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January 4, 2011

Dr. Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101

Re: In the Matter of the Petition of West Stevens Wind, LLC to Extend Deadline in its LWECS Site Permit, MPUC Docket No. IP-6824/WS-09-830

Dear Dr. Haar:

The attached Petition to Amend the West Stevens Wind, LLC LWECS Site Permit has been electronically filed on behalf of West Stevens Wind, LLC. Please do not hesitate to contact me with any questions related to the Petition. Thank you for your time and consideration of this matter.

Very truly yours,

/s/ Raymond W. Faricy III

Raymond W. Faricy III

Enclosures

cc: Roland Jurgens
Keith Thorstad

MPUC Docket No. IP-6824/WS-09-830

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Raymond W. Faricy, of the City of Minneapolis, County of Hennepin, State of Minnesota, being first duly sworn, deposes and says that on the 4th day of January, 2012, he served the attached Petition on all said persons on the attached Service List, true and correct copies, by electronic filing.

/s/ Raymond W. Faricy III
Raymond W. Faricy III

Subscribed and sworn to before me this
4th day of January, 2012

/s/
Notary Public

MPUC Docket No. IP-6824/WS-09-830

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101

In the Matter of the Site Permit of West Stevens Wind, LLC for a Large Wind Energy Conversion System	MPUC Docket No. IP-6824/WS-09-830

PETITION TO AMEND THE WEST STEVENS WIND, LLC LWECS SITE PERMIT

I. Introduction

West Stevens Wind, LLC ("West Stevens") requests that the Minnesota Public Utilities Commission ("MPUC") amend the Large Wind Energy Conversion System Site Permit ("LWECS Permit" or "Permit") issued to West Stevens to construct up to a 20 megawatt ("MW") Large Wind Energy Conversion System ("LWECS") and associated facilities in Stevens County, Minnesota (the "Project"). West Stevens hereby requests that the deadlines for construction to start and to obtain a Power Purchase Agreement (PPA) be changed from 2 years to 4 years or from February 25, 2012 to February 25, 2014. West Stevens is unable to meet the current 2012 deadline due to the impact of the Midwest Independent Transmission System Operator ("MISO") re-study of Minnesota Group 5 System Impact Study to determine the "but for" upgrades required by Federal Energy Regulatory Commission ("FERC") Docket Nos. ER09-1581-001 and ER-1581-003, and the sequential re-study of Minnesota Definitive Planning Phase ("DPP") Cycle 1 Group System Impact Study.

To date, the Minnesota DPP Cycle 1 Group System Impact Re-study has not been completed and West Stevens was informed by MISO on December 15, 2011 that the Re-study results will be delayed further due to the MISO Board of Director's approval of the 2011 MISO

Transmission Expansion Planning ("MTEP") Appendix A projects. Approval of the 2011 MTEP Appendix A projects (which includes the 17 Multi Value Project Portfolio) will require MISO to re-study the draft results of the Minnesota DPP Cycle 1 Group System Impact Re-study.

Without final Minnesota DPP Cycle 1 Group System Impact Study results, West Stevens is unable to determine the scope and total cost of transmission system upgrades and execute a Generator Interconnection Agreement ("GIA"), which has prevented the Project from obtaining financing and starting construction. Due to MISO's delays in providing the Project with a GIA, West Stevens will lose the ability to complete development of the Project if the MPUC does not amend the Permit, as allowed by Minn. R. 7854.1300, subp. 2. This amendment is the same as that granted by the MPUC to the Bear Creek Wind Energy Project on September, 28 2011 under MPUC Docket No. IP-6629/WS-07-297.

II. Petition

A. Overview of the West Stevens Project

In 2006 West Stevens Wind, LLC, a Minnesota limited liability company, was formed by a group of local residents for the purpose of developing a Community-Based Energy Development ("C-BED") Project pursuant to Minn. Stat. §216B.1612. The Project, as proposed, is a 20-MW wind farm consisting of up to 13 turbines, collection system, substation, connection transmission lines, permanent meteorological tower, and associated roads. The Project will be located in Stevens County in west-central Minnesota, approximately 3 miles northwest of Chokio, Minnesota. The Project is located on approximately 2880 acres (4.5 square miles) of primarily agricultural land. The Project is current owned by eight Minnesota entities, formed by local residents.

West Stevens began development of the Project in the spring of 2006. West Stevens submitted its Small Generator Interconnection Request to MISO in May of 2006. MISO accepted the request and Project was placed in the MISO queue on May 17, 2006. While the Project waited for MISO to study its interconnection request, West Stevens continued initial development work consisting of raising capital, installing a metrological tower, obtaining a PPA, identifying turbine locations, conducting environmental review activities, preparing the LWECS Permit application, and securing land and wind rights from landowners. In October of 2008, West Stevens was informed by MISO that the Project was to be included in the First DPP Cycle November 2008 group system impact study.

Upon receiving information from MISO that the Minnesota DPP Cycle 1 Group System Impact Study would be complete by the end of 2009, West Stevens submitted its application for the LWECS Permit on July 13, 2009 to the MPUC. On September 8, 2009 the MPUC issued an order finding the application, combined with the supplemental/amended application data, to be complete. Public comments on the LWECS Permit application were accepted during a 22-day comment period that closed on September 30, 2009. Staff received written comments from the Minnesota Pollution Control Agency ("MPCA") and the Minnesota Department of Natural Resources ("MnDNR").[1] A 30-day public comment period commencing with the notice of the draft site permit availability in the *EQB Monitor* ended on December 16, 2009. A public meeting on the draft site permit was held near the Project site on November 30, 2009, at the Northland Prairie Inn in Morris, Minnesota. Approximately 10 people attended the meeting. Questions were asked by two attendees at the meeting with regards to general Project

[1] Order Issuing Site Permit to West Stevens Wind, LLC, MPUC Docket No. IP-6824/WS-09-830, February 25, 2010, p. 3.

interconnection, Project timing, and general impacts to local traffic. No request for a contested case hearing on the proposed Project was submitted during the prescribed comment period.

The final Permit was issued on February 25, 2010, and requires West Stevens to obtain a PPA and start construction within 2 years of issuance, or February 25, 2012.[2] The Project is not controversial and the Project continues to maintain strong local support and good relations with Project landowners.

B. Project Development and Current Status

West Stevens has been diligently working to move the Project to construction. West Stevens' local owners have invested significant time and money in the Project. West Stevens has performed the following tasks in anticipation of receiving a GIA from MISO in 2010: obtaining the LWECS permit, obtaining leases, and conducting soil borings, wetlands assessments, and archeological assessments. West Steven also worked with engineers to develop preliminary road layouts and design of power collector system and substation for the Project.

Northern States Power Company (dba Xcel Energy) and West Stevens executed a PPA on November 30, 2006; this PPA was submitted on January 2, 2007 to the MPUC as Docket No. E002/M-07-04 for approval as a C-BED project under the 30-day negative check-off process established by Minn. Stat. 216B.1612, Subd. 7(e). The Commission issued its Notice of Approval for the Project on February 5, 2007. After several amendments to the PPA to extend the Commercial Operation Date ("COD"), on August 3, 2009, Xcel Energy notified West Stevens that the PPA would be terminated effective August 19, 2009 due to failure to reach COD.

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[2] *Id.*, Permit p. 17.

West Stevens has submitted new bids to Xcel Energy, Great River Energy, and Minnesota Power as part of each company's Request For Proposals ("RFP") for wind energy projects, but without the certainty of a signed GIA, West Stevens has not been a successful bidder. Unfortunately, factors including the tremendous cost uncertainty created by MISO delays in completing system impact studies, the RFP evaluation process being weighted in favor of wind projects with signed GIAs, and the extreme costs associated with the interconnection process have made it impossible for West Stevens' bids to be competitive. These study delays, the lack of a GIA, and cost uncertainties have also made it very difficult for the local owners of West Stevens to continue with development work, such as entering into a turbine supply agreement, negotiating a construction contract, and obtaining financing or an equity partner.

C. The MISO Interconnection Process Has Prevented West Stevens from Completing Development.

West Stevens entered the MISO interconnection queue in May of 2006 as project number G638. In July of 2007 the project was assigned to Coordinated Group Study Six (Group 6), which included 22 other queued projects in Minnesota, Iowa and South Dakota. On August 25, 2008, FERC conditionally approved MISO's proposal to reform the generator interconnection queue process. As part of the queue reform, MISO transitioned from a "first-in, first-served" approached to "first-ready, first-served" approach. This transition allowed MISO to abandon the study work on Group 6 and ended the Coordinated Group Study process with Group 5.

West Stevens' interconnection request was placed in the System Planning & Analysis group until West Stevens was notified in October of 2008 (over a year after the Group 6 study was to be started) of its eligibility to enter First DPP Cycle Group System Impact Study, the first group of projects to be studied under the new DPP process developed by the queue reform. To be included in the study group, West Stevens had 30 days to meet the required milestones. West Stevens successfully met the milestones in November of 2008 and was included in the First DPP Cycle November 2008 group system impact study, along with 24 other queued projects.

West Stevens received drafts of the System Impact Study Report for MN-DPP NOVEMBER 2008 (Cycle 1) on August 21, 2009, September 21, 2009, and November 16, 2009, followed by a final System Impact Study Report for MN-DPP NOVEMBER 2008 (Cycle 1) on April 6, 2010. Prior to receiving the final System Impact Study Report for MN-DPP NOVEMBER 2008 (Cycle 1), West Stevens was required to meet its final set of milestones and fund two MISO Facilities Studies. West Stevens successfully met the M3 milestones in December of 2009 and funded the two MISO Facilities Studies on April 1, 2010. MISO started the Facilities Studies in April of 2010. At that time, West Stevens expected to sign a GIA with MISO in the Fall of 2010.

As the MN-DPP NOVEMBER 2008 (Cycle 1) was being studied by MISO, many Group 5 project developers and other interested parties took issue with MISO's attempt to force the Group 5 projects to pay for the Brookings Line. The Community Wind North ("CWN") project took the matter to FERC in August 2009 by requesting that its GIA with MISO be filed unexecuted.[3] FERC ultimately ruled on October 9, 2009 that MISO's attempts to allocate the entire cost of the Brookings Line to CWN and 18 other Group 5 projects was not shown "to be just and reasonable, and must be rejected."[4] The basis for the FERC's order was that MISO had not demonstrated that the Brookings Line was required "primarily for the delivery of new wind

[3] *Midwest Independent Transmission System Operator, Inc.*, 129 F.E.R.C. ¶ 61,019 at Para 3. (Federal Energy Regulatory Commission, Order Conditionally Accepting Amended and Restated Generator Interconnection Agreement, October 9, 2009), attached as Exhibit A.

[4] *Id.* at Para 24.

energy resources."[5] MISO was ordered to remove language from the CWN GIA that allocated responsibility for the costs of the Brookings Line to the Group 5 projects.[6] If MISO had followed FERC's instructions, West Stevens, along with the other 24 projects in First DPP Cycle November 2008 group system impact study, may still have been able to proceed to GIA negotiations and execute their GIAs as expected.

MISO and others, however, requested a rehearing of the FERC's order and on November 2, 2009 the Big Stone II partners withdrew their G392 interconnection request for the Big Stone II Coal Plant. On May 20, 2010, the FERC clarified its October 2009 order and repeated that MISO's attempt to allocate the entire cost of the Brookings Line to the 19 Group 5 projects was unsupported by the evidence.[7] Specifically, FERC found that the Brookings Line was developed as part of the CapX2020 project to serve needs beyond the interconnection of the Group 5 projects.[8] MISO argued in the rehearing process that a complete restudy of Group 5 would be required in order to comply with the FERC's order. MISO asserted that a restudy was necessary because several projects had dropped out of the interconnection queue and because MISO had to find an alternative to the Brookings Line for the purpose of cost allocation for the Group 5 and DPP projects.[9]

It is West Stevens' understanding that the combination of the FERC order, Big Stone II withdrawal, and other projects' withdrawal from the queue lead MISO to build a new study model and re-study Group 5 and the DPP groups. Building a new study model has delayed the outcome of the re-studies significantly. West Stevens only received draft results of the

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[5] *Id.* (citations omitted).

[6] *Id.* at Para. 29.

[7] 131 F.E.R.C. ¶ 61,165 at Para. 2, attached as Exhibit B.

[8] *Id.* at Para. 18.

[9] *Id.* at Para. 26, Note 41.

Minnesota DPP Cycle 1 Group System Impact Re-study on November 10, 2011, over two years after FERC's October 2009 order. West Stevens was also informed by MISO on December 15, 2011, during the monthly DPP update call that the DPP Re-study results will be delayed further due to the MISO Board of Director's approval of the 2011 MTEP Appendix A projects. Approval of the 2011 MTEP Appendix A projects (which includes the 17 Multi Value Project Portfolio) will require MISO to build a new study model that will be used to study the Minnesota DPP Cycle 1 Group System Impact Re-study and successive DPP groups. As a result of the re-studies, West Stevens has been faced with the task of continuing development without any idea of the final cost of the Project. This has made it impossible to submit an accurate bid for a PPA or to finalize terms with prospective equity partners in the Project.

West Stevens is currently being held in limbo until MISO is able to build the new study model and issue a final report for the Minnesota DPP Cycle 1 Group System Impact Re-study. MISO anticipates this work to be completed by February of 2012. This alone will push West Stevens out of compliance with the Permit, if the Permit is not amended. The next step for West Stevens in the interconnection process will be the completion of the two Facilities Studies (started on March 29, 2010 and stopped due to the re-studies), which MISO indicates will take 120 days to complete after they are initiated. Upon completion of the Facilities Studies, West Stevens will proceed to GIA negotiations and execute its GIA. At that point West Stevens will still need to perform its required pre-construction planning and reporting to the MPUC, finalize construction agreements and complete other development tasks. West Stevens must also obtain an enforceable mechanism to sell power. It will be impossible to complete the MISO Facilities Study and complete these tasks without altering the deadlines in the Permit.

D. The MPUC has Good Cause to Amend the Permit

The MPUC may amend the Permit to extend the deadlines upon a showing of good cause, pursuant to Minn. R. 7854.1300, subp. 2. West Stevens feels that good cause is certainly present in this case. Minnesota public policy continues to favor C-BED projects like West Stevens.[10] West Stevens' development efforts should not be ended, and the capital expended by the local investors should not be lost, due to events beyond the control of West Stevens or the MPUC.

The MPUC's requirement of a deadline to begin construction is sensible and reflects public policy that favors equal opportunity to develop Minnesota's wind resources. The deadline allows the MPUC to revoke a permit when a developer fails to make progress on a project, thereby allowing another developer to gain access to the resource. In this case, the Permit allowed West Stevens a full two years to commence construction. Revocation of the Permit, however, would not help the MPUC meet its policy goals. As discussed above, the MISO interconnection process has caused delays that were unanticipated and beyond West Stevens control. This is not a situation where another developer could resolve a problem and complete construction of a project.

West Stevens' inability to start construction and meet its PPA requirements are a direct result of MISO's queue reform and MISO's attempts to force the various projects in Group 5 to pay for the Brookings Line, which led to a series of re-studies and delays. If the MPUC determines that the Permit should be revoked despite these facts, it will necessarily have to be willing to take the same action for any other projects that are now facing this same problem. Local owners with viable wind projects should not lose site permits due to issues that are beyond their control.

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[10] Minn. Stat. § 216B.1612.

E. February 25, 2014 is an appropriate amended deadline

The Minnesota DPP Cycle 1 Group System Impact Re-study is not complete, and MISO anticipates this work will not be completed until February of 2012. Assuming that the re-study results are acceptable and are not challenged before FERC, West Stevens will require time to complete its final development tasks. These steps include completing the 120-day facilities study, negotiation and filing the MISO GIA, obtaining a power purchase agreement or other enforceable power sale mechanism, completing negotiations with an equity investor, finalizing a turbine supply agreement, entering into a construction contract and performing pre-construction studies and surveys required by the Permit. West Stevens therefore requests that the Permit be amended to allow two additional years to obtain a PPA and begin construction. The new deadline would be February 25, 2014. With timely completion of the MISO interconnection issues, the two-year extension should allow West Stevens enough time to complete its development work on the Project.

III. Conclusion

The owners of West Stevens are committed to the Project and despite the delays, continue to diligently work to develop the Project. The delays the Project has experienced are truly beyond the owners' control, and good cause does exist to allow the local owners of West Stevens the opportunity to complete the work they started more than 5 years ago. The local owners of the Project are optimistic that MISO will complete the Minnesota DPP Cycle 1 Group System Impact re-study as anticipated this year and the Project will once again begin to move forward. West Stevens respectfully requests that the MPUC extend the deadlines to enter into a Power Purchase Agreement and begin construction to February 25, 2014.

January 4, 2012

Attorneys for West Stevens Wind, LLC

/s/ Raymond W. Faricy, III

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EXHIBIT A

EXHIBIT A

129 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER09-1581-000

ORDER CONDITIONALLY ACCEPTING AMENDED AND RESTATED GENERATOR INTERCONNECTION AGREEMENT

(Issued October 9, 2009)

1. On August 13, 2009, pursuant to section 205 of the Federal Power Act (FPA),[1] the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Amended and Restated Generator Interconnection Agreement (Amended GIA) among the Midwest ISO, Northern States Power Company (NSP), as transmission owner, and Community Wind North LLC (Community Wind) as interconnection customer (collectively, the Parties).[2] We accept the Amended GIA effective August 14, 2009, but we condition our acceptance on the Midwest ISO modifying the Amended GIA to remove any reference to cost responsibility for the Brookings County-Twin Cities 345 kV transmission line (Brookings Line).

I. Background

2. On December 9, 2008, the Parties executed a temporary interconnection agreement (Temporary GIA) involving Project No. G586, a 30 MW wind generation project consisting of twelve wind turbines that will each generate 2.5 MW (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 (GIP) in Attachment X of

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[1] 16 U.S.C. § 824d (2006).

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, Filing of Amended and Restated Generator Interconnection Agreement, Docket No. ER09-1581-000 (filed August 13, 2009) (Filing).

the Midwest ISO Tariff.[3] Since the body of the Temporary GIA conformed to the *pro forma* GIA, the Temporary GIA was reported in the Midwest ISO's Electric Quarterly Report in accordance with Order No. 2003.[4]

3. 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 have been unable to agree on revisions to the provisions of the appendices relating to Community Wind's responsibility for the costs of certain network upgrades. With negotiations at an impasse, Community Wind asked the Midwest ISO to file the Amended GIA unexecuted pursuant to section 11.3 of the GIP.

II. <u>The Filing</u>

4. The Midwest ISO requests that the Commission accept the Amended GIA, which provides for the interconnection of the Generating Facility at NSP's Yankee substation. The Midwest ISO states that the body of the Amended GIA conforms to the Midwest ISO's *pro forma* GIA that was in effect at the time that the Temporary GIA was executed, but that the appendices have been updated to provide cost estimates for network upgrades and contingencies that may affect Community Wind's cost responsibility.[5] The Midwest ISO requests that the Commission waive the 60 day prior notice of filing requirement and make the Amended GIA effective as of August 14, 2009 in order to provide certainty to the Parties as to the status of the agreement.

5. Under Appendix A of the Amended GIA, Community Wind agrees to share in the cost responsibility for the Shared Ownership Common Use upgrades, including the Brookings Line, which is a 230-mile, 345-kV transmission line that will connect Brookings County, South Dakota, with eastern Minnesota.[6] Section 2 explains that the Midwest ISO is in the process of developing a *pro forma* Multi-Party Facilities Construction Agreement (MPFCA) that will become an appendix to the Midwest ISO's

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[3] 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).

[4] *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).

[5] Filing, Transmittal Letter at 3.

[6] *Id.* at Original Sheet No. 91.

tariff,[7] and that the MPFCA will set forth requirements for Community Wind and other Group 5 projects[8] to provide security and funding for the Shared Ownership Common Use Upgrades identified in Appendix A. Further, section 2(i) provides that the respective obligations of Community Wind and the affected Group 5 projects "to fund such . . . Shared Ownership Common Use Upgrades will . . . be the subject matter governed by" a future MPFCA.[9] The Amended GIA estimates that the total cost of the Brookings Line will be $700 million, and allocates the costs of the line to 19 Group 5 generators, including Community Wind. The Amended GIA estimates that Community Wind will be responsible for 2.5 percent of the total cost of the Brookings Line or $15 million.[10] However, Community Wind's responsibility for the cost of the Brookings Line is subject to: (1) the outcome of proposed revisions to Midwest ISO's regional cost sharing methodology that are pending before the Commission;[11] (2) whether any of the other 18

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[7] On August 21, 2009, in Docket No. ER09-1619-000, the Midwest ISO filed a proposal to revise its GIP to include a proposed *pro forma* MPFCA. According to the Midwest ISO, the MPFCA is designed to address situations where multiple interconnection customers cause the need and share the cost responsibility for common use upgrades to accommodate their interconnection requests. *Midwest Indep. Transmission Sys. Operator, Inc.*, Electric Tariff Filing regarding Attachment X – Generator Interconnection Procedures, Docket No. ER09-1619-000, Transmittal Letter at 9 (filed August 21, 2009) (MPFCA Filing).

[8] The Group 5 projects consist of 32 individual interconnection requests totaling approximately 2,039 MW in Southwest Minnesota, Northwest Iowa, and Eastern South Dakota. The Midwest ISO's GIP in Attachment X provides that generator interconnection projects may be studied as a group for the purpose of conducting interconnection studies. The Midwest ISO conducted the generator interconnection system impact studies as a group for the Group 5 projects. The initial studies were performed in 2006 and 2007 and the study reports were posed during the summer and fall of 2007. As discussed below, the Amended GIA estimates that the costs of the Brookings Line will be funded by nineteen Group 5 projects, including Community Wind.

[9] Filing, Appendix A § 2(i).

[10] *Id.* Appendix A, Table 5.

[11] On July 9, 2009, the Midwest ISO filed proposed amendments to its tariff in Docket No. ER09-1431-000 to revise the method for allocating the cost of network upgrades for generation interconnection projects. Under the proposal, an interconnection customer would pay 90 percent of the cost of any network upgrades for facilities rates at or above 345 kV, such as the Brookings Line. *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-1431-000, at 15-16 (filed July 9, 2009) (Cost Allocation Filing).

EXHIBIT A

Group 5 projects assigned the costs of the Brookings Line drop out of the interconnection queue; and (3) any changes in the scope or funding of the Brookings Line.

6. The Midwest ISO states that Community Wind declined to execute the Amended GIA because of the inclusion of the language concerning Community Wind's responsibility for funding the Brookings Line.[12] The Midwest ISO states that Community Wind objects to the disputed language on the basis that the Brookings Line is not necessary to provide interconnection service for the Generating Facility and that the proposed language imposes a new obligation on Community Wind to pay an unknown cost.[13] According to the Midwest ISO, Community Wind asserts that inclusion of the proposed language makes it difficult to finance the project because developers and lenders are unable to bear the potential cost exposure of such a large upgrade.

7. The Midwest ISO argues that inclusion of the disputed provisions is appropriate, necessary, and consistent with Commission precedent. Citing Order Nos. 2003 and 2003-A, the Midwest ISO states that the Commission has recognized that each interconnection customer takes the business risk that its responsibility for funding network upgrades may change if certain contingencies occur, including the withdrawal of other interconnection customers, and that known contingencies for possible financial risk should be addressed in each interconnection agreement.[14] The Midwest ISO explains that the Brookings Line is properly included because it is a known contingency for Community Wind's interconnection project and others in the same group study. The Midwest ISO points out that the study results for the Group 5 projects have not yet resulted in agreements that allocate responsibility for the costs of the upgrades needed to accommodate the interconnection of the projects. The Midwest ISO also notes that Community Wind and other stakeholders are currently negotiating the terms and conditions of funding and constructing the Brookings Line. It anticipates that Community Wind will enter into a MPFCA with other generators to share in the costs of the line and that, if the negotiations are successful, the Midwest ISO anticipates amending the Amended GIA to reflect the resulting cost obligations. The Midwest ISO believes that the ongoing negotiations provide an efficient and effective means to resolve the matter.

8. The Midwest ISO also contends that the reference to the Brookings Line in the Midwest ISO Transmission Expansion Plan for 2008 (MTEP08) will not prevent Community Wind from having to share in the costs of the line. The Midwest ISO explains that the Brookings Line was included in MTEP08, and adds that the reference to

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[12] *See* Filing, Transmittal Letter at 4 n. 6.

[13] *Id.* Transmittal Letter at 4-5.

[14] *Id.* Transmittal Letter at 6.

the Brookings Line in MTEP08 meant that the project had not yet been validated for possible designation as a Baseline Reliability Project[15] eligible for regional cost sharing under the Midwest ISO tariff.[16] According to the Midwest ISO, the reference to the Brookings Line in MTEP08 does not rule out the possibility that Community Wind will bear 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."[17]

III. Notice of Filing and Responsive Pleadings

9. Notice of the Midwest ISO's filing was published in the *Federal Register*, 74 FR 42893 (2009), with interventions and protests due on or before September 3, 2009. Community Wind, Otter Tail Power Company, Missouri River Energy Services, and Renewable Energy Systems America, Inc., filed motions to intervene. Buffalo Ridge Power, LLC (Buffalo Ridge), Iberdrola Renewables, Inc. (Iberdrola), Great River Energy (Great River), Xcel Energy Services (Xcel), Wind Capital Group, LLC (Wind Capital), the American Wind Energy Association and Wind on the Wires (together, AWEA and WOW), Edison Mission Energy (Edison), on behalf of Community Wind, and NextEra, on behalf of its operating subsidiary Story Wind LLC (Story Wind), filed timely motions to intervene and comments.

10. On September 18, 2009, the Midwest ISO, Xcel, and Great River each filed a motion for leave to answer and answer to the comments submitted in the proceeding. On September 29, 2009, Edison filed a motion for leave to answer and answer.

11. Several protesters argue that the Commission should reject the proposed cost allocation of the Brookings Line and order the Midwest ISO to modify the Amended GIA to remove any reference to the responsibility of Community Wind and other Group 5 projects for the costs of the line.[18] More specifically, Buffalo Ridge states that the proposed cost allocation subverts Order No. 2003 by holding Group 5 projects responsible for a network upgrade that is not necessary for their interconnection and that the Midwest ISO has provided no evidence that the Group 5 projects benefit from the

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[15] Baseline Reliability Projects are eligible for regional cost sharing and are designated by the Midwest ISO after meeting specified criteria.

[16] Filing, Transmittal Letter at 4 n. 6.

[17] *Id.* Transmittal Letter at 7 (citing MTEP08 at 7).

[18] Edison Protest at 1, 27; NextEra Protest at 12; Buffalo Ridge Protest at 3, 15; AWEA and WOW Protest at 12.

facility to an extent that warrants them bearing such costs.[19] Similarly, AWEA and WOW argue that the proposed allocation of costs does not represent a reasonable balance between cost causers and beneficiaries, and express concern that the Midwest ISO is attempting to thrust unidentified costs onto interconnection customers through an unexecuted agreement with just one of those customers.[20] Edison, NextEra, AWEA and WOW argue that generators may only be allocated the costs for upgrades that would not have been made but for their interconnection.[21]

12. Edison, NextEra,[22] AWEA and WOW state that the Brookings Line is being developed as part of the CapX2020 initiative, which is designed to support the growing demand for electricity in Minnesota and the surrounding region.[23] They point out that the Minnesota Public Utilities Commission initially imposed a number of conditions on the Brookings Line when granting the required certificate of need, but modified those restrictions on reconsideration because it recognized that the line will promote regional

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[19] Buffalo Ridge Protest at 5, 9-11 (citing *Illinois Commerce Commission v. FERC*, 2009 U.S. App. LEXIS 18311 at 13-14 (7th Cir. 2009) (stating that "FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members").

[20] AWEA and WOW Protest at 7, 11-12.

[21] Edison Protest at 15 (citing *New York Indep. Sys. Operator, Inc.*, 97 FERC ¶ 61,113, at 61,573 (2001) (*NYISO*)); AWEA and WOW Protest at 8-10; NextEra Protest at 13-14.

[22] In addition, NextEra argues that the Midwest ISO has failed to meet its obligations under Order No. 2003-A. NextEra argues that Order No. 2003-A requires the Midwest ISO to provide an estimate of the costs of any network upgrades that were assumed in the interconnection studies for the interconnection customer that are an obligation of an entity other than the interconnection customer and that have not been constructed. Directing the Commission to the interconnection agreement between Story Wind, ITC Midwest LLC and the Midwest ISO, NextEra notes that, despite the fact that the Amended GIA estimates that Story Wind will be required to pay $39.2 million or 5.61 percent of the total cost of the Brookings Line, the Midwest ISO did not include an estimate of the costs of such network upgrades in Story Wind's interconnection agreement. NextEra Protest at 23-24.

[23] Edison Protest at 21; AWEA and WOW Protest at 10; NextEra Protest at 13; Buffalo Ridge Protest at 7. CapX2020 is an initiative of eleven transmission-owning utilities in the Minnesota region, including Xcel and Great River Energy, to expand the transmission grid to meet increasing demand and to support renewable energy expansion by building four new transmission lines, including the Brookings Line.

EXHIBIT A

and community reliability.[24] Edison notes that a study done by an engineer retained by several of the Group 5 projects reveals that the reliability concerns arising from the interconnection of the projects could be addressed by either adding shunt capacitors at strategic locations for $18.8 million or installing a shorter transmission line for $166.4 million.[25] Edison states that under Commission precedent the Midwest ISO can only require Community Wind to fund its proportionate share of the least cost alternative, which only costs $18.8 million. Edison urges the Commission to: (1) direct the Midwest ISO to revise the Amended GIA to substitute Community Wind's responsibility for the line with its share of the lowest cost alternative; (2) direct Midwest ISO to re-study the Group 5 projects in 30 days, taking the alternatives into consideration, and revise the Amended GIA accordingly; or (3) set the Amended GIA for hearing and settlement judge procedures.[26] Iberdrola makes a similar request and asks the Commission to appoint a settlement judge to initiate settlement procedures to determine the appropriate allocation of costs associated with the line.[27]

13. Xcel and the Midwest ISO argue that the Amended GIA merely provides an estimate of Community Wind's responsibility for the costs of the Brookings Line, which is required by Order No. 2003-A.[28] Great River maintains that providing a greater degree of certainty is unnecessary and impractical.[29] Great River, Xcel, and the Midwest ISO argue that litigating allocation of the costs of the Brookings Line in this proceeding could have an adverse effect on ongoing stakeholder negotiations and would implicate issues that go beyond the scope of the Amended GIA.[30]

14. Xcel argues that the alternative study Edison mentions does not provide an appropriate basis for cost allocation because: (1) it would be inconsistent with coordinated regional planning for NSP to construct both the alternatives advocated by the study and the Brookings Line; and (2) the study is flawed because it is only oriented toward resolving stability limitations, ignores thermal limitations, and assumes the

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[24] Edison Protest at 20 (citing *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, Order Granting And Denying Motions For Reconsideration, And Modifying Conditions, Docket No. ET-2, E-002, at 12 (August 10, 2009)).

[25] *Id.* at 26.

[26] *Id.* at 28.

[27] Iberdrola Protest at 1, 7.

[28] Xcel Initial Comments at 10; Midwest ISO Answer at 6.

[29] Great River Comments at 4-7.

[30] Great River Answer at 6; Xcel Answer at 7-8; Midwest ISO Answer at 6-8.

existence of a transmission line, the Storden Line, that is no longer planned and two 30 MVAR capacitors that were never installed.[31] Xcel states that the CapX2020 utilities have not changed their view of the Brookings Line or asked the Midwest ISO to change the proposed treatment of the line.[32] Xcel states that the utilities believe that the Brookings Line should be treated as a Baseline Reliability Project because it is designed to serve multiple needs beyond the interconnection of particular generators.[33] Xcel states that while the Midwest ISO has the power to classify the project as it has done,[34] NSP is not inclined to assign all, or even most, of the costs of the Brookings Line to the Group 5 projects.[35]

15. In response, Edison argues that Xcel's admission that the Brookings Line is designed to serve multiple needs demonstrates that the Brookings Line is not necessary for the interconnection of Community Wind.[36] Edison argues that Xcel's claim that the alternative study is inconsistent with regional planning confuses the regional planning process with the generator interconnection process. Edison also asserts that it is not suggesting that NSP should build both the Brookings Line and the alternative upgrades, but that Community Wind can only be held responsible for its proportionate share of the lowest cost alternative if the Brookings Line is built.[37] Edison notes that the alternative study only addressed stability limitations because the Midwest ISO has indicated that the Brookings Line is only designed to remedy stability limitations.[38] In addition, Edison

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[31] Xcel Answer at 10-11.

[32] *Id.* at 4-5.

[33] Xcel states that the allocation of the costs of the Brookings Line shows the limitations of the MTEP process and the current method of allocating costs in the Midwest ISO. Xcel states that it supports the creation of a new permanent regional expansion criterion and benefits cost allocation method that accounts for the need of vertically integrated utilities to recover new investment in transmission facilities. Xcel Initial Comments at 11-13.

[34] Xcel Answer at 5-7; Xcel Initial Comments at 11 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009)).

[35] Xcel Answer at 11.

[36] Edison Answer at 4-5.

[37] *Id.* at 4-6.

[38] *Id.* at 6-7.

points out that no final decision has been made about the Storden Line and that the study did not assume that the capacitors were installed but, instead, proposed to install them.[39]

16. Xcel urges the Commission to defer acceptance of the provisions assigning responsibility for the costs of network upgrades until the Commission makes a determination regarding the Midwest ISO's proposal to modify its generation interconnection cost allocation methodology in Docket ER09-1431-000. Xcel argues that the Commission should also defer action on the reasonableness of the obligation to execute a MPFCA until the Commission makes a determination on the tariff changes proposed in Docket No. ER09-1619-000, including the *pro forma* MPFCA.[40] Xcel also recommends that the Commission defer action on the Amended GIA for five months to allow time for the various stakeholder processes to reach a resolution and require the Midwest ISO to report on the progress of stakeholder discussions 60 and 120 days after the initial Commission order. Xcel states that the Commission can institute hearing and settlement procedures if the negotiations have not made sufficient progress at that time.[41] In addition, Xcel asks the Commission to order the Midwest ISO to defer filing of other Group 5 generator interconnection agreements that are pending execution or are going to be filed on an unexecuted basis because failure to do so would cause all affected parties to incur substantial and unnecessary costs.[42]

17. Edison argues that the Commission should not defer action on the Amended GIA for two reasons. First, Edison contends that the proceedings and negotiations that Xcel identified do not address the network upgrades Community Wind should be responsible for under the Amended GIA, which is the central issue in dispute in this proceeding.[43] Second, only by promptly directing the Midwest ISO to remove cost responsibility for the Brookings Line or to re-study the Community Wind project can the Commission avoid further delays and possible abandonment of the Community Wind project.[44]

18. A number of protesters argue that the costs of the Brookings Line should be allocated regionally. Edison argues that the Midwest ISO has the option of expanding the

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[39] *Id.* at 8-9.

[40] Xcel Initial Comments at 10.

[41] Xcel Answer at 9.

[42] *Id.* at 12.

[43] Edison Answer at 4, 9-11. Edison asserts that the ongoing discussions about the Brookings Line will not progress until the Commission rejects the proposed allocation of the costs of the Brookings Line.

[44] *Id.* at 12-13.

definition of a Baseline Reliability Project to include the Brookings Line.[45] NextEra, AWEA and WOW argue that the Brookings Line should be classified as a Baseline Reliability Project, Regionally Beneficial Project, or Other Project.[46] Buffalo Ridge simply argues that the costs of the Brookings Line should be rolled-in on a regional or system-wide basis.[47] On the other hand, Great River argues that the Commission would be ignoring the clear provisions of Attachment FF if it ordered the Midwest ISO to classify the project as requested by the protesters.[48]

19. Several protesters also argue that the Amended GIA is unreasonable because it subjects Community Wind and other Group 5 projects to a large, open-ended, and unreasonable contingent cost obligation.[49] They argue that the Amended GIA threatens to halt development of wind generation in the region by placing the entire cost of the Brookings Line on Community Wind and other Group 5 projects. Edison argues that the Commission should limit Community Wind's cost responsibility to the estimated cost of network upgrades in the Amended GIA.[50]

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits answers unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO, Xcel, Great River and Edison because they assisted us in our decision-making process.

B. Substantive Matters

22. We conditionally accept the Amended GIA, subject to the Midwest ISO revising the agreement, as discussed below. We also find good cause exists to grant the Midwest

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[45] Edison Protest at 29.

[46] NextEra Protest at 3; AWEA and WOW Protest at 10.

[47] Buffalo Ridge Protest at 13.

[48] Great River Answer at 3-4.

[49] Edison Protest at 30-32, 34-38; Wind Capital Comments at 2-3.

[50] Edison Protest at 33-34.

ISO's request for waiver of the 60-day prior notice requirement to permit an effective date of August 14, 2009, one day after the filing.[51]

23. Under the Midwest ISO's tariff, interconnection customers may only be required to fund the costs of network upgrades that are necessary for their interconnection. The Midwest ISO's tariff uses the "but for" standard for the purpose of allocating the cost of network upgrades.[52] Under that standard, "generation developers are to be allocated the costs for transmission system upgrades that would not have been made but for the interconnection of the developers, minus the cost of any facilities that the ISO's regional plan dictates would have been necessary anyway for load growth and reliability purposes."[53] 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.[54]

24. The Midwest ISO attempts to require Community Wind to share in the costs of the Brookings Line with other generator interconnection customers on the basis that an interconnection customer must fund the cost of all network upgrades needed to support that customer's in-service date.[55] The Midwest ISO asserts, without supporting its conclusion, that the Brookings Line is "required primarily for the delivery of new wind energy resources."[56] Under the Amended GIA, the Midwest ISO allocates the cost of the

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[51] *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992).

[52] The Midwest ISO has adopted the language of the *pro forma* LGIA adopted in Order No. 2003. *Compare* Order No. 2003, FERC Stats. & Regs. ¶ 31,146, Appendix C § 1 (defining network upgrades as "the additions, modifications, and upgrades to the Transmission Provider's Transmission System *required* at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System" (emphasis added)), *with* Tariff, Attachment X § 1 (defining network upgrades as the "additions, modifications, and upgrades to the Transmission System *required* at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility to the Transmission System" (emphasis added)). *See also*, *id.* § 8.4 (stating that the Interconnection Facilities Study must specify and estimate the cost of the *required* equipment and construction work needed to physically and electrically connect the Interconnection Facilities to the Transmission System (emphasis added)).

[53] *NYISO*, 97 FERC at 61,573.

[54] Tariff, Appendix FF § III.A.2.d.3(b).

[55] Filing, Transmittal Letter at 6 (citing Order No 2003-A, ¶ 31,160 at P 320).

[56] *Id.* at 7.

Brookings Line to Community Wind and 18 other Group 5 projects without the Midwest ISO providing any evidence that the Brookings Line would not have been built but for the interconnection of these generation projects. The Commission finds 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, and must be rejected. We reject the Midwest ISO's proposal without prejudice to the Midwest ISO re-filing a proposal to allocate the costs of the Brookings line with appropriate support.

25. We will deny the requests of several protesters to set the Amended GIA for hearing or settlement judge procedures. The Midwest ISO has provided no evidence that the Brookings Line would not be constructed but for the interconnection of Community Wind and other Group 5 projects. Therefore, setting the Amended GIA for hearing and settlement procedures is unnecessary.

26. The Commission rejects the argument that it should defer action on the Amended GIA for the Community Wind project pending the outcome of other Commission proceedings and ongoing stakeholder discussions for two reasons. First, the outcome of the proceedings identified by Xcel will not address the issue of whether the costs of the Brookings Line can be allocated to Community Wind or other Group 5 projects. In Docket No. ER09-1431-000, the Midwest ISO has proposed changes to the method that it uses to allocate the costs of network upgrades. Under the current Midwest ISO tariff, interconnection customers are required to pay the entire cost of network upgrades upfront. If, after achieving commercial operation, the interconnection customer designates its facility as a network resource or enters into a contract with a term of at least one year to supply capacity or energy to a network customer, then 50 percent of the costs of network upgrades will be repaid to the interconnection customer.[57] Under the Midwest ISO's proposal, the interconnection customer will be repaid 10 percent of the costs once commercial operation has been achieved, rather than 50 percent of such costs.[58] Thus, while the proceedings in Docket No. ER09-1431-000 may impact Community Wind's eligibility for reimbursement of the costs of network upgrades, the proceedings do not address whether Community Wind can be required to fund the costs of the Brookings Line in the first place.

27. Likewise, the Midwest ISO's proposed revisions to its GIP in Docket No. ER09-1619-000 does not address the question of whether Community Wind can be obligated to share in the costs of the Brookings Line. In that proceeding, the Midwest ISO has proposed to revise its GIP to include two new *pro forma* agreements: (1) a facilities construction agreement for a single interconnection customer; and (2) a MPFCA to

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[57] Tariff, Attachment FF, section III.A.2.d.

[58] Cost Allocation Filing, Transmittal Letter at 15.

EXHIBIT A

address the situation where multiple interconnection customers cause the need and share the cost responsibility for common use upgrades to accommodate their interconnection requests.[59] While that proceeding may impact any MPFCA that Community Wind and the other affected stakeholders ultimately enter into relating to the Brookings Line, those *pro forma* agreements are not relevant to the disposition of this case.

28. Second, deferring action on the agreement, as Xcel requests, pending the outcome of the ongoing stakeholder negotiations for the MPFCA is unnecessary. As the Midwest ISO has failed to meet its burden in demonstrating that the provisions of the Amended GIA relating to the Brookings Line are just and reasonable, we must reject the provisions of the Amended GIA relating to the Brookings Line and this order does not foreclose further discussions.

29. Accordingly, we will accept the filing, subject to the Midwest ISO making a compliance filing within 30 days to remove the unsupported language relating to any cost responsibility of Community Wind or other Group 5 projects for the costs of the Brookings Line.

The Commission orders:

(A) The Amended GIA is hereby accepted as conditioned in the body of the order, to become effective August 14, 2009, as requested.

(B) The Midwest ISO is required to make a compliance filing within 30 days of the date of this order, as discussed in the body of the order.

By the Commission. Commissioner Kelly concurring in part and dissenting in part with a separate statement to be issued at a later date.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[59] MPFCA Filing, Transmittal Letter at 5.

EXHIBIT B

EXHIBIT B

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

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[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

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[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).

EXHIBIT B

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.

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[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).

EXHIBIT B

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]

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[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

(continued...)

EXHIBIT B

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

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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).

EXHIBIT B

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

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[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

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[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

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EXHIBIT B

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

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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…)

EXHIBIT B

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"

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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).

EXHIBIT B

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

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[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.

EXHIBIT B

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.

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[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.

EXHIBIT B

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

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[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.

EXHIBIT B

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.

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[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.*

EXHIBIT B

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]

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[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).

EXHIBIT B

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,

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[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)).

EXHIBIT B

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]

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[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.

EXHIBIT B

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

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[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

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[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. <u>Commission Determination</u>

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 GIA[60] 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

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[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...)

EXHIBIT B

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

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

[62] Filing at Original Sheet No. 90.

EXHIBIT B

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.