

132 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER10-1552-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued August 23, 2010)

1. On June 24, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, under section 205 of the Federal Power Act (FPA),¹ proposed revisions to: (1) Section 8.2 of Midwest ISO's Generator Interconnection Procedures; and (2) Article 18.4.9 and Appendix B of Midwest ISO's *pro forma* Generator Interconnection Agreement (GIA).² As discussed below, we conditionally accept Midwest ISO's proposal and make the Tariff revisions effective August 24, 2010, as requested.

I. Background

A. Queue Issues

2. In 2008, Midwest ISO revised its generator interconnection queue procedures in order to reduce the time it takes a proposed project to proceed through the interconnection queue and to limit adverse impacts on lower-queued projects caused by projects dropping out of the queue. Among other things, Midwest ISO revised its procedure for processing interconnection applications from a "first come, first served"

¹ 16 U.S.C. § 824d (2006).

² Midwest ISO's Generator Interconnection Procedures and *pro forma* Generator Interconnection Agreement are found in Attachment X of Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), FERC Electric Tariff, Fourth Revised Vol. No. 1.

approach to an approach based on the progress that the generation project is making towards coming on-line, essentially a “first ready, first to proceed” approach. Midwest ISO also changed the characteristics of the milestones that a proposed project must meet in order to enter each phase of the interconnection process.

3. The Commission conditionally approved Midwest ISO’s proposal, noting that “the milestones Midwest ISO proposes generally appear to strike a reasonable balance between discouraging speculative projects from entering or remaining in the queue and ensuring that those projects that are ready to proceed can do so.”³

B. Midwest ISO’s Proposal

4. Midwest ISO states that its current proposal is intended to expand the eligibility of an interconnection customer to proceed in the interconnection study process under the Generator Interconnection Procedures and to clarify the insurance requirements specified in the *pro forma* Generator Interconnection Agreement.⁴

5. Midwest ISO proposes to expand the milestone options available to interconnection customers in order to commence the System Planning and Analysis Review, under Section 8.2 of the Generation Interconnection Procedures, to include the execution of a contract for the sale of electric energy or capacity from the Generation Facility, or a certification that the Generation Facility has been included in a state resource adequacy plan. Midwest ISO states that its proposed change will expand the options available to interconnection customers to proceed with the System Planning and Analysis Review and will ultimately provide the potential for interconnection customers to proceed to the Definitive Planning Phase earlier.⁵

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183, at P 77 (2008), *order on reh’g*, 127 FERC ¶ 61,294 (2009) (Queue Reform Order).

⁴ Midwest ISO June 24, 2010 Filing, Transmittal Letter at 1.

⁵ *Id.* at 2. Midwest ISO proposes to add the following language to Section 8.2:

(d) execution of a contract for the sale of electric energy or capacity from the Generating Facility, or a statement signed by an officer or authorized agent of the Interconnection Customer attesting that the Generating Facility is included in an applicable state resource adequacy plan or other information that the Transmission Provider deems to be reasonable evidence that the Generating Facility will qualify

(continued...)

6. Midwest ISO also proposes changes to the insurance requirements described in Article 18.4.9 and Appendix B of the *pro forma* Generator Interconnection Agreement. Midwest ISO states that the proposed changes will more closely tie the requirement to provide certification of insurance to actions by the parties for which the insurance is intended. Article 18.4.9 currently requires certification of the required insurance within ten days of execution of the Generation Interconnection Agreement. However, Midwest ISO states that it has recently received complaints from various parties questioning the need to maintain insurance, starting within ten days of execution of the Generation Interconnection Agreement, in cases where the action for which the insurance is intended does not occur immediately after execution of the Generator Interconnection Agreement.⁶ To resolve this issue, Midwest ISO proposes to tie the requirement to provide certification of insurance to a milestone date to be agreed upon between the parties and included in each Generator Interconnection Agreement. In addition to the above revisions, Midwest ISO proposes to revise Article 18.4.9 to require mandatory certification of insurance between only the interconnection customer and transmission owner.⁷

as a designated network resource; (e) demonstration that generation turbines have been ordered for the Generating Facility; or (ef)

⁶ *Id.*

⁷ *Id.* In Section 18.4.9, Midwest ISO proposes to make the following language changes:

18.4.9 ~~Within ten (10) days following execution of~~ As of the dates set forth in Appendix B, Milestones ~~this GIA,~~ and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, ~~each Party~~ Interconnection Customer and Transmission Owner shall provide ~~the other~~ certification of all insurance required in this GIA, executed by each insurer or by an authorized representative of each insurer. Upon request from Interconnection Customer or Transmission Owner, Transmission Provider shall provide within ten (10) days certification of all insurance required in this GIA, executed by each insurer or by an authorized representative of each insurer.

7. Finally Midwest ISO also proposes the following edits to Appendix B, Milestone 2A and Milestone 2B of the Generator Interconnection Agreement in order to be consistent with the revisions in Section 18.4.9 as discussed above:

A. Interconnection Customer Milestones

2.	Provide Certification of Insurance (GIA 18.34.9)	Within 10 days of execution of GIA [Insert date]; within 90 days of end of fiscal year or insurance renewable date
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B. Transmission Owner Milestones

1.	Provide Certification of Insurance (GIA 18.34.9)	Within 10 days of execution of GIA [Insert date]; within 90 days of end of fiscal year or insurance renewable date
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II. Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 75 Fed. Reg. 38,803 (2010), with interventions or protests due on or before July 14, 2010. Timely motions to intervene were filed by American Municipal Power, Inc., Wisconsin Electric Power Company, and Ameren Services Company, on behalf of its affiliated public utility operating companies, Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company, and on behalf of its affiliated marketing and generating companies, Ameren Energy Marketing Company, and Ameren Energy Generating Company and Ameren Energy Resources Generating Company. Motions to intervene out of time were filed by Consumers Energy Company and Xcel Energy Services, Inc., on behalf of its utility operating company affiliates Northern States Power Company and Northern States Power Company (Xcel).

9. Xcel states that it supports Midwest ISO’s proposed revisions to Attachment X of the Tariff as a reasonable way to expand the milestone options available to

interconnection customers. According to Xcel, the proposed changes represent an efficient and fair process for meeting the milestones in the Generator Interconnection Procedure.⁸

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Consumers Energy Company's and Xcel's late-filed motions to intervene given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

12. The Commission applies an independent entity standard to evaluate Regional Transmission Organization (RTO) and Independent System Operator (ISO) proposals for revisions to the procedures outlined in Order No. 2003.⁹ Under that standard, independent entities such as RTOs and ISOs are entitled to more flexibility in proposing variations than are non-independent entities, primarily because they do not have affiliated generation and thus are less likely than non-independent entities to favor one generator over another. Under the independent entity standard, Midwest ISO must demonstrate that

⁸ Xcel Intervention at 1-2.

⁹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 822-27 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 759, *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). *See also* Queue Reform Order, 124 FERC ¶ 61,183 at P 31; *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 (2008) (Conference Order).

its proposed variations are just and reasonable and not unduly discriminatory, and that they would accomplish the purposes of Order No. 2003.¹⁰

13. We find that Midwest ISO's proposed revisions, as modified below, satisfy the independent entity variation standard and accomplish the goal of Order No. 2003 to standardize procedures to "minimize opportunities for undue discrimination and expedite the development of new generation, while protecting and ensuring that rates are just and reasonable."¹¹ Specifically, Midwest ISO's proposed revisions to the Generation Interconnection Procedures represent an efficient, fair process for meeting milestones associated with the System Planning and Analysis Review phase, enabling interconnection customers to move forward to the Definitive Planning Phase in a more expedited manner. Additionally, the proposed changes to the *pro forma* Generator Interconnection Agreement will result in a closer alignment between the requirements to provide certification of insurance to actions by the parties for which the insurance is intended. Therefore, we will accept Midwest ISO's proposal subject to further compliance, as discussed below.

14. With respect to Midwest ISO's proposed changes to Appendix B, Milestones 2A and 2B of the Generator Interconnection Agreement, we are concerned that replacing the language "within 10 days of execution of GIA" with a milestone date may not address all possible scenarios. There may be circumstances in which the construction work covered under the terms of the Generator Interconnection Agreement may commence earlier than expected, which would require proof of insurance prior to the inserted milestone date. Therefore, we will require Midwest ISO to modify Appendix B to ensure that no construction work will commence on the upgrades covered by the Generator Interconnection Agreement without providing certification of insurance by inserting "the earlier of the construction work commencement date or the milestone date" in Appendix B. We will require Midwest ISO to make a filing to this effect within 30 days of the date of this order.

The Commission orders:

(A) Midwest ISO's tariff sheets are hereby conditionally accepted, effective August 24, 2010, as discussed in the body of this order.

¹⁰ Conference Order, 122 FERC ¶ 61,252 at P 13 & n.10

¹¹ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 11.

(B) Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of this order modifying its proposed tariff provisions, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.