

133 FERC ¶ 61,038
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. ER10-1400-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued October 15, 2010)

1. In this order, we conditionally accept for filing Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to section 2.1 of Midwest ISO's Generator Interconnection Procedures (GIP) in Attachment X of its Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff)¹ to enable improved cross border deliverability by certain generators into the Midwest ISO, to become effective August 4, 2010, as requested, subject to a compliance filing, as discussed below.

I. Background and Description of Filing

2. On June 4, 2010, Midwest ISO submitted for filing, under section 205 of the Federal Power Act,² proposed revisions to section 2.1 of its GIP. The proposed revisions would permit certain External Resources, which are generating facilities located outside of the boundaries of Midwest ISO's balancing authority area, to receive Network Resource Interconnection Service (NRIS) under the Tariff, if they meet certain criteria. Currently, each time a new Network Integration Transmission Service (NITS) customer nominates an External Resource to be a Network Resource, that External Resource must be studied for deliverability. Midwest ISO proposes to streamline the process such that, once an External Resource has been studied for aggregate deliverability, it will no longer have to be studied each time it is nominated by a NITS customer.

¹ Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1.

² 16 U.S.C. § 824d (2006).

3. Midwest ISO proposes a new subsection (e) to section 2.1 of its GIP. Specifically, the new subsection would provide as follows:

Network Resource Interconnection Service is available to existing Generating Facilities that are External Resources and are connected to facilities external to the Transmission System Region so long as the substation to which the existing Generating Facility connects is also connected to the Transmission System. Such a request for Network Resource Interconnection Service can be made by applying under the terms of this Attachment X and meeting other applicable requirements of this Tariff, and shall be memorialized with an appropriate form of Service Agreement.³

4. As explained in the testimony of Eric Lavery, an External Resource making an application for NRIS must be either in-service, under construction, or have an interconnection agreement with the transmission provider to which it is directly physically connected.⁴ According to Mr. Lavery, it is necessary to restrict NRIS to existing Generating Facilities in order to prevent speculative projects in neighboring transmission providers' interconnection queues from tying up interconnection capacity, consistent with Midwest ISO's queue reform efforts since 2007.⁵ Any new generator could be considered for NRIS if the generator has an unsuspended interconnection agreement at the time of the request, or the Generating Facility is actually constructed and in-service.⁶

II. Notice of Filing and Responsive Pleadings

5. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 Fed. Reg. 35,014 (2010), with interventions and protests due on or before June 25, 2010.

6. The Illinois Commerce Commission filed a notice of intervention. American Municipal Power, Inc., Consumers Energy Company, ITC Holdings Corp., MidAmerican Energy Company, Wisconsin Electric Power Company, and Xcel Energy Services Inc. and Northern States Power Company filed timely motions to intervene. In addition,

³ Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Third Revised Sheet No. 3064.

⁴ Midwest ISO June 4, 2010 Filing, Lavery Test. at 10.

⁵ *Id.*

⁶ *Id.* at 13-14.

Midwest ISO Transmission Owners (Midwest ISO TOs)⁷ filed a timely motion to intervene and comments. On July 12, 2010, Midwest ISO filed an answer to the comments.

7. On August 3, 2010, Commission staff issued a deficiency letter identifying specific issues that required additional information regarding how its proposed language would impact an External Resource's ability to participate in Midwest ISO's energy and ancillary services markets and serve as a Capacity Resource,⁸ as well as to provide a more detailed explanation regarding how eligible external resources would be modeled and studied under Midwest ISO's interconnection process.

8. On August 18, 2010, Midwest ISO submitted its response to the Commission's deficiency letter. Notice of Midwest ISO's August 18, 2010 response was published in the *Federal Register*, 75 Fed. Reg. 53,292 (2010), with comments due on or before September 8, 2010. None were filed.

III. Discussion

A. Procedural Matters

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

⁷ Midwest ISO TOs include American Transmission Company LLC; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁸ Certain statements in the testimony provided by Eric Lavery suggested that Midwest ISO's proposal was intended to allow External Resources with NRIS to provide Operating Reserves and qualify to serve as Capacity Resources without meeting other Tariff requirements applicable to External Resources. Midwest ISO June 4, 2010 Filing, Lavery Test. at 6.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

11. In its filing, Midwest ISO states that the need for its newly proposed subsection responds to limitations faced by existing generating facilities located outside of Midwest ISO's physical boundary, but located on or near transmission facilities that are in turn owned, at least in part, by transmission owning members of Midwest ISO. Midwest ISO explains that, today, the seam between transmission providers creates a hurdle to potential transactions when ownership of facilities is divided between parties within Midwest ISO and those outside Midwest ISO's boundaries. The instant proposal seeks to reduce this hurdle by facilitating NRIS for these units. Specifically, as explained in the testimony of Eric Laverty, the proposed subsection will "allow [a] Generating Facility to be designated as a Network Resource by a different NITS customer without having to go through the study process each and every time they change contractual counterparties."⁹ According to Mr. Laverty, under the proposal, "additional generators with NRIS will be able to more easily sell excess capacity under Module E of the Tariff and provide Operating Reserves to the [ancillary services markets]."¹⁰

12. Midwest ISO TOs state that Midwest ISO has failed to demonstrate why the proposed revisions are necessary to allow access to Midwest ISO's energy and ancillary services markets, given that External Resources that are pseudo-tied into the Midwest ISO Balancing Authority Area already have the ability to fully participate in those markets. Midwest ISO TOs also argue that the proposed revisions could remove an incentive for transmission-owning utilities that own or are affiliated with External Resources and are not transmission owners within Midwest ISO, to participate in Midwest ISO. Specifically, they explain, if the proposal provides additional flexibility to External Resources, it could allow such a transmission-owning utility to more easily receive the benefits of participating in Midwest ISO's markets without incurring the associated costs and obligations of becoming a transmission owner member of Midwest ISO.¹¹

⁹ Midwest ISO June 4, 2010 Filing, Laverty Test. at 12.

¹⁰ *Id.* at 6.

¹¹ Midwest ISO TOs Comments at 4-5 (citing *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 326 (2006), (continued)

13. In its answer, Midwest ISO states, among other things, that its proposal “will provide *additional* benefits to particular generators by extending NRIS where it is easy to do so.”¹² With respect to the argument put forth that its proposal would discourage membership in Midwest ISO, Midwest ISO states that it is unlikely that the extension of NRIS to a limited class of External Resources would either encourage transmission owners to withdraw from Midwest ISO or discourage new members from entering Midwest ISO given the numerous benefits of regional transmission organization membership. Additionally, Midwest ISO notes that External Resources seeking NRIS will remain financially responsible for study costs and the costs of network upgrades to facilitate such service.

14. The Commission’s deficiency letter required Midwest ISO to provide more information regarding how its proposal would impact an External Resource’s ability to participate in Midwest ISO’s energy and ancillary services markets as well as to provide a more detailed explanation regarding how eligible External Resources would be modeled and studied under Midwest ISO’s interconnection process.

15. In its deficiency response, Midwest ISO states:

- Generators addressed in its proposal remain subject to the requirements for any External Resources operating in Midwest ISO’s markets; the purpose of its filing is to make it easier for certain External Resources to be designated as Network Resources.
- The requirements for an External Resource to qualify as a Capacity Resource (under Module E of the Tariff) remain unchanged. The “only difference between an External Resource with or without NRIS is the study required for the External Resource to be designated as a Network Resource by a Network Load.”¹³

order on reh’g, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh’g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007); *Va. Elec. & Power Co.*, 128 FERC ¶ 61,026, at P 19 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,139, at P 64-65 (2009)).

¹² Midwest ISO July 12, 2010 Answer at 3-4 (emphasis in original).

¹³ Midwest ISO August 18, 2010 Response to Deficiency Letter at 4.

- The request for NRIS would be evaluated in the same manner as any other unit requesting NRIS; and a study would be performed regardless of whether the External Resource had been originally modeled at full output.¹⁴
- The request would be time stamped and put in the next Definitive Planning Phase cycle.¹⁵

16. We will conditionally accept Midwest ISO's proposed new subsection to section 2.1 of Midwest ISO's GIP in Attachment X of its Tariff.

17. We find that Midwest ISO's desire to rectify the limitations faced by existing Generating Facilities located outside of Midwest ISO's physical boundary, but located on or near transmission facilities that are in turn owned, at least in part, by transmission owning members of Midwest ISO, subject to the clarifications in its deficiency response, sufficiently justifies the newly proposed subsection to section 2.1 of the GIP.

18. We also find that the proposed revisions are consistent with the Commission's goal to streamline Midwest ISO's study process because it will eliminate the need for multiple deliverability restudies once it has been determined that a qualifying external generator has aggregate deliverability within the Midwest ISO footprint.¹⁶

19. Regarding the concern raised by Midwest ISO TOs that the proposal would permit certain External Resources to more easily receive the benefits of participating in Midwest ISO's markets without incurring the associated costs and obligations of becoming a transmission owner member of Midwest ISO, we find that the proposal would in fact benefit the region by streamlining the study process and that the scope of the proposal is limited to facilitating the provision of NRIS. We agree with Midwest ISO that it is unlikely that the extension of NRIS to the limited class of External Resources would either encourage transmission owners to withdraw from Midwest ISO or discourage new members from entering Midwest ISO.

20. While the Tariff does not define "existing Generating Facilities," in light of Eric Laverty's testimony, we interpret this term to mean generators that are either in-service, under construction, or have an unsuspended interconnection agreement with the

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183, at P 1-4 (2008).

transmission provider to which they are directly physically connected at the time of request.¹⁷ We approve the proposed new subsection on this basis.

21. Finally, we direct Midwest ISO, in a compliance filing to be made within 30 days of the date of this order, to revise section 69.3.1.c (e) under Module E of the Tariff. Although the purpose of the filing is to allow certain External Resources to receive NRIS for aggregate deliverability to Network Load within Midwest ISO, an External Resource may qualify as a Capacity Resource under section 69.3.1.c (e) only if it meets certain requirements.¹⁸ Among these requirements, an External Resource must demonstrate deliverability within Midwest ISO by showing that firm transmission service has been obtained to deliver capacity on the transmission system from the border to the load. This, however, fails to recognize that, under the proposal, certain External Resources may receive NRIS for aggregate deliverability to Network Load within Midwest ISO, which should also satisfactorily demonstrate deliverability within Midwest ISO to qualify as a Capacity Resource, just as NRIS does for internal generating facilities.¹⁹ Accordingly, we direct Midwest ISO to revise section 69.3.1.c (e) so that an External Resource can

¹⁷ See Midwest ISO June 4, 2010 Filing, Lavery Test. at 10. The use of “existing” in the context of this proceeding is a modifier on the Generating Facilities’ physical and operational status at the time of request. As stated in Eric Lavery’s testimony, if speculative “new” projects outside the borders of Midwest ISO could apply for NRIS, Midwest ISO would need to consider these projects for planning purposes even if they never get built. *Id.* at 13. The purpose of limiting the proposal to “existing” Generating Facilities is to prevent speculative projects in neighboring transmission providers’ queues from tying up Midwest ISO’s interconnection capacity. *Id.* Once an External Resource is either in-service, under construction, or has an unsuspended interconnection agreement with the transmission provider to which it is directly physically connected, the generator is no longer considered speculative for interconnection capacity planning purposes and would be deemed as an “existing” Generating Facility. *Id.*

¹⁸ See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 1462B.

¹⁹ See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Substitute First Revised Sheet No. 1490; Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Substitute Original Sheet No. 1490A (stating “The Transmission Provider shall be responsible for determining whether Generation Resources eligible to be Capacity Resources are deliverable to Load. Deliverability of such Generation Resources will be determined by [any one of the following]: (i) Demonstrating Network Resource Interconnection Service under Attachment X; . . .”).

demonstrate deliverability within Midwest ISO if it has either (i) firm transmission service from the border to the load or (ii) NRIS under Attachment X of the Tariff.

The Commission orders:

(A) Midwest ISO's proposed Tariff revisions are hereby conditionally accepted for filing, as modified herein, to become effective on August 4, 2010, as requested, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to submit a compliance filing, consistent with the discussion herein, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.