

UNITED STATES OF AMERICA 106 FERC ¶ 61,260
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Xcel Energy Operating Companies

Docket No. ER04-419-000

ORDER REJECTING PROPOSED MODIFICATIONS TO PRO FORMA LARGE
GENERATOR INTERCONNECTION PROCEDURES AND LARGE GENERATOR
INTERCONNECTION AGREEMENT

(Issued March 19, 2004)

1. On January 20, 2004, Xcel Energy Services, Inc. (XES) on behalf of the Xcel Energy Operating Companies (Operating Companies)¹, submitted, in compliance with Order No. 2003,² proposed variations from the pro forma Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA). XES states that the proposed variations are either "consistent with or superior to" the pro forma LGIA and LGIP, or are designed to incorporate existing regional reliability standards applicable to members of the Western Electricity Coordinating Council (WECC). The variations proposed by XES are rejected because XES does not demonstrate that these proposed variations are consistent with or superior to the pro forma LGIP and LGIA or incorporate recognized regional reliability requirements. This order benefits customers because it ensures that the terms, conditions, and rates for interconnection service are just and reasonable and thus encourages more competitive markets.

¹ This filing would apply only to interconnection requests with certain of the Operating Companies, namely the Public Service Company of Colorado (PSCo) and Cheyenne Light, Fuel and Power Company (Cheyenne). Interconnection Requests to XES' remaining Operating Companies, Northern States Power Company - Wisconsin (NSPW), Northern States Power Company (NSPC) and Southwestern Public Service Company (SPS) will be administered by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) or the Southwest Power Pool (SPP).

² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A); see also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

I. Background

2. In Order No. 2003, pursuant to its responsibility under Sections 205 and 206 of the Federal Power Act (FPA)³ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their open access transmission tariffs (OATT) a Final Rule LGIP and Final Rule LGIA. In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the pro forma LGIP and LGIA by January 20, 2004.⁴ The Commission left it to Transmission Providers⁵ to justify any variation to the pro forma LGIP or LGIA based on regional reliability requirements.⁶ Transmission Providers were required to submit these regional variations to the Commission for approval referring to the relevant reliability standard.

3. Transmission Providers are also permitted to seek variations from the pro forma LGIP and LGIA not made in response to recognized regional reliability requirements. These requests for variation are FPA Section 205 filings (rather than compliance filings) and will be approved only if they are "consistent with or superior to" the terms of the pro forma LGIA and LGIP.⁷ A Transmission Provider seeking a "consistent with or superior to" variation must demonstrate that its proposal is consistent with or superior to the pro forma.

4. XES requests both types of variations in its filing. It proposes to amend its OATT by adding a new Attachment N, which includes both the LGIP and LGIA, as modified by XES, and requests a January 20, 2004 effective date. XES states that its filing mirrors the pro forma LGIP and LGIA in most places, but requests changes to three distinct portions of the LGIP and LGIA.

³ 16 U.S.C. § 824d (2000).

⁴ See Notice Clarifying Compliance Procedures, supra note 1 (clarifying that Commission will deem OATTs of non-independent public utilities to be revised as of January 20, 2004).

⁵ The "Transmission Provider" is the entity with which the Generating Facility is interconnecting. The term "Generating Facility" means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the "Interconnection Customer."

⁶ See Order No. 2003 at P 822-24, 826.

⁷ Order No. 2003 at P 825.

5. First, XES argues that it should be allowed to modify its LGIP and LGIA in order to comply with Colorado state resource planning and competitive bidding requirements. These variations all relate to the "cluster study" concept in the LGIP, as well as corresponding changes to the LGIA. Specifically, XES proposes to make changes to LGIP: section 1.14 (replacing the term "clustering" with the term "group study" and otherwise modifying the definition); section 1.67 (defining the term "resource solicitation practice"); sections 4.1 and 4.2 (both dealing with clustering and queue position); sections 10.1 and 10.2 (modifying the description of the Optional Interconnection Study); and Appendix 1 (the actual interconnection request form). XES argues that, while it submitted written comments during the rulemaking process on the need to provide Transmission Providers flexibility to deal with various state resource planning processes and competitive bidding programs, the pro forma LGIP and LGIA did not include any language specifically addressing the state resource planning or competitive bidding process and that it needs these changes to comply with state law.⁸

6. XES states that these changes are consistent with and largely based upon comparable changes being filed by the Midwest ISO in its compliance filing to facilitate compliance by Midwest ISO member utilities subject to state-mandated integrated resource planning procedures. According to XES, these variations will also provide for consistent application of the LGIP and LGIA between the various XES Operating Companies, which are subject to the state resource planning and competitive bidding procedures.⁹

7. Second, XES proposes to modify Article 9.1 of the LGIA in accordance with what it describes as Western Electricity Coordinating Council (WECC) requirements. XES states that PSCo is a control area operator in WECC, and that it needs to modify Article 9.1 of the LGIA in order to comply with WECC's Reliability Management System (RMS).¹⁰ Specifically, XES proposes to modify the LGIA to add the underlined portion of the text to Article 9.1 of the LGIA: "[e]ach Party shall comply with the Applicable Reliability Council requirements including any associated agreements between Transmission Provider and Applicable Reliability Council. Interconnection Customer shall be responsible for payment of any monetary sanction assessed against Interconnection Customer by the Applicable Reliability Council."

8. Third, XES proposes to include an Appendix 7 to the LGIP to refer interested parties to what it refers to as an "Interconnection Guidelines" document. Appendix 7 is links to various documents on XES' website that contain technical interconnection guidance. XES states that the Interconnection Guidelines are a "user's guide" that will

⁸ XES transmittal letter at 8.

⁹ Id. at 8-9.

¹⁰ Id. at 10.

assist Interconnection Customers in complying with the relevant technical interconnection requirements.¹¹

II. Notice of Filing, Interventions and Comments

9. Notice of XES' filing was published in the Federal Register, 69 Fed. Reg. 5531 (2004), with comments, protests, and interventions due on or before February 10, 2004. Sunflower Electric Power Corporation (Sunflower), Golden Spread Electric Cooperative (Golden Spread), and Holy Cross and Yampa Valley Association (Holy Cross/Yampa) filed motions to intervene (collectively, Protesters). In addition, Golden Spread filed a protest, and motion for hearing and suspension, and Holy Cross/Yampa filed a conditional protest and motion for extension of time and reservation of rights. On February 20, 2004 Holy Cross/Yampa filed a supplemental protest. XES responded with an answer on February 24, 2004 and another on March 8, 2004.

A. Need for Further Filings

10. Sunflower expresses concern that XES may seek approval to apply the proposed modifications to the LGIP and LGIA in this filing to its remaining operating companies under the guise of seeking uniformity. Sunflower does not take a position as to whether the Commission should accept XES' proposed tariff sheets as those procedures may be applied to the PSCo and Cheyenne operating companies. However, Sunflower requests that if the Commission accepts XES' changes, it clarify that any effort to apply these tariff sheets to SPS, NSP, or NSPW will require a new FPA Section 205 filing.¹²

11. Golden Spread argues that it relies in large part upon SPS' transmission system to serve its members' loads. Golden Spread is aware that SPS has given notice that it intends to terminate its SPP membership. If SPS does terminate its SPP membership, it is likely that Xcel would seek to apply to SPS' transmission customers any non-standard transmission provisions which are approved in the instant filing for PSCo and Cheyenne, under the guise of uniformity. Golden Spread requests that XES be required to seek Commission approval of any non-standard changes if SPS' request to leave SPP is approved.¹³

B. Changes To Queuing and Clustering Procedures

12. Golden Spread contends that section 4.1 of XES' proposed LGIP, addressing Queue Position, would allow interconnection studies to be performed out of queue order

¹¹ XES transmittal letter at 10.

¹² Sunflower protest at 3-4.

¹³ Golden Spread protest at 4.

only if the generation is being built in connection with a state resource solicitation process and the Transmission Provider concurs. Golden Spread fears that this would allow only the Transmission Provider, that is, XES itself, to take advantage of this provision. Such a provision, Golden Spread argues, is inconsistent with Order No. 2003's goal of preventing undue discrimination in energy markets.¹⁴

13. Golden Spread also argues that XES has not demonstrated that its request to re-title the term "Clustering" to "Group Studies" is consistent with or superior to the pro forma LGIP.¹⁵ Further, Golden Spread and Holy Cross/Yampa point out that XES' proposed section 1.67 defines "Resource Solicitation Process" as "any process authorized or required by Applicable Laws and Regulations for the acquisition of Network Resources by a Distribution Owner." Both Protesters contend that the term "Distribution Owner" is not defined in either the LGIA or LGIP and is unacceptably ambiguous.¹⁶

14. Holy Cross/Yampa contend that XES' proposed modification to LGIP section 4.1 would permit queue jumping by certain transmission users based on the Colorado Commission's proposed least cost planning process and would "provide a significant preference for Xcel's own native load customers in Colorado."¹⁷ Holy Cross/Yampa point out that consumer-owned utilities such as Holy Cross/Yampa, which are not subject to similar Colorado Commission jurisdiction and do not participate in a state regulated resource solicitation process, may also use a least-cost planning process. Holy Cross/Yampa also argue that there is no legitimate public policy basis why a Commission tariff should discriminate against them and the independent generators with whom they deal.¹⁸

15. Additionally, Holy Cross/Yampa fear that the changed language would give XES' own (or affiliated) generation a competitive advantage by allowing them to know in advance where excess capacity may exist or where transmission constraints are likely to develop. Holy Cross/Yampa ask that XES be required to make available to interconnection customers siting information comparable to that it provides its own, or affiliated, generation.¹⁹

¹⁴ Id. at 5.

¹⁵ Id.

¹⁶ Golden Spread protest at 5; Holy Cross/Yampa protest at 6.

¹⁷ Holy Cross/Yampa protest at 6-7.

¹⁸ Id.

¹⁹ Id. at 3.

C. Changes to Applicable Reliability Council Requirements (Article 9.1)

16. Golden Spread agrees that XES should comply with all agreements between itself and WECC, but does not believe XES has the right to impose upon the Interconnection Customer the obligation to comply with agreements that the Interconnection Customer is not a party to, and of which it may not be aware.²⁰

D. Addition of Appendix 7 to the LGIP

17. Holy Cross/Yampa and Golden Spread both protest the inclusion of Appendix 7 in XES' OATT, arguing that they cannot comment on what they cannot see.²¹ According to Holy Cross/Yampa, XES has not yet posted its Interconnection Guidelines manual on the Internet and that since they are posted on XES' website, the guidelines may be altered by XES at any time. Sunflower also takes note of the problems that could arise if the Commission accepts Appendix 7.

E. Requests for Additional Time

18. Holy Cross/Yampa and Golden Spread both request additional time to complete their evaluation of XES' compliance filing and request that the Commission allow additional time for comments. Both parties also request that, if the Commission denies their request for additional time, that XES' compliance filing be set for hearing.²²

Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept XES' answers and will, therefore, reject them.

B. Need for Further Filings

20. We agree with Sunflower and Golden Spread that XES would be required to make a new filing with the Commission should SPS (or any other of XES' Operating

²⁰ Golden Spread protest at 6.

²¹ *Id.* at 4; Holy Cross/Yampa protest at 5.

²² Holy Cross/Yampa protest at 8; Golden Spread protest at 7.

Companies) either enter or leave a regional transmission organization or other independent transmission entity or should XES wish to apply the variations to other companies. However, unless such an event takes place, SPS is still a member of SPP and SPP's OATT will govern interconnections to SPS' system.

C. Changes to XES' Queuing and Clustering Procedures

21. XES proposes to significantly modify Order No. 2003's queuing and clustering provisions in order to accommodate Colorado's resource planning and least-cost bidding procedures. However, the manner in which XES proposed to change the queuing process would give XES a great deal of discretion over the order in which Interconnection Requests are studied and gives XES the power to discriminate against non-affiliated generation projects. The Commission agrees with Protesters that XES has not yet met its burden of demonstrating that its proposed changes to the LGIP and LGIA relating to queuing are "consistent with or superior to" the pro forma and therefore rejects them.

22. Specifically, XES' proposal unduly discriminates against Interconnection Customers that are not part of the state-sponsored bidding process. XES' proposal requires that Interconnection Customers bidding for, but not receiving a contract, drop out of the queue. Additionally, the proposal appears to call for studying projects submitted as part of the state process to jump ahead in the queue, ahead of other projects whose Interconnection Requests were filed first.

23. The Commission cannot endorse this type of discriminatory treatment. An Interconnection Customer must be able to take part in the state contracting process without danger of losing its queue position should it not win the contract, and Interconnection Customers that do not take part in the state-sponsored bidding must be allowed to compete in the wholesale energy market on an equal footing.

24. While we reject XES' Section 205 filing, the Commission is sympathetic to XES' desire to accommodate the Colorado resource planning process. If XES wishes, it is free to make another Section 205 filing that will both accommodate the state's concerns and eliminate the potential for discrimination against independent Interconnection Customers.

25. The Commission is also concerned that XES has not justified why it is necessary (or even possible) to cluster Interconnection Customers taking part in an Interconnection Feasibility Study.²³ A more detailed explanation of how the process would be

²³ Unlike XES' proposed LGIP, Order No. 2003 allows for clustering at the System Impact Study phase of the interconnection study process, but not during the initial Feasibility Study, nor the final Facilities Study. Instead, Order No. 2003 relies upon to the Feasibility Study to weed out projects that have little hope of going forward. The Transmission Provider then may study the surviving projects as a cluster.

implemented is required before the Commission could find such a proposal consistent with or superior to the pro forma LGIP and LGIA.

26. The Commission also agrees with Golden Spread that XES does not justify the need to change the term "Clustering" to "Group Studies." According to XES, the change will have no substantive effect on Interconnection Customers and is being proposed in order for XES' OATT to be consistent with the comparable changes being filed by the Midwest ISO. Consistency with a filing by an independent Transmission Provider does not make a provision filed by a non-independent Transmission Provider "consistent with or superior to" the pro forma LGIP and LGIA.²⁴ Order No. 2003 stated that "a non-independent Transmission Provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination."²⁵ XES is not an independent Transmission Provider as defined by the Final Rule, and therefore is not entitled to the same level of flexibility as an independent entity like Midwest ISO to propose terms that are different from those found in the pro forma. We also reject XES' argument that a change is justified to make the treatment of its various operating companies consistent.

27. The Commission notes that Order No. 2003 already allows a Transmission Provider to study projects out of queue order under certain circumstances: "Transmission Provider may study an Interconnection Request separately to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Large Generating Facility."²⁶ XES has not demonstrated that its proposed modification is consistent with or superior to what is already found in the LGIP and LGIA.

28. In addition, XES deleted from section 4.2 the requirement that any clustering study window not exceed 180 days. XES has not shown that this is consistent with or superior to the pro forma. The 180-day window reduces the potential for discrimination and allows the Transmission Provider the benefits of clustering.²⁷

29. In regard to Holy Cross/Yampa's concern over information sharing between the Transmission Provider and its own or affiliated generation, Order No. 2003 and Order No. 2003-A²⁸ prevent this type of unduly discriminatory conduct.

²⁴ The Midwest ISO Order No. 2003 compliance filing is currently pending before the Commission in Docket No. ER04-458-000.

²⁵ Order No. 2003 at P 822.

²⁶ LGIP section 4.2.

²⁷ See, e.g., Order No. 2003 at P 150-55.

²⁸ See Order No. 2003-A at 103-7.

C. Changes to Applicable Reliability Council Requirements (Article 9.1)

30. The Commission will deny XES' request to modify Article 9.1. XES' proposal does not track an established regional reliability standards variation and is rejected.²⁹

31. As it reads in the pro forma LGIA, Article 9.1 states that "[e]ach Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards." The Commission believes that this language is self explanatory. XES' proposed modification muddies the waters and requires the Interconnection Customer to follow reliability rules that it is already required to follow.

D. Addition of Appendix 7 to the LGIP

32. The Commission rejects XES' request to include a new Appendix 7 to the LGIP. The Interconnection Guidelines manual prepared by XES may indeed provide a fine road map for prospective Interconnection Customers and provide them necessary technical information. However, the Commission cannot accept into its OATT a reference to an outside document that has not even been filed with the Commission and that the Commission has been unable to review. Since XES has not demonstrated that the inclusion of Appendix 7 is consistent with or superior to the pro forma LGIP, it is rejected.

E. Changes to the Interconnection Request Form in Appendix 1 of the LGIA

33. The Commission rejects XES' changes to Appendix 1 of the LGIA without prejudice. The Commission recently issued Order No. 2003-A, which granted rehearing and clarification on certain items, including modifications to the forms found in

²⁹ See P 3, supra. XES cites the Commission's letter order in ER04-59-000 as precedent for the Commission accepting this language in prior interconnection agreements. However the letter order cited specifically states:

This acceptance shall not be construed as constituting approval of the referenced filing or of any rate, charge . . . regulation or practice affecting such rate or service provided for in the filed documents . . . and such acceptance is without prejudice to any findings or orders which have been or any which may hereafter be made by the Commission in any proceeding now or pending or hereafter instituted by or against Xcel Energy Services, Inc.

Appendix 1. Therefore the Commission will allow XES to resubmit this request in light of Order No. 2003-A.

F. Compliance Procedure

34. In the interests of efficiency, the Commission will allow XES to make a single filing to comply both with this order and Order No. 2003-A. XES is directed to comply with both this order and Order No. 2003-A no later than 30 days after Order No. 2003-A is published in the Federal Register.

The Commission orders:

(A) XES' proposed modifications to the pro forma LGIP and LGIA are rejected, as discussed in the body of this order.

(B) XES is directed to submit the pro forma LGIP and LGIA, as revised in Order No. 2003-A, within 30 days of the date Order No. 2003-A is published in the Federal Register.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.