

165 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Midcontinent Independent System Operator, Inc.

Docket No. ER18-2340-001

ORDER ACCEPTING GENERATOR INTERCONNECTION AGREEMENT

(Issued December 20, 2018)

1. On August 29, 2018, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act¹ and section 35.12 of the Commission's regulations,² a Generator Interconnection Agreement (GIA) among Crescent Wind LLC as interconnection customer, Michigan Electric Transmission Company, LLC (Michigan Electric) as transmission owner, and MISO as transmission provider, regarding Project No. J538 in MISO's generator interconnection queue (Agreement).³ On October 23, 2018, MISO amended the Agreement (Amended Agreement).⁴ We accept the Amended Agreement and make it effective August 15, 2018, as requested, as discussed below.

I. Filings

2. In the Filing, MISO states that the body of the Agreement conforms to its *pro forma* GIA and that the Agreement includes language pending in Docket Nos. ER18-

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.12 (2018).

³ Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, [SA 3153, Crescent Wind-METC GIA \(J538\), 32.0.0](#). See MISO GIA Filing, Docket No. ER18-2340-000 (filed Aug. 29, 2018) (Filing).

⁴ Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, [SA 3153, Crescent Wind-METC GIA \(J538\), 32.0.0](#). MISO GIA Substitute Filing, Docket No. ER18-2340-001 (filed Oct. 23, 2018) (Amended Filing).

1964-000, ER18-1982-000, and ER18-2054-000.⁵ MISO requests that the Commission accept the Agreement, subject to the outcome of Docket Nos. ER18-1964-000, ER18-1982-000,⁶ and ER18-2054-000.⁷ MISO also requests that the Commission waive its 60-day prior notice requirement⁸ and make the Agreement effective on August 15, 2018.⁹

3. MISO states that, on May 15, 2018, in Docket No. ER18-1628-000, MISO requested that all interconnection projects that had completed interconnection customer Decision Point II in the MISO Definitive Planning Phase process before May 15, 2018 be exempted from incorporating the new Order No. 842¹⁰ *pro forma* GIA language into the GIA associated with that particular project.¹¹ Because Project No. J538 completed Decision Point II before May 15, 2018, MISO asserts that the body of the Agreement does not contain the new Order No. 842 *pro forma* GIA language.

⁵ Filing, Transmittal Letter at 1.

⁶ MISO's filing in Docket No. ER18-1982-000 has been accepted by the Commission pursuant to delegated authority. *See Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER18-1982-000 (Oct. 4, 2018) (delegated order).

⁷ In Docket No. ER18-2054-000, MISO submitted revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to, among other things: (1) clarify that MISO may not terminate a GIA until any three-year extensions of the established commercial operation date have passed; and (2) clarify the circumstances surrounding the failure to achieve the commercial operation date under which MISO must terminate the GIA. *See* MISO Filing, Docket No. ER18-2054-000, Transmittal Letter, at 5-8 (filed July 23, 2018). This filing was made in compliance with *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,210 (2018). The filing is currently pending at the Commission.

⁸ 18 C.F.R. § 35.3(a) (2018).

⁹ Filing, Transmittal Letter at 3.

¹⁰ *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, Order No. 842, 162 FERC ¶ 61,128 (2018).

¹¹ Filing, Transmittal Letter at 1 n.2. MISO's Filing in Docket No. ER18-1628-000 has been accepted by the Commission pursuant to delegated authority. *See Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER18-1628-000 (Nov. 29, 2018) (delegated order).

4. In its Amended Filing, MISO notes that section 11.3 in the original Agreement contains Tariff language giving the transmission owner the unilateral ability to elect to provide initial funding for network upgrades (referred to herein as Transmission Owner Initial Funding), but that, after the Filing was submitted, this language was dismissed as moot by the Commission.¹² MISO therefore submitted the Amended Agreement, which revises section 11.3 to include only the *pro forma* terms of the GIA that have been accepted by the Commission. Thus, section 11.3 of the Amended Agreement allows the transmission owner to provide initial funding for network upgrades only upon mutual agreement with the interconnection customer.

II. Notices and Responsive Pleadings

5. Notice of the Filing was published in the *Federal Register*, 83 Fed. Reg. 45,120 (2018), with interventions and protests due on or before September 19, 2018. None was filed. Notice of the Amended Filing was published in the *Federal Register*, 83 Fed. Reg. 54,340 (2018), with interventions and protests due on or before November 13, 2018. Michigan Electric filed a timely motion to intervene and protest.

6. Michigan Electric asks the Commission to reject MISO's Amended Agreement.¹³ Michigan Electric notes that the Commission, through ongoing proceedings in Docket Nos. EL15-68-003, EL15-36-003, and ER16-696-004, is currently examining whether the Transmission Owner Initial Funding language should be included in GIAs executed between June 24, 2015 and August 31, 2018. Given that this issue is presently pending before the Commission, Michigan Electric argues, MISO's filing to eliminate this language from the Agreement is premature and should be rejected pending the outcome of the proceedings in the aforementioned dockets.

7. Moreover, Michigan Electric argues that the Agreement does not identify any network upgrades that would be subject to Transmission Owner Initial Funding.¹⁴ Therefore, Michigan Electric contends that the removal of the Transmission Owner Initial Funding language from section 11.3 of the Agreement does not impact the rights or obligations of any of the parties to the Agreement. Rather, Michigan Electric argues, if the Filing were to be accepted and network upgrades were to be identified in the future, the Agreement would need to be amended again to include the newly-identified network

¹² Amended Filing, Transmittal Letter at 1-2 (referencing *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,157 (2018) (*MISO I*)).

¹³ Michigan Electric Protest at 4.

¹⁴ *Id.*

upgrades, and the Transmission Owner Initial Funding language that was restored to MISO's *pro forma* GIA as of August 31, 2018 would apply.¹⁵

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), Michigan Electric's timely, unopposed motion to intervene serves to make Michigan Electric a party to this proceeding.

B. Substantive Matters

9. We accept the Amended Agreement, to be effective August 15, 2018, as requested, subject to the outcome of Docket Nos. EL15-68-003, EL15-36-003, ER16-696-004, and ER18-2054-000. In *MISO I*, the Commission dismissed as moot proposed language in section 11.3 of MISO's *pro forma* GIA that would have allowed Transmission Owner Initial Funding effective as of June 24, 2015.¹⁶ The Commission dismissed this filing as moot because, in a concurrent order, the Commission allowed Transmission Owner Initial Funding to be included in MISO's *pro forma* GIA only prospectively as of the date of that order – August 31, 2018 – and instituted a briefing schedule to determine how to address GIAs, Facility Construction Agreements, and Multi-Party Facility Construction Agreements that were entered into during the time period between June 24, 2015 and August 31, 2018.¹⁷ Therefore, as of the proposed

¹⁵ *Id.* (referencing *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158 (2018) (*MISO II*)).

¹⁶ *MISO I*, 164 FERC ¶ 61,157 at P 40. The June 24, 2015 date is in reference to the effective date that the Commission set when it originally directed MISO to revise its *pro forma* GIA to provide that the transmission owner may provide the initial funding for network upgrades only upon the mutual agreement of the interconnection customer. *See id.* P 9. This determination was later vacated by the United States Court of Appeals for the District of Columbia Circuit. *See Ameren Servs. Co. v. FERC*, 880 F.3d 571 (D.C. Cir. 2018).

¹⁷ *MISO II*, 164 FERC ¶ 61,158 at P 33. In this order, the Commission reversed a prior determination that transmission owners and affected system operators should not be allowed the unilateral right to elect to provide initial funding for network upgrades; the Commission found that it had failed to adequately address transmission owners' concerns with that language. *See id.* PP 28-33. Although the Commission instituted a briefing schedule to determine how to address GIAs that were entered into during the time period

August 15, 2018 effective date of the Amended Agreement, MISO's *pro forma* GIA allowed the transmission owner to provide initial funding for network upgrades only upon the mutual agreement of the interconnection customer. Accordingly, we find MISO's removal of the Transmission Owner Initial Funding language from section 11.3 of the Amended Agreement to be consistent with the Commission's orders in *MISO I* and *MISO II*, and we find the Amended Agreement to be just and reasonable because such language was not included in MISO's *pro forma* GIA as of the effective date of the Amended Agreement.

The Commission orders:

The Amended Agreement is hereby accepted, to be effective August 15, 2018, as requested, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.
Commissioner McNamee is voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

between June 24, 2015 and August 31, 2018, those briefing procedures are pending. *See id.* P 36.