

117 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

The Midwest Independent Transmission
System Operator, Inc.

Docket No. ER06-1051-000
ER06-1051-001
ER06-1051-002
ER06-1051-003

ORDER ACCEPTING AND SUSPENDING INTERCONNECTION
AGREEMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued October 3, 2006)

1. On May 26, 2006, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) submitted an unexecuted Large Generator Interconnection Agreement (LGIA) among MinnDakota Wind LLC (MinnDakota) as interconnection customer, the Midwest ISO as transmission provider, and Xcel Energy Services, Inc. (Xcel) on behalf of Northern States Power Company (NSP) as transmission owner. At issue is a dispute regarding an alleged change in the point of interconnection and the applicability of LGIA article 11.4 pricing provisions following the Commission's order on the Midwest ISO's transmission expansion planning protocols.¹ In this order, the Commission conditionally accepts and suspends the LGIA until October 4, 2006 and establishes hearing and settlement judge procedures.

Background

2. The unexecuted interconnection agreement submitted by the Midwest ISO sets forth the rates, terms and conditions for the interconnection of MinnDakota's planned 200 MW wind generation project to be located near the community of White in Brookings County, South Dakota. Based on its location, the generator would be interconnected with a new, approximately 28 mile long, 115 kV line that would interconnect the existing White, South Dakota substation owned by the Western Area Power Administration (WAPA) with NSP's Buffalo Ridge substation, located in Lake Benton, Minnesota.

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (2006) (February 3 Order), *reh'g* pending.

3. The Midwest ISO explains that it is filing the LGIA in unexecuted form due to a dispute among the parties concerning MinnDakota's request to change the point of interconnection provided in the original interconnection request.² According to the Midwest ISO, after all applicable interconnection studies were completed, but before the interconnection agreement was signed, MinnDakota requested that the Midwest ISO change the point of interconnection identified in its interconnection request (*i.e.*, NSP's planned 115kV/34.5kV Yankee substation) to NSP's newly planned 345kV/115kV Brookings substation.³

4. The Midwest ISO informed MinnDakota that its request to change the point of interconnection after the completion of the interconnection studies would constitute a material modification under the large generator interconnection procedures (LGIP), would result in a loss of queue position, and would require a new interconnection request.

5. The Midwest ISO explains that many projects located in that area are currently under study and affect one another, and allowing an interconnection customer to change

² While the Midwest ISO filed the Interconnection Agreement in accordance with the *pro forma* Large Generator Interconnection Agreement contained in Attachment X of its Open Access Transmission and Energy Markets Tariff, the interconnection procedures followed appear to be those contained in Attachment R of the Open Access Transmission Tariff (OATT) that was in effect prior to the issuance of Order No. 2003, *i.e.*, FERC Electric Tariff, Second Revised Volume No. 1, effective April 1, 2002. Specifically, pertinent information regarding interconnection procedures is located at section 3 (Interconnection Requests), section 5 (Interconnection Evaluation Study), and section 6 (Interconnection Facilities Study) of the predecessor OATT.

According to the record in this proceeding, the interconnection request here was processed as follows: (1) the Midwest ISO placed MinnDakota's interconnection request in the Midwest ISO's queue (June 2, 2003); (2) the Midwest ISO conducted a scoping meeting with the parties (June 26, 2003); (3) the Midwest ISO and MinnDakota signed an interconnection evaluation study agreement (December 19, 2003); (4) the Midwest ISO gave a generation interconnection study report to MinnDakota (September 9, 2004); (5) the Midwest ISO and MinnDakota signed a facilities study agreement (April 11, 2005); (6) the Midwest ISO gave a facilities study report to MinnDakota (December 2, 2005); (7) the Midwest ISO gave MinnDakota an LGIA to review and sign (January 13, 2006); (8) MinnDakota requested that the Midwest ISO file the LGIA unexecuted (April 27, 2006); and (9) MinnDakota issued notice of suspension to Midwest ISO and NSP.

³ The Midwest ISO does not give a detailed description of the Brookings substation in its filing, but NSP states that the Brookings substation will be in South Dakota, adjacent to the White substation.

its point of interconnection after completion of studies would adversely affect the Midwest ISO's ability to process interconnection requests, assign upgrade costs, and timely manage the study process.

6. The Midwest ISO further explains that although the development of the Brookings substation arose after the study process was complete, at the time the studies were being performed the point of interconnection for the instant interconnection request was made based on the information that was available during the scoping meeting. The Midwest ISO contends that subsequent events, such as the adoption of the proposed planned new substation that affects the costs of interconnection, are factors for MinnDakota's consideration in determining whether to proceed with the instant interconnection agreement.

7. The Midwest ISO states that it gave MinnDakota an opportunity to submit a new interconnection request, but MinnDakota did not do so. Instead, says the Midwest ISO, MinnDakota requested that the Midwest ISO file the unexecuted LGIA and present the disputed issues to the Commission.

8. On the issue of cost recovery for network upgrades, the Midwest ISO explains that the unexecuted LGIA reflects the revisions to the pricing provisions in article 11.4 of the *pro forma* LGIA that were accepted by the Commission in the February 3 Order and made effective February 5, 2006.

9. The Midwest ISO requests an effective date for the interconnection agreement that coincides with the date the Commission issues an order in this proceeding.

Notice of the Filing, Notices of Intervention and Protests

10. Notice of the Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 33,741 (2006), with interventions and protests due on or before June 16, 2006. MinnDakota filed a timely motion to intervene and protest. Xcel, on behalf of NSP, filed a timely motion to intervene. On June 19, 2006, Xcel filed an answer to MinnDakota's protest.

11. On July 5, 2006, Commission staff issued a deficiency letter requesting that the Midwest ISO, NSP, and MinnDakota provide more information and supporting documentation regarding the events that transpired in the study and negotiating process that preceded the LGIA.

12. Notice of Xcel's response to the Commission's July 5, 2006 deficiency letter was published in the *Federal Register*, 71 Fed. 47,197 (2006), with interventions and protests due on or before August 23, 2006. Notice of the Midwest ISO's and MinnDakota's responses to the Commission's deficiency letter was published in the *Federal Register*,

71 Fed. 47,494 (2006), with interventions and protests due on or before August 25, 2006. Xcel filed a timely response to MinnDakota's response to the deficiency letter. On September 6, 2006, MinnDakota filed an answer to Xcel's response.

Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁵ prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept Xcel's and MinnDakota's answers because they have provided information that assisted us in our decision-making process.

B. MinnDakota's Request to Change the Point of Interconnection

1. MinnDakota's Protest

15. In its protest, MinnDakota asserts that the LGIA is unjust and unreasonable, emphasizing that the Midwest ISO and the transmission owner altered the plan of service, and failed to address the comments that MinnDakota raised. According to MinnDakota, its interconnection request was "listed as MISO queue number 37774-01 with a point of interconnection in Brookings County, South Dakota."⁶ MinnDakota further maintains that the facilities study report (FSR) reflects a plan of service that varies significantly from the previously executed interconnection evaluation study agreement (IESA), the generation interconnection study report (GISR), and the facilities study agreement (FSA) because it adds a second substation to the plan of service and moves the original point of interconnection – the Yankee substation – approximately fifteen miles from South Dakota to Minnesota. MinnDakota contends that the Yankee substation was originally planned near the proposed site of the Brookings substation, and explains that it now requests a point of interconnection at the Brookings substation. MinnDakota argues that the relocation of the Yankee substation and subsequent insertion of the Brookings substation near the original planned site of the Yankee substation effectively allows MinnDakota to choose a point of interconnection in name only while depriving it of an opportunity to make reasonable siting decisions based on cost and reliability considerations.

⁴ 18 C.F.R. § 385.214 (2006).

⁵ *Id.* § 385.123(a)(2).

⁶ MinnDakota Protest at 2.

16. MinnDakota also argues that the proposed network upgrades associated with the building of the Brookings substation are not the least cost alternative option available. According to MinnDakota, the network upgrades are more environmentally intrusive than the one-substation plan of service originally agreed upon by the parties. MinnDakota further asserts that the Midwest ISO has not justified the need for the Brookings substation or the higher cost plan of service, and the Midwest ISO did not allow MinnDakota to fully review and discuss the FSR. Therefore, MinnDakota contends that the Midwest ISO's decision not to allow the point of interconnection in South Dakota is based on commercial preference, rather than system reliability concerns.

17. MinnDakota also states it believes the Midwest ISO should have advised it of the option to interconnect at the Brookings substation earlier, pursuant to section 4.4⁷ of the LGIP. MinnDakota continues that it would have agreed to this option, and that section 4.4 would have permitted it to modify the point of interconnection without losing its queue position.

2. Xcel's Answer

18. Xcel supports the Midwest ISO's request that the Commission accept the Interconnection Agreement without further proceedings. It argues that the Midwest ISO correctly applied the Commission's policies in determining MinnDakota was not permitted to materially modify the interconnection request by requesting a change in the point of interconnection after all interconnection studies have been completed, without first making a new interconnection request.

⁷ Section 4.4 of the LGIP states (in relevant part):

Notwithstanding the above, during the course and prior to the completion of the Interconnection Studies, the Interconnection Customer, Transmission Owner or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request. To the extent the identified changes are acceptable to the Transmission Provider, Transmission Owner and Interconnection Customer, such acceptance not to be unreasonably withheld, Transmission Provider shall modify the Point of Interconnection and/or configuration in accordance with such changes and proceed with any restudies necessary to do so in accordance with Section 6.4, Section 7.6 and Section 8.5 as applicable and Interconnection Customer shall retain its Queue Position.

19. Xcel asserts that MinnDakota's interconnection request did not specify an exact location for the point of interconnection, but only listed its generator location as being near White, South Dakota, which is close to WAPA's White substation. Xcel further contends that the IESA later signed by the Midwest ISO and MinnDakota, included plans for the interconnection point to be at the Yankee substation, but with no exact location.

20. According to Xcel, NSP proposed five possible alternative locations for the Yankee substation (all in Lincoln County, Minnesota), in its environmental and siting request filed with its jurisdictional authority, the Minnesota Environmental Quality Board. Xcel maintains that MinnDakota could have been apprised of the developments in the regulatory process, by intervening, but it did not. Additionally, Xcel indicates that the decision to build the Brookings substation was made "[a]s a result of discussions with WAPA and the Midwest ISO."⁸ Xcel maintains this decision was made after the Midwest ISO prepared its GISR, but before the FSA was completed. Xcel asserts that when MinnDakota responded to the FSR, MinnDakota did not make specific comments regarding the final location of the Yankee substation, and only "suggested" changing its point of interconnection to the Brookings substation.

21. In response to MinnDakota's assertion that the Midwest ISO had a duty to inform MinnDakota earlier of the plan for the Brookings substation, Xcel maintains that section 4.4 does not impose an affirmative duty on the transmission provider to identify changes, because the language states that the "Transmission Provider may identify changes" (emphasis added). Xcel also argues that MinnDakota's argument fails to recognize that interconnecting to the Brookings substation, although geographically closer, nevertheless may be more expensive than interconnecting to the Yankee substation because it would require expensive step-up transformers and other network upgrades.

3. Commission Conclusion

22. Upon review of the filings, including the subsequent responses to the deficiency letter, the Commission finds that the filings raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

23. Various discrepancies have come to light in analyzing the circumstances related to this unexecuted LGIA and the study process that preceded it. Such issues cannot be resolved based on the filings submitted to date, and the hearing and settlement procedures are to examine all the issues raised by the parties to these filings. For example, the location of the original planned point of interconnection remains unclear. MinnDakota argues that it was in South Dakota based on the executed IESA. MinnDakota states that the project was entered into the Midwest ISO queue with the point of interconnection in

⁸ NSP Answer to MinnDakota Protest at 9.

Brookings County, South Dakota, on June 2, 2003.⁹ But the Midwest ISO has provided the Commission with a copy of an email dated May 20, 2004, from Xcel to the Midwest ISO that states the point of interconnection will be in Lincoln County, Minnesota. Further complicating matters is the fact that the GISR shows the point of interconnection in South Dakota. The Midwest ISO maintains that the specified location in South Dakota was a mistake and that the error in the GISR (dated September 9, 2004) was the fault of its subcontractor, ABB.

24. The issues to be considered at the hearing include, but are not limited to: (1) whether the original point of interconnection was planned to be in Minnesota or South Dakota; (2) whether the location of the planned Yankee substation changed from South Dakota to Minnesota; (3) whether MinnDakota had a reason to expect that its proposed generator would not be interconnected at a substation in South Dakota; (4) how and when MinnDakota learned that it would be interconnected at the Yankee substation to be constructed in Lincoln County, Minnesota, and whether that notice was sufficient under the LGIP; (5) which point of interconnection (*i.e.*, the South Dakota or the Minnesota location) was studied for the GISR; (6) how and when MinnDakota learned about the planned Brookings substation; and (7) for what reason(s) was the Brookings substation planned.

25. Resolution of these factual issues will help the Commission determine whether the Midwest ISO acted properly under the LGIP, including whether MinnDakota's project was studied based on a set of system assumptions that changed between the GISR and FSR.

26. Our preliminary analysis indicates that the Midwest ISO's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the unexecuted agreement, nominally suspend it, and make it effective on October 4, 2006, and set it for hearing and settlement procedures.

27. While we are setting these matters for a trial type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding;

⁹ MinnDakota Protest at 2.

¹⁰ 18 C.F.R. § 385.603 (2006).

otherwise the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

C. Other Issues

28. Regarding cost recovery of network upgrades, MinnDakota argues that the unexecuted LGIA should be grandfathered and not use the currently applicable interconnection pricing provision because the LGIA negotiations were already underway when the February 3 Order became effective. At minimum, MinnDakota requests that any approval be subject to the outcome of the transmission pricing methodology approved in the February 3 Order, which is currently pending on a motion for rehearing. Xcel counters that MinnDakota's grandfathering request be rejected because the Commission has specified that generator interconnection agreements filed on or after February 5, 2006 must conform to Attachment X, as accepted by the February 3 Order.

29. Finally, MinnDakota requests that all obligations in the Interconnection Agreement be suspended by the Commission until the Commission renders a decision in this proceeding. In response, Xcel points out that MinnDakota already provided a notice of suspension to the Midwest ISO and NSP in a letter dated May 1, 2006. Xcel argues that the suspension requires no Commission action. Xcel further asks the Commission to confirm that the Midwest ISO and NSP may restudy the project and establish new milestone and cost estimates based on the system conditions at the time MinnDakota revokes its suspension.

Commission Conclusion

30. With regard to the article 11.4 dispute, the Commission's ultimate determination of the issues set for hearing may determine the appropriate crediting policy to apply to this interconnection. We note that the Midwest ISO transmission pricing policy pertaining to LGIAs filed on or after February 5, 2006 is currently pending rehearing in Docket No. ER06-18-000. Moreover, we note that for certain LGIAs filed prior to February 5, 2006, the Midwest ISO has recently proposed application of cost sharing in Docket No. ER06-1439-000. Therefore, we clarify that acceptance of the instant filing is subject to the outcome of Docket Nos. ER06-18-000 and ER06-1439-000.

¹¹ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

31. Regarding the request for suspension, we agree with Xcel that MinnDakota's notice of suspension requires no Commission action.¹² Until the Commission determines whether the Midwest ISO and NSP acted properly under the Midwest ISO's LGIP, it is premature to consider Xcel's request that the Midwest ISO and NSP may restudy the project and establish new milestones and cost estimates based on the system conditions at the time MinnDakota revokes its suspension.

The Commission orders:

(A) The Midwest ISO's unexecuted LGIA is hereby accepted for filing and suspended for a nominal period, to become effective October 4, 2006, subject to the outcome of the proceedings in ER06-18-000 and ER06-1439-000.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 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 concerning the justness and reasonableness of the Midwest ISO's unexecuted LGIA. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of being appointed by the Chief Judge, the settlement judge shall file an initial report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing

¹² See LGIA article 5.16.

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conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.