjustments to other customer milestones). Alternatively, it requests that, in light of the facts of this case, no interconnection customer milestones are required.

21. MidAmerican concurs with Midwest ISO’s position, including the argument that the omission of a commercial operation date from the Original LGIA was an inadvertent oversight. But, it asserts, if the Commission permits a one-year extension to the commercial operation date, then the remaining tasks in the milestone schedule should also be extended by one year.

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, Rule 213 of the

⁸ Pomeroy Wind Protest at 21.

Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2009) prohibits answers to protests or answers to answers unless otherwise permitted by the decisional authority. We are not persuaded to accept Midwest ISO's answer nor Pomeroy Wind's answer nor Midwest ISO's second answer and will, therefore, reject them.

B. Substantive Matters

1. Commercial Operation Date Dispute

23. As discussed below, we will direct Midwest ISO to modify the Amended LGIA to reflect a commercial operation date of December 31, 2011, as well as to modify the remaining tasks in the milestone schedule, as requested by MidAmerican in its comments, and to submit the revised agreement in the compliance filing ordered below.

24. Order No. 2003 requires that generator interconnection agreements include commercial operation dates.⁹ While the parties to the Original LGIA failed to include a commercial operation date, we will, consistent with Order No. 2003, require that the Amended LGIA include a commercial operation date (and other corresponding tasks) in the milestone schedule.

25. Midwest ISO's arguments regarding its request for a commercial operation date of December 31, 2010 rely largely on the premise that Pomeroy Wind seeks an indefinite extension of its commercial operation date. However, Pomeroy Wind's protest explicitly states that Pomeroy Wind does not now seek an indefinite extension but rather seeks to establish a commercial operation date of December 31, 2011.¹⁰ Further, Midwest ISO indicates that it is amenable to a later commercial operation date if the Commission determines that such a date is permissible, while MidAmerican requests that the remaining milestones also be moved by one year if the Commission permits a later date.

⁹ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at n.47 ("The draft interconnection agreement shall include: Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades; Appendix B, Milestones; Appendix C, Interconnection Details; Appendix D, Security Arrangements Details; Appendix E, Commercial Operation Date; and Appendix F, Addresses for Delivery of Notices and Billings."). See also Large Generator Interconnection Procedures, Appendix 1, No. 4.d (the interconnection customer provides the commercial operation date).

¹⁰ In view of our establishment of a commercial operation date of December 31, 2011 herein, Pomeroy Wind's alternative request for a determination that no commercial operation date is required is moot. Moreover, as stated above, Order No. 2003 requires the establishment of a commercial operation date in generator interconnection agreements.

In the unusual circumstances of this case, where no commercial operation date was included in the Original LGIA, we find that the establishment of a commercial operation date of December 31, 2011 for Pomeroy Wind is appropriate and consistent with the requirements of Order No. 2003. Additionally, we note that in the specific circumstances present here, there has been no factual showing that establishing this commercial operation date will harm lower-queued interconnection customers.

2. Use of Amended LGIA as a “Template”

26. Midwest ISO proposes several “ministerial formatting changes” to make the Amended LGIA aesthetically similar to the other LGIAs under the Midwest ISO Tariff. It requests that the Commission accept these revisions in the interest of creating a more consistent “template” for use with other similarly situated LGIAs executed by MidAmerican prior to its joining Midwest ISO as a transmission owner, as amendments are requested by the parties to those agreements.

27. We find these proposed revisions to be just and reasonable. But, regarding the request that these revisions serve as a template for other agreements with contracting parties under other LGIAs with MidAmerican that are not before us, we decline to permit that. However, Midwest ISO is free to make similar proposals in future filings and interested parties would be afforded the opportunity to comment on such proposals in those proceedings.

3. Substantive Non-Conforming Revisions

28. We will accept two of the three uncontested, substantive non-conforming revisions to the Amended LGIA. Regarding the proposed revision to Article 4.1 of the Midwest ISO Tariff, which limits network resource interconnection service to the facilities within the MidAmerican local balancing authority area, we find that Midwest ISO’s proposal is a reasonable alternative to performing a full restudy of the interconnection agreement and requiring the generator to take a new queue position. We accept the proposed revision to Article 5.16 (Suspension) to provide that suspensions of work on the project by Pomeroy Wind under the Original LGIA while under MidAmerican’s OATT will be counted toward the three-year limit for suspension of work under Midwest ISO’s Tariff.

29. We reject the proposed revisions that relate to Midwest ISO’s request to revise Article 11.4.1 to provide crediting for revenues that are distributed to MidAmerican. MidAmerican does not need the proposed language for this particular customer since no network upgrades are required in the Amended LGIA. Also, in light of our decision here not to permit use of this Amended LGIA as a template for future MidAmerican interconnection agreements being converted to service under the Midwest ISO’s Tariff, we reject the revisions to Article 11.4.1 as unnecessary and unsupported. The Amended LGIA must be modified accordingly in the compliance filing ordered below.

30. Based on the discussion above, we will conditionally accept Midwest ISO's proposed Amended LGIA, as modified herein, to become effective on December 23, 2009. We will direct Midwest ISO to make a compliance filing within 30 days of the date of this order.

The Commission orders:

(A) The Amended LGIA is hereby conditionally accepted for filing, to become effective on December 23, 2009, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.