

112 FERC ¶ 61,270
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-1047-000 ER05-1047-001 ER05-1048-000 ER05-1048-001
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ORDER ACCEPTING SERVICE AGREEMENTS,
SUBJECT TO CONDITIONS

(Issued September 15, 2005)

1. In this order, we conditionally accept two executed wind generation interconnection service agreements (Interconnection Agreements) among the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), certain Midwest ISO Transmission Owners and Interconnection Customers. We condition our acceptance on Midwest ISO's bringing the Interconnection Agreements into compliance with Midwest ISO's Order No. 2003 *pro forma* interconnection agreement. Alternatively, Midwest ISO may elect to withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions.¹

Background

2. Both Interconnection Agreements involve wind generators seeking to interconnect to the transmission system of Great River Energy (Great River), a transmission owner belonging to the Midwest ISO. The two interconnection customers are East Ridge Transmission, LLC (East Ridge) (Docket Nos. ER05-1047-000 & -001) and Wolf Wind Transmission, LLC (Wolf Wind) (Docket Nos. ER05-1048-000 & -001). East Ridge and Wolf Wind, who are the contracting entities, do not own the wind generating facilities. Rather, they were created by the various investors in the wind generating equipment to

¹ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 61,401 (2005) (Order No. 2003-C).

own and operate, on behalf of the investors collectively, the collection system, substation, certain Customer Interconnection and Transmission Facilities (as described in each Interconnection Agreement) and transmission lines to provide outlet, transformation, interconnection and transmission for the wind turbines. The East Ridge facilities are wind turbine generators located in Murray County, Minnesota. The Wolf Wind facilities are wind turbine generators located in Nobles County, Minnesota.

3. Midwest ISO states that each Interconnection Agreement has been revised² to reflect the specific and unique circumstances of these interconnections as it relates to the particular parties involved. It explains that the *pro forma* interconnection agreement has been modified to allow for the specific characteristics of a Customer who is not the generator or owner of the wind generating facilities. Specifically, the terms “Customer” and “Customer Interconnection and Transmission Facilities” have been substituted for the terms “Generator” and “Generator Interconnection Facilities,” respectively, and associated definitions have been revised in a like manner. Section 4.15, Relationship with Projects, has been revised by adding a requirement that there be an agreement between the interconnection customer and the investors in the wind generating facilities to enable the interconnection customer’s compliance with certain provisions of the Interconnection Agreement. Also, the *pro forma* language is generally revised to require the interconnection customer to “cause” actions to be undertaken rather than doing them itself.

4. Midwest ISO requests waiver of the Commission’s prior notice requirement to allow an effective date of May 23, 2005, for the Interconnection Agreement filed in Docket No. ER05-1047-000 and an effective date of May 12, 2005, for the Interconnection Agreement filed in Docket No. ER05-1048-000.

Notice of Filings

5. Notices of the filings in Docket Nos. ER05-1047-000, ER05-1048-000, ER05-1047-001 and ER05-1048-001 were published in the *Federal Register*, 70 Fed. Reg. 44,092, with interventions and protests due on or before August 8, 2005. Great River filed timely Motions to Intervene in Docket Nos. ER05-1047-001 and ER05-1048-001.

² The revisions were made to the *pro forma* Interconnection and Operating Agreement provided in Attachment R-4 of the Midwest ISO FERC Electric Tariff, Third Revised Vol. No. 1.

Discussion

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make Great River a party to this proceeding.

7. In Order No. 2003, the Commission required Transmission Providers (such as the Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with those documents.³ The use of *pro forma* documents ensures that Interconnection Customers receive non-discriminatory service and that all Interconnection Customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.⁴

8. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for the filing of a non-conforming agreement.⁵ The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.⁶

9. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming agreement.⁷ We note that a Transmission Provider seeking a case-by-case specific deviation from a *pro forma* interconnection agreement bears a burden higher than the

³ See Order No. 2003.

⁴ See *Id.* at P 10 (“it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues”).

⁵ *Id.* at P 913-15.

⁶ Order No. 2003-B at P 140 (“each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision”).

⁷ See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098 at P 9 (2005) (*PJM Order*); see also *El Paso Electric Co.*, 110 FERC ¶ 61,163 at P 4 (2005).

“consistent with or superior to” standard or the standard for independent entities to obtain variations that are used by the Commission in evaluating modifications to its *pro forma* interconnection agreement and interconnection procedures. A Transmission Provider seeking a deviation from its approved *pro forma* interconnection agreement must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.⁸

10. As explained above, certain changes proposed by the Midwest ISO are necessary because of the ownership structure of the wind generating facilities. East Ridge and Wolf Wind are the entities created by the various investors of the wind generating equipment to own and operate, on behalf of the investors collectively, generation and interconnection facilities. We find that the changes to the *pro forma* interconnection agreement made to accommodate this ownership structure are justified. These changes include substitution of “Customer” and “Customer Interconnection and Transmission Facilities” for “Generator” and “Generator Interconnection Facilities,” as well as provisions that establish the relationship between the interconnection customer and the wind generation facilities.

11. We also find to be justified the revision to the *pro forma* language requiring the interconnection customer to “cause” the action to be undertaken. Section 4.15, Relationship with Projects, was added to the *pro forma* interconnection agreement to require an agreement between the interconnection customer and the investors of the wind generating facilities to enable the interconnection customer’s compliance with certain provisions of the Interconnection Agreement. We find this addition to be justified as well. These changes are accepted as changes necessitated by the structure of the ownership of the wind generation facilities.

12. Midwest ISO has, however, made other changes to the *pro forma* interconnection agreement that it has not borne the burden of justifying. These non-conforming provisions include: (1) removal of all references to Independent Transmission Companies; (2) a requirement that the Customer enter into agreements with the project sponsors prior to the Backfeed Date as specified in Appendix A; (3) a change in the Reactive Power factor in section 4.7.2; (4) the addition of Interconnection Facilities Study, “or their equivalent” in section 9.1.1; (5) revising section 10.1 to remove the language “making all appropriate arrangements for station service requirements including the delivery component of transmission service if applicable. If Customer supplies its station service, the station service loads shall be netted against Customer’s output” and replacing it with “making all appropriate metering arrangements for Station Power service requirements;” (6) a change to section 13.2 requiring the Customer to provide assurances of creditworthiness within 15 days instead of the *pro forma* 7 day-requirement; (7) a change in personal injury liability coverage from \$25 million to \$10

⁸ See *PJM Order* at P 9.

million per occurrence; and, (8) the addition of section 23.5, requiring the Transmission Owner to serve the Midwest ISO with notice of the Operation Date on the same day it is forwarded to the Customer.

13. The Commission will conditionally accept the Interconnection Agreements, subject to Midwest ISO's re-filing them, within 30 days of the issuance of this order, to conform with its *pro forma* Interconnection Agreement that was in effect on the day the Interconnection Agreements were executed. The non-conforming terms and conditions that differ from Midwest ISO's *pro forma* interconnection agreement are accepted and rejected, as discussed in the body of this order. Alternatively, with respect to those nonconforming provisions that Midwest ISO has not satisfied its burden of justifying, the Midwest ISO may withdraw the Interconnection Agreements and re-file them with sufficient justification for the non-conforming provisions. If Midwest ISO wishes to change a provision of its *pro forma* interconnection agreement, it must file to make the change on a generic basis.⁹

14. We grant the parties' request for waiver of our prior notice requirement, and allow the agreements to become effective on the dates specified, as requested.¹⁰

The Commission orders:

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

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

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ See, e.g., *Sierra Pacific Power Co.*, 111 FERC ¶ 61,415 (2005).

¹⁰ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).