

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinohoff.

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER07-577-000
ER07-577-001
EL07-79-000

ORDER CONDITIONALLY ACCEPTING FACILITIES CONSTRUCTION
AGREEMENT AND INSTITUTING A SECTION 206 PROCEEDING

(Issued July 19, 2007)

I. Introduction

1. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an unexecuted Facilities Construction Agreement (FCA) among Endeavor Power Partners, LLC (Endeavor) as interconnection customer, itself as transmission provider, and Northern States Power Company (Northern States), a subsidiary of Xcel Energy Inc. (Xcel), as the owner of the Affected System. The primary issue is whether Midwest ISO's current policy on price allocation for network upgrades will apply. The agreement was filed unexecuted because the parties cannot agree on certain language in the FCA regarding cost responsibility for network upgrades. In this order, we conditionally accept the proposed FCA effective April 30, 2007, and institute an investigation in Docket No. EL07-79-000 under section 206 of the Federal Power Act¹ with regard to a related Interconnection Agreement, as discussed below.

II. Background

2. Endeavor is developing a 100 MW wind farm generating facility in Osceola and Dickinson County, Iowa, designated as Project G426, which will consist of forty 2.5 MW wind turbine generation units. Construction began in September 2006, and is expected to

¹ 16 U.S.C. § 824e (2000).

be completed by May 2007.² The project will interconnect with the transmission system of Interstate Power and Light Company (IPL), which is adjacent to Northern States' transmission system. An Interconnection Agreement relating to the project, entered into by Endeavor, Midwest ISO, and IPL, was filed on October 12, 2005.³ Midwest ISO has also determined that certain network upgrades to Northern States' transmission system are necessary because of the interconnection of the generating facility; thus, Northern States is designated as an Affected System for purposes of the generator interconnection. The network upgrades, a 30 MVAR Static Var Compensator (SVC) and related equipment located at Northern States' proposed Hazel Creek Substation, are estimated to cost \$4,803,000.

III. The Filing

3. On February 28, 2007, under section 205 of the Federal Power Act,⁴ Midwest ISO filed the FCA, which sets forth the terms and conditions for the construction of network upgrades on Northern States' transmission system necessitated by the operation of Endeavor's generating facility.

4. Midwest ISO states that the FCA is based on the facilities construction agreement with Prairie State (Prairie State FCA), which was accepted by the Commission.⁵ The FCA was filed unexecuted because the parties cannot agree upon certain language in the FCA and its Appendix A. Endeavor contends that the language is inconsistent with its Interconnection Agreement with Midwest ISO and IPL with regard to network upgrades to be installed by Northern States.

² Endeavor Protest at 2-3.

³ *Midwest Indep. Trans. Sys. Oper., Inc.*, 114 FERC ¶ 61,256 (2006), *order on reh'g*, 116 FERC ¶ 61,155 (2006). The compliance filing in Docket No. ER06-22-000, *et al.*, is awaiting Commission action.

⁴ 16 U.S.C. § 824d (2000).

⁵ *Midwest Indep. Trans. Sys. Oper., Inc.*, 113 FERC ¶ 61,048 (2005); *see also* Director letter order issued on June 7, 2006, in Docket No. ER05-1362-001.

A. Endeavor's Position

5. Primarily, Endeavor disputes the inclusion of the phrase “as provided under Attachment FF of the Transmission Provider Tariff”⁶ in Article 3.2.2.1 (Cash Repayment), since that phrase is not in the equivalent provision of the Interconnection Agreement. Article 3.2.2.1 states the following:

Interconnection Customer shall be entitled to a cash repayment by the Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, *as provided under Attachment FF of the Transmission Provider Tariff* (emphasis added)...

6. Endeavor contends that the proviso violates its right to a cash repayment under Article 11.4.1 (Repayment of Amounts Advanced for Network Upgrades)⁷ of the Interconnection Agreement and under Article 3.2.2.1 of the FCA. It says that the added phrase in Article 3.3.2.1 requires the application of the current cost allocation in the Midwest ISO's tariff (*i.e.*, 50 percent-50 percent cost sharing) rather than the 100 percent crediting prescribed in the Interconnection Agreement.

7. Endeavor also disputes Article 1.2.1 of Appendix A of the FCA (Transmission Owner Substation Network Upgrades) because that article does not include certain language contained in Appendix C, Section 1.7 (Unit Stability Requirements) of the Interconnection Agreement.⁸ The omitted language would limit the extent to which

⁶ Attachment FF generally provides for cost sharing between the Interconnection Customer (50 percent) and the Transmission Owner(s) (50 percent).

⁷ Article 11.4.1 of the Interconnection Agreement states:

Interconnection Customer shall be entitled to a cash repayment by the Transmission Owner and the Affected System Owner that owns the Network Upgrade, equal to the total amount paid respectively to Transmission Owner and Affected System Operator, if any, for the Network Upgrades ... to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility.

⁸ Section 1.7 of Appendix C of the Interconnection Agreement states:

(continued)

Endeavor may be required to fund network upgrades on the Northern States system (cost cap). Therefore, Endeavor requests that the following language from the Interconnection Agreement be added to the FCA:

In the event that the Interconnection Restudies performed by the Transmission Provider determine that Network Upgrades in addition to a 30 MVAR SVC are required, the Interconnection Customer will be responsible for funding such Network Upgrades in proportion to the size of the Generating Facility, but not to exceed the amount required to fund a 30 MVAR SVC.

8. The FCA also contains minor additional deviations from the Prairie State FCA that are uncontested by the parties and that are intended to clarify the language in Article 1.17 (Definition of Interconnection Agreement), Article 1.20 (Definition of Network Upgrades), and Article 6.1 (Creditworthiness) of the FCA.

B. Northern States' Position

9. As the owner of the Affected System, Northern States objects to the changes in language requested by Endeavor as contrary to the Midwest ISO Open Access Transmission and Energy Markets Tariff (Tariff),⁹ the Commission's order on the Prairie

Unit Stability Requirements. Per the Interconnection Studies performed by Transmission Provider, Interconnection Customer is responsible to fund up to 30 MVARs of incremental dynamic reactive compensation (SVC) to be installed near the Granite Falls substation located on the transmission system of an adjacent transmission-owning member of the Transmission Provider. The exact size, location and date for this SVC will be determined in future Interconnection Facilities Studies and this requirement will be amended accordingly. In the event that the Interconnection Studies performed by the Transmission Provider require Network Requirements beyond dynamic reactive compensation, the Interconnection Customer will be responsible to fund these Network Upgrades in proportion to the size of the Generating Facility but not to exceed the amount required to fund a 30 MVAR SVC. Failure by the Interconnection Customer to fund the installation of these Network Upgrades by their required service date will result in suspension of interconnection service under this Agreement.

⁹ Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Third Revised Vol. No. 1.

State FCA, and the Midwest ISO's generation interconnection cost allocation provisions (50 percent-50 percent cost sharing).¹⁰ Northern States points out that it was not a party to any agreement reached on the cost allocation for network upgrades in the Interconnection Agreement. It says that the FCA will not affect the repayments to be received by Endeavor from IPL for the interconnection. Northern States further contends that the FCA is a separate agreement under the tariff for certain network upgrades required to be installed on an Affected System based on facility studies performed by Midwest ISO after the Interconnection Agreement was entered into by Endeavor and IPL. Any restudy requested by Endeavor determining any different or additional network upgrades should be subject to Northern States' cost recovery rights under the tariff.

C. Midwest ISO's Position

10. Midwest ISO supports the inclusion of the language concerning Attachment FF in Section 3.2.2.1. It says this is consistent with the Commission's orders requiring that facilities construction agreements signed after February 5, 2006 conform to the Midwest ISO's current *pro forma* Large Generator Interconnection Agreement, which refers to Attachment FF in Article 11.4.2.¹¹ In addition, Midwest ISO argues that the Interconnection Agreement cannot limit Endeavor's responsibilities under the FCA. Finally, because there is no way to predict the results of any future restudies and no reassignment of costs will occur until after a restudy, Midwest ISO does not believe that the Interconnection Customer's issue concerning a limitation on costs is ripe for decision. That issue could be raised if an amended FCA or Interconnection Agreement reflecting increased costs result from future restudies is ever filed.

D. Deficiency Letter

11. On April 20, 2007, staff issued a deficiency letter to Midwest ISO, Endeavor, and Northern States requesting further information regarding the network upgrades at issue in this proceeding, the processes employed to identify those network upgrades, and relevant communications.

¹⁰ *Midwest Indep. Trans. Sys. Oper., Inc.*, 114 FERC ¶ 61,106 at P 70, *reh'g denied*, 117 FERC ¶ 61,241 (2006). (New Cost Allocation Orders).

¹¹ *Id.* at P 61.

IV. Notice and Responsive Filings

12. Notice of the filing was published in the *Federal Register*,¹² with interventions and protests due on or before March 21, 2007. Xcel, on behalf of Northern States, filed a notice of intervention and comments. Endeavor and Osceola Wind Power, LLC, the new owner of the Endeavor wind energy project, filed a motion to intervene and protest.¹³ Xcel, on behalf of Northern States, and Midwest ISO each filed answers to Endeavor and Osceola's protest. Notice of the responses to the deficiency letter was published in the *Federal Register*,¹⁴ with comments due on or before June 1, 2007. None was filed.

V. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ 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 Procedure¹⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed herein because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Allocation of Costs of Network Upgrades (100 Percent Crediting versus Cost Sharing)

a. Endeavor's Protest

¹² 72 Fed. Reg. 11,020 (2007).

¹³ The Commission, acting through delegated authority, authorized the sale of the project to Osceola. *Endeavor Power Partners, LLC*, 118 FERC ¶ 62,003 (2007).

¹⁴ 72 Fed. Reg. 30,582 (2007).

¹⁵ 18 C.F.R. § 385.214 (2006).

¹⁶ 18 C.F.R. § 385.213(a)(2) (2006).

14. Endeavor contends that the filing of the FCA is actually a proposal to change the rates and terms of the existing Interconnection Agreement that is on file with the Commission. Endeavor argues that the Interconnection Agreement addresses certain issues concerning the FCA. Endeavor maintains that it is entitled to 100 percent reimbursement of the costs of network upgrades on both the IPL and Northern States systems, consistent with Article 11.4.1 of the Interconnection Agreement. It suggests that a recent Commission order¹⁷ requires that the present FCA's pricing be rejected.

b. Affected System Operator Comments

15. Xcel, on behalf of Northern States, expresses its support for standardization of FCAs. Xcel further contends that the Interconnection Agreement between IPL and Endeavor is not relevant to the arrangements between Endeavor and Northern States because those arrangements are governed by a separate agreement, the FCA.

c. Answers

16. Xcel disputes that the Interconnection Agreement, to which Northern States is not a party, can govern the rates and terms of Network Upgrades on Northern States' system. It contends that the Commission should accept the proposed FCA because the tariff and Midwest ISO's Large Generation Interconnection Procedures (LGIP)¹⁸ require Endeavor to enter into a separate agreement concerning upgrades on Northern States' transmission system. Xcel further maintains that both Order No. 2003 and the tariff contemplate a separate FCA. Finally, Midwest ISO's new cost sharing should be applied to Endeavor under the FCA. This would allocate the costs 50 percent-50 percent.

¹⁷ Endeavor refers to an "October 30 Order," in which the Commission rejected a proposal by the Midwest ISO to retroactively apply its new network upgrade cost policy to, among others, the Endeavor project. While Endeavor does not provide a citation, Endeavor apparently means *Midwest Indep. Trans. Sys. Oper., Inc.*, 117 FERC ¶ 61,128, (2006) *reh'g denied*, 119 FERC ¶ 61,097 (2007).

¹⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. National Association of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

d. Responses to Deficiency Letter

17. In its response to staff's deficiency letter, Midwest ISO provides a timeline of major events for both the Interconnection Agreement and the FCA. It says that in February 2005, it received an executed Out of Queue Order Study Letter Agreement from Endeavor. In June 2006, Midwest ISO requested that Xcel expedite its Facilities Study for "the SVC." During the summer of 2005, when Endeavor, Midwest ISO and IPL were negotiating the Interconnection Agreement, the exact location of the SVC and the extent of the upgrades needed to accommodate the interconnection were unknown.¹⁹ In August 2005, Midwest ISO clarified with Xcel that the network upgrade to be studied was 30 MVAR at the Minnesota Valley 230 kV substation.²⁰ On October 12, 2005, Midwest ISO filed an unexecuted Interconnection Agreement among itself, IPL and Endeavor. On October 17, 2005, Endeavor suspended the Interconnection Agreement. In November 2005, Northern States provided a draft Facilities Study to the Midwest ISO. In February 2006, Midwest ISO's new cost allocation policy (50 percent-50 percent cost sharing) took effect.²¹ In April 2006, Endeavor indicated to Midwest ISO that it would move forward with the interconnection. On September 8, 2006, Endeavor requested a draft FCA. On September 26, 2006, Midwest ISO provided a draft FCA to both Endeavor and Northern States.²²

18. Midwest ISO argues that the network upgrades were required to be addressed by a separate FCA and states that Milestone 21 for the Interconnection Customer (in Appendix B to the Interconnection Agreement) provides that the network upgrades at issue here would be provided for under a separate facilities construction agreement.²³

¹⁹ Midwest ISO response to question 1.b.

²⁰ The substation was subsequently changed to Hazel Creek.

²¹ *See supra* note 10.

²² Midwest ISO response to question 4.c and Negotiation Events Outline.

²³ Milestone 21 states: "Provide 20 MVAR of reactive compensation on Transmission System pursuant to future facility studies under a separate facilities construction agreement. These network upgrades to be funded by Interconnection Customer. Note: Interconnection Service may be discontinued or reduced if facilities are not in service when needed." This obligation is "[t]o be determined by Interconnection Facilities Study."

Midwest ISO clarifies that the 30 MVAR upgrades referred to in the proposed FCA and the 20 MVAR upgrades cited in Milestone 21 refer to the same requirement.²⁴

19. While Midwest ISO explains that it attempts to negotiate FCAs and Interconnection Agreements at the same time if all necessary studies are complete, it will begin the Interconnection Agreement negotiation as soon as the studies for the Interconnection Agreement are complete even if the studies for the FCA are not yet complete if the interconnection customer so requests. Here, Midwest ISO states that Endeavor did not request to begin negotiating the FCA with Northern States until September 2006, after Endeavor recommenced the Interconnection Agreement proceedings. Midwest ISO further explains that if Northern States signed the Interconnection Agreement, Northern States would be incurring obligations related to interconnection service. Midwest ISO explains that the use of a separate FCA avoids this confusion.

20. Xcel states that, to its knowledge, Northern States was not contacted by any of the parties to the Interconnection Agreement about the network upgrades on Northern States' system when Midwest ISO, Endeavor and IPP negotiated the Interconnection Agreement; rather, the network upgrades under the proposed FCA were identified only after the filing of Endeavor's Interconnection Agreement. Although Northern States was aware of generation interconnection studies that Midwest ISO was performing starting in late 2004 to early 2005, Northern States was not aware that the project would go forward until it received the finalized FCA in September 2006.

21. Xcel provides some additional information regarding the timeline mentioned above. Specifically, in November of 2005, a month after Endeavor had suspended the Interconnection Agreement, NSP forwarded the Draft Facilities Study to Midwest ISO that provided for the installation of a 30 MVAR SVC at a future substation rather than at the existing Minnesota Valley Substation.²⁵

²⁴ Midwest ISO response to question 2. Midwest ISO states that during the negotiations of the Interconnection Agreement, the preliminary ongoing study results changed and it was thought at one point that the project would require only 20 MVARs of reactive compensation. The Midwest ISO believes that this number was not corrected when the later estimate was confirmed to be 30 MVARs.

²⁵ Xcel explains that during the performance of the Facilities Study, NSP/Xcel informed Midwest ISO that there was not available space at the Minnesota Valley Substation and that Midwest ISO and NSP/Xcel agreed to start planning a new substation to be in service in 2010 that would accommodate the SVC Network Upgrades. The new
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22. Endeavor explains that it did not request that the Interconnection Agreement be signed by Northern States because it was not sure that the upgrade would be required. It understood that the Midwest ISO, as an RTO, functioned as a “one-stop shop” with respect to interconnection requests, minimizing the number of entities that Endeavor would need to contract with. Endeavor states that it considered the Midwest ISO to be the representative for the Affected System.

e. Commission Determination

23. We agree with Northern States and Midwest ISO that the Interconnection Agreement contemplated a separate agreement, the FCA, to provide for the construction of the network upgrades on the Affected System. We also note that the Interconnection Agreement could not bind an entity that was not a party to it.²⁶ For the reasons stated below, we will accept the language in the FCA that requires 50 percent-50 percent cost sharing under the currently effective Midwest ISO tariff.

24. When the Interconnection Agreement was filed in 2005, the Midwest ISO pricing policy was that the generator was entitled to 100 percent reimbursement for network upgrades it funded. Since that time, a partial participant funding policy for Midwest ISO has been accepted. It generally requires interconnection customers and transmission owners to each absorb 50 percent of network upgrade costs for Interconnection Agreements filed on and after February 5, 2006. Northern States and Midwest ISO propose to apply the currently effective Midwest ISO tariff here, while Endeavor wants to apply the cost allocation method that was in effect when the Interconnection Agreement was filed.

25. While Endeavor contends that Article 11.4.1 of the Interconnection Agreement binds any Affected System to the 100 percent crediting, we do not agree, for the following reasons: (1) Northern States was not a party to the Interconnection Agreement and cannot be bound by a contract to which it is not a party; (2) Milestone 21 (in Appendix B to the Interconnection Agreement) clearly requires a future facilities construction agreement for the network upgrades at issue here; (3) Article 11.4.2 of the Interconnection Agreement contemplates that a separate agreement will be filed to

substation’s name was changed from Hazel Run to Hazel Creek because there is another substation called Hazel Run. *See* Xcel response to question 3.

²⁶ Restatement 2d of Contracts § 18 (1981). Mutual assent by all parties involved is necessary to form a contract.

govern network upgrades on an Affected System;²⁷ and (4) Order No. 2003 further acknowledges that an Affected System is not bound by the Final Rule LGIP and Interconnection Agreement.²⁸ We view Article 11.4.1 as an explanation of the cost allocation method in effect when the Interconnection Agreement was negotiated, rather than as a provision purporting to bind a non-party.²⁹ Additionally, as we have noted previously, this FCA was filed after February 5, 2006, when the 50 percent-50 percent cost sharing became effective. Therefore, we are unpersuaded by Endeavor's attempt to bolster its argument with the October 30 Order which prohibited Midwest ISO from applying the 50 percent-50 percent cost sharing retroactively. We find that case does not apply to this situation because the FCA was filed after February 5, 2006.

26. Regarding Endeavor's argument that it believed that Midwest ISO provided "one-stop shopping," we note that Order No. 2003 said that the Transmission Provider, Transmission Owner and Interconnection Customer, must all sign the Interconnection Agreement.³⁰ However, this does not release the Interconnection Customer from its

²⁷ Article 11.4.2 states:

Unless the Transmission Owner provides, under the interconnection agreement between the Interconnection Customer and the other system, for the repayment of amounts advanced to the Transmission Provider or an impacted transmission-owning member(s) of the Transmission Provider for Network Upgrades, the Interconnection Customer, the Transmission Provider, and the impacted transmission-owning members(s) shall enter into an agreement that provides for such repayment by transmission owners(s) as directed by the Transmission Provider.

²⁸ Order No. 2003 at P 121.

²⁹ Not only was Northern States not a party to the Interconnection Agreement, it was not even identified as an Affected System operator within the Interconnection Agreement. Moreover, the exact location of the SVC and indeed, the extent to which the SVC would be required were yet to be determined, a fact that no party disputes. Further, although Midwest ISO had directed Northern States to perform a facilities study to accommodate the project, a draft study was not complete when the Interconnection Agreement was filed.

³⁰ Order No. 2003 at P 908-09.

obligation to contract with all necessary parties, including the Affected System.³¹ Order No. 2003 says that the Transmission Provider (here, Midwest ISO) is to “assist” the Transmission Customer in coordinating with an Affected System; it does not say that the Transmission Provider has primary responsibility for dealing with the Affected Systems.³²

2. Cost Cap for Network Upgrades

a. Endeavor’s Protest

27. Endeavor argues that Section 1.7 of Appendix C of the Interconnection Agreement explicitly caps (limits) Endeavor’s exposure to the costs of upgrades on the Northern States system and should not have been omitted from the related provision in the FCA. Endeavor says this is an unjustified rate change.

b. Xcel’s Comments

28. Xcel argues that the Interconnection Agreement cannot limit Northern States’ rights under the FCA and the Midwest ISO Tariff. Accordingly, Xcel and Midwest ISO repeat this argument in their answers.

c. Responses to Deficiency Letter

29. Midwest ISO clarifies that it interprets the cost cap language in the Interconnection Agreement to mean that Endeavor is responsible for costs based on any future restudies and that the obligation to fund “up to 30 MVARs” is an estimate rather than a limit on the costs. Thus the language in Appendix C ties the funding to the outcomes of any future studies rather than being a cap on Endeavor’s funding obligation.

d. Commission Determination

30. The cost cap language in the Interconnection Agreement appears to put a cap on Endeavor’s obligation to an Affected System.³³ We further note that this language in

³¹ Milestone 21 of Appendix B to the Interconnection Agreement.

³² Order No. 2003 at P 118.

³³ We note that when Midwest ISO filed the Interconnection Agreement it should have identified the provision as non-conforming.

section 1.7 is inconsistent with Milestone 21 of Appendix B of the same Interconnection Agreement. And, as discussed above, the parties to a contract cannot bargain away the rights of a non-party. Thus, the Interconnection Agreement appears to improperly limit the costs of any network upgrades required on the Affected System. We, therefore, are instituting, in Docket No. EL07-79-000, an inquiry under section 206 of the FPA³⁴ into the justness and reasonableness of section 1.7 of Appendix C of the Interconnection Agreement.

31. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,³⁵ requires the Commission to establish a refund effective date that is no earlier than the date of publication of notice of its initiation of the investigation, but no later than five months after that date. In order to give maximum protection to consumers, we will establish the refund effective date at the earliest date allowed. This date will be the date on which notice of our initiation of the investigation in Docket No. EL07-79-000 is published in the Federal Register.

32. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. In light of the hearing schedule established below, the Commission estimates that it will be able to reach a final decision within approximately five months of the filing of reply comments, or by April 30, 2008.

33. The Commission finds that a single-phase, paper hearing will most efficiently and expeditiously address the justness and reasonableness of section 1.7 of Appendix C of the Interconnection Agreement, which purports to cap the costs of any network upgrades required on the Affected System. As we have explained in the past, “[a] trial-type hearing is required only when the written submissions do not afford an adequate basis for resolving disputes about material facts ... [and a] policy argument is not sufficient to

³⁴ 16 U.S.C. § 824e (2000).

³⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 580-81 (2005).

bring a factual assertion into question.”³⁶ The issues in this case primarily involve policy determinations that, at this juncture, we believe can be best resolved without the need for a trial-type evidentiary hearing.

34. The procedural schedule for the paper hearing will be as follows:
- a. Within 90 days of the date of this order, all parties seeking to be heard may file initial comments.
 - b. Within 30 days of the date on which initial comments are filed, reply comments may be filed.

3. Additional “Clarifying” Deviations

35. Midwest ISO also requests additional uncontested deviations from the language that we accepted in the Prairie State FCA.³⁷ These revisions include substantive, non-substantive and stylistic variations from the Midwest ISO *pro forma* Interconnection Agreement. Midwest ISO has not explained why these non-conforming provisions are necessary due to reliability concerns, novel legal issues or other unique factors.³⁸ While certain provisions of Midwest ISO’s *pro forma* Interconnection Agreement do not apply to facilities construction agreements since they provide for construction of network upgrades on an Affected System, but not for interconnection of a generator’s facility to a transmission owner’s transmission system, some of the revisions go beyond what is necessary to reflect this difference and have not otherwise been supported as non-conforming provisions.³⁹ Therefore, we will conditionally accept the FCA, effective April 30, 2007, as discussed below, and require the parties to refile the FCA in 30 days to remove the unsupported changes.

³⁶ *Iroquois Gas Transmission System, L.P.*, Opinion No. 357-A, 54 FERC ¶ 61,103 at 61,346 (1991) (citing *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969)), *reh’g denied*, 58 FERC ¶ 61,280 (1992).

³⁷ See Article 1.17 (Definition of Interconnection Agreement), Article 1.20 (Definition of Network Upgrades), and Article 6.1 (Creditworthiness).

³⁸ See *MidAmerican Energy Co.*, 116 FERC ¶ 61,018 at P 11 (2006) (rejecting typographical and stylistic changes).

³⁹ See *Midwest Indep. Trans. Sys. Oper., Inc.*, 113 FERC ¶ 61,048 at P 15 -16 (2005).

4. Consequences of Termination and Interconnection Customer Obligations

36. We note that, although the transmittal letter points to Endeavor's concerns with Articles 2.2.3 and 10.3.2 of the FCA,⁴⁰ Endeavor does not in fact protest this language nor provide any explanation or justification for any requested revisions. Since no support was provided, and the language in question was previously accepted by the Commission in the Prairie State FCA, we will accept these provisions as filed.

37. We deny Midwest ISO's request for waiver of the 60-day prior notice requirement⁴¹ and establish an effective date of April 30, 2007.

The Commission orders:

(A) Midwest ISO's proposed FCA is hereby conditionally accepted for filing, effective April 30, 2007, subject to further compliance filing as ordered herein. Midwest ISO is hereby ordered to refile the FCA within 30 days, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL07-79-000 concerning the justness and reasonableness of the "cost cap" in the Interconnection Agreement, as discussed in the body of the order.

⁴⁰ Midwest ISO notes that Endeavor requests that Article 2.2.3 (Consequences of Termination) of the FCA be amended to clarify that the events permitting termination of the FCA be limited to events of default by Endeavor that have not been cured under applicable cure provisions. Midwest ISO states that Endeavor also requests that Article 10.3.2 (Interconnection Customer Obligations) be amended to limit obligations following termination to events of default that have not been cured and to limit reimbursement by Endeavor to reasonable costs incurred by Northern States up to the date of termination, including the costs of network upgrades performed as of the date of termination.

⁴¹ 18 C.F.R. § 35.3 (2006); *Central Hudson Gas & Electric Corp.*, 61 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

(C) The refund effective date in Docket No. EL07-79-000, established pursuant to section 206(b) of the Federal Power Act, will be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (E) below.

(D) Initial and reply comments addressing the justness and reasonableness of the “cost cap” in the Interconnection Agreement, as discussed in the body of this order, may be filed in accordance with the procedural schedule described in the body of this order.

(E) The Secretary is hereby directed to publish a notice of the section 206 proceeding instituted in Docket No. EL07-79-000 in the Federal Register.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.