

122 FERC ¶ 61,113
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 Nos. ER07-1375-000
ER07-1375-001
ER08-320-000
(consolidated)

ORDER CONSOLIDATING DOCKETS, ACCEPTING AND SUSPENDING
PROPOSED AGREEMENTS, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued February 8, 2008)

1. The Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) has submitted an unexecuted Large Generator Interconnection Agreement (Interconnection Agreement) among Summit Wind LLC (Summit) as interconnection customer, the Midwest ISO as transmission provider, and Interstate Power and Light Company (IPL) as transmission owner. The Midwest ISO later submitted a related unexecuted Facilities Construction Agreement (Construction Agreement) between the Midwest ISO, Summit, and Great River Energy¹ (Great River) providing for the construction of network upgrades on Great River's system to accommodate Summit's generation facility.
2. At issue is whether or to what extent Summit should have to pay for the network upgrades identified in the agreements. As explained below, we find that the proposed Interconnection Agreement and Construction Agreement raise issues of material fact that cannot be resolved based on the record before us. Therefore, we accept both the Interconnection Agreement and the Construction Agreement, subject to refund, suspend them for a nominal period, to become effective September 14, 2007 and December 11,

¹ Great River is a generation and transmission cooperative corporation organized under the laws of Minnesota.

2007, respectively, and establish hearing and settlement judge procedures. We also consolidate the proceedings for purposes of settlement, hearing and decision.

I. Background

A. Interconnection Agreement²

3. The Interconnection Agreement is based on the Midwest ISO's *pro forma* Large Generator Interconnection Agreement under Order No. 2003³ and identifies the network upgrades that are allegedly required to interconnect Summit's 130 MW wind generation facility to IPL's transmission system in southwestern Minnesota.

4. The parties disagree regarding who should pay for the identified network upgrades and whether they are all necessitated by Summit's interconnection. At the heart of the dispute are two studies that reached different conclusions regarding Summit's cost responsibility. The System Impact Study⁴ identified \$26 million in network upgrades associated with Summit's interconnection, while the subsequent Facilities Study⁵ identified \$37 million in network upgrades. The Interconnection Agreement adopts the findings of the Facilities Study and concludes that approximately \$37 million in network upgrades must be installed in order to accommodate the wind project. According to the Midwest ISO, Summit believes that some or all of the network upgrades required by the Interconnection Agreement defer or displace Baseline Reliability Projects and that Summit should therefore not be held entirely responsible for paying for them.

5. The network upgrades required by the Interconnection Agreement include:

- a) a new \$4.8 million Cottonwood County substation;
- b) a new \$16 million 161 kV transmission line from the Cottonwood County substation to the Dotson Corner substation;

² Midwest ISO September 14, 2007 Filing, Docket Nos. ER07-1375-000 and ER07-1375-001.

³ *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, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁴ See Summit Initial Comments at Att. A.

⁵ *Id.* at Att. B.

- c) a \$4.2 million expansion of the existing Heron Lake substation;
- d) an approximately \$400,000 communications system upgrade between the Cottonwood County substation and the Heron Lake substation for line protection; and
- e) the approximately \$11 million re-construction of 17 miles of a 69kV transmission line between Heron Lake and Cottonwood County, and the upgrade of that line to 161 kV.

6. The Midwest ISO requests that the Commission make the Interconnection Agreement effective on September 14, 2007. It asserts that this date will provide certainty to the parties as to the status of the agreement. The Midwest ISO requests waiver of the Commission's 60-day prior notice requirement to allow the Interconnection Agreement to go into effect on the requested date.

7. The Commission's staff issued a deficiency letter directing the Midwest ISO to answer questions regarding the origin of the base case in the System Impact Study and to explain how the Facilities Study comports with section 8.2 of Attachment X of the Midwest ISO tariff (Large Generator Interconnection Procedures).

B. Construction Agreement⁶

8. The Construction Agreement sets forth the terms and conditions that would govern the construction of network upgrades on Great River's transmission system that are allegedly necessitated by the interconnection of Summit's generation facility. The Midwest ISO states that the Construction Agreement is based on the Facilities Construction Agreement with Prairie State, which the Commission accepted.⁷ The Construction Agreement provides for the upgrade of the Dotson Corner substation from a 69 kV to a 69/161 kV substation. The upgrade of the Dotson Corner Substation is allegedly needed to accommodate the new Cottonwood County to Dotson Corner 161 kV transmission line identified in the Facilities Study and Interconnection Agreement. The Midwest ISO states that Summit's cost responsibility for this network upgrade is \$725,855.

9. The Midwest ISO requests that the Commission make the Construction Agreement effective on December 11, 2007. It asserts that the parties have indicated their support of this effective date and that this date will provide certainty to the parties as to the status of the agreement. The Midwest ISO requests waiver of the Commission's 60-day prior

⁶ Midwest ISO December 10, 2007 Filing, Docket No. ER08-320-000.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,048 (2005); *see also* Delegated Letter Order issued on June 7, 2006, in Docket No. ER05-1362-001.

notice requirement to allow the Construction Agreement to go into effect on the requested date.

II. Notice of Filings and Responsive Pleadings

10. Notice of the Midwest ISO's September 14, 2007 filing of the Interconnection Agreement was published in the *Federal Register*, 72 Fed. Reg. 62,225 (2007), with interventions and protests due on or before October 5, 2007. Summit filed a timely motion to intervene and protest. The Midwest ISO filed a motion for leave to answer and an answer. IPL filed a motion to intervene out of time and an answer.

11. On November 13, 2007, the Commission's staff issued a deficiency letter directing the Midwest ISO to address questions regarding the Interconnection Agreement. On December 13, 2007, the Midwest ISO submitted a compliance filing in response to the deficiency letter. Notice of the Midwest ISO's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 2,468 (2008), with comments due on or before January 3, 2008. Summit filed timely comments in response to the Midwest ISO's compliance filing.

12. Notice of the Midwest ISO's December 10, 2007 filing of the Construction Agreement was published in the *Federal Register*, 72 Fed. Reg. 73,016 (2007), with interventions and protests due on or before December 31, 2007.⁸ Summit filed a timely motion to intervene and protest and a motion to consolidate the Construction Agreement proceeding with the related Interconnection Agreement proceeding. Great River also filed a timely motion to intervene. The Midwest ISO filed a motion for leave to answer and an answer.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene of Summit and Great River serve to make them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant IPL's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁸ See Notice of Extension of Time, Docket No. ER07-1372-000 (Sept 26, 2007) and Notice of Extension of Time, Docket No. ER07-1372-001 (Sept. 28, 2007).

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO, IPL, and Summit because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Interconnection Agreement

a. Summit's Protest

15. Summit contends that both studies considered previously existing system overloads as well as regional planning needs and thus identified more than just the upgrades necessitated by its interconnection (those that would not be needed “but for” the interconnection). Summit argues that it should not have to bear the cost of network upgrades designed to provide general system benefits. Thus, the \$37 million in network upgrades identified in the Interconnection Agreement have not been shown to be just, reasonable, and not unduly discriminatory.⁹ Summit also asserts that a substantial portion of the costs are incorrectly classified under the cost allocation provisions of the Midwest ISO's tariff.

16. Summit states that the network upgrades identified in the Interconnection Agreement are designed to provide benefits to existing and near-term transmission demands rather than just to facilitate the interconnection of Summit's generation resource. That is, the network upgrades were identified to “provide increased benefits to other users of the grid, and not because the additional upgrades were required to interconnect Summit's generation resource.”¹⁰

17. Summit further states that the Interconnection Agreement, by identifying network upgrades not required for Summit's interconnection, fails the “but for” standard. It notes that the Midwest ISO uses “a ‘but for’ standard to define the network upgrades that generators may be required to fund as part of a generation interconnection project”¹¹ and

⁹ See Summit Initial Comments at 12 n.23. Summit notes that between 50 and 100 percent of these network upgrade costs are directly assigned to the generator.

¹⁰ *Id.* at 8 (emphasis in original).

¹¹ See *N.Y. Indep. Sys. Operator, Inc.*, 97 FERC ¶ 61,118, at 61,576 (2001) (describing the “but for” standard and explaining that, under the standard, generation developers should not be have to pay for network upgrades that are identified in baseline reliability assessments, or that replace the need for upgrades identified in baseline reliability assessments).

that “[t]he Midwest ISO and IPL have failed to demonstrate that the network upgrades proposed in the unexecuted Interconnection Agreement would not be needed ‘but for’ the interconnection of the Summit generation resource.”¹² Thus, because the proposed network upgrades are not directly caused by Summit’s interconnection, it is inappropriate for the Midwest ISO and IPL to hold Summit responsible for the costs of the upgrades.¹³

18. Thus, Summit argues that some or all of the network upgrades identified in the Interconnection Agreement are classified incorrectly for purposes of cost allocation under the Midwest ISO’s Attachment FF. Under Attachment FF, upgrades that defer or displace the need for previously identified Baseline Reliability Projects cannot be directly assigned to the generator.¹⁴ Summit states that “it is not clear that the network upgrades identified in the Interconnection Agreement would not, in fact, defer or displace the need for previously identified Baseline Reliability Projects.”¹⁵ Even “IPL acknowledges that the [network] upgrades are intended to serve purposes beyond merely the interconnection of Summit’s generation resource.”¹⁶

19. Finally, Summit asserts that this dispute involves factual issues that cannot be resolved based on the current record and that the Commission should therefore accept and suspend the Interconnection Agreement subject to the outcome of an evidentiary hearing to determine: (1) what network upgrades are required to interconnect Summit’s generation resource, through application of the “but for” standard; and (2) whether and to what extent such network upgrades should be classified as Baseline Reliability Projects for cost allocation purposes.

b. Midwest ISO’s Answer

20. The Midwest ISO states that Summit and IPL agreed to use the Facilities Study results in developing the Interconnection Agreement.¹⁷ The Midwest ISO further states

¹² Summit Initial Comments at 10.

¹³ “Network Upgrades” are upgrades that are “required at or beyond the point of” interconnection to “accommodate” the interconnection. Midwest ISO, FERC Electric Tariff, Att. X § 1, Original Sheet No. 1703.

¹⁴ *See* Midwest ISO, FERC Electric Tariff, Att. FF § III.A.d.2., Original Sheet No. 1849.

¹⁵ Summit Initial Comments at 12.

¹⁶ *Id.*

¹⁷ IPL, in its answer, states that it concurs with the opinions expressed by the Midwest ISO.

that Summit agreed to use the Facilities Study because it believed that all parties could receive a more robust system at a lower cost.¹⁸ While the Midwest ISO's System Impact Study proposed a lower cost, the Facilities Study met reliability requirements, and therefore the Midwest ISO also consented to its use.

21. The Midwest ISO argues that Summit has not provided evidence that the System Impact Study or the subsequent Facilities Study are flawed, or that they do not comport with the Midwest ISO's tariff. To the contrary, the Facilities Study "identified upgrades that were not only needed to connect Summit's Generation Facility, but that will also ensure region-wide reliability once such facilities are connected."¹⁹ Furthermore, the Facilities Study enables the transmission owners to identify upgrades that would provide more robust deliverability and load serving capabilities in the region.²⁰ The Midwest ISO asserts that the Facilities Study is therefore consistent with Attachment FF of the Midwest ISO's tariff.

22. With respect to Summit's arguments about "but for" pricing, the Midwest ISO argues that while the System Impact Study does show that the existing facilities are overloaded, it also shows that the facilities would operate within their limits "but for" the interconnection of Summit's facility. In other words, "[t]he interconnection of Summit's project pushes the loading of existing transmission facilities beyond their emergency rating limits, and, accordingly, upgrades are needed to accommodate Summit's project while maintaining reliability."²¹ Finally, the Midwest ISO argues that in *Pacific Gas and Electric Company*, the Commission found that requiring an interconnection customer to pay for upgrades that are needed for it to interconnect reliably does not violate the "but for" test of *New York Independent System Operator, Inc.*, even when the upgrades also address existing overloads.²²

23. The Midwest ISO thus disagrees with Summit's assertion that the network upgrades have been improperly classified under Attachment FF. While noting that the network upgrades provide regional benefits independent of their primary purpose, i.e., facilitating the interconnection, the Midwest ISO asserts that the proposed network upgrades are not Baseline Reliability Projects and do not defer or displace any currently

¹⁸ Midwest ISO October 22, 2007 Answer at 3 n.6.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 10.

²¹ *Id.* at 13-14.

²² See *Pac. Gas and Elec. Co.*, 117 FERC ¶ 61,294, at P 40-47 (2006), citing *N.Y. Indep. Sys. Operator*, 97 FERC ¶ 61,118 (2001).

planned Baseline Reliability Projects. It concludes that Summit's disagreement with that outcome is not sufficient to require a change in the classification of the upgrades or a change in the allocation methodology mandated by Attachment FF.

c. Midwest ISO's Compliance Filing

24. In its response to the deficiency letter, the Midwest ISO states that "the Transmission Owners determined that the upgrades to accommodate [Summit's] project could be configured to enhance the reliability of the system and believed that these could be accomplished without increased cost."²³ With this in mind, the Midwest ISO and the affected transmission owners developed an alternative plan, the Facilities Study, to meet future transmission and generation interconnection needs in the regions that were expected to accommodate the network upgrades necessary to support Summit's interconnection. The Midwest ISO states that Summit "did not at the time object to the use of the coordinated [Facilities] Study."²⁴

25. With respect to the validity of the base case, the Midwest ISO states that an "acceptable base case for a system impact study...is characterized by study assumptions under which facilities in the area electrically proximate to the point of interconnection are operating within acceptable performance levels for that area."²⁵ In any case, the Midwest ISO states that Summit was insulated from the costs associated with existing overloads through the use of screening techniques that assign responsibility for network upgrades only to the projects under study.²⁶

d. Summit's Answer

26. Summit alleges that the Midwest ISO mischaracterizes the differences between the System Impact Study and the Facilities Study. It states that the Midwest ISO implies that Summit should prefer the Facilities Study because the network upgrades assigned to Summit under the Facilities Study "are generally fewer...or of the same magnitude", as those in the System Impact Study.²⁷

²³ Midwest ISO Response to Deficiency Letter at 3.

²⁴ *Id.* at 10.

²⁵ *Id.* at 8 (footnote omitted).

²⁶ *Id.* at 6.

²⁷ Summit January 3, 2008 Answer at 2 *citing* Midwest ISO Response to Deficiency Letter at 10.

27. Summit argues that the existing Storden – Heron Lake transmission line performs a reliability function that is “wholly unrelated to Summit’s requested interconnection”²⁸ and that assigning to it the costs of building a new Storden – Heron Lake transmission line is unjust, unreasonable, unduly discriminatory and an attempt to improperly classify the rebuild as a generator interconnection project.

28. Arguing that the Midwest ISO has not shown in its compliance filing that the proposed network upgrades meet the “but for” standard, Summit states that the Midwest ISO fails to demonstrate that the proposed upgrades are necessary to facilitate Summit’s generator interconnection rather than to remedy pre-existing system overloads. Additionally, Summit contends that the Midwest ISO has not attempted to disprove Summit’s contention that the network upgrades should be classified as Baseline Reliability Projects rather than a generator interconnection project.

2. Construction Agreement

29. Summit requests that the Commission consolidate the Interconnection Agreement and Construction Agreement proceedings. It argues that there are common issues of fact and law in these proceedings because both agreements relate to the network upgrades needed to interconnect Summit’s generation facility. Consolidation will produce administrative efficiencies.

30. Summit contends that the justness and reasonableness of the network upgrades proposed in the Construction Agreement depend upon the Commission’s findings regarding the Interconnection Agreement. Summit explains that the Construction Agreement provides for upgrades to the Dotson Corner Substation that are needed only to accommodate the new Cottonwood County to Dotson Corner transmission line, which was identified in the Facilities Study and Interconnection Agreement. As discussed above, Summit argues that the new Cottonwood County to Dotson Corner transmission line does not meet the “but for” test.

31. In its answer, the Midwest ISO supports Summit’s motion for consolidation. However, the Midwest ISO disagrees with Summit’s statement that the Interconnection Agreement would allocate \$37 million in network upgrade costs to Summit. The Midwest ISO explains that Summit is eligible to receive reimbursement for up to 50 percent of its costs and associated financial transmission rights.

3. Commission Determination

32. We find that the proposed Interconnection Agreement and Construction Agreement raise issues of material fact that cannot be resolved based on the record before

²⁸ *Id.* at 3.

us, and that are more appropriately addressed in hearing and settlement judge procedures. We will accept the Interconnection Agreement and Construction Agreement for filing, suspend them for a nominal period, make them effective September 14, 2007 and December 11, 2007, respectively, subject to refund, and set them for hearing and settlement judge procedures.

33. According to the Midwest ISO, its procedures for screening the base case “prevented Summit Wind from being assigned responsibility for *any* of the pre-existing study overloads.”²⁹ However, we are concerned that all pre-existing system overloads in the base case may not have been resolved in computer modeling before considering the network upgrades needed to interconnect Summit’s generation facility. In addition, the Midwest ISO contends that the Facilities Study’s consideration of upgrades to “provide better deliverability and excellent load serving capabilities”³⁰ is consistent with Attachment FF. We note that Attachment X, not Attachment FF, provides the procedures for performing interconnection studies and limits their scope to estimating and specifying the cost to “implement the conclusions of the Interconnection System Impact Study.”³¹

34. The Construction Agreement provides for the upgrade of the Dotson Corner Substation in order to accommodate certain network upgrades identified in the Facilities Study and included in the Interconnection Agreement. Because Docket Nos. ER07-1375-000, -001, and ER08-320-000 raise common issues of law and fact, we will consolidate them for purposes of settlement, hearing, and decision.

35. With respect to the proposed effective dates, we will grant the Midwest ISO’s requests for waiver of the Commission’s prior notice requirement and permit effective dates of September 14, 2007 and December 11, 2007 for the Interconnection Agreement and Construction Agreement, respectively.³²

36. 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.³³ If the parties desire, they may,

²⁹ Midwest ISO Response to Deficiency Letter at 4.

³⁰ System Impact Study at 5.

³¹ Att. X § 8.2, Substitute Second Revised Sheet No. 1714Q.

³² See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *reh’g denied* 65 FERC ¶ 61,081 (1993).

³³ 18 C.F.R. § 385.603 (2007).

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.³⁴ 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.

The Commission orders:

(A) The proposed Interconnection Agreement and Construction Agreement are hereby set for hearing and settlement judge procedures, as discussed in the body of this order.

(B) The proposed Interconnection Agreement and Construction Agreement are hereby accepted, subject to refund, and suspended for a nominal period to become effective September 14, 2007 and December 11, 2007, respectively.

(C) Docket Nos. ER07-1375-000 and ER08-320-000 are hereby consolidated for purposes of settlement, hearing and decision.

(D) 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 unexecuted agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), 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.

³⁴ 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 background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(F) Within thirty (30) days of the appointment of the settlement 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.

(G) 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, DC 20426. Such a 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.