

140 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-2242-000

ORDER CONDITIONALLY ACCEPTING GENERATOR
INTERCONNECTION AGREEMENT

(Issued September 11, 2012)

1. On July 13, 2012, the Midwest Independent Transmission System Operator, Inc. (MISO) filed an unexecuted Generator Interconnection Agreement (GIA) among DEGS Wind I, LLC (DEGS Wind) as Interconnection Customer, Michigan Electric Transmission Company, LLC (METC) as Transmission Owner, and MISO as Transmission Provider.¹ MISO requests that the Commission (1) accept the GIA and (2) waive the Commission's 60-day prior notice requirement and make the GIA effective as of July 14, 2012.

2. In this order, we conditionally accept the GIA for filing to become effective July 14, 2012, as requested, and deny DEGS Wind's requests that we stay or waive the milestones in the GIA or alternatively accept and suspend the GIA pending completion of the required restudy.

I. Background and Filing

3. DEGS Wind is developing a 100.8 MW wind generation facility, designated as Project J056 in the MISO interconnection queue, in Hillsdale County, Michigan. Appendix B of the GIA identifies the milestones that must be met for Project J056 to achieve its scheduled commercial operation date of December 31, 2015, with

¹ Midwest Independent Transmission System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, [SA 2455, DEGS Wind I, LLC-METC GIA, 0.0.0](#).

milestone 4a requiring DEGS Wind to provide payment by August 31, 2012 of approximately \$7.3 million to METC to commence design and procurement associated with network upgrades and interconnection facilities included in the GIA.

4. MISO states that the GIA was filed unexecuted because DEGS Wind does not agree with the milestone schedule.² MISO explains that Project J056 was originally studied with another project, designated as Project J085, and that the group study resulted in a shared cost responsibility for common use upgrades. However, MISO states that, during the recent transition to MISO's revised Generator Interconnection Procedures (GIP),³ Project J085 elected to remain in MISO's System Planning and Analysis Phase⁴ rather than proceed to the Definitive Planning Phase,⁵ thus resulting in the need to restudy Project J056 on a standalone basis. MISO acknowledges that a restudy is needed, but states that it plans to amend the GIA following completion of the restudy.⁶ MISO also requests that the Commission waive its 60-day notice requirement and notes in

² MISO Transmittal Letter at 2.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233 (2012) (*Queue Reform III*), *order on reh'g and compliance filing*, 139 FERC ¶ 61,253 (2012) (*Queue Reform III Rehearing*).

⁴ Under MISO's transition procedures to its current GIP, interconnection customers (unless otherwise exempt) were required to pay the new M2 Milestone payment to proceed to the Definitive Planning Phase. Interconnection requests in the Definitive Planning Phase were required to make the M2 Milestone payment or were returned to the System Planning and Analysis Phase. Interconnection requests that had executed GIAs, but were required to be restudied and were required but failed to make the M2 Milestone payment, were returned to the System Planning and Analysis Phase. *Queue Reform III*, 138 FERC ¶ 61,233 at P 15. Interconnection requests remaining in the System Planning and Analysis Phase may be revised, subject to the requirement that they obtain an updated system impact study at least once every 18 months. MISO, FERC Electric Tariff, Attachment X (7.0.0), § 7 (System Planning and Analysis Phase); *see also Queue Reform III*, 138 FERC ¶ 61,233 at P 109.

⁵ The Definitive Planning Phase is the final phase of the interconnection process under MISO's GIP, in which Facilities Studies and, as needed, System Impact Studies are performed for interconnection customers. MISO, FERC Electric Tariff, Attachment X (7.0.0), § 1 (defining Definitive Planning Phase).

⁶ MISO Transmittal Letter at 2.

support of its request that MISO, DEGS Wind, and METC support an effective date of July 14, 2012 for the GIA.⁷

II. Notice of Filing and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 43,069 (2012), with interventions and protests due on or before August 3, 2011. METC filed a timely motion to intervene, and DEGS Wind filed a timely motion to intervene and protest. On August 16, 2012, MISO filed an answer to DEGS Wind's protest. On August 22, 2012, DEGS Wind filed an answer to MISO's answer.

A. Protest

6. DEGS Wind asserts that Article 11.3 of its GIA requires restudy of Project J056 because Project J085, with which Project J056 was studied and which is listed as a contingent facility in Exhibit A-10 of Appendix A of the GIA,⁸ elected to remain in the System Planning and Analysis Phase, thus rendering Project J056's study results inaccurate.⁹ DEGS Wind also notes that an independent screening assessment of Project J056 identified no overloads attributed solely to the interconnection of Project J056, and anticipates that MISO's restudy will similarly show no system overloads, thereby rendering unnecessary many of the network upgrades identified in the prior joint studies.

7. DEGS Wind further states that, consistent with the "but for" standard applicable to generator interconnections, DEGS Wind may only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of Project J056. DEGS Wind explains that, with regard to a group of interconnection customers, the Commission has confirmed that the group's cost responsibility is limited to the cost of the upgrades that would not be necessary but for the interconnection of the group.¹⁰ Accordingly, DEGS Wind maintains that MISO has not demonstrated that the network upgrades identified in Appendix A, which MISO determined are required for the combined interconnection of Projects J056 and J085, would not be necessary but for the

⁷ *Id.* at 3.

⁸ GIA, app. A, ex. A-10, Original Sheet No. 105 (listing contingent facilities required for the interconnection of Project J056).

⁹ DEGS Wind Protest at 3.

¹⁰ *Id.* at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,011, at P 5 (2010)).

sole interconnection of Project J056. DEGS Wind thus asserts that the Interconnection Customer Milestones set forth in Appendix B of the GIA should reflect the costs for upgrades that would not be necessary but for the interconnection of Project J056 only, costs which will be determined through restudy of Project J056 and incorporated into Appendix B through subsequent amendment of the GIA.¹¹

8. DEGS Wind also requests that the Commission order MISO to stay the interconnection customer milestones in Appendix B of the GIA until the GIA is amended to reflect the results of the restudy. In support of its request, DEGS Wind relies upon the Commission's decision in another MISO case involving correction of milestones in an existing interconnection agreement to incorporate the results of a restudy.¹² DEGS Wind explains that in *Lakeswind* the Commission held that the withdrawal from the interconnection queue of other projects included in the original study group triggered Article 11.3, which in turn obligated MISO to determine whether there was an impact on the interconnection service, network upgrades, or cost responsibility for the Lakeswind facility. DEGS Wind also states that the Commission held that MISO had responsibility to work with Lakeswind to determine the impact of the restudy on Lakeswind's cost responsibility and found it would be reasonable to modify Lakeswind's milestones based on the draft restudy.¹³ Similarly, DEGS Wind asserts that MISO should be required to work with Project J056 to reflect relevant changes that result from a restudy. Given that certain milestones are fast approaching and contain incorrect requirements for network upgrades and cost responsibility, DEGS Wind requests that the Commission direct MISO to stay such milestones.¹⁴

B. MISO Answer

9. In its answer, MISO acknowledges that restudy of Project J056 is needed because of Project J085's decision to remain in the System Planning and Analysis Phase. In response to DEGS Wind's contention that a restudy will show no overloads and render several network upgrades unnecessary, MISO states that no restudy results can be

¹¹ *Id.* at 5.

¹² *Id.* (discussing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 (2011) (*Lakeswind*)).

¹³ *Id.* at 6.

¹⁴ *Id.* at 7.

predicted with certainty, and DEGS Wind remains responsible for the actual cost of upgrades needed to reliably interconnect its generating facility.¹⁵

10. MISO responds to DEGS Wind's request to stay the milestones by noting that it does not object to amending the milestones upon completion of the restudy, subject to the following provisos: (1) MISO notes that the requested commercial operation date might not be met and Project J056's interconnection service might be conditioned if the GIA milestone payments are not met; and (2) MISO believes that the filing of the unexecuted GIA does not exempt Project J056 from payments under the GIA and any potential payments due under the GIA are not grounds for a stay,¹⁶ which MISO asserts requires a showing of irreparable harm, because payments from Project J056 would be made towards the funding of required upgrades for its own project or potentially refunded.¹⁷ Therefore, MISO asserts that DEGS Wind must provide either the August 31, 2012 payment in Milestone 4a of the GIA or an M2 Milestone payment¹⁸ pursuant to Section 8.2 of the current GIP in order to demonstrate the readiness of its project to proceed to restudy.¹⁹ If neither is paid when due, MISO states it will return Project J056 to the System Planning and Analysis Phase, and Project J056 will not be restudied until it elects to enter the Definitive Planning Phase.²⁰

¹⁵ MISO Answer at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4 n.10 (citing *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 140 FERC ¶ 61,100, at P 13 (2012)).

¹⁸ The M2 Milestone payment, also known as the Definitive Planning Phase entry milestone, is a capital contribution required under the recently-revised MISO GIP, and which serves as an indication of a project's readiness to proceed through MISO's interconnection process. *See Queue Reform III*, 138 FERC ¶ 61,233 at P 119. The amount of DEGS Wind's possible M2 Milestone payment was not provided. However, by our calculation and assuming a project size of 100.8 MW, its M2 Milestone payment would be between \$201,600 and \$1,008,000, based upon the minimum and maximum charges for the M2 Milestone payment approved by the Commission. MISO, FERC Electric Tariff, Attachment X (7.0.0), § 8.2.

¹⁹ MISO Answer at 4.

²⁰ *Id.* at 5.

11. MISO acknowledges that the situation is unusual in this case because DEGS Wind's request to file the unexecuted GIA coincided with the transition period for the recently-revised GIP and the decision of Project J085 to remain in the System Planning and Analysis Phase. MISO states that it did not assess the M2 Milestone payment to Project J056 at that point in time because DEGS Wind elected to file its GIA unexecuted, has so far met milestones under the filed GIA, and is subject to restudy; thus it is currently exempt from making the M2 Milestone payment. However, MISO cautions that if Project J056 does not meet the milestones going forward under the GIA, this exemption from paying the M2 Milestone payment would no longer apply and the M2 Milestone payment would be due.²¹ MISO further states that it would not restudy the project in the Definitive Planning Phase if DEGS Wind fails to satisfy the required GIA milestones and also fails to make the M2 Milestone payment because the project will not have demonstrated that it is ready to proceed, and therefore, it would return Project J056 to the System Planning and Analysis Phase.²²

C. DEGS Wind Answer and Conditional Motion for Suspension

12. DEGS Wind states that in order to proceed with development of Project J056, it must either comply with the terms of a facially unjust and unreasonable GIA or pay the M2 Milestone payment, and reaffirms its request for equitable relief from compliance with the milestones in the GIA. DEGS Wind states that MISO's reliance on a recent Commission order addressing a request for stay of a Commission order is misplaced, noting that what DEGS Wind seeks is more accurately characterized as a waiver and should be considered as such.²³ DEGS Wind then cites in support of its waiver request a number of Commission cases in which the Commission granted requests by interconnection customers for waivers of financial security requirements.²⁴

²¹ *Id.* at 6.

²² *Id.* at 7.

²³ DEGS Wind Answer at 3-4.

²⁴ *Id.* at 5-7 (citing *American Municipal Power, Inc.*, 140 FERC ¶ 61,102 (2012); *Lakeswind*, 137 FERC ¶ 61,008; *Southern California Edison Co.*, 135 FERC ¶ 61,093 (2011); and *Calpine Corp.*, 134 FERC ¶ 61,232 (2011)).

13. Alternatively, DEGS Wind requests that the Commission suspend the GIA for the maximum period allowed, which DEGS Wind argues would relieve it of its obligation to satisfy the GIA milestones while the restudy proceeds.²⁵

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits both an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept MISO's and DEGS Wind's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

1. GIA

16. We conditionally accept the GIA for filing, subject to the completion of the required restudy of Project J056 and the incorporation of the restudy results into an amended GIA. As an initial matter, with regard to DEGS Wind's argument that application of the "but for" standard in this case requires a restudy, MISO does not dispute that a restudy of Project J056 is required due to Project J085's decision to remain in the System Planning and Analysis Phase. In fact, in its transmittal letter, and again in its answer, MISO stated its willingness and intent to restudy Project J056.²⁶ Thus, there is agreement that a restudy is required.

17. However, we deny DEGS Wind's requests that we stay or waive the milestones contained in the GIA, and implicitly DEGS Wind's alternative obligation to pay the M2 Milestone, or that we accept and suspend the GIA while MISO completes the restudy. We find that granting either of DEGS Wind's requests would improperly permit DEGS Wind to remain in the queue pending the outcome of the restudy without an

²⁵ *Id.* at 7-8.

²⁶ MISO Transmittal Letter at 2; MISO Answer at 3-4.

adequate demonstration of Project J056's readiness to proceed, as required by MISO's GIP.

18. In *Queue Reform III*, the Commission accepted MISO's proposal to require in its GIP, as a demonstration of a project's readiness to proceed, a new M2 Milestone payment from an interconnection customer in order to advance through the MISO interconnection process.²⁷ The Commission concluded that the then-existing M2 milestones were "not sufficient for distinguishing between projects that are likely to achieve commercial operation and those that are not."²⁸ In fact, the Commission was particularly concerned by the frequency of "late-stage terminations," which the Commission recognized as "indicative of it being too easy for projects that are not ready to proceed or that are not commercially viable from being able to enter the interconnection queue."²⁹

19. What DEGS Wind seeks, in effect, is a waiver of the obligation to demonstrate its readiness to proceed with Project J056 under the existing terms of the GIP and the GIA while MISO completes its restudy. MISO has made clear that DEGS Wind can make such a demonstration through *either* continued satisfaction of the milestones in the GIA *or* payment of the M2 Milestone payment;³⁰ indeed, DEGS Wind acknowledges that this is the choice before it.³¹ We note that the Commission recently reaffirmed that the M2 Milestone payment is a just and reasonable mechanism for demonstrating a project's readiness to proceed,³² and we are not persuaded to effectively relieve DEGS Wind of that obligation, should DEGS Wind conclude that the financial requirements of the GIA milestones are too onerous.

²⁷ *Queue Reform III*, 138 FERC ¶ 61,233 at PP 64, 146. The Commission noted in *Queue Reform III* that "all interconnection requests with outstanding requests" will be required to transition to the revised GIP, including the new M2 Milestone payment (unless otherwise exempted). *Id.* P 102.

²⁸ *Id.* P 64.

²⁹ *Id.* P 68.

³⁰ MISO Answer at 4.

³¹ DEGS Wind Answer at 2 ("If DEGS Wind wants its approximately 100 MW wind project (J056) to move forward on a timely basis, it must either abide by the terms of a facially unjust and unreasonable [GIA] *or* meet the M2 payment requirement of the [GIP]" (emphasis in original)).

³² *Queue Reform III Rehearing*, 139 FERC ¶ 61,253.

20. DEGS Wind cites to *Lakeswind* in support of its request to stay or waive the milestones in the GIA pending completion of the restudy. However, the facts here are readily distinguishable from *Lakeswind*. In *Lakeswind*, the Commission faced a request by MISO to *terminate* an existing GIA because the interconnection customer failed to meet milestones based upon studies that MISO had separately concluded were no longer accurate due to higher-queued projects being withdrawn from the queue.³³ Here, by comparison, we are faced with DEGS Wind's request for a waiver of the milestones in its GIA and an effective, implicit waiver of its alternative obligation to pay the M2 Milestone payment. Accordingly, the requests made of the Commission in the two cases are fundamentally different. Furthermore, as explained above, DEGS Wind has failed to demonstrate that a waiver is appropriate here. Because DEGS Wind's GIA was finalized pursuant to MISO's revised GIP, which were modified after the *Lakeswind* decision and allow a customer like DEGS Wind to demonstrate its readiness to proceed by either complying with its GIA milestones *or* paying the M2 Milestone payment, DEGS Wind has an option not available to *Lakeswind*: namely, the option to pay the M2 Milestone payment in lieu of meeting the GIA milestones.

21. Therefore, we find that DEGS Wind remains obligated to demonstrate the readiness of Project J056 to proceed and may do so by either continuing to meet the milestones in the GIA or making the M2 Milestone payment. The Commission directs MISO to provide DEGS Wind a reasonable period of time (*i.e.*, no less than thirty days from the date of this order) to decide whether to proceed with the restudy, and if so, to make the required demonstration either under the GIA or through payment of the M2 Milestone under Section 8.2 of the GIP.

2. Waiver of 60-Day Prior Notice Requirement

22. We will grant waiver of the 60-day prior notice requirement and make the GIA effective July 14, 2012. We find that good cause has been shown for this waiver.³⁴

The Commission orders:

(A) The GIA is conditionally accepted, effective July 14, 2012, as requested, as discussed in the body of this order.

³³ *Lakeswind*, 137 FERC ¶ 61,008 at P 4 n.2 (referencing *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009), *order on reh'g*, 131 FERC ¶ 61,165, *order on reh'g*, 133 FERC ¶ 61,011 (2010)).

³⁴ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

(B) DEGS Wind's requests to stay or waive the milestones contained in the GIA, or alternatively to accept and suspend the GIA, are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.