

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Shetek Wind Inc., Jeffers South, LLC, and)	Docket Nos. EL11-53-000
Allico Renewable Energy Limited)	EL11-53-001
v.)	EL11-53-002
Midwest Independent Transmission)	
System Operator, Inc.)	
)	
)	
Midwest Independent Transmission)	Docket Nos. ER12-188-000
System Operator, Inc.)	ER12-188-001
)	ER12-188-002
)	ER12-188-003
)	(Not consolidated)

**TRIAL STAFF'S INITIAL COMMENTS
SUPPORTING THE STIPULATION AND AGREEMENT**

**To: The Honorable David H. Coffman
Settlement Judge**

Pursuant to Rule 602(f) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),¹ the Commission's Trial Staff (Trial Staff) respectfully submits its Initial Comments supporting the August 27, 2012 Offer of Settlement and Settlement Agreement (Settlement) among Shetek Wind Inc., Jeffers South, LLC, Allico Renewable Energy Limited (collectively the Complainants),

¹ 18 C.F.R. § 385.602(f) (2011).

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EcoEnergy, LLC, Prairie Rose Wind, LLC (Prairie Rose),² Midwest Independent Transmission System Operator, Inc. (MISO), Xcel Energy Services Inc. on behalf of Northern States Power Company, a Minnesota corporation (NSPM) and Northern States Power Company, a Wisconsin corporation (NSPW) (jointly Xcel Energy), Renewable Energy Systems Americas, Inc. (RES Americas), High Country Energy, LLC (HCE), and Great River Energy (GRE) (the Settling Parties). The Settling Parties intend this Settlement to comprehensively resolve all issues among them in the captioned proceedings.

For the reasons detailed below, Trial Staff supports the Settlement as fair, reasonable and in the public interest. Accordingly, Trial Staff supports certification of the Settlement to the Commission and the Commission's approval of the Settlement.

I. BACKGROUND

As early as 2005, MISO began studying certain interconnection requests assuming that previously-approved interconnection service for existing generation facilities could be shared with new ones.³ In 2008, MISO posted a policy allowing existing generators to coordinate their operations with new generators provided their combined output did not

² Prairie Rose is an affiliate of Geronimo Wind Energy, LLC.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,234 at P 2 (2011).

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exceed the existing generator's rights at the point of interconnection.⁴ MISO called this "Net Zero Interconnection," because it produced a net zero incremental MW injection.⁵

On July 15, 2011, Complainants filed a complaint against MISO (in Docket No. EL11-53-000) claiming Net Zero Generator Interconnection Agreements (GIA) were unjust, unreasonable and unduly discriminatory and preferential in violation of section 206 of the Federal Power Act (FPA).⁶ The complaint involved several interconnection projects—including Prairie Rose Wind Farm (Project J183), which shares NSPM's existing interconnection at the Angus Anson generator Split Rock substation.

⁴ *Id.*

⁵ *Id.*

⁶ The following parties intervened in the Complaint proceeding: the Detroit Edison Company, Duke Energy Corporation, NextEra Energy Resources, LLC, Missouri River Energy Services, Iberdrola Renewables, Inc., Edison Mission Energy, Integrys Energy Group, Inc., EcoEnergy, LLC, Michigan Electric Transmission Company, LLC, National Wind, LLC, Wind on the Wires, Midwest ISO Transmission Owners (Ameren Services Company (as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois), American Transmission Company LLC, Big Rivers Electric Corporation, Central Minnesota Municipal Power Agency, City Water, Light & Power (Springfield, IL), Dairyland Power Cooperative, Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc., GRE, Hoosier Energy Rural Electric Cooperative, Inc., Indiana Municipal Power Agency, Indianapolis Power & Light Company, Michigan Public Power Agency, MidAmerican Energy Company, Minnesota Power (and its subsidiary Superior Water, L&P), Montana-Dakota Utilities Co., Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana), Southern Minnesota Municipal Power Agency, Wabash Valley Power Association, Inc., and Wolverine Power Supply Cooperative, Inc.), PNE Wind USA, Inc., American Municipal Power, Inc., RES Americas, International Transmission Company, ITC Midwest, LLC, HCE, GRE, Prairie Rose, Exelon Corporation, and Xcel Energy.

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On October 25, 2011, in Docket No. ER12-188-000, MISO filed, under section 205 of the FPA, a Provisional GIA among MISO, NSPM, and Prairie Rose for a Net Zero Interconnection at the Angus Anson generator Split Rock substation.⁷ Next, MISO instituted a generator interconnection queue reform proceeding, by a November 1, 2011 tariff filing in Docket No. ER12-309-000. The Commission accepted and suspended the Prairie Rose Wind Provisional GIA, on December 23, 2011, subject to refund and further Commission order⁸ because the issues it raised may be affected by both the pending complaint and the queue reform proceeding.⁹

By a March 30, 2012 order addressing both the complaint and the Provisional GIA case,¹⁰ the Commission denied rehearing of its decision to conditionally accept Prairie Rose's Provisional GIA¹¹ but set the complaint for a section 206 hearing.¹² It found that,

⁷ The following parties intervened in the proceeding and some also protested the filing: Complainants, the Midwest ISO Transmission Owners (in this case, Midwest ISO Transmission Owners also included: International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; and Missouri River Energy Services), Prairie Rose, and Xcel Energy.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,234 at P 23 (2011). Pursuant to the order, the GIA became effective on October 26, 2011.

⁹ *Id.* at P 10, Ordering Para. (B).

¹⁰ *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250 at P 141 (2012) (the Hearing Order).

¹¹ *Id.* at P 154.

¹² The Commission did not consolidate the dockets in the complaint and Provisional GIA proceedings.

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by processing the Prairie Rose interconnection request, MISO violated the MISO Tariff¹³ because the tariff did not include that service.¹⁴ It set for hearing the issue of whether MISO's past application of its posted Net Zero Interconnection policy resulted in undue discrimination for a subset of the complained-about projects and the appropriate remedy to address any such discrimination. Specifically, it limited the hearing to Projects J182, J183, J184, and J189, to establish a more complete record about: "whether a lack of transparency and fairness in MISO's past application of its posted Net Zero interconnection policy resulted in undue discrimination against Complainants *or other parties to the complaint*."¹⁵ Thus, it directed the hearing judge to "determine whether any parties were similarly situated to the Net Zero developers that were chosen . . . and, if so, whether the existing generators gave undue preference to an affiliate or another developer when choosing a Net Zero project with which to partner."¹⁶ Concerning the Prairie Rose interconnection in particular, it set for hearing "the process that led to the selection of Prairie Rose as a Net Zero generator and issues of undue discrimination."¹⁷

On the same day, in MISO's generator interconnection queue reform proceeding, the Commission conditionally accepted a MISO compliance filing through which MISO

¹³ Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Fifth Revised Vol. No. 1.

¹⁴ *Id.* at P 125.

¹⁵ *Id.* at P 127 (emphasis supplied).

¹⁶ *Id.* at P 128.

¹⁷ *Id.* at P 141.

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created a new sub-class of Energy Resource Interconnection Service called Net Zero Interconnection Service (in Docket No. ER12-309-000).¹⁸ In that order, the Commission required MISO to make a compliance filing “to implement additional procedures that ensure that Net Zero Interconnection Service is offered on a fair, transparent, and non-discriminatory basis and that comply with the filing requirements of FPA section 205.”¹⁹

Judge Karen V. Johnson was appointed as Settlement Judge in the complaint proceeding.²⁰ Judge Johnson held settlement conferences on April 17, 2012, April 23, 2012, and May 7, 2012. On April 30, 2012, Complainants and EcoEnergy, LLC requested rehearing of the Hearing Order.

On May 9, 2012, the Chief Administrative Law Judge (Chief Judge) Curtis L. Wagner, Jr. terminated settlement judge procedures because the parties had reached an impasse.²¹ Chief Judge Wagner selected Judge David H. Coffman as the Presiding Judge and directed him to adopt a procedural schedule that would produce an Initial Decision by May 11, 2013.²²

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,223 at P 293 *order on reh'g*, 139 FERC ¶ 61,253 (2012).

¹⁹ *Id.* at P 299-306.

²⁰ *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-000 (Apr. 5, 2012) (unpublished order).

²¹ *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-000 (May 9, 2012) (unpublished order).

²² *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket (continued)

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Then, Judge Coffman established a procedural schedule²³ and, on June 7, 2012, a protective order.²⁴ During the interim, the parties conducted discovery and settlement negotiations, resulting in the Settlement.

On August 2 and 7, 2012, Complainants and EcoEnergy, LLC withdrew their requests for rehearing of the March 30, 2012 order, pursuant to an agreement with Geronimo Wind Energy LLC (Geronimo) and Prairie Rose. On August 27, 2012, the Settling Parties filed the Settlement along with a motion to suspend the procedural schedule and Initial Decision date. On August 28, 2012, the Chief Judge granted the motion pending Commission action on the Settlement.²⁵

II. DESCRIPTION OF THE SETTLEMENT

As detailed in the Settlement, the Settling Parties agreed to the following. The Settlement will resolve all issues concerning both the complaint (in Docket No. EL11-53-000) and the Provisional GIA filing (in Docket No. ER12-188-000) and consolidate those proceedings under Rule 602(b)(3).²⁶

No. EL11-53-002 (May 11, 2012) (unpublished order).

²³ *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-002 (May 25, 2012) (unpublished order).

²⁴ *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-002 (June 7, 2012) (unpublished order).

²⁵ *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-000 (Aug. 28, 2012) (unpublished order).

²⁶ 18 C.F.R. § 385.602(b)(3) (2012).

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Section 3.1 of the Settlement defines the “Geronimo Parties” as Geronimo and its present or future affiliates, including Prairie Rose Wind, LLC. Section 3.2. defines the “Melone Parties” as Thomas Melone, Shetek Wind, Inc., Jeffers South, LLC, Allco Renewable Energy Limited, and any present or future affiliates of any of the Melone Parties. Section 3.3 defines “EcoEnergy Parties” as EcoEnergy, LLC and its present or future affiliates.

In Section 3.4, the Settling Parties stipulated that “there were no similarly-situated parties capable of interconnecting at Angus Anson Station in a timeframe contemporaneous with that proposed by Prairie Rose that were unduly discriminated against in connection with the development and execution of the Prairie Rose Net Zero GIA for interconnection Project J183 at the point of interconnection for the NSPM Angus Anson Station.”

In Section 3.5, the Geronimo Parties, MISO, and Xcel agreed to comply with the Net Zero interconnection filing requirements of the MISO Tariff that will be developed in the queue reform proceeding; they will file agreements that conform to the *pro forma* agreements for Net Zero GIAs: Energy Displacement and Monitoring and Consent. Based on their stipulation that no parties were similarly situated to Prairie Rose that were unduly discriminated against, the Settling Parties agreed that, Prairie Rose will be deemed to be in compliance with provisions of the MISO Tariff designed to protect against undue discrimination.

In Section 3.6, the Melone Parties and EcoEnergy Parties agreed to cease any

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participation in the complaint and the Provisional GIA case and, upon request of the Geronimo Parties, to file notices of withdrawal in those proceedings.

Section 3.7 clarifies that the Settlement does not limit the rights of any party, except the Melone and EcoEnergy Parties as specified explicitly in the Settlement, to participate in judicial or administrative proceedings.

Under Section 4.1, the Settlement provisions are not severable and are not operative until the Settlement is approved without modification by the Commission through a Final Order. Under Section 4.2, the Settlement will not become effective until approved by a Final Commission Order.

Section 4.3 provides that no Settling Party shall be bound by the Settlement unless the Settlement is approved by a Final Order without modification and that the Settlement shall be deemed withdrawn if it is not accepted or if it is accepted with modification.

Section 4.4 provides that the Settlement does not limit obligations under any other settlement agreement or private contracts entered into by the Settling Parties, including any other agreements involving matters in the complaint and GIA cases.

III. DISCUSSION

For the following reasons, the Settlement is fair, reasonable, and in the public interest and meets overall goals of the Commission and the customers who are Settling Parties. The Settlement resolves two important cases: 1) the complaint, which includes all challenges to Projects J182, J183, J184 and J185 and which arose before tariff implementation of Net Zero Interconnection Service and 2) the protests of the Provisional

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GIA among MISO, NSPM, and Prairie Rose for a Net Zero Interconnection at the Angus Anson Station. The Settlement benefits the public interest by resolving all issues in these cases, saving Commission and Party litigation resources.

By resolving all issues concerning the complaint and the Provisional GIA for a Net Zero Interconnection at the Angus Anson Station, the Settlement allows the Net Zero Interconnection Service to proceed unimpeded. This is in the public interest because the Commission has found that Net Zero Interconnection Service is just and reasonable and “will promote more efficient utilization of existing interconnection capacity.”²⁷ It has further found the service will promote one of the goals of Order No. 2003: to “increase energy supply and lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market.”²⁸

The Settlement accomplishes this benefit by completely stipulating the factual issues the Commission set for hearing. First, the Settlement resolves the issue of whether any parties were similarly situated to the Net Zero developers that were chosen for MISO Projects J182, J183, J184, or J189 and, if so, whether they were unduly discriminated against in the awarding of Net Zero interconnections. Specifically, in the Explanatory

²⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,223 at P 293 (2012).

²⁸ *Id.* at P 294, citing *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), *cert. denied*, 552 U.S. 1230 (2008).

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Statement, the Settling Parties clarify that, of the multiple projects set for hearing, only one Net Zero Interconnection agreement resulted: the GIA for the Prairie Rose project.²⁹

Concerning that interconnection, the Settlement stipulates that no similarly-situated parties were unduly discriminated against.³⁰

The Settlement also resolves the second issue: the process that led to the selection of the Prairie Rose interconnection and issues of undue discrimination. Based on their stipulation that no parties were similarly situated to Prairie Rose that were unduly discriminated against, the Settling Parties stipulated that Prairie Rose was deemed in compliance with provisions of the MISO Tariff designed to protect against undue discrimination.³¹

The Settlement not only resolves the complaint and the GIA case, it also responds to the Commission's concerns about how MISO implements the Net Zero Interconnection Service in the queue reform proceeding. Specifically, the Geronimo Parties, MISO, and Xcel Energy commit to comply with the filing requirements of the MISO Tariff in that proceeding.³² The Settlement further ensures compliance with the MISO Tariff process by the Settling Parties' agreement that the GIA signatories are in compliance with the MISO Tariff process for awarding the interconnection in a fair,

²⁹ Explanatory Statement at 8.

³⁰ Settlement, Section 3.4.

³¹ Settlement, Section 3.5.

³² Settlement, Section 3.5.

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transparent, and non-discriminatory manner.³³ At the same time, the Settlement is beneficial because it essentially recognizes that the Net Zero Interconnection Service tariff issues reside in the generic forum of the queue reform proceeding.

IV. RESPONSE TO REQUIRED QUESTIONS

The following respond to the Chief Administrative Law Judge's five questions about settlements.

1. *What are the issues underlying the settlement and what are the major implications?*

The issues set for hearing are discussed above. The Settlement resolves these issues.

2. *Whether any of the issues raise policy implications*

The Settlement does not raise any policy implications. Rather, the Settling Parties have agreed on a stipulation of facts which, as discussed above, will end litigation that impeded implementing a tariff provision that the Commission found promotes one of the policy goals of Order No. 2003.

3. *Whether other pending cases may be affected*

The Explanatory Statement states that no other pending case may be affected by this Settlement. In reality, as discussed above, the Settlement enhances the queue reform proceeding by committing to comply with the filing requirements of the MISO Tariff and resolving, among the Settling Parties, that the Prairie Rose GIA process was fair, transparent, and non-discriminatory while leaving the Net Zero Interconnection Service

³³ *Id.*

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tariff issues to be decided in that more appropriate generic forum.

4. *Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved*

There are no prior decisions or reversals.

5. *Whether the proceeding is subject to the just and reasonable standard or whether there is Mobile-Sierra language making it the standard, i.e., the applicable standard of review*

The proceeding is subject to the just and reasonable standard of review. The

Settlement does not change that standard.

V. CONCLUSION

Trial Staff recommends that the Settlement be certified to and approved by the Commission.

Respectfully submitted,

// Mary C. Hain/

Mary C. Hain
Commission Staff Counsel
202-502-8247

September 17, 2012
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this September 17, 2012.

// Mary C. Hain/

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Document Content(s)

Intervention Answer

ATTACHMENT B

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