

143 FERC ¶ 61,072
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 26, 2013

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket Nos. ER12-2277-000
ER12-2277-001
ER12-2277-002
ER12-2277-003
ER12-2277-004

Midwest Independent Transmission
System Operator, Inc.
Attention: Matthew R. Dorsett
Attorney for Midwest Independent Transmission System Operator, Inc.
P.O. Box 4202
Carmel, IN 46082-4202

Reference: Filing and Termination of Generator Interconnection Agreement

Dear Mr. Dorsett:

1. On July 20, 2012, as amended on August 31, 2012,¹ you submitted, on behalf of Midwest Independent Transmission System Operator, Inc. (MISO), an executed Generator Interconnection Agreement (GIA) among MISO as Transmission Provider, Pheasant Ridge Wind Farm, LLC (Pheasant Ridge) as Interconnection Customer, and ITC Midwest LLC as Transmission Owner. The GIA relates to the interconnection request for Project Nos. G631, G632, and G633, consisting of a 56.7 MW generating facility (a total of twenty-seven 2.1 MW wind turbines) in Nobles County, Minnesota. The GIA provides that Pheasant Ridge will fund \$5,008,286 in network upgrades and interconnection facilities related to the projects. An effective date of July 21, 2012, was requested for the GIA.

¹ The August 31, 2012 filing was made to correct the signature page to properly reflect the executed version of the GIA in the Commission's eTariff system.

2. On October 31, 2012, the Director, Division of Electric Power Regulation-Central issued a letter advising MISO that its filing of the GIA was deficient. The letter required MISO to explain inconsistencies between the projects listed in a table in Exhibit A10 to Appendix A of the GIA entitled “Group 5 Projects that impact this GIA” and the projects listed as contingencies for Pheasant Ridge in MISO’s “Generator Interconnection System Impact Study.” On November 30, 2012, MISO filed its response to the deficiency letter and included associated revisions to Appendix A of the GIA.
3. On January 24, 2013, a second deficiency letter was issued focusing largely on certain additions or deletions of projects, facilities, or upgrades in Appendix A. The deficiency letter also cited inconsistencies between the eTariff and eLibrary documents in reflecting the deletions of common use upgrades, contingent facilities, and generator interconnection projects.
4. On February 5, 2013, MISO filed a Notice of Termination of the GIA, citing a breach and default by Pheasant Ridge due to failure to meet required milestones specified in Appendix B of the executed GIA.² MISO also maintains that Pheasant Ridge breached its obligations with regard to a related Multi-Party Facilities Construction Agreement (Hazelton-Mitchell MPFCA), which Pheasant Ridge executed and which provides for common use upgrades to be jointly funded by Pheasant Ridge and 12 other interconnection customers.³ MISO contends that Pheasant Ridge failed to provide appropriate irrevocable security under the latter agreement as well. MISO requests an effective date of April 6, 2013, for the termination of the GIA.
5. Finally, on February 28, 2013, MISO filed its response to the second deficiency letter. MISO provides explanations in response to the questions raised in the deficiency letter. In addition, the filing includes a revised version of the GIA with updated formatting.
6. Notices were published in the *Federal Register* with interventions and protests due on or before August 10, 2012, for the initial filing of the GIA; September 21, 2012, for the amended filing; December 21, 2012, for the response to the first deficiency letter; February 26, 2013, for the termination filing; and March 21, 2013, for the response to the

² Among other things, the Appendix B milestones require Pheasant Ridge to pay \$500,829 to ITC Midwest LLC within 30 days following execution of the GIA.

³ The Hazelton-Mitchell MPFCA was accepted by a delegated letter order issued on December 21, 2012 in Docket No. ER13-416-000.

second deficiency letter.⁴ On August 9, 2012, ITC Midwest LLC filed a timely motion to intervene in the Docket No. ER12-2277-000. On December 21, 2012, Pheasant Ridge filed a timely motion to intervene and comments with respect to MISO's first deficiency response in Docket No. ER12-2277-002. Motions for leave to answer and answers were filed by MISO and Pheasant Ridge on January 7, 2013 and January 22, 2013, respectively. On February 7, 2013, Iberdrola Renewables, LLC filed a timely motion to intervene regarding the termination in Docket No. ER12-2277-003.

7. 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 entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept MISO's and Pheasant Ridge's answers because they have provided information that assisted us in our decision-making process.

8. In Pheasant Ridge's comments following MISO's response to the first deficiency letter, it requests further explanation of certain changes proposed by MISO. In addition, Pheasant Ridge asserts, among other things, that the uncertainties resulting from MISO's revisions to Appendix A in its deficiency letter response were making it difficult for Pheasant Ridge to satisfy its initial payment milestone. In its answer, MISO does not address the concerns raised by Pheasant Ridge in its comments; instead, MISO argues that Pheasant Ridge's motion to intervene and comments were untimely filed and should thus be rejected. MISO considers Pheasant Ridge's submittal to be a late intervention because Pheasant Ridge neglected to intervene by the dates established by the Commission's notices of the July 20 and August 31, 2012 filings. In its answer, Pheasant Ridge explains that its intervention and comments are not untimely because it appropriately filed its comments by December 21, 2012, the comment date set by the Commission in its December 3, 2012 Combined Notice of Filings. Pheasant Ridge explains that it did not choose to intervene in the earlier filings because it did not perceive a need to do so. However, when MISO unilaterally amended the GIA in the November 30, 2012 filing, Pheasant Ridge recognized that it had become necessary to intervene to protect its interests. We find that Pheasant Ridge intervened in a timely manner by the date established in the notice of MISO's November 30, 2012 first

⁴ *Federal Register* cites for the notices are 77 Fed. Reg. 45,346, 77 Fed. Reg. 56,831, 77 Fed. Reg. 73,643 (2012), 78 Fed. Reg. 10,164, and 78 Fed. Reg. 15,361 (2013), respectively.

deficiency response. Therefore, we reject MISO's procedural argument to reject Pheasant Ridge's motion to intervene and comments.⁵

9. In support of terminating the GIA, MISO explains that: (1) Pheasant Ridge was provided written Notices of Breach and of Default after Pheasant Ridge failed to make payment associated with a milestone in the executed GIA and after Pheasant Ridge failed to act to cure the breaches; and (2) termination of the GIA is just and reasonable, not unduly discriminatory, and consistent with the public interest. MISO further argues that accepting the termination will eliminate the harm to lower queued projects, projects in the same group study, the transmission owner, and the MISO interconnection queue process caused by these projects if they remain in the queue, and it will benefit other projects by removing uncertainty regarding whether the upgrades in the GIA will be built.⁶

10. Pheasant Ridge did not file any comments or protest to the Notice of Termination. In addition, Pheasant Ridge did not file any comments or protest to MISO's second deficiency response. Given Pheasant Ridge's lack of opposition to the termination of the GIA, we find that the termination is not unjust, unreasonable, unduly discriminatory or preferential.

11. We will accept the GIA submitted in Docket No. ER12-2277-004 for filing effective July 21, 2012, as requested.⁷ In doing so, however, we make no finding as to the merits of the GIA; this acceptance is for purposes of eTariff compliance only.⁸ We will also accept the termination of the GIA in Docket No. ER12-2277-003, effective

⁵ See *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,201 (2005) (finding that the granting of a motion to intervene in a subdocket serves to make it a party to all past and future subdockets in that proceeding).

⁶ MISO Answer at 7-11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, *order on reh'g and compliance filing*, 139 FERC ¶ 61,253 (2012)).

⁷ *Midwest Independent Transmission System Operator, Inc.*, FERC FPA Electric Tariff, *Midwest ISO Agreements, SA 2457, Pheasant Ridge Wind Farm LLC-ITC Midwest LLC GIA, 2.5.0.*

⁸ Although MISO attempted to correct formatting issues with the GIA in Docket No. ER12-2277-004, it was not successful. Even though MISO satisfactorily explains which language and data should appear in parts of Appendix A, some of the items are not properly reflected in the eTariff system, and the eTariff document still does not mirror the eLibrary document. In fact, entire tables, including Exhibit A10, are missing from the eTariff document. Nonetheless, since the GIA is being terminated, we will not require MISO to file further corrections.

April 6, 2013, as requested.⁹ Based on our acceptance of the termination of the GIA, Pheasant Ridge's comments are hereby rendered moot.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁹ Midwest Independent Transmission System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, SA 2457, Pheasant Ridge Wind Farm LLC-ITC Midwest LLC GIA, 3.0.0.