

130 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER10-352-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS ADDRESSING
INTERIM INTERCONNECTION SERVICE

(Issued January 29, 2010)

1. On December 1, 2009, Southwest Power Pool, Inc. (SPP), as part of its ongoing interconnection queue reform process, filed amendments to its Open Access Transmission Tariff (tariff) to include a *pro forma* Interim Large Generator Interconnection Agreement (interim LGIA) and associated provisions in its Large Generator Interconnection Procedures (interconnection procedures).¹ These revisions would allow interconnection customers, upon request, to interconnect their generating facilities prior to completion of the interconnection study process, using existing capacity on the transmission system, if the generating facility's projected in-service date occurs before study completion.
2. In this order, the Commission conditionally accepts SPP's filing effective December 2, 2009, as requested, subject to SPP submitting an additional compliance filing within 30 days of the date of this order.

¹ SPP tariff, Attachment V.

I. Background

3. In Order No. 2003,² the Commission issued standardized interconnection procedures and agreements for the interconnection of large generating facilities.³ In the years since the issuance of Order No. 2003, many RTOs and Independent System Operators (ISOs), including SPP, have experienced backlogs of interconnection requests. On December 11, 2007, the Commission held a technical conference to address issues relating to interconnection queuing problems.⁴ As a result of this conference, the Commission recognized an immediate need to expedite the processing of interconnection requests. The Commission declined to require any particular solution but instead called upon RTOs and ISOs to work with their stakeholders to develop consensus proposals based on regional needs.⁵

4. Finding its current interconnection processing to be inefficient, SPP began to develop tariff revisions to its interconnection procedures through its stakeholder process. To address its queue backlog as soon as possible, SPP submitted (in Docket No. ER09-

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (Order No. 2003-A), *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).

³ Under these interconnection procedures, Regional Transmission Organizations (RTOs) such as SPP conduct a series of studies to evaluate system impacts of generator interconnection requests, to estimate additional facility or other system upgrades needed to accommodate these requests, and to assign costs for such facilities or system upgrades. These studies are the interconnection feasibility study, the interconnection system impact study, and the interconnection facilities study. Before proceeding to each study phase, an agreement must be executed between the RTO and the interconnection customer. For example, in SPP, after a definitive interconnection system impact study is completed and posted on SPP's Open Access Same Time Information System (OASIS), SPP and its interconnection customer must execute an interconnection facilities study agreement before SPP begins the interconnection facilities study. The word "interconnection" will be dropped from these study and agreement titles for the remainder of this order.

⁴ *Interconnection Queuing Practices*, Notice of Technical Conference, Docket No. AD08-2-000, 72 Fed. Reg. 63,577 (November 2, 2007).

⁵ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 15 (2008) (Conference Order).

262-000) a request for a limited, one-time waiver of various provisions in its interconnection procedures to allow for the formation of two transitional clusters. The Commission conditionally granted the waiver request, ordering SPP to submit a timeline for the completion of the transitional cluster study process.⁶

5. The Commission accepted SPP's proposed timeline in Docket No. ER09-262-002 on May 18, 2009.⁷ In its compliance filing, SPP also informed the Commission that it would offer those customers ready to interconnect prior to the completion of the interconnection study process the option of entering into an interim LGIA, if the interconnection is feasible based on existing transmission capacity.⁸ SPP posted the details and general terms and conditions of the interim LGIA on its website and notified its interconnection customers of the service.⁹ In the Waiver Compliance Order, the Commission stated that it was encouraged by SPP's intention to provide interim interconnection service and believed that doing so might alleviate customer concerns regarding the delay in processing interconnection requests. However, the Commission advised SPP that it should amend its tariff if it chose to offer interim interconnection service.¹⁰

6. On June 1, 2009, SPP submitted a filing to reform its interconnection procedures. Among other things, SPP proposed to create three interconnection study queues with different deposit and milestone requirements: (1) the feasibility study queue (feasibility queue), which would result in a feasibility study; (2) the preliminary system impact study queue (preliminary queue), which would result in a system impact study; and (3) the definitive system impact study queue (definitive queue), which would be the first required stage in the interconnection process and would result in a system impact study and a facilities study. On July 31, 2009, the Commission conditionally accepted SPP's filing subject to SPP submitting an additional compliance filing within 30 days of the

⁶ *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,012, at P 37 (Waiver Order), *order on reh'g*, 126 FERC ¶ 61,215, *order on compliance*, 127 FERC ¶ 61,138 (Waiver Compliance Order), *order on reh'g*, 129 FERC ¶ 61,145 (2009).

⁷ *See* Waiver Compliance Order, 127 FERC ¶ 61,138.

⁸ SPP February 9, 2009 Compliance Filing in Docket No. ER09-262-002 at n.18.

⁹ *See* http://www.sppoasis.spp.org/documents/swpp/transmission/studies/interim_ia_oasis_posting_3-6-09.pdf.

¹⁰ Waiver Compliance Order, 127 FERC ¶ 61,138 at P 24.

date of issuance of the order,¹¹ which SPP submitted on August 31, 2009. The Commission conditionally accepted the compliance filing, subject to an additional compliance filing, on December 17, 2009.¹²

II. SPP's Filing

7. SPP proposes to provide, upon request, interim interconnection service to customers with generating facilities projected to be in-service prior to completion of the interconnection study process. SPP states that it will provide this service when the analysis of transmission system topology and in-service generation¹³ indicates that the interim interconnection service is feasible, with minimal or no upgrades required before interconnection.¹⁴ SPP proposes four areas of revisions within Attachment V of its tariff: (1) revisions to the "Definitions" section; (2) addition of a new Section 11A, which outlines interim interconnection service procedures; (3) addition of a new Appendix 5, which is a *pro forma* interim availability system impact study agreement; and (4) addition of a new Appendix 8, which is a *pro forma* interim LGIA.¹⁵ SPP states it derived the proposed *pro forma* interim LGIA from its existing *pro forma* LGIA.¹⁶

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 74 FR 66120 (2009), with interventions or protests due on or before December 22, 2009. Golden Spread Electric Cooperative, Inc. filed a motion to intervene. Western Farmers Electric Cooperative (Western Farmers) filed a motion to intervene, protest, and comment. SPP filed an answer. Western Farmers filed an answer to SPP's answer.

¹¹ See *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114, *order on compliance*, 129 FERC ¶ 61,226 (2009) (Queue Reform Compliance Order).

¹² See Queue Reform Compliance Order, 129 FERC ¶ 61,226.

¹³ That is, generation expected to be in place at the time of the facility's in-service or commercial operation date.

¹⁴ SPP December 1, 2009 Transmittal Letter at 4.

¹⁵ *Id.* 5.

¹⁶ *Id.*

IV. Discussion

A. Procedural Matters

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

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 unless otherwise ordered by the decisional authority. We will accept SPP's answer and Western Farmers' answer because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Independent Entity Variation

11. SPP contends its proposal to incorporate a *pro forma* interim LGIA and associated revisions in its interconnection procedures is just and reasonable under the independent entity variation standard of review. SPP asserts that the independent entity variation standard permits RTOs, like SPP, "flexibility in designing their interconnection procedures to accommodate regional needs."¹⁷ SPP explains that under this standard an RTO must demonstrate that its proposed variation from Order No. 2003 is just and reasonable and not unduly discriminatory and would accomplish the goals of Order No. 2003.¹⁸ SPP contends that its proposal meets these goals because it minimizes opportunities for undue discrimination, expedites the development of generation, protects reliability, and ensures just and reasonable rates.¹⁹ SPP also notes that the proposed *pro forma* interim LGIA and associated tariff revisions received strong stakeholder support.²⁰

12. The independent entity variation standard recognizes that an RTO or an ISO has different operating characteristics depending on its size and location and is less likely to

¹⁷ Conference Order, 122 FERC ¶ 61,252 at P 13.

¹⁸ SPP December 1, 2009 Transmittal Letter at 17, *citing* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 822-827 and Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759.

¹⁹ *Id.*, *citing Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,183, at P 2 (2008) and Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 7.

²⁰ *Id.* at 3-4.

act in an unduly discriminatory manner than a transmission provider that is a market participant. The independent entity variation standard provides the RTO and ISO with greater flexibility to customize its interconnection procedures and agreements to fit regional needs.²¹ We agree with SPP that as an RTO it is entitled to flexibility in proposing variations from the *pro forma* interconnection procedures in Order No. 2003 under the independent entity variation standard.

13. The Commission accepts SPP's proposed *pro forma* interim LGIA and associated tariff revisions under the independent entity variation standard, subject to conditions, as discussed below.²² While Western Farmers filed comments and protests on particular aspects of the proposal, we note that it was generally supportive of the filing. We find that providing those interconnection customers whose in-service dates occur prior to completion of the interconnection study process the option to request interim interconnection service will aid in bringing new generation resources online more quickly and alleviate customer concerns regarding delays in processing interconnection requests. Providing a *pro forma* interim LGIA in SPP's tariff will also help ensure that customers are aware of the service and that the service is provided on a non-discriminatory basis. We also find that SPP's proposal helps accommodate the needs of those customers ready to interconnect while simultaneously respecting queue position priority.

2. Section 11A in Interconnection Procedures

a. Proposal

14. SPP proposes to add a new Section 11A to its interconnection procedures, which outlines the availability of interim interconnection service, interconnection customer eligibility requirements for interim interconnection service, and the procedures for obtaining the service. Proposed Section 11A.1 provides that customers with pending interconnection requests for generating facilities projected to be in service prior to completion of the interconnection study process may request interim interconnection service, execute an interim LGIA, and receive interim interconnection service pursuant to the terms and conditions of Section 11A and of the interim LGIA. In addition, this proposed section states that interim interconnection service is an optional service and will not affect a customer's queue position. Proposed Section 11A.1 also gives customers notification that their interim interconnection service may be terminated if a generating

²¹ Conference Order, 122 FERC ¶ 61,252 at P 13 and Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827.

²² Our discussion below is limited to provisions that were protested or otherwise warrant discussion. We are accepting the other provisions without further discussion.

facility with a higher queue position goes into commercial operation and SPP determines that service cannot be provided simultaneously to both interconnection customers.²³

15. Proposed Section 11A.2 sets forth the criteria a customer must meet to receive interim interconnection service, which include: (1) meeting the terms and conditions for inclusion in a definitive system impact study; (2) submission of a written request for interim interconnection service, and (3) execution of an interim availability system impact study agreement, under which the customer agrees to pay all costs - including deposits - for any additional studies SPP deems necessary to evaluate the feasibility of the requested interim interconnection service.²⁴ SPP asserts that allowing only customers ready to enter the definitive queue – as opposed to the feasibility and preliminary queues – the ability to request interim interconnection service is appropriate, because entrance to the definitive queue is meant to demonstrate that a customer is ready to move forward with its request and receive interconnection service. SPP also claims that the security requirements for interim interconnection service – the estimated costs associated with facilities and upgrades for which the customer will share cost responsibility – is determined more accurately during a definitive system impact study.²⁵

16. SPP states that, based on interconnection studies and accounting for the interconnection customer's projected in-service date and the applicable topology of the transmission system, if there is sufficient stability and reliability margin to accommodate interim interconnection service, the customer may enter into an interim LGIA, pursuant to the procedures set forth in proposed Section 11A.3. SPP explains that proposed Section 11A.3 - which details the procedures for the tender, negotiation, execution, and filing of an interim LGIA – is based on the related provisions for LGIAs set forth in Section 11 of the interconnection procedures. However, SPP notes that the timelines for negotiation and execution are truncated in the interim interconnection service procedures, as the purpose of the interim LGIA is to expedite the provision of the service on a temporary basis.²⁶ Additional changes from Section 11 in proposed Section 11A.3 include deletion of language referring to negotiation impasse, dispute resolution, withdrawal of a request, and milestone requirements.²⁷

²³ SPP tariff, Attachment V, proposed § 11A.1.

²⁴ *Id.* at proposed §§ 11A.2.1, 11A.2.2, and 11A.2.3.

²⁵ SPP December 1, 2009 Transmittal Letter at n.16.

²⁶ *Id.* at 7.

²⁷ *See* SPP tariff, Attachment V, §§ 11.2 and 11.3.

17. SPP explains that it included proposed Section 11A.5 to provide that interim interconnection service will cease upon termination of the interim LGIA and to clarify that further permanent interconnection service, if any, will be provided pursuant to a LGIA.²⁸

b. Commission Determination

18. We accept SPP's proposed Section 11A to its interconnection procedures, with one exception. We agree that a customer's ability to enter the definitive queue is an appropriate benchmark to determine an interconnection customer's commitment to receive interim interconnection service. However, we require that SPP include the milestone requirements detailed in Section 11.3 within Section 11A of its interconnection procedures.²⁹ We note that the Recitals in the proposed interim LGIA refer to the milestone requirements in Section 11.3.³⁰ However, Section 11 of SPP's interconnection procedures encompasses standard interconnection service, and Section 11.3 specifically refers to the final LGIA, not the interim LGIA.³¹ It is unclear why the interim LGIA would reference this section when proposed Section 11A deals exclusively with interim interconnection service. Accordingly, we direct SPP to include within Section 11A of its interconnection procedures the milestone requirements contained in Section 11.3 and make the appropriate reference within the Recitals of its interim LGIA in a compliance filing within 30 days of the date of this order.

3. Pro Forma Interim LGIA

19. SPP explains that it based the proposed *pro forma* interim LGIA on the existing *pro forma* LGIA, although there are some revisions that take into account the nature of interim interconnection service. SPP proposes to include the *pro forma* interim LGIA as Appendix 8 in its interconnection procedures. Throughout the description of proposed

²⁸ SPP December 1, 2009 Transmittal Letter at 7 and SPP tariff, Attachment V, proposed § 11A.5.

²⁹ These milestone requirements include reasonable evidence of continued site control or posting of an additional \$250,000, non-refundable security. The interconnection customer must also provide reasonable evidence that one or more of a list of milestones in the development of its generating facility has been met. *See* SPP tariff, Attachment V, § 11.3.

³⁰ *See* SPP tariff, Attachment V, proposed Appendix 8, Recitals.

³¹ *See id.* § 11.3.

Appendix 8, allusions to revisions, amendments, or additions are in reference to the existing *pro forma* LGIA in Appendix 6 of the interconnection procedures.

a. Recitals

i. Proposal

20. SPP proposes several revisions to the Recitals to provide that the interconnection customer has qualified for interim interconnection service and that the interim LGIA provides for such service. Specifically, the Recitals state: (1) SPP posted a definitive system impact study that includes the interconnection customer's generating facility; (2) SPP has conducted an additional analysis to determine the availability of interim interconnection service at the time of the in-service date of the customer's generating facility (i.e., SPP has conducted an interim availability system impact study); (3) the customer has provided reasonable evidence that it has achieved site control, additional security, or certain milestones listed in Section 11.3 of SPP's interconnection procedures; and (4) the parties to the interim LGIA have agreed to enter into the agreement for the purpose of interconnecting the customer's generating facility on an interim basis prior to completion of the interconnection study process.³²

ii. Commission Determination

21. We accept the Recitals in SPP's proposed *pro forma* interim LGIA, with one exception. As discussed previously, we direct SPP to remove the reference to the Section 11.3 milestones and replace it with the appropriate reference to the Section 11A milestones in the Recitals of the *pro forma* interim LGIA within 30 days of the date of this order.

b. Article 4 (Scope of Service)

i. Proposal

22. SPP explains that Article 4 of the *pro forma* interim LGIA generally differs from the *pro forma* LGIA in order to define the scope of interconnection service being provided.³³ Proposed Article 4.2.1 specifies that pre-commercial operation testing and interim interconnection service is contingent upon the completion of the interconnection facilities and applicable facilities upgrades listed in Appendix A of the agreement.³⁴

³² *Id.* at proposed Appendix 8, Recitals.

³³ SPP December 1, 2009 Transmittal Letter at 11-12.

³⁴ SPP tariff, Attachment V, proposed Appendix 8, Article 4.2.1.

Proposed Article 4.2.2 provides that interconnection service and the amount of power that the interim interconnection customer is permitted to inject into the transmission system may be reduced in whole or in part in the event that: (1) another higher-queued interconnection customer obtains an effective interim or final LGIA and commences operations during the term of the customer's interim LGIA, and (2) SPP, in its sole discretion, determines that interim interconnection service and/or interconnection service cannot be provided simultaneously to the interim interconnection customer and another higher-queued interconnection customer(s) to the maximum extent specified in their agreements without further upgrades or additional facilities.³⁵ Proposed Article 4.2.3 provides that any reductions pursuant to Article 4.2.2 will be in accordance with each interconnection customer's relative queue position.³⁶ SPP asserts that these additional provisions in Article 4 will ensure that lower-queued customers requesting interim interconnection service (and use of existing capacity) will not harm higher-queued customers' projects.³⁷

ii. Protest

23. Western Farmers protests specific language contained in Article 4.2.2 that provides that SPP will determine "at its sole discretion" whether interim interconnection service can be provided and, if so, in what amount.³⁸ Western Farmers claims this provision would grant SPP unfettered discretion to decide whether to provide interim interconnection service to an entity ready to interconnect, which could allow room for undue discrimination.³⁹ Western Farmers asserts this is contrary to the stated goals of Order No. 2003.⁴⁰ As an alternative, Western Farmers suggests modifying proposed

³⁵ SPP explains that it may need to conduct additional studies to determine the extent to which interim interconnection service would continue to be available when a higher-queued project begins operation. SPP states that the interim interconnection customer will be responsible for the costs for such studies and will be required to execute an additional study agreement prior to SPP conducting these studies. SPP asserts these studies are necessary to determine whether sufficient interconnection capacity is available. SPP December 1, 2009 Transmittal Letter at n.25.

³⁶ SPP tariff, Attachment V, proposed Appendix 8, Article 4.2.3.

³⁷ SPP December 1, 2009 Transmittal Letter at 12.

³⁸ Western Farmers December 22, 2009 Comments and Protest at 5.

³⁹ *Id.* at 5-6.

⁴⁰ *Id.* at 5, *citing* Order No. 2003, FERC Stats. & Regs. ¶ 31,146.

Article 4.2.2, changing “at its sole discretion” to “in its reasonably exercised discretion.” Western Farmers argues that this small revision would hold SPP accountable and eliminate the potential for discrimination.⁴¹

iii. SPP’s Answer

24. In its answer, SPP states that it must be able to maintain the reliability of the transmission system and ensure that no other customers (e.g., higher-queued customers) are harmed by the provision of interim interconnection service. SPP asserts that it is in a unique position to determine if interim interconnection service is available when requested, the amount of interim interconnection service available if a higher-queued customer desires interim interconnection service or goes into commercial operation, and the impact of interim interconnection service on the reliability of the transmission system. SPP argues that its determination to reduce interim interconnection service will not be baseless - as Western Farmers suggests - and would depend on whether service to the interim interconnection customer and to a higher-queued project can be provided simultaneously over the existing transmission system without additional interconnection facilities, network upgrades, or distribution upgrades.⁴² SPP also notes that, as the Commission has previously found, “an RTO or ISO is independent and is less likely to act in an unduly discriminatory manner than is a transmission provider that is a market participant.”⁴³ SPP claims Western Farmers has provided no basis to conclude that SPP would act in an unduly discriminatory manner when providing interim interconnection service.⁴⁴

iv. Western Farmers’ Answer

25. In its answer, Western Farmers contends that it has not challenged SPP’s authority, as transmission provider, to make the determination whether interim interconnection service is feasible; rather, it only requests that SPP’s determination be held to a reasonableness standard. Western Farmers asserts a reasonableness standard would provide a means to assess SPP’s decisions and ensure that SPP exercises a reasonable degree of care when determining whether interim interconnection service can be provided. Western Farmers claims the “sole discretion” language in proposed Article 4.2.2 eliminates the possibility to challenge and seek relief for determinations based on

⁴¹ *Id.* at 6.

⁴² SPP January 6, 2010 Answer at 3-5.

⁴³ *Id.* at 5, *citing* Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759.

⁴⁴ *Id.* at 5.

studies containing potential errors. Western Farmers also asserts that if SPP's process is fair, a reasonableness standard should not affect its conclusions.⁴⁵

v. Commission Determination

26. We accept the proposed changes in Article 4 of SPP's *pro forma* interim LGIA. We find that these provisions respect queue priority and will ensure that higher-queued interconnection customers will not be harmed by lower-queued customers' requests for interim interconnection service. We disagree with Western Farmers' assertion that the language in Article 4.2.2 that allows SPP "at its sole discretion" to determine whether interim interconnection service can be provided and in what amount opens the door for undue discrimination. As the Commission has found in the past, SPP, as an RTO, is an independent entity that is less likely than a market participant to act in an unduly discriminatory manner.⁴⁶ We note that SPP has communicated that it will base its decisions regarding reduction or removal of interim interconnection service on the results of interconnection studies, nothing more or less.⁴⁷ Because SPP, as an independent entity, will base its decisions on objective study results, we find that it is implicit that SPP's discretion will be reasonably exercised. We also note that, if an interconnection customer believes that it has been unduly discriminated against by SPP, it may file a complaint with the Commission.

c. Article 5 (Interconnection Facilities Engineering, Procurement, and Construction)

i. Proposal

27. SPP states that Articles 5.9 (Limited Operations) and 5.16 (Suspension) in the *pro forma* LGIA are not included in the proposed *pro forma* interim LGIA because they do not apply to the provision of interim interconnection service. In the case of Article 5.9, SPP explains that interim interconnection service is based on the existing capacity of the transmission system at the time a generating facility begins commercial operation and is dependent only on limited upgrades or interconnection facilities. In the case of Article 5.16, SPP maintains that the purpose of interim interconnection service is to allow generating facilities that are ready to go into immediate operation the opportunity to interconnect to the transmission system. SPP asserts that allowing interim interconnection customers to suspend construction of limited upgrades or facilities

⁴⁵ Western Farmers January 19, 2010 Answer at 4-8.

⁴⁶ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 759.

⁴⁷ SPP December 1, 2009 Transmittal Letter at n.25.

defeats this purpose and encourages customers with projects not ready to go into operation to seek interim interconnection service to gain an advantage over other projects, which would contribute to the queue backlog.⁴⁸

28. SPP proposes revisions to Article 5.5.1 and proposes a new Article 5.5.4 to require the transmission owner with construction responsibility (for interconnection facilities or network upgrades) to commence facility design and equipment procurement upon completion of the interim availability system impact study (Article 5.5.1) and execution of the interim LGIA (Article 5.5.4).⁴⁹ SPP also proposes amending language in Article 5.6.4 to state that the interim interconnection customer must provide the security required under Article 11.5 of the interim LGIA to the transmission provider (SPP).⁵⁰

ii. Protest

29. Western Farmers protests specific language contained in Article 5.6.4 that provides that the interconnection customer must provide financial security to the transmission provider (*i.e.*, SPP).⁵¹ Western Farmers asserts that SPP provides no explanation or justification for this change. Western Farmers argues that because the transmission owner is responsible for constructing, procuring, and installing the necessary upgrades to allow interconnection, the transmission owner bears the risk of non-payment. Western Farmers contends that providing the security directly to the transmission owner reduces this risk (e.g., by reducing delays in compensation). Accordingly, Western Farmers requests that the Commission require SPP to conform Article 5.6.4 of the proposed interim LGIA to Article 5.6.4 of SPP's LGIA to provide that security shall be provided to the transmission owner.⁵²

⁴⁸ *Id.* at 13.

⁴⁹ SPP tariff, Attachment V, proposed Appendix 8, Articles 5.5.1 and 5.5.4.

⁵⁰ *Id.* at Article 5.6.4. Under SPP's LGIA, the customer provides this security to the transmission owner. *Id.* at Appendix 6, Article 5.6.4.

⁵¹ Western Farmers acknowledges that the Commission's *pro forma* LGIA, as adopted in Order No. 2003, states that this security should be provided to the transmission provider rather than the transmission owner. However, because SPP is basing its *pro forma* interim LGIA on its *pro forma* LGIA, Western Farmers contends that SPP's *pro forma* LGIA should govern in the absence of any justification by SPP for a different approach. Western Farmers December 22, 2009 Comments and Protest at n.9.

⁵² *Id.* at 7-8.

iii. SPP's Answer

30. In its answer, SPP asserts that, as transmission provider, it is the proper entity to receive the security pursuant to Article 5.6.4 in the proposed *pro forma* interim LGIA. SPP explains that the security provision in proposed Article 5.6.4 is consistent with the Commission's *pro forma* LGIA established in Order No. 2003, as Western Farmers acknowledges. SPP also notes that this change is intended to correct an inconsistency in its tariff. Specifically, SPP notes that Article 5.6.4 in its *pro forma* LGIA instructs the customer to provide security to the transmission owner, while Article 11.5 calls on the customer to provide security to the transmission provider; in contrast, Articles 5.6.4 and 11.5 in the proposed *pro forma* interim LGIA both require that the customer provide security to the transmission provider. SPP also argues that, given the new cluster study process in its reformed interconnection procedures, it is appropriate that the transmission provider hold the security related to all upgrades for which a customer will have cost responsibility, as the customer may be responsible for upgrades constructed by multiple transmission owners.⁵³

iv. Western Farmers' Answer

31. In its answer, Western Farmers contends that SPP did not explain why SPP's existing LGIA should not be the standard against which the interim LGIA is evaluated. Western Farmers also argues that even if the Commission's *pro forma* LGIA is used, SPP's approach is still not justified. Western Farmers states that the Commission's *pro forma* LGIA defines "Transmission Provider" to mean both the transmission provider and transmission owner, even though the two are different. Therefore, Western Farmers explains, requiring that security be provided to the transmission owner would still be consistent with the Commission's *pro forma* LGIA. In response to SPP's claim that the proposed change in Article 5.6.4 is appropriate given the nature of clustered studies, Western Farmers argues that SPP is basing permanent interconnection service on clustered studies, too, and has identified no material distinction between the interim and existing LGIAs. Western Farmers also renews its argument that a policy requiring that security be provided to the transmission owner is compelling, particularly because the transmission owner bears significant risk with respect to the construction of transmission upgrades.⁵⁴

⁵³ SPP January 6, 2010 Answer at 6-7.

⁵⁴ Western Farmers January 19, 2010 Answer at 8-10.

v. **Commission Determination**

32. We accept the proposed changes in Article 5 of SPP's *pro forma* interim LGIA. We agree that removal of language referring to limited operations and suspension is appropriate, given the nature of interim interconnection service. We find that provision of security to the transmission provider in Article 5.6.4 is acceptable, given that the provision is part of the Commission's *pro forma* LGIA established in Order No. 2003. However, we suggest that SPP consider making this change in its *pro forma* LGIA for consistency between the interim and existing LGIAs.

d. **Appendices**

i. **Proposal**

33. SPP states the appendices to the *pro forma* interim LGIA are amended from the existing *pro forma* LGIA to provide placeholders for information routinely included in LGIAs.⁵⁵ SPP also proposes further amendments to the appendices to incorporate categories of information necessary to accommodate interim interconnection service. Proposed Section 4.A is added to Appendix A to specify the amount of security required by Article 11.5.1 of the interim LGIA and to indicate that security requirements may be adjusted pursuant to Article 11.5.2 of the interim LGIA. Proposed Sections 4.B and 4.C to Appendix A allow for insertion of language regarding the portion of network upgrades that will be subject to transmission credits and the interconnection customer's estimated liability for reimbursement of the transmission owner for taxes. SPP states similar language is often included in LGIAs.⁵⁶ Proposed Appendix A also includes a new Section 7 that details the higher-queued projects that have priority over the interim interconnection customer's project.⁵⁷

34. SPP proposes a new Section 4 to Appendix C, where interconnection guidelines specific to each interconnection will be detailed. SPP also proposes minor revisions in Appendix D that amend the title of the appendix and add a sentence that states, "Interconnection Customer will comply with all applicable NERC^[58] Standards."

⁵⁵ SPP notes that the Commission found that inclusion of similar provisions "do not constitute non-conforming changes" from the *pro forma* LGIA. SPP December 1, 2009 Transmittal Letter at 15-16, citing *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,022, at P 13 (2009).

⁵⁶ SPP December 1, 2009 Transmittal Letter at 16.

⁵⁷ *Id.*

⁵⁸ North American Electric Reliability Corporation.

ii. Protest

35. Western Farmers protests specific language in Appendix D of the proposed *pro forma* interim LGIA that provides that the interconnection customer will comply with all applicable NERC standards. Western Farmers argues this language is problematic for several reasons. First, Western Farmers explains that “NERC Standards” is not a defined term in SPP’s interconnection procedures. While the term “Applicable Reliability Standards” is a defined term, Western Farmers notes that it is unclear whether these terms are interchangeable. Second, Western Farmers notes that a violation of these NERC standards could be deemed a breach of contract, which could potentially lead to cancellation of the interim LGIA and loss of financial security. Third, Western Farmers claims this language is unnecessary because the proposed interim LGIA – like SPP’s existing LGIA – contains a number of provisions that require compliance with “Applicable Reliability Council” requirements and “Applicable Reliability Requirements.” Finally, Western Farmers notes that the interconnection customer is already required to comply with the requirements of the Reliability Standards adopted by NERC and approved by the Commission. Western Farmers argues that there is potential for a “double-jeopardy situation” if a customer is punished for violation of a NERC reliability standard and then is also punished under its interim LGIA for the same violation.⁵⁹

iii. Commission Determination

36. We accept the proposed changes in the appendices of SPP’s *pro forma* interim LGIA, with one exception. We agree with Western Farmers that the proposed sentence in Appendix D concerning NERC reliability standards should be omitted as unnecessary because the interim LGIA contains provisions regarding compliance with applicable reliability standards that are consistent with the *pro forma* LGIA established in Order No. 2003.⁶⁰ We direct SPP to remove this statement from Appendix D in a compliance filing within 30 days of the date of this order.

⁵⁹ Western Farmers December 22, 2009 Comments and Protest at 8-10.

⁶⁰ Elimination of this sentence does not relieve a party under the interim LGIA from the reliability standards. Our regulations at 18 C.F.R. § 40.2(a) (2009) require that each applicable user, owner, or operator of the bulk-power system must comply with Commission-approved reliability standards developed by the electric reliability organization.

4. Requested Effective Date and Waiver of Notice Requirements**a. Proposal**

37. SPP requests an effective date of December 2, 2009, one day after the date of its filing. SPP claims good cause exists to grant waiver, as the effective date will allow expeditious implementation of the interim interconnection procedures and permit customers to use the new *pro forma* interim LGIA as soon as possible. SPP asserts this will reduce the need to file non-conforming agreements. SPP also requests waiver of the Commission's prior notice requirement.⁶¹

b. Commission Determination

38. We will grant waiver of notice requirements to allow the proposed effective date of December 2, 2009, in order to expedite the implementation of the new interim LGIA.

5. Clarification on Need for Additional Studies**a. Comments**

39. Western Farmers seeks clarification that no further studies (e.g., the preliminary system impact study) will be required of those entities - including Western Farmers - which are already party to an interim LGIA.⁶²

b. SPP's Answer

40. In its answer, SPP explains that additional studies will be the mechanism by which it determines whether interim interconnection service may continue if higher-queued projects come online. SPP contends that it cannot provide a blanket assurance to each interim interconnection customer that no further studies will be required. However, with respect to Western Farmers' interim LGIA, SPP confirms that no further studies will be required, as SPP studied Western Farmers' interconnection request assuming that all higher-queued projects in the immediate area were online.⁶³ SPP notes, however, that

⁶¹ SPP December 1, 2009 Transmittal Letter at 18.

⁶² Western Farmers December 22, 2009 Comments and Protest at 10-11. Western Farmers' interim LGIA was conditionally accepted by the Commission on September 17, 2009 in Docket No. ER09-1716-000. See *Southwest Power Pool, Inc.*, 129 FERC ¶ 61,121 (2009).

⁶³ SPP January 6, 2010 Answer at 7-8.

Western Farmers' request may require additional studies with regard to permanent interconnection service.⁶⁴

c. Commission Determination

41. We accept SPP's clarification regarding the need for further studies. We find that SPP's clarification answers Western Farmers' query.

6. Miscellaneous Errors

42. We note that proposed Original Sheet No. 562Y lists an incorrect effective date (December 1, 2009). We direct SPP to correct this in its compliance filing.

43. We note several errors in the Table of Contents of the proposed *pro forma* LGIA. Article 2.3.1 should be labeled "Termination Events" as opposed to "Written Notice". Articles 4.2.1.1 (Pre-Commercial Operation Testing) and 4.2.1.2 (Interim Interconnection Service) are not listed in the Table of Contents. We direct SPP to correct these errors in its compliance filing within 30 days of the date of this order.

The Commission orders:

(A) SPP's tariff sheets are hereby conditionally accepted, effective December 2, 2009, as discussed in the body of this order.

(B) SPP is hereby directed to make a compliance filing within 30 days of the date of this order modifying its proposed tariff revisions as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁴ *Id.* at n.23.