

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

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER09-1581-001
ER09-1581-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 20, 2010)

1. On October 9, 2009, the Commission conditionally accepted an Amended and Restated Generator Interconnection Agreement (Amended GIA) among Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Northern States Power Company (Northern States), as transmission owner, and Community Wind North LLC (Community Wind) as interconnection customer (together, the Parties).¹ The Commission required Midwest ISO to modify the Amended GIA to remove unsupported language relating to Community Wind's responsibility for the costs of a particular network upgrade, the Brookings County-Twin Cities transmission line (Brookings Line).²
2. In this order, the Commission addresses requests for rehearing and clarification of the Initial Order as well as a compliance filing required by the Initial Order (Compliance Filing).³ As set out below, we will deny requests for rehearing of the Initial Order, grant clarification, and require Midwest ISO to further revise the Amended GIA. Specifically we clarify that the Initial Order's direction to remove any reference to the Brookings Line was based upon a concern that the degree of cost allocation, i.e., based on 100 percent

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2009) (Initial Order).

² The Brookings Line is a 230-mile, 345-kV transmission line that will connect Brookings County, South Dakota, with eastern Minnesota.

³ *Midwest Indep. Transmission Sys. Operator, Inc., Compliance Filing*, Docket No. ER09-1581-003 (Filed November 9, 2009).

cost allocation to generator interconnection, was unsupported. This order finds that that degree of proposed cost allocation is still unsupported. We further clarify that the Initial Order's finding that the "but for" standard was not met was intended to address only the issue of determining cost responsibility and not whether a particular facility is built. Based on this clarification, we will dismiss the Compliance Filing and require a further compliance filing, as discussed below.

I. Background

3. On December 9, 2008, the Parties executed a temporary interconnection agreement (Temporary GIA) for Community Wind's 30 MW wind generation project (Generating Facility). The Temporary GIA provided for the limited operation of the Generating Facility prior to the completion of related interconnection studies pursuant to section 11.5 of the Midwest ISO's Generator Interconnection Procedures in Attachment X of the Midwest ISO Tariff.⁴ Since the body of the Temporary GIA conformed to the *pro forma* GIA, the Temporary GIA was reported in Midwest ISO's Electric Quarterly Report in accordance with Order No. 2003.⁵

4. Following completion of the related interconnection studies, Community Wind requested that the Temporary GIA be amended to include the updated study results. Despite extensive negotiations, the Parties could not agree on revisions to the provisions of the appendices relating to Community Wind's responsibility for the costs of the Brookings Line. Community Wind therefore asked Midwest ISO to file the Amended GIA unexecuted pursuant to section 11.3 of the Generator Interconnection Procedures.

5. In the Initial Order, the Commission found that Midwest ISO had not shown that allocation of the costs of the Brookings Line to Community Wind was just and reasonable. The Commission found that Midwest ISO's Tariff uses the "but for" standard for the purpose of allocating the cost of network upgrades, and that, under that standard, an interconnection customer can only be allocated the cost of network upgrades

⁴ Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1, Appendix X (August 25, 2008) (Tariff).

⁵ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 915 (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).

that would not have been constructed but for the interconnection of the generator.⁶ Midwest ISO had failed to provide any evidence that the Brookings Line would not be constructed but for the interconnection of Community Wind and other projects within its study group, the Group 5 projects,⁷ and so the Commission directed Midwest ISO to revise the Amended GIA to remove unsupported language relating to any responsibility of Community Wind or the Group 5 projects for the costs of the Brookings Line.⁸

6. Midwest ISO filed the Compliance Filing, as required, on November 9, 2009. The Compliance Filing includes a revised Amended GIA, which, Midwest ISO asserts, complies with the Initial Order. The Compliance Filing also includes revisions to the Amended GIA that return it to the status of a temporary (or provisional)⁹ GIA that will be subject to operating limitations until further studies have been completed.

II. Notice of Filing and Responsive Pleadings

7. Several parties filed motions for rehearing or clarification, including Great River Energy (Great River), Midwest ISO, and Xcel Energy Services Inc. (Xcel), on behalf of Northern States. Edison Mission Energy (Edison) filed a motion for clarification or rehearing and a motion for expedited treatment. Both Xcel and Midwest ISO submitted motions for leave to answer and answers to Edison's request for rehearing.

8. Notice of the Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 61,342 (2009), with interventions and protests due on or before November 30, 2009. Edison filed a timely protest, combined with a motion for leave to answer and answers to Midwest ISO's and Xcel's answers to the rehearing requests. Midwest ISO filed an answer to Edison's protest, and Edison filed an answer to Midwest ISO's answer.

⁶ Initial Order, 129 FERC ¶ 61,019 at P 23.

⁷ Under the Midwest ISO Generator Interconnection Procedures, generator interconnection projects may be grouped together for the purpose of conducting interconnection studies. The Midwest ISO followed this procedure for the Group 5 projects, which request interconnection in southwest Minnesota, northwest Iowa, and eastern South Dakota. The initial studies were performed in 2006 and 2007 and the study reports were posted during the summer and fall of 2007.

⁸ Initial Order, 129 FERC ¶ 61,019 at P 29.

⁹ The Tariff was recently amended, and now refers to temporary GIAs as provisional GIAs. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,301 (2009).

III. Discussion

A. Procedural Matters

9. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2009), prohibits answers to rehearing requests. We will therefore reject the answers of Xcel, Midwest ISO, and Edison.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Midwest ISO or Edison and will, therefore, reject them.

B. Substantive Matters

1. Requests for Rehearing

a. Support for the Brookings Line

i. Rehearing Requests

11. In its rehearing request, Midwest ISO argues that, by finding no evidence in support of allocating the costs of the Brookings Line to the Group 5 projects, the Commission failed to examine the relevant data in the record. It also contends that the Commission failed to articulate why the data, along with publicly-available studies, did not provide appropriate support for the inclusion of the Brookings Line in the Amended GIA.¹⁰

12. Midwest ISO also argues that the Commission failed to articulate a rational connection between the facts and the decision to reject the use of the Brookings Line.¹¹ It states that several interveners, as well as a study Edison submitted in the underlying proceeding, acknowledge that the interconnection of the Group 5 projects will result in stability issues.¹² Midwest ISO adds that the Brookings Line is not merely a solution to these stability issues, but that it has been subjected to extensive study and peer review.¹³

¹⁰ Midwest ISO Request for Rehearing at 26-28.

¹¹ *Id.* at 27.

¹² *Id.* at 29.

¹³ *Id.* at 30-31. Midwest ISO asserts that other solutions to resolve the impact of the Group 5 projects would need to be planned and studied, and may restart the state

It argues that the Commission erred to the extent that it based its finding on Edison's study, as the study is flawed and Midwest ISO is not required to accept customer studies.¹⁴ While Midwest ISO acknowledges that the Brookings Line provides benefits to the transmission system aside from the inclusion of more generation, Midwest ISO asserts that the interconnection of new generation facilities drives the need for the 345 kV facility.¹⁵

13. Midwest ISO also seeks rehearing or clarification that the "but for" standard should apply on a group basis for projects studied under the group study process. It argues that the Initial Order is unclear about whether the "but for" standard requires a determination that a specific network upgrade is the least-cost upgrade that would not have been built but for the interconnection of a single project, as Community Wind suggests. Midwest ISO contends that to consider each project in a group study to be responsible for only an individualized cost assessment would undercut the theory behind group studies for efficient planning. It asks the Commission to reverse or clarify the Initial Order to the extent that the Initial Order would permit a single interconnection customer to divorce itself from the group study results based on the claim that it was not accurately represented by the group.

14. Midwest ISO next requests rehearing or clarification that its discretion to determine that the upgrades required to accommodate interconnection requests is not limited to bare minimum upgrades under the "but for" standard. It contends that the Initial Order's application of the "but for" standard appears to exclude Midwest ISO's planning process and the application of Good Utility Practice, and to limit Midwest ISO's discretion regarding cost allocation to upgrades that would not have been made "but for the interconnection of the developers, minus the costs of any facilities that the ISO's regional plan dictates would have been necessary anyway for load growth and reliability purposes."¹⁶ Midwest ISO argues that the language of section 8.4 of the Generator Interconnection Procedures clarifies that what equipment is required for the interconnection of a project or group of projects is based on the Midwest ISO study process and Good Utility Practice; therefore, Midwest ISO is only required to find a reasonable solution for interconnecting the entire set of Group 5 projects. According to

certification process, and that the consideration of an existing, vetted solution, is consistent with Good Utility Practice.

¹⁴ *Id.* at 31-34 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183, at P 167-168 (2008) (Queue Reform Order)).

¹⁵ Midwest ISO Request for Rehearing at 31.

¹⁶ *Id.* at 38-39 (quoting Initial Order, 129 FERC ¶ 61,019 at P 23).

Midwest ISO, the Commission misapplied the “but for” standard to place a burden on Midwest ISO to justify the outcome of its study and planning process because the Commission found no evidence to meet the “but for” standard.¹⁷

15. Midwest ISO contends that the Brookings Line was identified as a network upgrade necessary to resolve a system impact caused by a subset of constituents of Group 5, which include Community Wind. It contends that removing the contingency from the Amended GIA for Community Wind’s project arbitrarily singles out one agreement from among the Group 5 projects, and would void the study results that Midwest ISO relied on to update the appendices of the Amended GIA. This, Midwest ISO argues, departs from the Commission’s directive in Order Nos. 2003 and 2003-A to include such costs in the appendices of GIAs.¹⁸

16. Midwest ISO asserts that the Initial Order violates the requirements of Order No. 2003 by failing to address Midwest ISO’s contention that the contingency risk described in Appendix A of the Amended GIA is the same risk shared by other similarly situated generator interconnection projects and that including these contingencies in the Amended GIA is consistent with the Commission’s guidance in Order No. 2003. Midwest ISO maintains that the Initial Order erroneously required it to remove the known contingency of the unbuilt Brookings Line, which was shown to be necessary for this project to interconnect and receive interconnection service without limitation.¹⁹ Moreover, Midwest ISO asks the Commission to clarify that the Initial Order did not alter the standards articulated in Order No. 2003 to require additional justification for cost estimates in GIAs as standard practice.²⁰

ii. Commission Determination

17. The Initial Order’s primary concern was that the Amended GIA’s allocation of the costs of the Brookings Line to Community Wind was not supported by record evidence. As noted in the Initial Order, Appendix A of the Amended GIA provided that

¹⁷ Midwest ISO Request for Rehearing at 40-44. Midwest ISO argues that its Generator Interconnection Procedures represent an independent entity variation and that the Commission erred to the extent it failed to consider Midwest ISO’s variation in the Tariff. *Id.* at 41 & n.107.

¹⁸ *Id.* at 20-21.

¹⁹ *Id.* at 16-17 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 409; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 320).

²⁰ Midwest ISO Request for Rehearing at 34-37.

Community Wind shares in the cost responsibility for the Brookings Line and included a table estimating that 100 percent of the total cost of the Brookings Line would be allocated to a subset of the Group 5 projects, including Community Wind.²¹ In support of its proposed cost allocation, Midwest ISO argued that the Brookings Line is a known contingency for Community Wind and that the reference to the Brookings Line in the Midwest ISO Transmission Expansion Plan 2008 does not preclude Community Wind from bearing its share of the costs because the Brookings Line is required primarily for the delivery of new wind energy resources and is not a Baseline Reliability Project.²² Yet, despite Midwest ISO's assertions, the evidence in the record demonstrated that the Brookings Line was developed as part of the CapX2020 Initiative to serve multiple needs beyond the interconnection of particular generators.²³ Further, while studies identified by several protesters, and in Midwest ISO's request for rehearing, demonstrated that certain stability problems arising from the interconnection of the Group 5 projects disappear once the Brookings Line is in service, the evidence also demonstrated that the Brookings Line had been assumed in the base case covering the out-year horizon – something that further suggested that the Brookings Line was needed for more than interconnection purposes.²⁴

18. Accordingly, the Commission rejected Midwest ISO's proposed cost allocation, finding that “based on the information that the Midwest ISO has provided in this docket, the allocation of the costs of the Brookings Line to Community Wind has not been shown to be just and reasonable”²⁵ The Commission concluded only that the evidence in

²¹ Initial Order, 129 FERC ¶ 61,019 at P 5.

²² *Id.* at P 8; Filing, Transmittal Letter at 5-9. As discussed further below, Midwest ISO's characterization of the Brookings Line as a known contingency for Community Wind is inconsistent with some of the language of Appendix A.

²³ *See, e.g.*, Xcel Comments, Docket No. ER09-1581-000, at 12 (filed Sept. 3, 2009); Xcel Answer, Docket No. ER09-1581-000, at 4-5 (filed Sept. 18, 2009).

²⁴ *See e.g.*, Edison Protest, Docket No. ER09-1581-000, at 3 (filed Sept. 3, 2009); Midwest ISO Request for Rehearing at 9; NextEra Protest, Docket No. ER09-1581-000, at 2 (filed Sept. 3, 2009); Buffalo Ridge Power Partners, LLC Protest, Docket No. ER09-1581-000, at 25 (filed Sept. 3, 2009). As we noted in Order No. 2003-A, “the Commission has made exceptions to its policy of prohibiting the direct assignment of Network Upgrade costs in cases where the Transmission Provider is *independent* of market participants.” Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 587 (emphasis added).

²⁵ We clarify that the Initial Order does not modify the standards articulated in Order No. 2003 to require additional justification for cost estimates in GIAs as standard

the record did not support Midwest ISO's proposal to allocate the costs of the Brookings Line as a network upgrade; it made no finding regarding the effectiveness of the Brookings Line in resolving the stability issues and permitting interconnection service for the Group 5 projects. Thus, we reject Midwest ISO's argument that the Commission failed to examine relevant data and articulate a rational connection between the facts found and its decision in the Initial Order, and deny rehearing of the Initial Order in this regard.

19. We agree with Midwest ISO that the Initial Order could be read to suggest that the "but for" standard must be used to determine the upgrade that is constructed to facilitate a new interconnection. The Initial Order recited the "but for" standard as it is stated for a single generator,²⁶ but then required Midwest ISO "to remove the unsupported language

practice. On the contrary, the Initial Order rejected the Amended GIA on the basis that Midwest ISO had failed to meet its burden under section 205 of the FPA. *See e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054, at P 37 (2009) (noting that the filing party has the burden of demonstrating a rate is just and reasonable in the first instance).

²⁶ Initial Order, 129 FERC ¶ 61,019 at P 23 ("In other words, under the Midwest ISO's tariff, a generator can only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of the generator."). We clarify that the Initial Order was not meant to suggest that the "but for" standard should be applied to each individual project when studied as part of a reasonably constituted group; for example, where, as here, projects are grouped on the basis of a combination of queue position and electrical proximity. *See* Tariff, Attachment X at section 4.2, First Revised Sheet No. 3074. The Initial Order did not require separate treatment for Community Wind apart from the other Group 5 projects. Moreover, we note that section 4.1 of Midwest ISO's Generator Interconnection Procedures provides that, in the case of group studies, "the determination of cost responsibility for common facilities necessary to accommodate two or more Interconnection Requests . . . may depend on factors other than Queue Position." This tariff language reflects the Commission's finding in Order No. 2003-A that the "but for" standard applies on a group basis for projects studied as a group. *See* Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 120. As the Commission recognized in Order No. 2003-A, where projects are studied as a group, the cost responsibility of an individual project may be greater than if it were studied individually. *Id.* ("Sometimes, one generating facility interconnecting alone would not require a substantial upgrade to the Transmission System, but when clustered with others, a costly upgrade may be required."). On the other hand, it is also possible that the use of group studies will result in cost savings for a customer and that the cost responsibility of

(continued...)

relating to any cost responsibility of Community Wind *or other Group 5 projects* for the costs of the Brookings Line.”²⁷ Combined, this order language could be read to mean that the “but for” standard requires that the need for the Brookings Line must be ascribed in its entirety to the Group 5 projects (and by extension, Community Wind), before any cost responsibility could be assigned. This was not the intent.

20. We clarify that we view the “but for” standard, in the context of Midwest ISO’s Tariff, as a cost allocation principle that limits the cost responsibility of an interconnection customer or a group of interconnection customers to the cost of the upgrades that would not be necessary but for the interconnection of the customer or reasonably constituted group of customers. The Tariff adopts the language of the *pro forma* Large Generator Interconnection Agreement’s (LGIA) definition of network upgrades and, like the *pro forma* LGIA, uses the “but for” standard. While Midwest ISO is correct in stating that it can propose variations from the Commission’s *pro forma* LGIP as an independent Transmission Provider, we disagree with Midwest ISO’s interpretation of section 8.4. To the extent that Midwest ISO suggests that the presence of the terms “System Planning and Analysis Review” and “Good Utility Practice” mean that the word “required” as it is used in section 8.4 and in the definition of network upgrades should be interpreted such that Midwest ISO’s Tariff does not include the “but for” standard, we disagree. We note that in the very same proceeding that Midwest ISO proposed and the Commission accepted the addition of the term “required” to the “Scope of Interconnection Facilities Study” section (then section 8.2), Midwest ISO acknowledged that it was adopting the Commission’s default pricing policy, including the “but for” standard for the purpose of the definition of network upgrades.²⁸ Further, we note the similarity between section 8.4 of Midwest ISO’s Generator Interconnection Procedures and section 8.2 of the *pro forma* Generator Interconnection Procedures. Despite the presence of “Good Utility Practice” in section 8.2 of the *pro forma* Generator Interconnection Procedures, the Commission never suggested that section 8.2’s reference to “Good Utility Practice” should be interpreted as expanding the meaning of “required”

an individual project may be less than it would have been had the project been studied individually.

²⁷ Initial Order, 129 FERC ¶ 61,019 at P 29 (emphasis added).

²⁸ See Midwest Indep. Transmission Sys. Operator, Inc., Docket No. ER04-458-000, Transmittal Letter at 28-29, 32-33 (filed Jan. 20, 2004) (January 20, 2004 Filing); Midwest Indep. Transmission Sys. Operator, Inc., Docket No. ER04-458-001 (filed April 26, 2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, at P 136 (2004).

for the purpose of the definition of network upgrades.²⁹ In other words, interconnection customers in Midwest ISO are required to fund the cost of network upgrades that would not have been needed but for their interconnection.

21. We clarify that this language does not limit Midwest ISO or its transmission owners to the least-cost option available to interconnect a generator or group of generators. The Tariff affords Midwest ISO some discretion when determining what facilities should be built in order to accommodate the interconnection of a project or group of projects. In particular, sections 7.1 and 8.1 of the Generator Interconnection Procedures recognize that Midwest ISO should use its study process to identify network upgrades that: (1) ensure that an interconnection customer or group of interconnection customers can reliably connect to the transmission system; and (2) ensure that the network upgrades chosen promote efficiency.³⁰ We do not doubt that a range of improvements could achieve these results. In addition, we have previously recognized that Midwest ISO's use of group studies allows it to focus on the needs of both the relevant interconnection customers and the overall system.³¹

22. Thus, Midwest ISO may determine through its study process that a large upgrade, such as the Brookings Line, should be built because it will both accommodate the interconnection of a group of projects and address other system-wide needs. However, the cost responsibility of a group of interconnection customers remains limited to the cost of the facilities that would not be needed but for the interconnection of the group. In this case, the evidence submitted indicated that the Brookings Line was needed for more than interconnection, but the cost allocation language in the Amended GIA was not sufficient to limit Community Wind's (or Group 5's) cost responsibility for the Brookings Line such that they were funding only the cost of upgrades that would not have been necessary but for their interconnection.³² In other words, the evidence submitted does not support

²⁹ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 221.

³⁰ See Tariff, Attachment X, First Revised Sheet No. 3082 (providing that the System Planning and Analysis Phase of the Midwest ISO study process, including an Interconnection System Impact Study, is designed to determine "Network Upgrades that will *reliably* and *efficiently* integrate the proposed Generating Facility" (emphasis added)), Second Revised Sheet No. 3085 (providing that the Definitive Planning Phase is designed to identify Network Upgrades that will *reliably* and *efficiently* integrate proposed generation into the Transmission Provider's Transmission Provider's Transmission System" (emphasis added)).

³¹ Queue Reform Order, 124 FERC ¶ 61,183 at P 114.

³² Initial Order, 129 FERC ¶ 61,019 at P 24.

allocation of 100 percent of the costs of the Brookings Line to the Group 5 projects. Because the Initial Order's direction to remove the unsupported language relating to any cost responsibility for the Brookings Line could have been read to imply that the "but for" standard determines the network upgrades that can be built to accommodate an interconnection customer or group of interconnection customers, rather than is solely related to cost allocation, we will clarify the Initial Order and require a further compliance filing, as discussed below.

23. As to the suggestion that the Initial Order contravened Order No. 2003, we disagree. Midwest ISO correctly states that Order Nos. 2003 and 2003-A indicated that contingencies that may affect the cost responsibility of an interconnection customer and estimates of an interconnection customer's possible cost responsibility should be identified in an interconnection agreement.³³ However, in this case, Midwest ISO did not justify assigning responsibility for 100 percent of the costs of the Brookings Line to the Group 5 projects. The Transmittal Letter and Amended GIA properly characterized Community Wind's potential cost responsibility for the Brookings Line as a contingency risk,³⁴ but they do not make clear that Community Wind (or Group 5 as a whole) cannot be assessed the portions of the costs of the Brookings Line not attributable to interconnection. As discussed below, we will order Midwest ISO to revise the Amended GIA to properly describe the risk faced by Community Wind and the other Group 5 projects.

³³ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 409. When discussing the possibility that a lower queued interconnection customer may be responsible for funding the costs of completing the network upgrades for a higher-queued Interconnection customer we stated that "[i]f it is apparent to the Parties at the time they executed the LGIA that contingencies (such as other interconnection customers terminating their LGIAs) might affect the financial arrangements, the Parties should include such contingencies in their LGIA and address the effect of such contingencies on their financial obligations." *Id. also see* Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 320 (directing the Transmission Provider to provide an estimate of the interconnection customer's maximum possible funding exposure, if higher queued generating facilities drop out when the Transmission Provider tenders the draft LGIA).

³⁴ *See* Filing, Transmittal Letter at 5-9.

b. Timing and Cost Responsibility for Restudy

i. Rehearing Requests

24. Edison argues that the Commission erred by failing to specify that if Midwest ISO restudies the network upgrades for Community Wind and the other Group 5 projects, and re-files a proposal to allocate the costs of additional upgrades to Community Wind, it must do so within 60 days.³⁵ Edison argues that the Commission should order restudy within 60 days because time is of the essence for Community Wind and the interconnection of the project should not be further delayed by Midwest ISO's failure to identify the network upgrades required "but for" the interconnection of the Group 5 projects. Edison argues that 60 days is enough time for Midwest ISO to conduct a restudy, as section 8.7 of the Generator Interconnection Procedures states that Midwest ISO must use reasonable efforts to complete an Interconnection Facilities Restudy within 60 days if a higher-queued interconnection request is withdrawn or terminated.³⁶

25. Edison also argues that the Commission erred by failing to specify that the costs of any restudy should not be imposed on Community Wind.³⁷ It asks the Commission to waive section 8.7 of the Generator Interconnection Procedures, which specifies that the cost of any Interconnection Facilities Restudy shall be borne by the interconnection customer, on the ground that the restudy will be the result of Midwest ISO's failure to comply with its Tariff.³⁸

26. Midwest ISO states that restudy is necessary due to both the withdrawal of a number of projects, including a number of Group 5 projects, and the Initial Order's directive to remove the Brookings Line. If the Commission does not reverse the Initial Order and accept the results presented in the Amended GIA, Midwest ISO says that it will be required to perform a restudy to produce another alternative.³⁹ It adds that, since additional restudy is required, there will be further delay in achieving unfettered

³⁵ Edison Request for Rehearing at 4 (citing Generator Interconnection Procedures, sections 1, 8.4, and 8.7).

³⁶ Edison Request for Rehearing at 7-8.

³⁷ *Id.* at 4.

³⁸ *Id.* at 8.

³⁹ Midwest ISO Request for Rehearing at 50.

interconnection service, and it notes that Community Wind has failed to meet certain milestones in its Amended GIA and is subject to a declaration of default.⁴⁰

27. Midwest ISO states that removing the Brookings Line from the GIA of Community Wind and other Group 5 projects will require extensive restudy and provides estimates of the time that it will take to restudy the Group 5 projects.⁴¹ Finally, Midwest ISO commits to continuing to work towards resolving the Brookings Line issue and still believes that it is possible to make further progress through negotiation. Accordingly, Midwest ISO plans on providing restudy agreements to the Group 5 projects and other effected parties in order to move forward to the extent possible.⁴²

ii. Commission Determination

28. We deny Edison's request that we order Midwest ISO to restudy and file a revised Amended GIA within 60 days. Midwest ISO has indicated that restudy is required in any event under the Tariff, due to the withdrawal of several projects. Section 8.7 requires Midwest ISO to use reasonable efforts to complete restudy within 60 days, and so we find it unnecessary to impose this deadline by order. We also deny Edison's request for waiver of section 8.7 of the Generator Interconnection Procedures, to prohibit Midwest ISO from charging Community Wind and the other Group 5 projects for any restudy. As Midwest ISO indicates, restudy is required because of the withdrawal of higher-queued generators.

⁴⁰ *Id.* at 51.

⁴¹ *Id.* at 52-53. Midwest ISO states that restudy will take approximately 128 days if it is required to demonstrate not only that the Brookings Line is a solution to the stability problems arising from the interconnection of the Group 5 projects but the prudence of alternative solutions as well. Midwest ISO states that Community Wind and other interveners have acknowledged that a stability problem arises from the interconnection of the Group 5 projects, but that they have not stipulated that the correct problem has been identified and quantified to the point that a restudy can start. Midwest ISO states that if the Group 5 projects contest that the problem exists, restudy will take an additional 108 days.

⁴² *Id.*

c. **Applicable Cost Allocation Methodology**

i. **Rehearing Requests**

29. Midwest ISO argues that the Initial Order's application of Attachment FF is arbitrary and inconsistent with the "but for" standard. It states that the Commission acted inconsistently by relying on Attachment FF of the Tariff to conclude that the "but for" standard limits the cost responsibility of an interconnection customer, while later stating that ongoing revisions to the cost allocation procedures under Attachment FF pending before the Commission in Docket No. ER09-1431 (RECB III proceedings)⁴³ "may impact Community Wind's eligibility for reimbursement for the costs of network upgrades, [but] do not address whether Community Wind can be required to fund the costs of the Brookings Line in the first place."⁴⁴

⁴³ In Order No. 2003, the Commission recognized that independent transmission providers could propose alternative allocation methodologies for the costs of network upgrades associated with generator interconnection. When acting on Midwest ISO's Order No. 2003 compliance filing, the Commission encouraged Midwest ISO to work with stakeholders to develop a network upgrade pricing policy. Midwest ISO then proposed, and the Commission accepted, tariff language providing that if, at the time the interconnection customer achieved commercial operation, the interconnection customer demonstrated that its generator had been designated as a network resource or committed by contract of at least one year to supply capacity or energy to a network customer, then 50 percent of the costs of the network upgrades for the Generation Interconnection Project would be repaid to the interconnection customer (50-50 cost sharing methodology). *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I), *order on reh'g*, 117 FERC ¶ 61,241 (2006), *aff'd sub nom. Pub. Serv. Comm'n of Wis. v. FERC*, 543 F.3d 1058 (D.C. Cir. 2008). On October 23, 2009, in Docket No. ER09-1431, the Commission conditionally accepted Midwest ISO's proposal to replace the 50-50 cost sharing methodology with an interim methodology providing that an interconnection customer would bear 100 percent of the costs of network upgrades rated below 345 kV, and 90 percent of the costs of network upgrades rated at 345 kV and above (with the remaining 10 percent recovered on a system-wide basis). *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009) (RECB III Order). Midwest ISO is expected to file a further revised cost allocation methodology by July 2010.

⁴⁴ Midwest ISO Request for Rehearing at 48-49 (quoting Initial Order, 129 FERC ¶ 61,019 at P 26).

30. Xcel requests clarification of an issue arising from the RECB III Order. Xcel states that, since the parties had an executed Temporary GIA dated December 9, 2008, but the Initial Order accepts the unexecuted Amended GIA for filing effective August 14, 2009, it appears the Amended GIA is the legally binding GIA. Xcel notes that the RECB III Order applies the RECB III allocation methodology, which requires the interconnection customer to fund either 100 percent or 90 percent of all network upgrades, to all GIAs executed or filed unexecuted after July 9, 2009. Xcel contends that there is uncertainty about whether Community Wind would have a RECB cost allocation grandfathered by virtue of its Temporary GIA or if Community Wind would be subject to the RECB III allocation made effective July 10, 2009.⁴⁵ Xcel states that it interprets the Initial Order as requiring Community Wind to provide funding under the RECB III methodology but argues that the Commission should clarify this point to avoid any future misunderstandings between the Parties.

ii. Commission Determination

31. We will deny Midwest ISO's request for rehearing to the extent that it argues that the Initial Order's application of Attachment FF is arbitrary and inconsistent with the "but for" standard. Attachment FF provides that all costs of Generator Interconnection Projects will be funded initially by the relevant interconnection customer in accordance with the Generator Interconnection Procedures which, as discussed above, use the "but for" standard. While the "but for" standard limits the costs that an interconnection customer can be required to fund initially, the revisions accepted in the RECB III Order affect only the extent to which an interconnection customer can be reimbursed after funding the costs of a Generator Interconnection Project.

32. We clarify that the mere fact that Community Wind had a Temporary GIA does not grandfather any particular cost allocation methodology. As we stated in the RECB III Order, the "[t]ariff that should apply is the one that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted."⁴⁶ Here, the Amended GIA was filed unexecuted on August 13, 2009. Accordingly, the cost allocation methodology that was effective and on file on that date—the RECB III cost allocation methodology—would apply to any network upgrades that Community Wind is obligated to fund under the Amended GIA. The Amended GIA currently provides that there are no network upgrades under the Amended GIA that Community Wind is required to fund,

⁴⁵ Xcel Request for Rehearing at 12.

⁴⁶ RECB III Order, 129 FERC ¶ 61,060 at 62 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,277, at P 10 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, at P 70 (2006)).

and that a subsequent multi-party facilities construction agreement will govern the obligation of Community Wind and the Group 5 projects to secure and fund the Shared Ownership Common Use Upgrades,⁴⁷ including the Brookings Line. Therefore, the Group 5 projects' obligations to secure and fund the Brookings Line will be governed under a future multi-party facility construction agreement and such responsibility will depend on the Tariff allocation methodology that applies to that agreement.

d. Transmission Planning

i. Rehearing Requests

33. Xcel asks how the “but for” standard should be applied in circumstances where a regional planning process under Order No. 890 develops plans for comprehensive regional transmission upgrades that are different than those that an incremental “but for” analysis, including a group study, might conclude are necessary. Xcel states that the initial Group 5 studies indicated that the interconnection of the Group 5 projects would require the construction of more than \$500 million in new transmission facilities.⁴⁸ Xcel states that the Brookings Line was subsequently added in order to solve the model and to provide adequate transmission for the Group 5 projects, and, thereby, make the various facilities identified by the initial Group 5 study facilities unnecessary.

34. Xcel states that if this docket is not the appropriate forum in which to address this policy issue, the Commission should clarify that Midwest ISO and its stakeholders must address this issue in the compliance filing required by the RECB III Order and that the permanent cost methodology to be filed in July 2010 may be applied to the Brookings Line. In the alternative, Xcel states that the Commission should set these issues for a technical conference because of the complex technical issues relevant to a determination in this matter.⁴⁹

⁴⁷ The Amended GIA distinguishes among several types of network upgrades: Common Use Upgrades, Shared Ownership Common Use Upgrades, and network upgrades. The Amended GIA refers to the Brookings Line as a Shared Ownership Common Use Upgrade. *See* Filing at Original Sheets 99-105.

⁴⁸ Xcel Request for Rehearing at 14-15.

⁴⁹ *Id.* at 18.

ii. Commission Determination

35. We reject Xcel's request for clarification. This is not an appropriate forum in which to generically address the policy issue concerning the relationship between the cost allocation principles articulated in Order No. 2003 and the planning process embraced in Order No. 890. The issues in this proceeding are limited to the responsibility of the Group 5 projects for the costs of the Brookings Line. Further, because Xcel is asking for clarification of a broad policy issue through its request for rehearing, we do not have the range of input that would be necessary to make such a decision. Xcel has failed to persuade us that we should "clarify" that Midwest ISO and its stakeholders must address this policy issue in the compliance filing required by the RECB III Order or that we should set these issues for technical conference in this proceeding.

e. The Need to Restudy, Status of the Amended GIA, and Status of Community Wind

i. Rehearing Requests

36. Midwest ISO argues that the Initial Order violates the FPA to the extent that it invites Midwest ISO to re-file the Amended GIA without prejudice, but does not address the need for a restudy.⁵⁰ Midwest ISO argues that the effect of the Initial Order on other Group 5 projects is unclear. Midwest ISO claims that one implication of the Initial Order may be that the Brookings Line should not be listed as a contingency for any Group 5 project until additional justification is provided.⁵¹

37. Midwest ISO argues that the Initial Order should be reversed or clarified to require Midwest ISO to refile the Amended GIA as a provisional GIA under section 11.5 of the Generator Interconnection Procedures. Midwest ISO contends that complying with the Initial Order would require it to violate North American Electric Reliability Corporation (NERC) reliability standards, Commission precedent, and the Tariff. At the very least, Midwest ISO asks the Commission to clarify that removal of the Brookings Line as a contingency listed in the appendices of the Amended GIA returns the Amended GIA to the status of a provisional GIA, subject to the outcome of restudy to determine the appropriate network upgrades.

38. Xcel requests clarification that Community Wind is only eligible for the limited interconnection capabilities and operations made possible by the specific interconnection

⁵⁰ Midwest ISO Request for Rehearing at 7.

⁵¹ *Id.* at 50.

facilities and network upgrades remaining in the Amended GIA until the Group 5 common use network upgrades are identified in a restudy and allocated to Community Wind in a further Amended GIA or multi-party facilities construction agreement. Xcel asks the Commission to clarify that if the Brookings Line is omitted from Appendix A, Northern States is only obligated to install the network upgrades and interconnection facilities that remain in Appendix A, as amended. Xcel notes that the Amended GIA currently obligates the Transmission Owner to construct and design the network upgrades in Appendix A and then indicates that there are currently no network upgrades that the Transmission Owner is obligated to build under the Amended GIA.⁵²

39. Great River asks the Commission to clarify that the Initial Order does not preclude Midwest ISO from allocating the costs of the Brookings Line to Community Wind and other Group 5 projects if Midwest ISO demonstrates that the Brookings Line is required to interconnect the projects to the transmission system.⁵³ Great River expresses concern that the Initial Order will be erroneously interpreted as stating that Midwest ISO can subsequently provide evidence that the Brookings Line is required for the interconnection of the Group 5 projects, but not for Community Wind.⁵⁴ Great River argues that such a result could jeopardize system reliability and run afoul of the Midwest ISO group study process, and, thereby, undermine regional efforts to plan for the types of network upgrades that would allow large additions of wind generation to the system.⁵⁵ Great River states that, to the extent that the Commission does not grant the requested clarification, the Commission should grant rehearing of the Initial Order because it accepted the Amended GIA without an evidentiary or paper hearing.⁵⁶

40. Similarly, Xcel seeks rehearing or clarification that Community Wind was appropriately studied as part of Group 5, and that the results of any restudies of Group 5 must be comparably applied to Community Wind in a future multi-party facilities construction agreement and/or amendment to Appendix A of the Amended GIA.⁵⁷ Xcel states that the Commission strongly encouraged the use of clustering in Order No. 2003-A and acknowledged that a Transmission Provider may allocate the cost of common use

⁵² Xcel Request for Rehearing at 18 (citing Amended GIA, Original Sheet Nos. 57, 99).

⁵³ Great River Request for Rehearing at 2.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 6-8.

⁵⁷ Xcel Request for Rehearing at 8, 11-12.

upgrades for clustered interconnection requests without regard to queue position.⁵⁸ Xcel contends that it is unclear how to marry the guidance and directives provided by the Commission in Order No. 2003-A and the Initial Order. Xcel states that it interprets the Initial Order and Commissioner Kelly's partial dissent to allow a future amendment to the Amended GIA to include such common use upgrade costs identified by Midwest ISO with additional supporting evidence. Xcel asks the Commission to clarify that the Initial Order does not preclude Midwest ISO's continued use of the group study process for the Group 5 projects.⁵⁹

ii. Commission Determination

41. As discussed above, we clarify that, under the Tariff, the "but for" standard is merely a cost allocation principle and does not determine the network upgrades that can be built to accommodate an interconnection request or group of interconnection requests. The Commission's concern with the cost allocation language in the Amended GIA was that it was not sufficient to limit Community Wind's (or Group 5's) cost responsibility for the Brookings Line such that they were funding only the cost of upgrades that would not have been necessary but for their interconnection. However, in ordering Midwest ISO to delete unsupported language relating to any cost responsibility of Community Wind or other Group 5 projects for the costs of the Brookings Line, the Commission did not intend that Midwest ISO revert the Amended GIA to a temporary or provisional GIA or to prejudice the outcome of any future proceeding concerning allocation of the costs of the Brookings Line to Community Wind or other Group 5 projects following restudy. Nor did the Commission intend to suggest that Midwest ISO was required to delete *all* references to the Brookings Line in the Amended GIA.

42. We will direct Midwest ISO to revise the language of Appendix A of its Amended GIA⁶⁰ so that it more correctly describes the limits of the risk that Community Wind and other Group 5 projects face regarding construction of the Brookings Line.⁶¹ We note that

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 11.

⁶⁰ We note that we are dismissing Midwest ISO's Compliance Filing which reverted the Amended GIA to a provisional GIA and that we expect that the compliance filing ordered below will retain the permanent character of the Amended GIA.

⁶¹ We do not expect that Midwest ISO will submit information specifically delineating what portion of the Brookings Line is attributable to the Group 5 projects in the compliance filing ordered below. We expect that such information would be

(continued...)

section 2(i) of Appendix A provides that the “Group 5 Generators’ obligations to simultaneously secure and fund [the] Common Use Upgrades and Shared Ownership Common Use Upgrades will . . . be the subject matter governed by [the multi-party facilities construction agreements] to be developed by [the] Transmission Provider”⁶² Sections 2(ii) and 2(iii) also refer to future agreements, but the language of those provisions is not as clear as the language of section 2(i). We therefore direct Midwest ISO to revise the language of sections 2(ii) and 2(iii) of Appendix A so that they are consistent with the language of section 2(i). All three subsections should state that Community Wind shares cost responsibility for the Brookings Line only to the extent that the Brookings Line would not have been necessary but for the interconnection of the group.

43. Further, we will direct Midwest ISO to remove Table 5 from the Amended GIA. The cost estimates provided therein have little value in light of the parties’ acknowledgement that restudy of the Group 5 projects is required and Midwest ISO’s failure to demonstrate that 100 percent of the costs of the Brookings Line should be allocated to the Group 5 projects.

44. Our decision to grant clarification of the Initial Order and to allow Midwest ISO to retain references to the Brookings Line in the Amended GIA makes it unnecessary to address the arguments that the Initial Order erred by failing to address the need for restudy and that compliance with the Initial Order would require Midwest ISO to violate reliability standards. Likewise, we find that it is unnecessary to address requests for clarification regarding the status of the Amended GIA and multi-party facilities construction agreement because of our decision to allow Midwest ISO to retain references to the Brookings Line.

45. Finally, we reiterate that Midwest ISO has indicated that the conditions for restudy listed in section 8.7 have been met and emphasize that section 8.7 directs Midwest ISO to use reasonable efforts to complete any such restudy within 60 days.

2. Compliance Filing

46. In the Compliance Filing, Midwest ISO proposes to omit any reference to the Brookings Line. However, as explained above, the Commission merely meant that Midwest ISO should remove unsupported language relating to cost allocation. In light of

submitted when Midwest ISO files the multi-party facilities construction agreement governing the Brookings Line.

⁶² Filing at Original Sheet No. 90.

our clarifications above, and given our decision to require Midwest ISO to further revise the language of the Amended GIA as discussed above, we will dismiss the Compliance Filing submitted in Docket No. ER09-1581-003. We therefore need not address the protests to that filing.

The Commission orders:

(A) The requests for rehearing of the Initial Order are hereby denied and the requests for clarification of the Initial Order are hereby granted in part and denied in part, as discussed in the body of this order.

(B) Midwest ISO's Compliance Filing is hereby dismissed, as discussed in the body of this order.

(C) Midwest ISO is hereby directed to make a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.