

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 No. ER05-1475-004

ORDER ACCEPTING COMPLIANCE FILING,  
SUBJECT TO MODIFICATION

(Issued May 22, 2006)

1. In this order, the Commission accepts revisions to Attachment X (Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA)) of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission and Energy Markets Tariff (TEMT), filed in compliance with the Commission's February 13, 2006 Order,<sup>1</sup> subject to further modifications, as discussed below.

**I. Background**

2. The February 13 Order, among other things, addressed the Midwest ISO's proposed revisions to Article 18 (Indemnity, Consequential Damages and Insurance). The order directed the Midwest ISO to clarify that the language in Article 18.1 (Limitation of Liability): (1) applies to all actions taken by the Parties to implement or comply with their obligations under the LGIA, regardless of whether the obligation is preceded by a specific directive; and (2) applies to Transmission Providers and Transmission Owners as well. Finally, the Midwest ISO was required to file revised tariff sheets reflecting all of the changes it agreed to adopt in its October 18, 2005 answer with respect to Article 18 and the definition of Loss.

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,134 (2006) (February 13 Order).

3. The February 13 Order further directed the Midwest ISO to file certain revisions to Attachment X<sup>2</sup> to provide greater clarity and to respond to protester concerns. Specifically, we directed the Midwest ISO to make its Attachment X more useful and consistent by making the definitions used in the LGIA and LGIP identical. Where a defined term was not used in the LGIA, but was used in the LGIP, we instructed the Midwest ISO to define the term in both the LGIA and LGIP. In addition, the order directed the Midwest ISO to revise its LGIP and LGIA by changing its definition of “Distribution System” so that it would apply to stand-alone transmission companies.

## **II. Compliance Filing**

4. On March 8, 2006, as amended by an errata filing on March 14, 2006, the Midwest ISO filed tariff sheets in compliance with the February 13 Order. The Midwest ISO revised Article 18.1 (Limitation of Liability) to clarify that the “provisions set forth in the tariff shall be additionally applicable to any Party acting in good faith to implement or comply with its obligations under this LGIA.”<sup>3</sup> Midwest ISO’s compliance filing, with one exception, included identical definitions between the LGIA and LGIP, as required by the Commission.

## **III. Notice**

5. Notice of the Midwest ISO’s March 8 filing was published in the *Federal Register*, 71 Fed. Reg. 14,195 (2006), with comments, interventions, and protests due on or before March 29, 2006. None was filed.

6. Notice of the Midwest ISO’s March 14 filing was published in the *Federal Register*, 71 Fed. Reg. 14,881 (2006), with comments, interventions, and protests due on or before April 4, 2006.<sup>4</sup> None was filed.

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<sup>2</sup> Attachment X to the Midwest ISO’s TEMT contains both the Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement.

<sup>3</sup> The Midwest ISO’s March 14, 2005 Filing at 1.

<sup>4</sup> By errata notice, the Commission amended the comment date that was published in the *Federal Register* (March 29, 2006) to read “April 4, 2006.”

#### IV. Discussion

7. The Commission accepts the Midwest ISO's filing,<sup>5</sup> effective November 16, 2005 as stated previously, subject to further modifications. The Midwest ISO has generally complied with the February 13 Order. However, in two instances it did not.

8. First, the Midwest ISO's proposed errata revision to Article 18 submitted on March 14, 2006 does not comply with the intent of the February 13 Order. The Commission intended to assure all Interconnection Customers that as long as they are acting in good faith to comply with the obligations of the LGIA, they receive the same liability protection as the Transmission Owner, regardless of the directive being issued by the Transmission Provider or the Transmission Owner. Specifically, the Commission directed the Midwest ISO to add a provision "to clarify that the provisions set forth in the tariff apply to all actions taken by the Parties to implement or comply with its obligations under the LGIA, regardless of whether the obligation is preceded by a specific directive."<sup>6</sup> The Midwest ISO's March 14, 2006 revision deletes the provision "regardless of whether the obligation is preceded by a specific directive." Therefore, we direct the Midwest ISO to further revise Article 18.1 to add the following: "The provisions set forth in the Tariff shall be additionally applicable to any Party acting in good faith to implement or comply with its obligations under this LGIA, regardless of whether the obligation is preceded by a specific directive."

9. Second, we directed the Midwest ISO to revise the definition of a Distribution System in both the LGIP and LGIA to make the definitions consistent between the LGIP and the LGIA.<sup>7</sup> The Midwest ISO complied with this directive in most respects, but did not make the definitions consistent due to a typographical error mentioning

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<sup>5</sup> We note that the Midwest ISO requested waiver of Rule 2010 to permit it to provide electronic service of the filings. 18 C.F.R. § 385.2010 (2005). The Midwest ISO's request for electronic service is consistent with Order No. 653, which revised the Commission's regulations to require senders and recipients to serve documents upon one another by electronic means, with the exception of those who are unable to receive such service unless the parties agree otherwise. *Electronic Notification of Commission Issuances*, Order No. 653, 70 Fed. Reg. 8,720 (Feb. 23, 2005), FERC Stats. & Regs. ¶ 31,176 (2005); *order on reh'g*, Order No. 653-A, 70 Fed. Reg. 21,330 (April 26, 2005) FERC Stats. & Regs. ¶ 31,178 (2005).

<sup>6</sup> See February 13 Order, 114 FERC ¶ 61,134 at P 38.

<sup>7</sup> See February 13 Order, 114 FERC ¶ 61,134 at P 19 and 15.

“interconnection” as opposed to “interconnected.”<sup>8</sup> Therefore, we direct the Midwest ISO to correct this in a further compliance filing.

The Commission orders:

(A) The Midwest ISO’s compliance filing is hereby accepted, subject to further modification, as discussed in the body of this order.

(B) The Midwest ISO is directed to make a compliance filing within 30 days of the issuance of this order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>8</sup> See Substitute Second Revised Sheet No. 1714Z.43.

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Midwest Independent Transmission System Operator, Inc.      Docket No. ER05-1475-004

(Issued May 22, 2006)

KELLY, Commissioner, *dissenting in part*:

This order accepts, subject to modification, Midwest ISO's filing to comply with the February 13, 2006 Order in this proceeding,<sup>9</sup> including a broad limitation of liability provision in its Large Generator Interconnection Agreement (LGIA). As I stated in my partial dissent from the February 13, 2006 Order, I believe that this limitation of liability provision is inappropriate and fails to strike a proper balance between interconnection costs and the rights of harmed third parties to seek recovery for damages resulting from parties' negligence under the LGIA.

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Suedeem G. Kelly

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<sup>9</sup> *Midwest Independent Transmission System Operator, Inc.* 114 FERC ¶ 61,134 (2006) (Commissioner Kelly dissenting in part).