

130 FERC ¶ 61,172
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. ER10-579-000

ORDER ACCEPTING AMENDED LARGE GENERATOR
INTERCONNECTION AGREEMENT

(Issued March 12, 2010)

1. On January 11, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an Amended and Restated Large Generator Interconnection Agreement (Amended LGIA) that is executed by American Transmission Company LLC (American Transmission or Transmission Owner) and Quilt Block Wind Farm LLC (Quilt Block or Interconnection Customer).¹ However, Midwest ISO, as the Transmission Provider has not executed the Amended LGIA because Midwest ISO believes that a proposed revision to the commercial operation date deviates from the Generator Interconnection Procedures in Attachment X of Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). Midwest ISO requests the Commission's guidance on whether the proposed changes to the commercial operation date constitute a Material Modification² in this case or whether waiver of the three-year extension limit for a commercial operation date is appropriate in the

¹ Midwest ISO has designated the Amended LGIA as Fifth Revised Service Agreement No. 1520 under the Midwest ISO FERC Electric Tariff, Fourth Revised Vol. No. 1.

² The Tariff defines Material Modifications as "[t]hose modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date." Midwest ISO Tariff, Attachment X, section 1.

circumstances of this filing.³ As explained below, we will accept the Amended LGIA for filing and find that no waiver of the Tariff is necessary for our acceptance.

I. Background

A. Interconnection Queue Reform

2. On August 25, 2008, the Commission accepted changes to Midwest ISO's Attachment X (Generator Interconnection Procedures) that transition Midwest ISO's interconnection queue from a "first-come, first-served" to a "first-ready, first-served" approach.⁴ One of the major changes accepted by the Commission in the Queue Reform Order was the revision of the rules governing suspension of a project. Under the previous interconnection procedures, a customer could suspend its project (for any reason) for a cumulative period of up to three years, once the generator interconnection agreement was executed, without having to make payments for network upgrades, upon which projects lower in the queue are dependent. The revised interconnection procedures, under Article 5.16 of Appendix 5 to the Generator Interconnection Procedures, eliminated an interconnection customer's right to suspend its project except in cases of *force majeure*:

Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of such Interconnection Facilities, Network Upgrades or Stand Alone Network Upgrades, Interconnection Customer will not suspend unless a *force majeure* event occurs.

This change was intended to ensure that once an interconnection agreement is executed any network upgrades associated with the interconnection will be built so that lower-queued projects that are relying on the network upgrades are not adversely affected. If a project is suspended under *force majeure*, the interconnection customer must provide security in the form of \$5 million or the estimated cost of the network upgrades, whichever is greater.

B. Instant Filing

3. Midwest ISO is the transmission provider, American Transmission is the transmission owner, and Quilt Block is the interconnection customer under the original interconnection agreement (Original LGIA), which provided for a commercial operation

³ January 11, 2010 Transmittal Letter at page 6.

⁴ See *Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,183 (2008), *order on reh'g*, 127 FERC ¶ 61,294 (2009) (*Queue Reform Order*).

date of December 31, 2006. Midwest ISO states that, on September 26, 2005, Quilt Block suspended all work under the Original LGIA, which provided for a three-year suspension period. On September 17, 2008, Quilt Block reactivated work under the Original LGIA by notifying American Transmission and Midwest ISO that it desired to end its period of suspension.

4. On June 16, 2009, Midwest ISO filed an executed interconnection agreement between the parties (June 16 LGIA), which updated project costs and milestones, including a commercial operation date of December 31, 2010.⁵ In a July 23, 2009 letter order, the Commission accepted the June 16 LGIA.

5. Midwest ISO explains that American Transmission and Quilt Block seek to amend the June 16 LGIA to change the construction-related project milestones. American Transmission and Quilt Block have agreed to revise project milestones, including revising the commercial operation date from December 31, 2010 to no later than December 31, 2012. Midwest ISO states that the revised construction-related project milestones will better meet the scheduling needs of Quilt Block.

6. However, Midwest ISO states that it believes that the proposed revisions to the June 16 LGIA deviate from section 4.4.4 of Midwest ISO's Generator Interconnection Procedures, which states that extensions of a project's commercial operation date of less than three cumulative years "are not material and should be handled through construction sequencing."⁶ Midwest ISO states that it interprets this provision to mean that any extension of longer than three years constitutes a potential Material Modification under section 4 of the Generator Interconnection Procedures. Midwest ISO states that American Transmission and Quilt Block do not believe that the proposed revisions in the instant filing constitute a Material Modification.

7. Midwest ISO states that it and American Transmission have determined that the proposed changes will not adversely impact the reliability of American Transmission's transmission facilities and will not adversely impact or otherwise disadvantage any specific lower queued interconnection request or interconnection customer. However, Midwest ISO notes that "in light of the Midwest ISO's revisions to expedite the

⁵ In the June 16, 2009 Filing, Midwest ISO did not express any concern regarding the extension of the commercial operation date from December 31, 2006 to December 31, 2010 being contrary to the interconnection procedures under its tariff.

⁶ "Extensions of less than three cumulative years in the Commercial Operation Date of the Generating Facility to which the Interconnection Request relates are not Material and should be handled through construction sequencing." Midwest ISO Tariff, Attachment X, section 4.4.4.

processing of interconnection requests and the Commission's recognition of the harm caused by suspended projects in the queue, the Midwest ISO believes that permitting the Interconnection Customer to extend its Commercial Operation Date in this instance would effectively permit a de facto increase in suspension time. Such extensions in time increase the uncertainty and delay for lower queued projects that result from projects remaining in the queue as if suspended."⁷ Therefore, Midwest ISO states that it cannot agree to an extension of the commercial operation date of Quilt Block's project and it has not executed the Amended LGIA.

8. Midwest ISO requests the Commission's guidance on whether the proposed changes to the commercial operation date constitute a Material Modification in this case or whether waiver of the three-year extension limit for a commercial operation date is appropriate in the circumstances of this filing.⁸ Midwest ISO requests an effective date of January 11, 2010.

II. Notice of Filing and Responsive Pleadings

9. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 FR 3546 (2010), with motions to intervene and protests due on or before February 1, 2010. On February 1, 2010, Quilt Block filed a motion to intervene and comments supporting acceptance of the Amended LGIA as filed, without the further guidance requested by Midwest ISO.

10. Quilt Block argues that the revised milestones do not necessarily constitute a Material Modification under section 4.4.4 of Midwest ISO's Generator Interconnection Procedures because that section does not rule on extensions over three years. Quilt Block states that while changes in commercial operation dates of up to three years are explicitly discussed in section 4.4.4. and therein determined not to be Material Modifications, the determination of materiality for an extension of more than three years is left to Midwest ISO and not discussed in the Tariff. Quilt Block contends that since Midwest ISO has determined that the extended milestones will not "adversely affect or otherwise disadvantage any specific lower-queued Interconnection Request or Interconnection

⁷ Midwest ISO Transmittal Letter at 5, *citing* Midwest ISO's Queue Reform Annual Informational Report in Docket No. ER08-1169 (Aug. 25, 2009) and Midwest ISO's transmittal letter concerning a proposed change in commercial operation date involving another interconnection customer in Docket No. ER10-495.

⁸ *Supra* note 3.

Customer,”⁹ the proposed changes do not constitute a Material Modification, and are consistent with the Tariff.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make Quilt Block a party to this proceeding.

B. Substantive Matters

12. We find that the proposed revisions in the Amended LGIA are consistent with the Midwest ISO Tariff, and we will accept them, to become effective on January 11, 2010, as requested.

13. We agree with Quilt Block that section 4.4.4 of the Generator Interconnection Procedures does not preclude extensions of the commercial operation date of three or more years. Section 4.4.4 permits extensions of a commercial operation date of less than three years and states that such extensions are not Material Modifications and should be handled through construction sequencing; however, this tariff language is silent regarding extensions of a commercial operation date of three years or more. As noted above, the Tariff defines Material Modifications as “[t]hose modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.”¹⁰ Midwest ISO has itself determined that the proposed changes will not adversely impact the reliability of American Transmission’s transmission facilities and will not adversely impact or otherwise disadvantage any specific lower queued interconnection request or interconnection customer. Thus, while the Commission in the *Queue Reform Order* accepted Midwest ISO’s revisions to its interconnection rules regarding suspensions, Midwest ISO has retained the Commission’s *pro forma* language in its Tariff regarding extension of a commercial operation date. As to the application of that *pro forma* tariff language, the Commission has explained that extensions such as that sought in this proceeding are acceptable absent a determination by Midwest ISO that

⁹ Quilt Block Motion to Intervene at 5, *citing* Midwest ISO Transmittal Letter at 4-5.

¹⁰ *Supra* note 2.

Material Modifications exist.¹¹ Therefore, we find that the proposed extensions of the commercial operation date are just and reasonable.

14. In light of the retained language in Midwest ISO's Tariff and the Commission's finding in *Illinois Power* as discussed above, we find that no waiver is required to accept the proposed LGIA. Should Midwest ISO wish to make a filing under section 205 of the Federal Power Act to change the language of section 4.4.4, the Commission will address such a proposal at that time.

15. Accordingly, we will accept the Amended LGIA for filing, effective on January 11, 2010, as requested.

The Commission orders:

The Amended LGIA is hereby accepted for filing, to become effective on January 11, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ See, e.g., *Illinois Power Co.*, 120 FERC ¶ 61,237, at P 20 (2007) (*Illinois Power*) and the cases cited therein.