

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-969-000 ER05-1018-000 ER05-1036-000 (Not Consolidated)
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ORDER ACCEPTING SERVICE AGREEMENTS, SUBJECT TO CONDITIONS

(Issued July 15, 2005)

1. In this order we conditionally accept three executed interconnection service agreements (Interconnection Agreements) among the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Northern States Power Company d/b/a Xcel Energy – Transmission Function (Xcel Transmission), and Interconnection Customers. We condition our acceptance on Midwest ISO's bringing the Interconnection Agreements into compliance with Midwest ISO's Order No. 2003 *pro forma* interconnection agreement.<sup>1</sup> Alternatively, Midwest ISO may elect to withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions.

**I. Background**

2. One Interconnection Agreement involves the interconnection of an affiliate's steam generator to Xcel Transmission's transmission system and the other two involve

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<sup>1</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,146 (2005). See also *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027, *order on reh'g*, 109 FERC ¶ 61,085 (2004).

unaffiliated wind Interconnection Customers seeking to interconnect to Xcel Transmission's transmission system. The affiliated Interconnection Customer involved is Xcel Energy – Generation Function (Xcel Generation) and the two wind Interconnection Customers involved are: PPM Energy, Inc. (PPM Energy) and Fenton Power Partners I, LLC (Fenton).

3. Midwest ISO states that the parties to each of the Interconnection Agreements negotiated "deviations" from the Midwest ISO *pro forma* interconnection agreement.<sup>2</sup> The non-conforming provisions include: (1) eliminating provisions that do not apply to the specific interconnections at issue; (2) recognizing that some interconnection studies were conducted before the Order No. 2003 study process; (3) requiring an Interconnection Customer to provide reactive power; (4) including a new "whereas" clause to the recitals section; (5) revising the consequential damages and limitation of liability provisions;<sup>3</sup> (6) deviating from the Midwest ISO *pro forma* interconnection agreement to use language included in the Order No. 2003 *pro forma* interconnection agreement; and (7) changing the insurance provision. The parties also propose to revise a number of definitions and various editorial changes. Midwest ISO states that the changes were either negotiated to reflect the specific needs of the parties involved, or that they meet the Commission's "consistent with or superior to" standard.

4. The parties request an effective date of April 22, 2005 for the Xcel Generation project and April 28, 2005 for the PPM Energy and Fenton projects. Midwest ISO also requests waiver of the Commission's prior notice requirement to allow the Interconnection Agreements to go into effect on the dates requested.

## **II. Notice of Filings**

5. Notice of the filing in Docket No. ER05-969-000 was published in the *Federal Register*, 70 Fed. Reg. 29,731 (2005), with interventions and protests due on or before June 6, 2005. None were filed.

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<sup>2</sup> The Midwest ISO *pro forma* interconnection agreement was originally in Attachment X to the Midwest ISO's Open Access Transmission Tariff (OATT), but has been transferred to Midwest ISO's Open Access Transmission and Energy Market Tariff (TEMT), which superseded the OATT effective April 1, 2005.

<sup>3</sup> Midwest ISO cites *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,164 (2005), as giving it authority to include different liability provisions in the Interconnection Agreements than are in the Midwest ISO *pro forma* interconnection agreement.

6. Notice of the filing in Docket No. ER05-1018-000 was published in the *Federal Register*, 70 Fed. Reg. 33,142 (2005), with interventions and protests due on or before June 15, 2005. Xcel Energy Services, Inc filed a timely motion to intervene.

7. Notice of the filing in Docket No. ER05-1036-000 was published in the *Federal Register*, 70 Fed. Reg. 33,469 (2005), with interventions and protests due on or before June 17, 2005. Xcel Energy Services, Inc filed a timely motion to intervene.

### **III. Discussion**

8. In Order No. 2003, the Commission required Transmission Providers (such as the Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.<sup>4</sup> The use of *pro forma* documents ensures that Interconnection Customers receive non-discriminatory service and that all Interconnection Customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.<sup>5</sup>

9. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.<sup>6</sup> The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.<sup>7</sup>

10. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming provisions.<sup>8</sup> We note that the “consistent with or superior to” standard, which Midwest

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<sup>4</sup> See Order No. 2003.

<sup>5</sup> See *id.* at P 10 (“it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues”).

<sup>6</sup> *Id.* at P 913-15.

<sup>7</sup> Order No. 2003-B at P 140 (“each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision”).

<sup>8</sup> See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098 at P 9 (2005) (*PJM Order*); see also *El Paso Electric Co.*, 110 FERC ¶ 61,163 at P 4 (2005).

ISO uses to justify several of its non-conforming provisions, is one of the standards under which the Commission evaluates modifications to its *pro forma* interconnection agreement and interconnection procedures. A Transmission Provider seeking a case-specific deviation from its approved *pro forma* interconnection agreement bears an even higher burden to explain what makes the interconnection unique and why its changes are operationally necessary (not merely "consistent with or superior to") changes.<sup>9</sup>

11. The Commission will conditionally accept the executed Interconnection Agreements, subject to Midwest ISO's re-filing of the agreements, within 30 days of the issuance of this order, to conform with its *pro forma* Interconnection Agreement that was in effect on the day the Interconnection Agreements were executed, as discussed below. Alternatively, Midwest ISO may withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions. We grant the Midwest ISO's request for waiver of our prior notice requirement given that the Interconnection Agreements were filed within 30 days of their effective dates, and allow the agreements to become effective on the dates specified, as requested.

12. The stylistic and non-substantive deviations from Midwest ISO's *pro forma* interconnection agreement are rejected, as are the other non-conforming terms and conditions negotiated by the parties, including the unexplained or unsupported deviations.<sup>10</sup> Consistent with the *PJM Order*, we also reject the unnecessary deletion of non-applicable terms from the Interconnection Agreement.<sup>11</sup>

13. Midwest ISO provides limited justifications for several of its changes. For instance, Midwest ISO characterizes some changes as correcting mistakes or omissions in Midwest ISO's currently effective *pro forma* interconnection agreement. These changes are also rejected. If Midwest ISO wishes to change a provision of its *pro forma* interconnection agreement, it must file to make the change on a generic basis.<sup>12</sup>

14. We also reject Midwest ISO's inclusion of liability provisions different than those in the Midwest ISO's *pro forma* interconnection agreement. Order No. 2003 noted that "interconnection presents a greater risk of liability than exists for the provision of transmission service and that, therefore, the OATT indemnity provision is not suitable in

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<sup>9</sup> See *PJM Order* at P 9.

<sup>10</sup> Simply stating that the parties "negotiated" for or "agreed" to the non-conforming changes is not sufficient justification. See *PJM Order* at n. 13.

<sup>11</sup> *Id.* at P 14 ("[i]f a provision of a contract is not applicable, it is not applicable. Unless confusion is likely, modifications to a pro forma agreement that "clarify" matters not in doubt are not necessary.")

<sup>12</sup> See, e.g., *Sierra Pacific Power Co.*, 111 FERC ¶ 61,415 (2005).

the interconnection context."<sup>13</sup> The limited liability provisions accepted in *Midwest ISO* apply to transmission service (including transmission to and from interconnected generators), but not to the actual interconnection process under Attachment X.<sup>14</sup> If *Midwest ISO* wishes to revise the liability provisions in Attachment X, it must propose changes to its *pro forma* interconnection agreement.

15. *Midwest ISO* also proposes several non-conforming provisions to "bridge" the transition between its pre-Order No. 2003 processing of interconnection requests and its post-Order No. 2003 processing of interconnection requests.<sup>15</sup> This includes allowing the Interconnection Customers to select a higher level of interconnection service (which was not available under Attachment R), pending the completion of further studies. *Midwest ISO* also proposes several non-conforming provisions reflecting that several interconnection studies were completed under the Attachment R process. These changes are accepted because they are necessitated by the transition from Attachment R to Attachment X.

16. Finally, the Commission recognizes that reliability and safety are paramount concerns and that non-conforming provisions may sometimes be necessary to preserve them.<sup>16</sup> Therefore, while we reject the non-conforming deviations proposed by the *Midwest ISO* that relate to the provision of reactive power, we do so without prejudice to the *Midwest ISO* re-filing these changes with an explanation as to why they are operationally necessary. If it does so, *Midwest ISO* must show (via a system impact study) why it is necessary that the Interconnection Customer provides reactive power support. Moreover, the deviation providing for the Transmission Provider to pay the Interconnection Customer for reactive power produced or absorbed is rejected as unnecessary, because the *Midwest ISO pro forma* interconnection agreement already states that reactive power payments will be pursuant to any tariff or rate schedule filed by the Transmission Provider and approved by the Commission.

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<sup>13</sup> Order No. 2003 at P 636.

<sup>14</sup> See *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,164 at P 34 (2005) (discussing *Midwest ISO*'s proposed changes to sections 10.2 through 10.5 of its OATT).

<sup>15</sup> Before the approval of *Midwest ISO*'s Order No. 2003 compliance filing, interconnection requests in *Midwest ISO* were processed under Attachment R to its tariff. After that date, interconnection requests are processed under Attachment X to its tariff.

<sup>16</sup> See, e.g., *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 at P 17 (2005).

The Commission orders:

(A) The Interconnection Agreements are accepted for filing, subject to the conditions discussed in the body of this order.

(B) The requests for waiver of the Commission's prior notice requirement is hereby granted, as discussed in the body of this order.

(C) Midwest ISO is directed to make a compliance filing, as discussed in the body of this order, within 30 days.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.