

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cinergy Services, Inc.

Docket No. ER04-719-000

ORDER CONDITIONALLY ACCEPTING
AMENDED INTERCONNECTION AGREEMENT

(Issued June 4, 2004)

1. In this order we conditionally accept for filing Cinergy Services, Inc.'s (Cinergy) Amended and Restated Interconnection Agreement (IA) with Allegheny Energy Supply Wheatland Generating Facility, L.L.C. (Wheatland) effective June 7, 2004. This order benefits customers because it assures that the terms, rates and conditions for interconnection service are just and reasonable, and provides the parties with a reasonable means to ensure the reliable operation, protection and integrity of the transmission system.

I. Background

2. On April 7, 2004, Cinergy filed with the Commission on behalf of its utility operating company PSI Energy, Inc. (PSI), an Amended and Restated IA. Wheatland owns and operates a 500 MW electrical generating facility (Facility) located in the city of Wheatland, Knox County, Indiana.¹ The Amended and Restated IA will supersede the Interconnection Agreement between Cinergy and Wheatland's predecessor (Original IA).²

¹ The Wheatland Generating Facility began commercial operation in July 2000.

² Delegated Letter Order Accepting the Interconnection Agreement between Cinergy and Wheatland's predecessor, WestFork Land Development Company, L.L.C. (WestFork) on May 10, 2000. WestFork assigned its rights under the Original IA to Wheatland.

3. The Original IA provided for the interconnection of the Facility to the 345 KV transmission line from the Gibson Generating Station to the Qualitech Substation, both of which are owned by PSI, a Cinergy utility operating company.³ In addition, the Original IA set forth the entire agreement and understanding of the parties and further defined responsibilities and obligations of the parties.

4. Cinergy and Wheatland amended the Original IA in this executed, Amended and Restated IA in part to: (1) include recognition of Wheatland's Generating Facility as part of Cinergy's Control Area; (2) remove Attachment C, Bill Of Sale; and (3) add Attachments D, Generating Imbalance Service, Attachment E, Generator Regulation Service, and Attachment F, System Modeling.

5. Cinergy requests waiver of the Commission's 60-day prior notice requirement⁴ to allow an April 1, 2004 effective date. The Amended and Restated IA was executed by both parties on April 6, 2004, and filed on April 7, 2004.

II. Notice and Intervention

6. Notice of Cinergy's April 7, 2004 filing was published in the Federal Register, 69 Fed. Reg. 20,869 (2004), with protests or interventions due on or before April 27, 2004. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a motion to intervene and comments.

7. Midwest ISO states as an RTO it has the responsibility to reliably operate and plan the transmission facilities under its management and control, including those transmission facilities owned by Cinergy. The Midwest ISO provides transmission service and interconnection service over the transmission facilities placed under its control by its transmission-owning members. Further, the Midwest ISO has established procedures by which the interconnection of generating facilities to such transmission facilities are evaluated, including generating facilities similar to those of Wheatland.

8. Midwest ISO acknowledges that prior to it beginning operations on February 1, 2002, many IAs existed between its transmission-owning members and generators, including the Original IA between Cinergy and Wheatland's predecessor. Midwest ISO acknowledges it is not a signatory to these agreements; however, it states it should have a

³ Cinergy Services, Inc has two utility operating companies: PSI and Cincinnati Gas & Electric Company (collectively the Cinergy Operating Companies).

⁴ 18 C.F.R. § 35.3 (2003).

role in the evaluation and negotiation of any amended pre-existing IAs within Midwest ISO's footprint. Midwest ISO states that under its Operating Protocol for Existing Generators (Operating Protocol),⁵ it has the authority to take the necessary steps with respect to Wheatland to ensure the safety and reliability of the transmission system.

9. Midwest ISO states that while it believes this agreement is consistent with Commission policy and the Midwest ISO's procedures, it is concerned with the precedential value Commission approval would have with respect to other similar amended agreements. Midwest ISO believes being a signatory to IAs would be the best way to ensure safe and reliable transmission. However, it proposes a second option whereby Midwest ISO would be involved in acknowledging and participating in amendment negotiations, and if the parties agree, be a signatory to any amended agreement. Midwest ISO argues this acknowledgement procedure is similar to the Commission's certificate concurrence provided for in its regulations.⁶

10. Midwest ISO states this is a practical approach that would bridge the gap between any amended pre-existing IAs and Midwest ISO's functional control of the transmission facilities to assure Midwest ISO they are able to address any operational issues as they arise.

III. Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make Midwest ISO a party to this proceeding.

⁵ The Operating Protocol was conditionally accepted for filing by the Commission in Midwest Independent System Operator, Inc., 100 FERC ¶ 61,262 (2002); see also Midwest Independent Transmission System Operator, Inc., 104 FERC ¶ 61,245 (2003).

⁶ 18 C.F.R. § 35.1(a) (2003).

12. As a required characteristic of an RTO, Midwest ISO must have exclusive authority for maintaining short-term reliability⁷ and must take the steps necessary to enhance reliability and competition.⁸ As Midwest ISO has acknowledged, there are numerous IAs that predate Midwest ISO. Midwest ISO's Operating Protocol⁹ provides for Midwest ISO the authority over the generators to ensure reliability in operating the transmission facilities under Midwest ISO's control. However, the Commission recognizes the potential to circumvent Midwest ISO's authority if generators and transmission owners amend these existing IAs without Midwest ISO's participation. Generally, IAs are amended to recognize and address changes that have occurred since the previous signing. The Midwest ISO's obtaining operational control over the transmission facilities is a significant change, and should be addressed in the Amended and Restated IA. When amending an IA to address other changed circumstances, the parties must recognize this major change in circumstances.

13. Section 1.2.1 of Midwest ISO's Operating Protocol addresses pre-Midwest ISO interconnection agreements, stating that these agreements "shall remain in effect unless modified or terminated by the parties thereto pursuant to section 205 or 206 of the Federal Power Act."¹⁰ At that time, Midwest ISO has the authority to supersede the prior agreements. In this case, as Midwest ISO has stated, and the Commission concurs, that Midwest ISO is best suited to ensure the safe and reliable operation of the transmission system when it is a party to any amended IA.¹¹

⁷ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁸ Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001).

⁹ Midwest ISO FERC First Revised Rate Schedule No. 4.

¹⁰ Section 1.2.1, Operating Protocol for Existing Generators, FERC Electric Tariff, First Revised Rate Schedule FERC No. 4.

¹¹ Midwest ISO Comment at 3.

14. Moreover, while there are numerous agreements that were in place or in progress prior to the Midwest ISO becoming the regional transmission provider and, for that reason, are grandfathered, we are now past that transition period. Thus, any new interconnection agreements or modifications to existing agreements properly fall under the purview of the current transmission provider, Midwest ISO.

15. Therefore, in order to ensure that Midwest ISO has the ability to operate a safe and reliable transmission system, and to account for changed circumstances in amended agreements, including Midwest ISO's role as the regional transmission provider, we will require that Midwest ISO participate in the negotiations and become a signatory to the amendments. This process is to ensure that the amendments have been agreed to by the generating facility, transmission owner, and Midwest ISO, and are consistent with Midwest ISO's OATT. Furthermore, this three-party agreement should reiterate that Midwest ISO has rights over the facility's operations consistent with its Operating Protocol and that all future amendments to the original IA will be subject to negotiation and approval by all three parties. We do not believe that an after-the-fact acknowledgement statement by the Midwest ISO permits appropriate and sufficient participation by the transmission provider.

16. This three-party agreement is consistent with Commission precedent. While we recognize the IA at issue here predates Order No. 2003, the amendment does not, and Order No. 2003 does specify the Commission's requirement for ISO-related interconnection agreements to be three-party agreements between the transmission owner, transmission provider and the interconnection customer.¹² Furthermore, the Commission has previously approved amended IAs that were codified in three-party agreements under the Midwest ISO tariff.¹³

17. In this filing, Midwest ISO intervened with comments stating it supports the changes in the Amended and Restated IA, but did not file this support in the form of a signed three-party agreement as discussed above. Therefore, we will accept Cinergy's

¹² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 909 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A) reh'g pending.

¹³ See e.g., Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,076 (2003).

Amended and Restated IA subject to the condition that the parties file a signed three-party agreement to amend this IA as ordered below.

18. Consistent with Commission precedent, we will deny Cinergy's request for waiver of our prior notice requirement because it has not shown good cause to justify granting waiver.¹⁴ We will thus make the Agreement effective June 7, 2004, after 60 days' notice from the date Cinergy made this filing.

The Commission orders:

(A) The proposed Amended and Restated IA is hereby conditionally accepted for filing effective June 7, 2004, as discussed in the body of this order.

(B) Cinergy is hereby directed to file a signed three-party agreement, as described in the body of this order, within 30 days from the date of this order.

(C) Cinergy's request for waiver of the Commission's prior notice requirement is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁴ See Central Hudson Gas and Electric Corp., 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1993).