

109 FERC ¶61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER04-458-002
ER04-458-003

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE FILING

(Issued October 28, 2004)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners have requested rehearing and submitted motions for clarification in Docket No. ER04-458-002 of the Commission's order issued July 8, 2004 in these proceedings.¹ In the July 8 Order, the Commission accepted in part and rejected in part certain revisions proposed by Midwest ISO to the *pro forma* tariff sheets filed in compliance with Order Nos. 2003 and 2003-A.² The July 8 Order also directed Midwest ISO to make a further compliance filing. In this order, the Commission grants in part and rejects in part rehearing and clarification, and accepts Midwest ISO's September 7, 2004 compliance filing. This order benefits Midwest ISO customers by further ensuring that the rates, terms, and conditions for interconnection service are just and reasonable.

¹ Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,027 (2004) (July 8 Order).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, 69 Fed. Reg. 15,932 (2004), FERC Stats & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), *reh'g pending*; see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

I. Background

2. In Order No. 2003, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)³ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their Open Access Transmission Tariffs (OATT) *pro forma* Large Generator Interconnection Procedures (LGIP) and a *pro forma* Large Generator Interconnection Agreement (LGIA). In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the *pro forma* LGIP and LGIA included in Order No. 2003 by January 20, 2004.⁴ Order No. 2003-A, issued on rehearing, made certain revisions to the *pro forma* LGIP and LGIA.

3. The Commission, however, permitted independent transmission providers, *e.g.*, regional transmission organizations (RTOs), the flexibility to deviate from the *pro forma* LGIP and LGIA to meet their regional needs.⁵ After submitting its compliance filing, an independent transmission provider would continue to have the right to propose changes to its LGIP and LGIA using the “independent entity variation” standard.⁶

4. On January 20, 2004, Midwest ISO submitted its initial Order No. 2003 compliance filing (January 20 Filing). In that filing, it proposed certain variations from the *pro forma* Final Rule LGIP and LGIA that it asserted were based on its operating requirements and consistent with the flexibility provided to RTOs by the Commission in Order No. 2003.⁷ On April 26, 2004, Midwest ISO submitted an additional compliance filing (April 26 Filing) amending its proposed LGIP and LGIA to reflect both the guidance provided by Order No. 2003-A and certain suggestions and comments made by interveners regarding the January 20 Filing.

³ 16 U.S.C. §§ 824d-e (2000).

⁴ See Notice Clarifying Compliance Procedures, *supra* note 1.

⁵ See, *e.g.*, Order No. 2003 at P 26, 28, 32, 34, 92, 698-703 and 822-24.

⁶ See Notice Clarifying Compliance Procedures, *supra* note 1.

⁷ Transmittal Letter to January 20 Filing at 5.

5. In the July 8 Order, the Commission accepted in part and rejected in part Midwest ISO's proposed revisions to the *pro forma* tariff sheets included in Order Nos. 2003 and 2003-A. While the Commission found that Midwest ISO's proposed variations from the *pro forma* LGIP and LGIA generally complied with Order Nos. 2003 and 2003-A, it rejected certain revisions as inconsistent with those orders. Additionally, the July 8 Order directed Midwest ISO to submit a further compliance filing regarding certain issues raised by its compliance filings. The particular actions taken by the Commission in the July 8 Order that are implicated in the instant order on rehearing, clarification and compliance are more fully described below.

6. On August 5, 2004, the Midwest ISO filed a motion for extension of time to file certain tariff revisions required in the July 8 Order. Specifically, the Midwest ISO requested an extension of 60 days to and including November 6, 2004, to file modifications to its Attachment O formula rate, generator maintenance outage compensation schedule, and emergency redispatch compensation schedule. Midwest ISO stated that the extension of time would allow it to complete the stakeholder approval process for these tariff changes. The Commission granted the requested extension of time in a notice issued on August 26, 2004.

7. On August 9, 2004, Midwest ISO and the Midwest ISO Transmission Owners separately submitted requests for rehearing and clarification of the July 8 Order, which are discussed in detail below.

8. Additionally, on September 7, 2004, Midwest ISO submitted a compliance filing containing certain revisions to its LGIP and LGIA, and a response regarding its technical ability to oversee transmission and distribution upgrades, in accordance with the Commission's directives in the July 8 Order (September 7 Filing). The September 7 Filing did not include the modifications for which an extension of time was granted by the Commission in its August 26 notice. Midwest ISO requests an effective date of September 8, 2004 for the compliance tariff sheets.⁸

⁸ The compliance sheets should have the same effective date, July 8, 2004, as was established for the tariff sheets that were accepted by the July 8 Order. Thus, granting the September 8, 2004 date would result in an incomplete LGIP and LGIA for Midwest ISO. The Commission will instead require an effective date of July 8, 2004.

II. Notice of September 7 Compliance Filing

9. Notice of Midwest ISO's September 7 Filing was published in the *Federal Register*⁹ with comments, interventions and protests due on or before September 28, 2004. None was filed.

III. Discussion

10. The Commission finds that the September 7 Filing complies with the directives in the July 8 Order. Accordingly, the Commission will accept that filing. The Commission will grant rehearing and clarification in part, and reject rehearing and clarification in part, and order a further compliance filing, as discussed below.

A. Group Studies and Out-of-Queue-Order Studies

1. Midwest ISO's Proposal

11. In the January 20 Filing and the April 26 Filing, Midwest ISO proposed variations to sections 4.1, 4.2, 7.3 and 7.4 of the *pro forma* large generator interconnection agreement (LGIP) to implement a "group study" approach to queue processing, instead of the cluster study approach described in Order No. 2003, and to perform studies out-of-queue-order.

12. Midwest ISO proposed to establish groups of Interconnection Requests, determine incremental upgrade(s) driven by individual projects in the groups, and consider expansions to accommodate all of the members of a group, as applicable. A group study would be conducted in the following circumstances: (1) when a backlog develops of two or more Interconnection Requests that are waiting in the queue in an area that electrically affect one another¹⁰; (2) upon request of the affected Interconnection Customers; (3) in connection with a state-sanctioned resource solicitation process with the concurrence of the Transmission Provider; and (4) to perform a coordinated study with an Affected

⁹ 69 Fed. Reg. 56,208 (2004).

¹⁰ The April 26 Filing further refined this language to specify that the Transmission Provider in its sole judgment may implement Grouping when a backlog develops of two or more Interconnection Requests that are waiting in the queue in an area and that electrically affect one another. Transmittal Letter to April 26 Filing at 7.

System operator involving Interconnection Requests on an Affected System that may have an electrical effect on the Transmission Provider and on requests in the Transmission Provider's queue.¹¹

13. Regarding state-sanctioned resource solicitation processes, the soliciting entity would be authorized by the Interconnection Customers participating in the solicitation to act as their agent for all Interconnection Requests, and would withdraw those Interconnection Requests not selected. Interconnection Requests that the solicitor wants to hold in reserve as replacements for Interconnection Requests in the selected portfolio may remain in the queue if such requests, as determined by the Transmission Provider, allow the LGIP process to proceed unabated for the selected Interconnection Requests and the replacement Interconnection Requests, or until the Transmission Provider determines there is (i) a difference between the selected Interconnection Requests and the Interconnection Requests held in reserve that would require additional Network Upgrades as compared to the selected Interconnection Requests, or (ii) a material impact (which adversely affects the LGIP schedule or upgrade requirements) on a subsequently queued Interconnection Request.¹²

14. Midwest ISO also proposed to perform studies out-of-queue-order based upon the electrical remoteness of the generating facility, or at the request of the Interconnection Customer, when Midwest ISO concurs with the request and has the resources to perform the study, and if the Interconnection Customer accepts the financial risk of restudy and reassignment of upgrades when the Interconnection Request becomes the next in the queue.¹³ An Interconnection Customer could request Midwest ISO's concurrence in connection with a state-sanctioned resource solicitation process, a proposal to replace equipment due to catastrophic failure (when such replacement constitutes a material modification under section 4.4), and for other reasons specific to the Interconnection Customer.¹⁴

¹¹ Proposed section 4.2 of the *pro forma* LGIP.

¹² *Id.*

¹³ Transmittal Letter to January 20 Filing at 15 and 16.

¹⁴ Proposed section 4.1 of the *pro forma* LGIP.

15. Midwest ISO amended its proposal in the April 26 Filing to state that the determination of cost responsibility for common facilities may depend on factors other than queue position,¹⁵ and to add that the Transmission Provider, in performing the System Impact Study, will consider along with the Base Case any Generating Facilities that are part of a System Impact Group Study pursuant to section 4.2.¹⁶

16. Finally, Midwest ISO proposed to revise the time period for completing a System Impact Study, if the study is to be a group study, from 90 days after the close of the study window, to 180 calendar days after the receipt of the last such agreement or notification to proceed, study payment and technical data.¹⁷

2. July 8 Order

17. The July 8 Order rejected Midwest ISO's proposal to perform group studies, including its proposed deletion of an established 180-day window for clustering should Midwest ISO use clusters.¹⁸ The Commission stated that queue windows with regular, fixed opening and closing dates are essential to an orderly process,¹⁹ and that if Midwest ISO proposes to adopt more than one queue for its footprint and also uses clusters, then it must use the same start and stop date for its queues (an established and uniform 180-day window) in order to adequately assess outcomes among the queues. Finally, the Commission rejected revisions in sections 7.3 and 7.4 of the LGIP, as these modifications were related to the Group Study concept, which we rejected.

¹⁵ Midwest ISO states that it based this modification on the Commission's clarification in Order No. 2003-A that the Transmission Provider may allocate the cost of Network Upgrades common to more than one Interconnection Request on a basis other than queue position.

¹⁶ Transmittal Letter to April 26 Filing at 7.

¹⁷ Proposed section 7.4 of the *pro forma* LGIP.

¹⁸ Transmittal Letter to January 20 Filing at 16.

¹⁹ Order No. 2003 at P 150-55. Also, the 180-day window reduces the potential for discrimination and allows the Transmission Provider the benefits of clustering.

18. The July 8 Order also rejected Midwest ISO's proposal to perform studies out-of-queue-order, except as already provided in Order No. 2003.²⁰ The Commission noted its concern that the proposed language requiring losing bidders of state resource planning programs to drop out of the queue denies the Interconnection Customer certainty with respect to its queue position, which is necessary to properly develop its business strategy.²¹

3. Requests for Rehearing/Clarification

19. Midwest ISO requests rehearing of the Commission's rejection of the proposed group study process, and requests rehearing, or in the alternative clarification, of the Commission's decision regarding out-of-queue-order studies. The Midwest ISO Transmission Owners request that the Commission reconsider its rejection of the "group study" variations that would support utility resource solicitation processes mandated by state regulatory requirements, and instead set these provisions for technical conference.²²

20. In its rehearing request, Midwest ISO also provides additional information. It clarifies that it does not intend to have more than one queue or mini-queues in its region. Midwest ISO also states that resources are generally in the position to begin group studies soon after the receipt of several interconnection requests that are within a short time frame and in close proximity. Midwest ISO also provides an example comparing strict adherence to the cluster window concept with its proposed group study concept.²³

21. Midwest ISO contends that the group study approach is similar to the *pro forma* cluster study approach because interconnection requests would be studied serially or in groups for the purpose of performing system impact studies, at the Transmission

²⁰ Section 4.2 of the *pro forma* LGIP allows a transmission provider to study projects separately "to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Large Generating Facility."

²¹ See Xcel Energy Operating Companies, 107 FERC ¶ 61,313 (2004).

²² Request for Rehearing and/or Clarification of Midwest ISO Transmission Owners at 2.

²³ Request for Rehearing and Clarification of the Midwest ISO at 10, 11, 23-27.

Provider's option. It states that group studies would be implemented on the basis of queue position, in close proximity in time and in space, without regard to the nature of the underlying interconnection service.²⁴

22. Midwest ISO further argues that group studies provide efficient, effective and flexible processing of projects to the benefit of all interconnection customers, as compared to the fixed window queues. It asserts that application of the Commission's queue cluster window may add up to 180 days to the time interconnection studies can be completed for an Interconnection Request. Moreover, Midwest ISO notes that the cluster window concept lacks Midwest ISO stakeholder and Interconnection Customer support, and that to date it has not received any complaints regarding its administration of Group Studies under Attachment R, or the out-of-queue-order studies it has undertaken at the request of Interconnection Customers under circumstances similar to those Midwest ISO discusses in its request for rehearing.²⁵

23. Regarding the Midwest ISO's proposal to remove Interconnection Customers participating in a state resource solicitation process from the queue when these customers are unsuccessful in their bid to win selection, Midwest ISO Transmission Owners state that "[a]bsent this flexibility, the Midwest ISO could be required to engage in studies that assume the existence of generators that bid into the LSE process but will never be constructed, thus likely creating both delays and incorrect study results."²⁶ Additionally, Midwest ISO Transmission Owners argue that the Commission's rejection of the proposed variations relating to group studies and out-of-queue-order studies could preclude certain Transmission Owners from complying with state resource solicitation processes, and thus improperly imposes the Commission's authority over these state-regulated programs in violation of the FPA and precedent.

4. Compliance Filing

24. Additionally, in the September 7 Filing, Midwest ISO made associated edits to sections 4.1, 4.2, 6.4, 7.3, 7.4, 7.6 and 8.5 of the LGIP, in response to the Commission's directives in the July 8 Order.

²⁴ *Id.* at 6 and 7.

²⁵ *Id.* at 7, 9 and 13.

²⁶ Request for Rehearing and/or Clarification of Midwest ISO Transmission Owners at 17.

5. Commission Conclusion

25. The Commission remains concerned with Midwest ISO's proposed group study and out-of-queue-order modifications. The Commission is concerned that accelerated processing of some requests or groups of requests could lead to other requests not being handled within the timelines in Order No. 2003. However, the Commission also understands the Midwest ISO's stakeholders' preference for the proposed process over the Order No. 2003 cluster study process, which has established open and closing dates for the cluster windows. Thus, the Commission will grant rehearing of our decision regarding Midwest ISO's proposed sections 4.1 and 4.2 under the independent entity variation standard, with the conditions discussed below. The modified proposal will help bring Midwest ISO the greater efficiencies it seeks, while ensuring that other projects in the queue are not disadvantaged. Lastly, the Commission does not expect that any Interconnection Customer will be made worse off economically as a result of Midwest ISO's proposed changes.

26. The Commission is concerned that Midwest ISO's proposed language²⁷ may be interpreted to provide Midwest ISO with extended timeframes that go beyond those granted in Order Nos. 2003 and 2003-A. As a result, while granting rehearing and approving this proposal, the Commission will condition approval on Midwest ISO meeting required milestones in Order No. 2003 and 2003-A, so that other Interconnection Customers will not be adversely affected. Midwest ISO must be able to meet Order Nos. 2003 and 2003-A timelines for individual projects as well as for projects that are studied within groups. Along these lines, Midwest ISO must be able to conduct studies for bids within state resource solicitations as well as for Interconnection Requests that are not associated with solicitations within the required timeframes. Midwest ISO must modify its language to state that these provisions do not relieve Midwest ISO of its obligation to meet Order No. 2003 and 2003-A timelines for Interconnection Customers. While conditionally approving Midwest ISO's group study and out-of-queue-order proposal, we will reject the Midwest ISO Transmission Owners' argument that our initial refusal to approve the proposal amounted to an encroachment on state jurisdiction. On the issue of generator interconnection as a component of jurisdictional transmission service, federal law preempts state law.

27. The Commission denies as unsupported Midwest ISO's request to revise the time period for completing a System Impact Study, if the study is to be a group study, from 90 days after the close of the study window, to 180 calendar days after the receipt of the last

²⁷ See especially proposed sections 4.1, 4.2 and 7.4 of the LGIP.

such agreement or notification to proceed, study payment and technical data. Midwest ISO must complete the System Impact Study for a group within 90 days after receipt of the last such agreement or notification to proceed, study payment and technical data.

28. Yet merely requiring that Midwest ISO conform to a 90 day study requirement – once Midwest ISO effectively establishes a group – is not enough. Because the size of a group is not determined by a known start and stop dates, generators within a group have no assurance as to when the group study will be started. The Commission requires Midwest ISO to add language²⁸ that limits the time to complete the System Impact Study for any project within a group.

29. The Commission also clarifies that an Interconnection Customer competing in a state resource solicitation has no right to a position in the queue (short of having an existing queue position or submitting a separate Interconnection Request) if it is not selected by the soliciting entity. If the Interconnection Customer, however, judges that its project is viable outside the state solicitation as a stand-alone project, it should not be required to waste valuable time awaiting the outcome of the solicitation to begin the interconnection process. Midwest ISO may not prohibit that Interconnection Customer from submitting, at any time, an Interconnection Request under its own name for the same project that is bid into the solicitation.

30. This option - to participate in the state solicitation under the soliciting entity's queue position and to retain its own queue position for the same project should it lose the solicitation - is not a free ride for the Interconnection Customer. If it wishes to reserve a queue position outside the resource solicitation, the Interconnection Customer must separately meet the required Order No. 2003 milestones and payments so as not to impede the progress of lower-queued Interconnection Customers.²⁹ This means that the Interconnection Customer must pay all interconnection study costs associated with its non-solicitation Interconnection Request, as well as any costs associated with its bid into the resource solicitation. This will ensure that only Interconnection Customers serious about interconnecting will remain in the queue. Any extra costs expended to participate

²⁸ See July 8 Order at P 128. Consumer Energy Company (Consumers Energy) proposed language in section 7.4 of the LGIP to require Midwest ISO to begin the study of a group no later than 240 days after receipt of any Agreement or notification to proceed, study payment and technical data.

²⁹ We note that the Transmission Provider already has the obligation to utilize any existing interconnection studies "to the extent practicable in performing all studies." See also sections 6.3, 7.4 and 8.3 of the *pro forma* LGIP.

in the state resource solicitation process and to maintain a separate queue position in the event that it does not win the solicitation are simply costs of doing business for the Interconnection Customer. This will allow the Interconnection Customer to make a business decision about whether to go forward with its project even if it is not selected in the state resource solicitation.

31. In summary, the Interconnection Customer should not be required to waste valuable time awaiting the outcome of the solicitation to begin the interconnection process if it believes that the project is viable as a stand-alone project; but also, it should not be denied the opportunity to bid into the resource solicitation simply because it wishes to build its project regardless of whether or not it actually wins the solicitation. Thus, an Interconnection Customer may bid in the state resource solicitation, may submit an Interconnection Request outside the solicitation, or it may do both. Also, the Interconnection Customer's stand-alone Interconnection Request is to be treated no differently simply because it is also bidding into the solicitation. Midwest ISO must include suitable language to this effect in its LGIP.

32. Finally, the Commission believes that Midwest ISO's language that accommodates state-sanctioned resource solicitations must be revised to accommodate any entity (whether a cooperative, an industrial customer or a municipal customer) conducting a solicitation for a Commission-jurisdictional interconnection, whether state-sanctioned or not. Similarly, the previous discussion regarding the ability of bidders to pursue development of their projects on a stand-alone basis as well as to pursue solicitation opportunities applies to any solicitation, whether state-sanctioned or not.

33. Midwest ISO is directed to submit a compliance filing containing revised LGIP provisions to implement the group study approach, as conditioned above, within 30 days of the date of this order.

B. Contingencies Affecting Network Upgrades

1. Midwest ISO's Proposal

34. In the January 20 Filing, Midwest ISO proposed new article 11.3.1 to the LGIA, in order to specify the contingencies³⁰ that may modify the Network Upgrades that the

³⁰ The specific contingencies are withdrawal of a higher queued Interconnection Request; termination of a higher queued Interconnection Request prior to the project's in service date; the commercial Operation Date for a higher queued interconnection is delayed; the queue position is reinstated for a higher queued Interconnection Request whose queue position was subject to dispute resolution; changes occur in Transmission

(continued)

Interconnection Customer has committed to fund and for which it will receive credits.³¹ If a contingency occurs, the Interconnection Customer would be obligated under proposed article 11.3.2 to enter into an agreement to restudy its Generating Facility to determine whether its commitments regarding Network Upgrades will change.³² Midwest ISO stated that the proposed revisions provide the Interconnection Customer with more certainty regarding the possibility that an interconnection request will be restudied.

2. July 8 Order

35. The Commission's July 8, 2004 Order conditionally accepted Midwest ISO's proposed article 11.3.1 and article 11.3.2, and required modification of these articles to comply with Order No. 2003-A. Specifically, the Commission noted that while the proposed revisions provide some of the certainty sought by the Commission with regard to funding exposure, they did not on balance comply with the directives in Order No. 2003-A.³³

3. Request for Rehearing/Clarification

36. Midwest ISO, in its rehearing request, seeks further clarification regarding the deficiencies of its proposal under Order No. 2003.

4. Commission Conclusion

37. In Order No. 2003-A, the Commission clarified that the Interconnection Customer is responsible (and later may receive credits) for funding the cost of, among other things, Network Upgrades that originally were the responsibility of a higher queued Interconnection Customer that dropped out of the queue, if these Network Upgrades are necessary to support the interconnection of the Interconnection Customer's Generating Facility.³⁴ The Commission also recognized that this requirement creates uncertainty for

Provider's or Owner's equipment design standards or reliability criteria; or the facilities required to accommodate a higher queued Interconnection Request were modified constituting a Material Modification pursuant to section 4.4 of the LGIP.

³¹ *Citing* Order No. 2003 at P 409.

³² Transmittal Letter to January 20 Filing at 33.

³³ July 8 Order at P 149.

³⁴ Order No. 2003-A at P 320.

the Interconnection Customer because it may cause the Interconnection Customer's funding requirements to increase above initial estimates. The Commission noted that, with the withdrawal of the higher queued Interconnection Customer, such costs become a legitimate component of the Interconnection Customer's funding requirement. However, to help the Interconnection Customer manage this uncertainty, the Commission directed the Transmission Provider, when it tenders the draft LGIA, to provide an estimate of the Interconnection Customer's maximum possible funding exposure, if higher queued generating facilities drop out. Additionally, the Commission directed the Transmission Provider to provide an estimate of the costs of any Network Upgrades that were assumed in the Interconnection Studies for the Interconnection Customer that are an obligation of an entity other than the Interconnection Customer and that have not yet been constructed.

38. On reconsideration, the Commission will not require Midwest ISO to make any changes to articles 11.3.1 and 11.3.2 of its LGIA, and will accept those provisions without condition. The Commission reminds Midwest ISO, however, of the requirement in Order No. 2003-A that it provide an estimate of the Interconnection Customer's maximum possible funding exposure, and an estimate of the costs of any Network Upgrades, as explained above.³⁵

C. Timing of Operational Protocol

1. Request for Rehearing/Clarification

39. Midwest ISO seeks clarification that action is not required at this time with respect to its Operating Protocol for Existing Generators, filed in Docket No. ER02-488-004, pending final action in the instant dockets, and until the Commission has acted on the comments and protests filed by the various parties in Docket No. ER02-488-004.³⁶

40. On March 22, 2004, Midwest ISO submitted a revised Operating Protocol for Existing Generators in Docket No. ER02-488-004, in compliance with the Commission's September 10 Order.³⁷ In the September 10 Order, the Commission directed Midwest ISO to file revisions to its Operating Protocols necessary to conform the Operating Protocols with the requirements of Order No. 2003. Among other things, the

³⁵ *See id.*

³⁶ Request for Rehearing and Clarification of the Midwest ISO at 20.

³⁷ Midwest Independent Transmission System Operator, Inc., 104 FERC ¶ 61,245 (2003) (September 10 Order).

Commission ordered Midwest ISO to discontinue its existing business practice of not compensating Interconnection Customers for performing Emergency Redispatch upon the effective date of Order No. 2003. Meanwhile, the Commission directed Midwest ISO to continue to use its stakeholder process to further refine its Operating Protocols to resolve an issue relating to compensation for Emergency Redispatch service.³⁸

2. Commission Conclusion

41. The Commission clarifies that no further action is required regarding the Operating Protocols for Existing Generators filed in Docket No. ER02-488-004 until the Commission has issued a final order in the instant dockets³⁹ and has acted on comments and protests in Docket No. ER02-488-004.

D. Control over Distribution Upgrades

1. Midwest ISO's Proposal and the July 8 Order

42. In the July 8 Order, the Commission accepted in part, and rejected in part, certain of Midwest ISO's proposed revisions regarding the application of the LGIP and LGIA to interconnections to "distribution" systems. Midwest ISO had proposed revisions to section 2.1 which would apply the LGIP to interconnections to distribution systems either where the large generating facility plans to engage in sales for resale or where the distribution system or a portion thereof has been determined to be under the authority of the transmission provider. Midwest ISO had also proposed to revise language in section 3.2.2.1 and article 4.1.2.1 to require the Transmission Owner to "cause the construction of . . . Distribution Upgrades . . . subject to the approval of Governmental Authorities, needed to integrate the Generating Facility in the same manner as for any Large Generating Facility being designated as a Network Resource." Further, Midwest ISO had proposed to include language in section 7.3 providing that the interconnection system impact study "shall evaluate the impact of the proposed interconnection on the reliability and safety of the . . . Distribution System, if applicable."

43. Specifically, the Commission rejected the proposed revisions in section 2.1 to the extent that they would allow Midwest ISO to apply the LGIP and LGIA to distribution facilities not subject to the Midwest ISO OATT at the time the Interconnection Request is

³⁸ *Id.* at P 12.

³⁹ Per our August 26, 2004 Notice in this docket, Midwest ISO will make a further compliance filing on or before November 7, 2004.

made. The Commission noted its conclusion in Order No. 2003 that the Final Rule would apply generally where “an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made.”⁴⁰ The Commission determined that Midwest ISO’s proposed language in section 2.1 conflicted with this conclusion in Order No. 2003 because it appeared to improperly apply the LGIP and LGIA where there is only an intent to make a wholesale sale or transmit electric energy in interstate commerce, even if the distribution facilities in question are not under the Midwest ISO OATT.⁴¹

44. The July 8 Order, however, accepted the proposed revisions to section 3.2.2.1, article 4.1.2.1, and section 7.3, finding that these changes did not conflict with the Commission’s jurisdiction over distribution facilities outlined in Order No. 2003. The Commission also held that these proposed revisions did not conflict with the Midwest ISO Agreement, because that agreement provides that “each Transmission Owner shall provide such service on its distribution facilities as is necessary to effectuate transmission transactions administered to eligible customers under the [Midwest ISO OATT] by the Midwest ISO at approved rates.”⁴²

2. Request for Rehearing/Clarification

45. Midwest ISO Transmission Owners request rehearing of the Commission’s acceptance of Midwest ISO’s revisions to sections 3.2.2.1 and 7.3 and article 4.1.2.1. Specifically, they argue that the revised language in these provisions gives the Midwest ISO authority over distribution upgrades which exceeds the authority it is provided under the Midwest ISO Agreement. The Midwest ISO Transmission Owners note that Appendix B, section I of the Midwest ISO Agreement states that the “planning of all Non-Transferred Transmission Facilities, as well as all distribution facilities, shall be done by the Owners.”⁴³ They argue that while article four, section 1.E of the Midwest

⁴⁰ July 8 Order at P 112, *citing* Order No. 2003 at P 804.

⁴¹ July 8 Order at P 112.

⁴² Midwest ISO Agreement at Article Four, section 1.E.

⁴³ Request for Rehearing and/or Clarification of the Midwest ISO Transmission Owners at 4, *citing* Midwest ISO Agreement, Appendix B, section I.

ISO Agreement (cited by the Commission in the July 8 Order) “shows that the transmission owners have generally committed to allow distribution facilities to be used for wholesale transactions,” the more specific provisions of the Agreement (such as Appendix B, section I) clearly give the transmission owners control over the construction of distribution upgrades.⁴⁴ According to the Midwest ISO Transmission Owners, the revised language accepted in the July 8 Order would allow the Midwest ISO to require the construction of distribution upgrades based on its interconnection studies, contravening the Midwest ISO Agreement’s grant of control over distribution upgrades to transmission owners. Accordingly, the Midwest ISO Transmission Owners ask the Commission to direct Midwest ISO to revise sections 3.2.2.1 and 7.3 of its LGIP, and article 4.1.2.1 of its LGIA, “to ensure that the transmission owners maintain control over planning and construction of distribution facilities.”⁴⁵ Additionally, the Midwest ISO Transmission Owners argue that because the language proposed by Midwest ISO would effect a modification to the Midwest ISO Agreement, it may only be adopted by the Commission after making appropriate findings under section 206 of the FPA.⁴⁶

3. Commission Conclusion

46. The Commission reiterates the conclusion reached in the July 8 Order that the Midwest ISO LGIP and LGIA may apply to “distribution” facilities⁴⁷ only when such facilities are subject to the Midwest ISO OATT and the Interconnection Customer intends to make a wholesale sale in interstate commerce.⁴⁸ This conclusion results in a relatively small amount of distribution facilities that will be subject to the LGIP and LGIA. Furthermore, the expression of the Commission’s jurisdiction in Order Nos. 2003 and 2003-A does not extend the applicability of the LGIP and LGIA to “distribution facilities” that are not subject to a Commission-approved OATT at the time the

⁴⁴ *Id.* at 4-5.

⁴⁵ *Id.* at 6.

⁴⁶ 16 U.S.C. § 824e (2000).

⁴⁷ In Order No. 2003, the Commission noted that “[d]istribution’ is an unfortunately vague term,” and can refer to either lower-voltage facilities used only for local distribution and not subject to Commission jurisdiction, or lower-voltage facilities used for “jurisdictional service such as carrying power to a wholesale power customer for resale.” *See* Order No. 2003 at P 803.

⁴⁸ July 8 Order at P 112-113.

Interconnection Request is made, even if the Interconnection Customer intends to make a jurisdictional wholesale sale.⁴⁹ Thus, the Midwest ISO Transmission Owners should have no concern that the language in Midwest ISO's LGIP and LGIA will extend its reach to "distribution" facilities over which service is not already available under the Midwest ISO OATT.

47. Additionally, the Commission notes that under the procedures established in the Midwest ISO LGIP and LGIA, the Transmission Owner is a signatory to the Interconnection Agreement, and will have significant involvement in the study process. As a result, it will be aware of the system planning, reliability and safety implications of the requested interconnection, and will have input on these issues throughout the process.

48. Furthermore, while the Commission recognizes that the Midwest ISO Agreement states in Appendix B, section I, that "planning of all Non-Transferred Transmission Facilities, as well as all distribution facilities, shall be done by the Owners," the Commission also notes the repeated statement in the Agreement that "[t]he Midwest ISO shall engage in such planning activities as are necessary to fulfill its obligations under this Agreement and the Transmission Tariff."⁵⁰ Taken together, the Commission reads these provisions in the Midwest ISO Agreement as giving the Transmission Owners primary responsibility and control over the planning and construction of their "distribution" facilities, but also recognizing that the Midwest ISO is responsible for carrying out its responsibilities under its OATT. Pursuant to Order Nos. 2003 and 2003-A, Midwest ISO now has a responsibility under its OATT to facilitate interconnection to transmission and to "distribution" facilities under the OATT when the Interconnection Customer intends to make a jurisdictional sale of power.

49. Based on all of the foregoing, the Commission believes that Transmission Owners are responsible for planning of all Non-Transferred Transmission Facilities as well as all "distribution" facilities. This planning includes studies necessitated by interconnection requests. However, Midwest ISO has responsibility to facilitate transmission service and wholesale distribution service for facilities included under its OATT. In directing jurisdictional interconnection, the Midwest ISO will not be usurping the primary control of the Transmission Owners over the planning and construction of "distribution" facilities. To the contrary, it will simply be carrying out its responsibility to invoke the

⁴⁹ Order No. 2003-A at P 735.

⁵⁰ See Midwest ISO Agreement, Article Three, section I(C); see also Midwest ISO Agreement, Appendix B, section I ("the Midwest ISO shall have only that planning authority necessary to carry out its responsibilities under the Transmission Tariff.")

Transmission Owners' obligation to provide service over distribution facilities in order to facilitate interconnection under the Midwest ISO OATT, as the Midwest ISO Agreement requires. The Commission does not view this as a conflict, but rather a necessary balancing of responsibility under both the OATT and the Midwest ISO Agreement.

E. Calculation of Repayment for Network Upgrades

1. Midwest ISO's Proposal and the July 8 Order

50. In the July 8 Order, the Commission accepted Midwest ISO's general proposal to implement the "default" pricing proposal of Order No. 2003, including the *pro forma* crediting proposal, as article 11.4 of its LGIA. The Commission noted that Midwest ISO intends that the default pricing proposal will remain in effect only until a new pricing policy, based on the Organization of Midwest ISO States (OMS) principle of payment for upgrades by those that cause and benefit from the upgrades, can be established.⁵¹

2. Request for Rehearing/Clarification

51. On rehearing, Midwest ISO Transmission Owners argue that the Commission erred by accepting the language proposed by Midwest ISO in article 11.4.1 of its LGIA as part of its acceptance of the default pricing proposal and the *pro forma* crediting proposal. Specifically, Midwest ISO Transmission Owners object to the following paragraph in article 11.4.1 of the Midwest ISO LGIA:

If the Generating Facility is designated a Network Resource under the Tariff, and in the absence of another mutually agreeable payment schedule, repayments shall be established equal to the applicable Tariff rate for firm point-to-point transmission service multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) studied pursuant to section 3.2.2.2 of the LGIP.

52. Midwest ISO Transmission Owners contend that this provision is contrary to Order No. 2003-A, where the Commission deleted from the *pro forma* LGIA included in Order No. 2003 what they contend was similar language in article 11.4.2. The deleted language stated:

Refunds are to be paid without regard to whether the Interconnection Customer contracts for transmission service on the Affected System. If the Interconnection Customer does not contract for transmission service, and in the absence of another

⁵¹ See July 8 Order at P 38.

mutually acceptable payment schedule, refunds shall be established at a level equal to the Affected System's rate for firm point-to-point transmission service multiplied by the output of the Large Generating Facility assumed in the

Interconnection Facilities Study. All refunds must be paid within five years of the Commercial Operation Date.

53. Midwest ISO Transmission Owners note that the Commission made this change in Order No. 2003-A in response to arguments that providing transmission credits, when there are no transmission revenues from which to provide such credits, could cause losses by transmission owners and native load customers. Specifically, they note the Commission's statement in Order No. 2003-A that the change would "ensure . . . that the native load and other Transmission Customers of the Transmission Provider and the Affected System will not subsidize Network Upgrades."⁵² Further, Midwest ISO Transmission Owners point out the Commission's determination in Order No. 2003-A that it would only require Transmission Providers to give credits to an Interconnection Customer for Network Upgrades to the extent that the Interconnection Customer takes transmission service that includes the interconnected generating facility as the source of power, noting the Commission's determination that "allowing the Interconnection Customer to receive credits for services unrelated to the Generating Facility tends to shift risk from the entity in control of the investment to native load and other Transmission Customers."⁵³

54. Midwest ISO Transmission Owners contend that the language in article 11.4.1 of Midwest ISO's LGIA is contrary to these Commission statements. They argue that under this language, "generators will be designated as network resources, which will not result in *any* incremental increase in transmission revenues under the current Midwest ISO rate design."⁵⁴ Yet, according to Midwest ISO Transmission Owners, "the Midwest ISO will impute transmission revenues to the transmission owner and require it to give back those imputed transmission revenues over five years," resulting in subsidization by native load customers and transmission owners in contravention of the Commission's statement in Order No. 2003-A. Additionally, Midwest ISO Transmission Owners assert that article 11.4.1 violates the Commission's finding in Order No. 2003-A that credits should only be

⁵² Order No. 2003-A at P 11.

⁵³ *Id.* at P 615.

⁵⁴ Request for Rehearing and/or Clarification of Midwest ISO Transmission Owners at 10.

given for “payments that are made for transmission services taken with respect to the Generating Facility.”⁵⁵ Midwest ISO Transmission Owners also argue that article 11.4.1, by requiring that reimbursements occur over a five-year period, violates Order No. 2003-A, where the Commission struck this requirement. Finally, Midwest ISO Transmission owners reiterate the statement in their May 17, 2004 protest that article 11.4.1, because it differs from the *pro forma* LGIA in Order No. 2003-A, constitutes an addition for which Midwest ISO bore the burden of justifying as fitting the needs of its region. They argue that Midwest ISO failed to meet this burden, and that the Commission failed to engage in reasoned decision-making by not considering this contention in the July 8 Order.

3. Commission Conclusion

55. The Commission does not agree with the Midwest ISO Transmission Owners that the language proposed by Midwest ISO and accepted in the July 8 Order in article 11.4.1 is the same as language that was previously struck from article 11.4.2 of the *pro forma* LGIA in Order No. 2003-A. This struck language applied to the situations where upgrades are required to Affected Systems, and had a different purpose; requiring that refunds be paid “without regard to whether the Interconnection Customer contracts for transmission service on the Affected System.” By contrast, Midwest ISO’s language applies when the Generating Facility is designated a Network Resource on the Transmission Provider’s system, and does not require that refunds be paid regardless of whether transmission service is actually taken, as the deleted article 11.4.2 in the *pro forma* LGIA required.

56. Approving this language in Midwest ISO’s LGIA is consistent with the Commission’s position in Order No. 2003-A that crediting is only appropriate “for payments that are made for transmission service taken with respect to the Generating Facility.”⁵⁶ Under Midwest ISO’s language in article 11.4.1, the Interconnection Customer will be credited only for payments for transmission service taken with respect to the Generating Facility.

57. The Commission also believes that Midwest ISO’s language in article 11.4.1 is consistent with the *pro forma* LGIA because it adds detail to the existing language implementing crediting to an Interconnection Customer. Because the Network Service charge is based upon load rather than the level of Network Resources, it is necessary to determine the portion of the Network Service Charge that is attributable to the Network

⁵⁵ Order No. 2003-A at P 615.

⁵⁶ *Id.*

Resources for which the credits are due. Midwest ISO's proposal to use the point-to-point rate and the capability of the unit to impute network service charges associated with the resource is a reasonable method to make this determination. Midwest ISO Transmission Owners don't challenge the reasonableness of the methodology per se, but challenge the applicability of the Commission's policy regarding transmission service credits to Network Customers. However, this was addressed in *American Electric Power Service Corporation*.⁵⁷

58. Regarding the payback requirement, the Commission notes that the Midwest ISO's language is in fact the language required under the *pro forma* LGIA.⁵⁸

F. Modifications to Attachment O

1. Midwest ISO's Proposal

59. In the January 20 Filing and the April 26 Filing, Midwest ISO proposed to add language to article 11.4.1 of the LGIA that denies payment of credits due to an Interconnection Customer for Network Upgrades if the Generating Facility's output at the Commercial Operation Date is five percent below the threshold level at which Network Upgrades would not have been required but for the Interconnection Request. Under this proposal, interest does not accrue during periods when either the Network Upgrades have been determined not to be needed pursuant to article 11.4.1 or the Interconnection Customer has suspended construction pursuant to article 11. Repayment, plus interest, commences when the Network Upgrades are needed to accommodate the demonstrated capacity of the Generating Facility or other firm uses of the Transmission or Distribution System.

2. July 8 Order

60. The July 8 Order accepted Midwest ISO's proposal to defer credits in certain circumstances until the Network Upgrades built for an Interconnection Customer are needed or used. The Commission conditionally accepted Midwest ISO's proposal that interest not accrue during the deferral period. The Commission expressed a concern, however, that with the deferral of such credits without interest once the network upgrades are in service, the Transmission Owner will over-recover the cost of such facilities

⁵⁷ *American Electric Power Service Corporation*, 91 FERC ¶ 61,308 at 62,051-62,052. (2000)

⁵⁸ See April 26 Filing.

through the formula rate in Attachment O of the Midwest ISO OATT. The July 8 Order required Midwest ISO to propose appropriate modifications to Attachment O to address this concern.

3. Request for Rehearing/Clarification

61. Midwest ISO seeks clarification regarding the specific nature of the Commission's concerns regarding the modifications required of Attachment O, as well as additional time to evaluate appropriate mechanisms to resolve the concerns. Midwest ISO believes that applying an adjustment to Account 106 of the Uniform System of Accounts⁵⁹ may address the concern regarding continuation of interest charges that are not paid to the generator when credits are deferred without interest. However, the Midwest ISO requires additional clarification in order to address satisfactorily the Commission's concerns.⁶⁰

4. Commission Conclusion

62. The Commission clarifies that Midwest ISO must modify its rate formula so as to preclude a Transmission Owner from earning a return on assets which are being financed by Interconnection Customers but are not yet required. Midwest ISO must modify the Attachment O formula to remove the not-yet-useful assets from net plant prior to applying the rate of return during the associated deferral period.

G. Reactive Supply Voltage Control

1. Midwest ISO's Proposal and the July 8 Order

63. Midwest ISO proposed to revise article 9.6.3 of the LGIA to reference and apply a compensation schedule for reactive power that will be filed by the Midwest ISO as a revision to its current Schedule 2 under the Midwest ISO OATT. The July 8 Order directed Midwest ISO to file an amended Schedule 2, Reactive Supply and Voltage Control from Generation Sources Service, within sixty days.

⁵⁹ See Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, Account 106, Completed Construction Not Classified-Electric (Major only), 18 C.F.R. Part 101 (2004).

⁶⁰ Request for Rehearing and Clarification of the Midwest ISO at 17-18.

2. Request for Rehearing/Clarification

64. In their request for rehearing and clarification, Midwest ISO states that on June 25, 2004, prior to the July 8 Order, the Midwest ISO filed Schedule 21, Reactive Supply and Voltage Control from Independent Generation Resources Service, which Midwest ISO proposed as a supplement to Schedule 2 of the Tariff. Midwest ISO requests that the

Commission clarify that the June 25 filing complies with the Commission's directive that such compensation schedule be filed.⁶¹

3. Commission Conclusion

65. Midwest ISO's June 25, 2004 filing complies with the directive in the July 8 Order that a reactive power schedule be filed with the Commission.

H. Dispute Resolution Procedures

1. Midwest ISO's Initial Proposal

66. Midwest ISO proposed to revise section 13.5 and article 27 to apply the dispute resolution procedures that are currently in effect under its OATT. Midwest ISO stated that this revision of the *pro forma* LGIP and LGIA dispute resolution procedure is necessary to make tariff administration more effective, and to make dispute resolution under the LGIP and LGIA consistent with the established dispute resolution procedures already in place.

2. July 8 Order

67. The July 8 Order stated that Midwest ISO did not support the proposed modifications in terms of improving parties' performance of their responsibilities under Order Nos. 2003 and 2003-A or in terms of benefits to customers. The Commission rejected the revisions without prejudice to Midwest ISO providing additional support in a future filing. In the interim, the Commission directed Midwest ISO to adopt the dispute resolution procedure in the *pro forma* LGIP and LGIA.

⁶¹ *Id.* at 18.

3. Request for Rehearing/Clarification

68. Midwest ISO states in its request for rehearing and clarification that its long-term goal is to achieve a uniform dispute resolution process, and thus provide all stakeholders with certainty regarding the means by which disputes will be resolved. Midwest ISO notes that it has been working with Commission staff to conform the various existing dispute resolution provisions applicable under the Tariff and the Agreement of Transmission Facilities Owners to Organize the Midwest ISO to achieve this goal. Midwest ISO requests that the Commission provide guidance with respect to the Midwest ISO's ongoing efforts to facilitate transmission customer relations and the resolution of future disputes, and clarify the circumstances under which the Commission would accept language in the LGIP and LGIA that is similar to what the Midwest ISO proposed in its previous compliance filings.⁶²

4. Commission Conclusion

69. The Commission continues to encourage Midwest ISO to develop dispute resolution procedures that increase certainty for all stakeholders. On rehearing, in the interest of efficiency and pursuant to the independent entity standard, the Commission will allow Midwest ISO to incorporate into the LGIP and LGIA itself the dispute resolution procedures that are currently in effect under its OATT.

I. Recovery of Operating and Maintenance Costs

1. Midwest ISO's Proposal

70. Midwest ISO proposed to revise article 10.5 of the *pro forma* LGIA, which requires interconnection customers to be responsible for all reasonable operating and maintenance expenses, including overheads associated with, among other items, operating, maintenance, repair and replacement of the Transmission Provider's Interconnection Facilities.⁶³ Specifically, Midwest ISO proposed to add language in this article to condition recovery of operating and maintenance expenses "to the extent required by the Transmission Owner on a comparable basis."

⁶² *Id.* at 19.

⁶³ Note that in the July 8 Order, the Commission allowed Midwest ISO to change "Transmission Provider" to "Transmission Owner" in its LGIA and LGIP. See July 8 Order at P 70, n. 70.

2. July 8 Order

71. The Commission approved this proposed revision. The Commission reasoned that including this language in article 10.5 to limit recovery of costs by transmission owners on a comparable basis serves the Commission's goal, expressed in Order No. 2003, to "limit opportunities for Transmission Providers to favor their own generation."⁶⁴ Further, the Commission disagreed with the Midwest ISO Transmission Owners' assertion that such language violates the FPA by placing a condition on the ability of a Transmission Owner to collect its costs. Specifically, the July 8 Order held that "Midwest ISO's proposed language in article 10.5 of the LGIA, by conditioning the ability of a Transmission Owner to collect operation and maintenance expenses not only on the reasonableness of such expenses, but also on their being assigned to interconnection customers on a comparable (*i.e.*, not unduly discriminatory) basis, is entirely consistent with [the FPA]."⁶⁵

3. Request for Rehearing/Clarification

72. Midwest ISO Transmission Owners request clarification from the Commission regarding how article 10.5 of the Midwest ISO's LGIA should be implemented. While not disagreeing that they should be required to act on a comparable basis, they reiterate a concern that the additional language in article 10.5 approved in the July 8 Order "could allow a generator to withhold payments unilaterally simply based on its own opinion that the transmission owner was not acting comparably."⁶⁶ They ask that the Commission specifically clarify what process a Transmission Customer would be required to follow in determining whether the Transmission Owner acted on a comparable basis, such as dispute resolution or a FERC proceeding. Midwest ISO Transmission Owners contend that allowing a generator to withhold payments unilaterally based on its own determination of comparability would be unreasonable and could lead to abuse.

⁶⁴ *Id.* at P 73, *citing* Order No. 2003 at P 12.

⁶⁵ July 8 Order at P 73.

⁶⁶ Request for Rehearing and/or Clarification of the Midwest ISO Transmission Owners at 13.

4. Commission Conclusion

73. As noted above, the Commission approved Midwest ISO's revision to article 10.5 of the *pro forma* LGIA because it serves the broader goal of Order No. 2003 to limit the opportunity for Transmission Providers to act in a discriminatory manner. If an Interconnection Customer believes that a Transmission Owner is not acting on a comparable basis with respect to the recovery of operations and maintenance expenses pursuant to article 10.5, we would expect the customer to initiate the appropriate dispute resolution procedures in the LGIA.

The Commission orders:

(A) The requests for rehearing and motions for clarification are granted in part, and denied in part, as discussed in the body of this order.

(B) Midwest ISO's September 7, 2004 compliance filing is accepted to become effective on July 8, 2004.

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

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.