



Electric Power Industry

FERC Issues Order Reducing Cost of Generation Interconnection Service

By: Bruce Grabow

Recently, the Federal Energy Regulatory Commission (FERC) directed the Midwest Independent Transmission System Operator, Inc. (MISO) to remove a provision in its Tariff pertaining to the cost of generation interconnection service.¹ The FERC order has significant beneficial cost impacts for the generation community in the MISO region. Evidence in the FERC proceeding demonstrated estimated cost savings for one generation developer at just one of its generating sites at \$10 million (NPV) or \$55 million (over time). The FERC decision applies to all new generation interconnection agreements executed as of March 22, 2011.

Background

Standard FERC policy requires a generator connecting to the transmission grid to pay 100 percent of the cost, up-front, for any upgrades to the utility transmission system to accommodate the interconnection (i.e., network upgrades). Standard FERC policy requires the money to be refunded to the generator. In the MISO region (covering all or a portion of 12 States), two variations were allowed. First, in 2010, the FERC cut the refund back to essentially zero — so the generator bears 100 percent of the cost of any network upgrades. Second, in 2006, the FERC accepted a Tariff provision that allowed the interconnecting utility, in its sole discretion, after commercial operation of the new generating project, to refund 100 percent of the amounts that the interconnecting generator paid for network upgrades, but then file a service agreement at the FERC to re-collect that same 100 percent amount over time, from the interconnecting generator, with a rate of return, O&M, taxes, etc. built in (known as “Option 1”).

FPA Section 206 Complaint

In March 2011, an ad hoc coalition of generation developers, represented by Locke Lord LLP, filed a Complaint at the FERC to remove Option 1 from the MISO Tariff.

The Complaint argued Option 1 is unjust and unreasonable in violation of the Federal Power Act (FPA) because: 1) no legitimate service is being provided to justify this higher priced cost for interconnection service — interconnection service already is being provided when Option 1 might be elected by the utility; 2) the generation developer already bore the financial risk in providing the money up-front so the utility could construct the network upgrades — the utility has not put any capital at risk for which it might earn a rate of return; and 3) the principles of cost causation



Electric Power Industry

are violated — there is no legitimate cost on the part of the utility and the generator receives no benefit from the higher Option 1 pricing.

The Complaint argued Option 1 is unduly discriminatory in violation of the FPA because, among other things, it allows generators that compete within the same MISO market to be subject to different interconnection cost policies: utility A may not elect Option 1, which means generators connecting its transmission system, at most, pay 100 percent of the cost for network upgrades; whereas utility B may elect Option 1, which means generators connecting to that transmission system pay much more than 100 percent of the cost of network upgrades (evidence showed this could be as much as 338 percent over time or 162 percent NPV).

FERC allows variations from its Standard generation interconnection policies when they are administered by an “independent entity” such as the MISO. The Complaint argued Option 1 is elected solely by a utility which is a non-independent entity; the Midwest ISO is not involved at all. The non-independent transmission utility has an incentive to elect Option 1 to garner revenue (which, in turn, increases the price of the generator’s power) and to provide a cost advantage to its own or affiliated generation that may compete within the MISO region.

The Complaint was supported by various independent generation developers and national trade associations. The Complaint was opposed by MISO, the transmission-owning utilities within the MISO region and the Organization of MISO States (State regulators within the 12-State region).

FERC Decision

The FERC agreed that Option 1 is “unjust, unreasonable, and unduly discriminatory” in violation of the FPA and ordered MISO to remove the provision from its Tariff effective March 22, 2011 (the date the Complaint was filed). The FERC determined “it is unjust and unreasonable to require the interconnection customer to bear the burden of funding the network upgrades up-front but then be repaid these costs and be subjected to a monthly [charge] reflecting the transmission owner’s capital costs and income tax allowance, which unreasonably increases the interconnection customer’s costs over time—solely at the discretion of the transmission owner.”² The FERC also ruled, “the fact remains that the Tariff gives the transmission owner the sole discretion to choose . . . Option 1 . . . and, thereby, creates opportunities for undue discrimination.”³

Parties to the proceeding have the right to seek rehearing of the FERC’s order.

Endnotes

- ¹ *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076 (2011).
- ² *Id.* at P 37.
- ³ *Id.* at P 39.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

Bruce Grabow | T: 202-220-6991 | bgrabow@lockelord.com