

118 FERC ¶ 61,270
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.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER07-580-000

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

(Issued March 30, 2007)

1. On February 28, 2007, as amended on March 2, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Large Generator Interconnection Agreement (LGIA) among itself, Michigan Electric Transmission Company, LLC (METC), and Entergy Nuclear Palisades, LLC (Entergy Palisades). The proposed LGIA is related to the proposed sale of the existing Palisades Nuclear Generating Plant (Palisades Plant) from Consumers Energy Company (Consumers) to Entergy Palisades, which the parties expect to close in April 2007. At issue is the amount of Network Resource Interconnection Service (NRIS) that Entergy Palisades is eligible to receive under the proposed LGIA. In this order, the Commission accepts and suspends the unexecuted proposed LGIA for a nominal period, to become effective as of the closing date of the Palisades Plant transaction, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. The Palisades Plant is a pressurized water reactor nuclear power plant located in Covert, Michigan. It has a rated net output of 820 MWs and is interconnected with the transmission system owned by METC. Consumers owns the Palisades Plant.

3. Entergy Palisades is in the process of acquiring the Palisades Plant from Consumers. The Commission has approved Consumers' application under section 203 of the Federal Power Act (FPA)¹ for Consumers to sell, and Entergy Palisades to acquire,

¹ 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

the Palisades Plant and its associated jurisdictional facilities, subject to resolution of a single rate issue involving one Consumers customer.² The Midwest ISO states that Consumers and Entergy Palisades have filed a ratepayer protection mechanism in accordance with the order that resolves that issue. Consumers and Entergy Palisades also are seeking regulatory determinations and approvals for the transaction from the Michigan Public Service Commission and the Nuclear Regulatory Commission (NRC). Pending receipt of regulatory approvals and satisfaction of other conditions precedent, the parties expect to complete the Palisades Plant transaction in April 2007.

4. The Palisades Plant is already interconnected with the transmission facilities owned by METC under a generator interconnection agreement among Consumers, METC and the Midwest ISO. The existing generator interconnection agreement provides for the interconnection of Consumers' generation resources, including the Palisades Plant, with METC's transmission system and has been accepted for filing by the Commission.³ On February 28, 2007, and contemporaneously with the filing of the proposed LGIA, the Midwest ISO filed an amended version of the existing generator interconnection agreement to remove references to the Palisades Plant and to reflect the assignability of the Palisades Plant-related provisions to Entergy Palisades.⁴

Proposed, Unexecuted LGIA

5. The Midwest ISO filed the proposed, unexecuted LGIA among itself, METC and Entergy Palisades setting forth the terms and conditions for interconnection service for the Palisades Plant once Entergy Palisades becomes the owner of the plant. The proposed LGIA is modeled on the Midwest ISO's *pro forma* LGIA. However, the Midwest ISO states that the Palisades Plant is an existing generator not requiring any material changes to its operating characteristics, and that, therefore, the Midwest ISO's *pro forma* Large Generator Interconnection Procedures do not apply. There is no need for additional studies or the construction of additional interconnection facilities or network upgrades.

² *Consumers Energy Co.*, 118 FERC ¶ 61,143 (2007).

³ *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,125 (2006).

⁴ *Midwest Independent Transmission System Operator, Inc.*, Filing of Amended and Restated Generator Interconnection Agreement, Docket No. ER07-579-000 (filed Feb. 28, 2007). The Commission will act on that filing by separate order.

6. Although the proposed LGIA is modeled on the Midwest ISO's *pro forma* LGIA, the parties have agreed to several modifications to adopt aspects of the existing generator interconnection agreement that the parties agree are necessary for the Palisades Plant's operation, consistent with its nuclear operating license issued by the NRC and the Palisades Plant's operating requirement and commitments. Specifically, the proposed LGIA includes additional nuclear-related defined terms and commitments by METC and the Midwest ISO to operate the transmission system in support of NRC voltage requirements. The parties agree that these nuclear-specific provisions are consistent with or superior to the provisions of the *pro forma* LGIA.

7. In addition, the parties deleted from the proposed LGIA provisions regarding parties' obligations relating to construction of new facilities and related billing and payment provisions to avoid ambiguity with respect to the parties' respective rights and obligations.

8. The Midwest ISO explains that it is filing the proposed LGIA in unexecuted form because the parties disagree about Entergy Palisades' eligibility for NRIS. According to the Midwest ISO, Entergy Palisades and Consumers believe that the Palisades Plant should be eligible for NRIS at 820 MWs, the level at which the plant has been treated as a Designated Network Resource historically, on a year-round basis or, at least, a level that accommodates seasonal fluctuations in the maximum output level of the plant. The Midwest ISO states that it and METC believe that the Palisades Plant should be eligible for NRIS only at 767 MWs based upon the Palisades Plant's performance limitations at summer peak and the level of output actually studied by the Midwest ISO. The Midwest ISO notes that the parties agree that, regardless of the outcome of the NRIS dispute, Consumers has made appropriate transmission arrangements to entitle it to deliver up to 820 MWs on a year-round basis to Consumers' load as a Designated Network Resource based upon a combination of NRIS and Energy Resource Interconnection Service and the requirements of Module E of the Midwest ISO's Transmission and Energy Markets Tariff (TEMT).⁵

9. The Midwest ISO states that, other than the NRIS dispute, the parties agree on all terms and conditions of interconnection service for the Palisades Plant. Therefore, it requests that the Commission accept the LGIA for filing, effective on the date of closing of the Palisades Plant transaction, and establish further proceedings to resolve the NRIS issue. It also requests that the Commission act on or before March 30, 2007 to accommodate the expected closing of the Palisades Plant transaction in early April 2007.

⁵ Module E of the TEMT provides requirements and standards to be met by the Transmission Provider and Market Participants to ensure access to adequate Generation Resources to meet demand on the Transmission System.

Notice of the Filing, Notices of Intervention and Protests

10. Notice of the Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 11,020 (2007), with interventions and protests due on or before March 12, 2007. METC filed a timely motion to intervene. Timely motions to intervene and protests were filed by: Entergy Services, Inc., as agent for its affiliates Entergy Palisades and Entergy Nuclear Power Marketing, Inc. (collectively, Entergy); and Consumers.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Standard of Review

12. Order No. 2003⁶ provides for the interconnection of *new* generators and *expansion* of existing generators, not to *existing* generators already interconnected to the transmission grid where there is no proposed increase in output or material modifications to physical or operating characteristics.⁷ The Palisades Plant is an existing generator. The proposed LGIA reflects only a change in ownership of the existing generator and the

⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (2007).

⁷ *New England Power Company*, 109 FERC ¶ 61,364, at P 13 (2004) (*New England*) (finding that "[b]ecause there are no proposed increases in capacity or material modifications of the characteristics of an existing generating facility, the [proposed agreements] are not 'new interconnection requests' [and t]herefore, Order No. 2003 does not apply. . ."); *See also Entergy Services, Inc.*, 115 FERC ¶ 61,294, at P 4 (2006) (finding that where a facility is already physically interconnected to the grid, Order No. 2003 is not applicable and the agreement is "more in the nature of an 'interconnection operating agreement.'").

inclusion of NRC rules and regulations, but no proposed increases in capacity or material change to the operating characteristics of the Palisades Plant. Accordingly, Order No. 2003 does not apply.

13. In *Cinergy Services, Inc.*, the Commission required the Midwest ISO to become a signatory to any amended interconnection agreement even where there was no increase in capacity or other material modifications to the generator.⁸ Accordingly, the Midwest ISO is properly a signatory to the proposed LGIA.

C. Eligibility for NRIS

1. Protests

14. Entergy argues that the Midwest ISO's determination that the Palisades Plant should be eligible for NRIS only at an output level of 767 MWs, based upon the Palisades Plant's performance limitations at summer peak and the level of output actually studied by the Midwest ISO in its 2004 Market Transition Deliverability Test (Deliverability Test), is wrong. Entergy argues that the Palisades Plant should be eligible for NRIS at 820 MWs, the level at which the plant has been treated as a Designated Network Resource historically, on a year-round basis or, at least a level that accommodates seasonal fluctuations in the maximum output level of the plant.⁹

15. Entergy argues that the Midwest ISO's policy of limiting the availability of NRIS conflicts with Order No. 2003's basic requirements for Transmission Providers studying and providing access to NRIS. Entergy further states that it is eligible for generator interconnection service consistent with the Palisades Plant's pre-Order No. 2003 treatment and therefore, allowing the Midwest ISO to limit Entergy Palisades to NRIS at less than the Palisades Plant's full output would violate the plant's eligibility for grandfathered status.

16. Second, Entergy argues that the Midwest ISO's treatment of eligibility for NRIS appears to be inconsistent with TEMT Module E and Regional Reliability Organization requirements and objectives. Entergy asserts that the Midwest ISO's policy of relying on the lowest seasonal rating as cap on NRIS availability (and hence Network Resource deliverability) is inconsistent with these standards and procedures because it makes the deliverability standard more restrictive than the rating and reporting requirements adopted by the East Central Area Reliability Council (ECAR). Entergy states that

⁸ 107 FERC ¶ 61,260, at P 15 (2004).

⁹ Consumers filed comments supporting Entergy's protest.

Module E is intended to ensure access to deliverable capacity, but that the Midwest ISO's policy restricts access to capacity by refusing to evaluate the availability of NRIS, even in months where the ECAR rating process has confirmed that the plant can generate at a higher level. Entergy maintains that this limitation can be significant.

17. Third, Entergy claims that the Midwest ISO's stance on eligibility for NRIS is inconsistent with other Midwest ISO proceedings and policies. Entergy and Consumers are unaware of any Midwest ISO business practice, tariff provision, or other internal documentation that provides notice to market participants of the limitations applied to NRIS based solely on the lowest seasonal rating. Entergy argues that the Midwest ISO's limitation on NRIS availability here ignores the reality that generator ratings are not static measurements and ignores the historical operating levels at which the plant had been studied before the Deliverability Test.

18. Fourth, Entergy disagrees that the Midwest ISO's 2004 Deliverability Test justifies the limitations the Midwest ISO is seeking to impose. Entergy also states that the Midwest ISO's notice procedures with respect to the Deliverability Test are inconsistent with the TEMT.

19. Fifth, Entergy argues that the Midwest ISO's approach here is inconsistent with prior Midwest ISO application of its policy. The Midwest ISO has failed to apply the limitation on the output level of the Palisades Plant to other generators evaluated in the Deliverability Test and other generators seeking NRIS service.

2. Commission Determination

20. Our preliminary analysis of the proposed LGIA indicates that, with the exception of the NRIS dispute discussed below, the agreement appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed LGIA for filing, to become effective as of the closing date of the Palisades Plant transaction, as requested.

21. However, the proposed LGIA raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. In particular, the parties disagree over the amount of NRIS service for which the Palisades Plant is eligible. This issue cannot be resolved based on the filings submitted to date, and the hearing and settlement procedures are to examine this issue.

22. Our preliminary analysis indicates that this aspect of 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

proposed, unexecuted LGIA for filing, suspend it for a nominal period, make it effective on the date of the closing date of the Palisades Plant transaction, as requested, subject to refund, and set it for hearing and settlement judge procedures.

23. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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 the settlement judge in the proceeding; 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 30 days of the date of the appointment of the settlement judge, 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 commencement of a hearing by assigning the case to a presiding judge.

D. Effective Date

24. We find good cause exists to grant the Midwest ISO's request that the Commission waive its 60-day notice requirement under the Commission's regulations, and make the proposed LGIA effective on the closing date of the Palisades Plant transaction.¹²

¹⁰ 18 C.F.R. § 385.603 (2006).

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

¹² See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (explaining that the Commission will grant waiver of notice for a service agreement under an umbrella tariff if the agreement is filed within 30 days after service commences).

The Commission orders:

(A) The Midwest ISO's proposed, unexecuted LGIA is hereby accepted for filing and suspended for a nominal period, to become effective as of the closing date of the Palisades Plant transaction, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly 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 amount of NRIS that Entergy Palisades is eligible to receive under the proposed 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 Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding 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 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 a 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 at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If 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 conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such a conference shall be held for the purpose of establishing

Docket No. ER07-580-000

9

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)

Philis J. Posey,
Acting Secretary.