

132 FERC ¶ 61,020
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. ER10-1233-000

ORDER ACCEPTING LARGE GENERATOR
INTERCONNECTION AGREEMENT

(Issued July 9, 2010)

1. On May 12, 2010, Southwest Power Pool, Inc. (SPP) submitted an unexecuted Large Generator Interconnection Agreement (LGIA) between SPP as transmission provider, Southwestern Public Service Company (SPS) as transmission owner, and Novus Wind II, LLC (Novus II) as interconnection customer.¹ SPP filed the Novus II LGIA as unexecuted because of a dispute between SPP and Novus II over language addressing whether SPP should restudy the project in light of certain network upgrades identified through SPP's transmission planning process. SPP also filed the agreement because it contains language, terms, and conditions that do not conform to SPP's *pro forma* LGIA. In this order, we accept the Novus II LGIA effective April 12, 2010, as requested.

I. Background

2. Prior to this proceeding, on June 1, 2009, SPP submitted an executed LGIA between SPP as transmission provider, SPS as transmission owner, and Novus Wind I, LLC (Novus I), an affiliate of Novus II, as interconnection customer.² In Appendix A of the Novus I LGIA, the parties agreed to the following language:

If any of these [higher queued] interconnection requests do not achieve commercial operation (terminate their LGIA) or if network upgrades are

¹ The Novus II LGIA is for the interconnection of a 399 MW wind generating facility interconnecting at SPS's Stevens County Interchange.

² SPP, June 1, 2009 Filing, Docket No. ER09-1258-000.

authorized under the SPP Transmission Expansion Plan, Balanced Portfolio or other SPP Board-approved process, additional studies will be necessary to determine whether these Network Upgrades are necessary, and if any additional Network Upgrades are necessary or whether there is need for a delay in the In-Service Date, Interconnection Customer's ultimate cost responsibility for Network Upgrades in this Section A.2(c) will be determined at that time.³

SPP supported the inclusion of this provision in the Novus I LGIA, stating that it ensured that Novus I would only be responsible for upgrades necessary but for its interconnection.⁴ The Commission accepted the Novus I LGIA by delegated letter order on July 22, 2009.⁵

3. On April 19, 2010, SPP submitted its Highway/Byway transmission cost allocation methodology, which the Commission accepted on June 17, 2010.⁶ Under the Highway/Byway cost allocation methodology, SPP allocates the costs of Base Plan Upgrades⁷ based on the voltage of the upgrade, with the costs of facilities operating at or above 300 kV allocated across the SPP region on a postage stamp basis (i.e., 100 percent

³ *Id.* (appending Novus I LGIA §§ 2(c) and 2(d) of Appendix A). Under the Balanced Portfolio provision of its Open Access Transmission Tariff (Tariff), SPP evaluates a portfolio of economic upgrades to achieve a balance where the benefits of the portfolio to each zone (as measured by adjusted production costs) equal or exceed the costs allocated to each zone in a ten-year period. Where necessary, SPP includes costs associated with reliability upgrades or existing facilities that are allocated zonally to achieve a balance among all SPP zones. *See* SPP Tariff, Att. O §§ IV.6 and IV.7.

⁴ *Id.* at 4.

⁵ *Southwest Power Pool, Inc.*, Docket No. ER09-1258-000 (July 22, 2009) (unpublished letter order).

⁶ *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010) (Highway/Byway Order).

⁷ Base Plan Upgrades are upgrades included in and constructed pursuant to the SPP transmission expansion plan to ensure the reliability of SPP's transmission system. Base Plan Upgrades also include service upgrades required for new or changed designated resources, to the extent allowed for in Attachment J of SPP's Tariff. Base Plan Upgrades also include high priority upgrades, excluding Balanced Portfolios, that are approved for construction by the SPP Board of Directors. *See* SPP Tariff § I.1.3.g.

regional allocation).⁸ On April 27, 2010, the SPP Board of Directors (SPP Board) conditionally approved a double circuit Hitchland-Woodward 345 kV transmission line (Double Circuit Line) as a Priority Project through its transmission planning process.⁹

4. Novus Windpower, LLC and Novus II (collectively, Novus) filed a limited protest in the Highway/Byway proceeding, requesting that the Commission require SPP to restudy generator interconnections where all of the following conditions exist: (1) SPP includes EHV facilities in the customer's LGIA appendices; (2) no authorization to proceed has been issued by the customer pursuant to the terms of its LGIA prior to June 19, 2010 (the effective date of the Highway/Byway cost allocation methodology); and (3) identical or electrically similar EHV facilities are included as Base Plan Upgrades.¹⁰ In the Highway/Byway Order, the Commission found that Novus's request stemmed from the dispute over the Novus II LGIA at issue in this proceeding.¹¹ Accordingly, the Commission found the issue to be more appropriate for the instant proceeding.¹²

II. SPP's Filing

5. On May 12, 2010, SPP submitted the unexecuted Novus II LGIA in the instant proceeding. SPP filed the Novus II LGIA unexecuted because of a dispute between SPP and Novus II over whether the language regarding restudy of certain network upgrades included in the Novus I LGIA should be included in the Novus II LGIA. The disputed network upgrades are the Woodward EHV substation and a single circuit Hitchland-Woodward 345 kV transmission line (Single Circuit Line).¹³ SPP estimates that the total cost of the Single Circuit Line will be \$80.225 million.

⁸ SPP Tariff, Att. J § III.A.

⁹ Priority Projects are the group of extra-high voltage (EHV) projects that SPP developed as interim projects pending implementation of its proposed new transmission planning process.

¹⁰ Highway/Byway Order, 131 FERC ¶ 61,252 at P 118.

¹¹ *Id.* P 122.

¹² *Id.*

¹³ SPP assigned the costs of the single circuit portion of the Double Circuit Line to Novus II. SPP, May 12, 2010 Transmittal Letter at n.8 (SPP Transmittal Letter).

6. According to SPP, Novus II disputes this network upgrade because, subsequent to the interconnection study process, SPP approved the Double Circuit Line as a Priority Project under its transmission planning process. SPP states that Novus II sought a restudy of its interconnection request that would account for SPP's approval of the Double Circuit Line. SPP further asserts that to effectuate this restudy, Novus II requested that SPP insert the above-quoted language from the Novus I LGIA into the Novus II LGIA. SPP refused. Novus II requested that SPP file the Novus II LGIA as unexecuted.¹⁴

7. SPP asserts that the Commission has determined that an interconnection customer's queue position forms the basis for the determination of the customer's cost responsibilities for the construction of facilities or upgrades needed to accommodate its interconnection request.¹⁵ SPP maintains that, because the Double Circuit Line was not already included in the SPP transmission expansion plan at the time it studied the Novus II facility, and because SPP had determined the Single Circuit Line to be an upgrade that would not be needed "but for" Novus II's interconnection request during the study process, Novus II is responsible for the costs of the Single Circuit Line.¹⁶ SPP claims that its Tariff provides no mechanism for adjusting an interconnection customer's cost responsibility for upgrades required for its interconnection due to a later event that would cause the upgrade to be included in the SPP transmission expansion plan.

8. With respect to the above-quoted language in the previously accepted Novus I LGIA, SPP asserts that it agreed to that language in the Novus I proceeding because the

¹⁴ The filed LGIA does not contain the language requested by Novus II.

¹⁵ SPP Transmittal Letter at n.7 (citing *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (Neptune Order), *order on reh'g*, 111 FERC ¶ 61,455, at P 19 (2005) (Neptune Rehearing Order), *aff'd sub nom. Public Service Gas & Electric Company v. Federal Energy Regulatory Commission*, 485 F.3d 1164 (D.C. Cir. 2007)) (*Neptune*).

¹⁶ *Id.* at 2-3. SPP notes that in Order No. 2003, the Commission found that it is appropriate for an interconnection customer to initially pay the full cost of interconnection facilities and network upgrades that would not be needed but for the interconnection of its generating facility. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 694 (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).

network upgrades at issue were small in scope and cost-shifting to others would have been less significant. SPP notes that the Commission accepted the Novus I LGIA by delegated letter order, which has no precedential effect.¹⁷

9. SPP asserts that there are other minor provisions in the Novus II LGIA that do not conform to SPP's *pro forma* LGIA. In addition, SPP states that Novus II executed a facilities study agreement prior to August 1, 2009. Therefore, SPP explains, Novus II's interconnection request is not subject to the reformed interconnection procedures approved by the Commission in a recent SPP interconnection queue reform proceeding, except for the new suspension provisions approved in that proceeding.¹⁸ Accordingly, SPP states it based the Novus II LGIA on the *pro forma* LGIA in effect prior to the effective date of the reformed interconnection procedures (June 2, 2009). SPP also asserts that it amended Appendix C to include the new suspension provisions.¹⁹

10. SPP also requests waiver of the Commission's 60-day notice requirement to allow for the April 12, 2010 effective date requested by Novus II. SPP asserts waiver is appropriate because it filed the Novus II LGIA no later than 30 days after the requested effective date.²⁰

III. Notice of Filing and Responsive Pleadings

11. Notice of SPP's filing was published in the *Federal Register*, 75 Fed. Reg. 28795 (2010), with interventions and protests due on or before June 2, 2010. GDF SUEZ Energy Marketing NA, Inc. filed a timely motion to intervene. Novus filed a motion to intervene and protest. On June 17, 2010, SPP filed an answer to the protest, and on June 28, 2010, Novus filed an answer to SPP's answer. SPP filed a second answer on July 6, 2010. Xcel Energy Services, Inc. (Xcel), on behalf of its public utility operating affiliate SPS, filed an out-of-time motion to intervene.

¹⁷ SPP Transmittal Letter at n.9.

¹⁸ See *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114, at P 98, *order on compliance*, 129 FERC ¶ 61,226 (2009). In this proceeding, SPP reformed its interconnection procedures to move toward a "first ready, first served" approach, which included: the clustering of interconnection requests into study groups, the creation of three interconnection study queues with different deposit and milestone requirements, and stricter suspension provisions.

¹⁹ SPP Transmittal Letter at 8.

²⁰ SPP Transmittal Letter at 8-9.

A. Novus's Protest

12. Novus argues that its request for a restudy of the Novus II interconnection project is consistent with the SPP Tariff and Commission policy and is necessary to prevent unduly discriminatory results between the instant LGIA and the Novus I LGIA.²¹ Novus contends that an interconnection customer should not be responsible for the costs of network upgrades that provide system-wide benefits and that have been developed in a regional planning process, unless it can be shown through an interconnection restudy that those facilities continue to be “but for” facilities; i.e., facilities that would not be needed but for the interconnection request.²²

13. Novus argues that its request for a restudy is consistent with the SPP Tariff. Novus states that Section II of Attachment O (Transmission Planning Process) in the SPP Tariff provides that transmission upgrades related to an approved interconnection agreement may be deferred or supplemented by other upgrades based upon the results of subsequent studies. While Novus acknowledges that “subsequent studies” is not defined, it asserts that a plain reading of the Attachment O language allows for the restudy situation Novus II faces.²³

14. Novus also claims that in a recent proceeding involving the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Commission found Midwest ISO's proposal to assign 100 percent of the costs of a transmission line upgrade included as part of a regional plan to a group of interconnection customers was not shown to be just and reasonable.²⁴ Novus contends that the same situation exists here and that, without a restudy, it is not clear that the disputed facilities are “but for” facilities.

15. Novus also contends that SPP's refusal to include language it included in the Novus I LGIA is unduly discriminatory and in violation of Section 206 of the Federal Power Act.²⁵ Novus is critical of SPP's assertion that the upgrades in the Novus I LGIA were small in scope and would have resulted in less significant cost shifting, noting that

²¹ Novus, June 2, 2010 Protest at 12, 16 (Novus Protest).

²² *Id.* at 8.

²³ *Id.* at 14.

²⁴ *Id.* at 14-15 (citing *Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,019, at P 23 (2009) (Brookings Order), *order on reh'g*, 131 FERC ¶ 61,165 (2010) (Brookings Rehearing Order)).

²⁵ *Id.* at 16 (citing 16 U.S.C. § 824e (2006)).

SPP did not elaborate on what it considered a small upgrade or less significant cost shifting.²⁶ Novus also argues that while interconnection customers with projects further behind in the interconnection process will receive the benefits of the Priority Projects, it and similarly situated interconnection customers will not benefit because they cannot obtain a restudy to assess whether upgrades initially assigned through the interconnection process are duplicative under the transmission planning process.²⁷

16. Novus asserts that policy considerations support its position that a restudy should be performed if network upgrades are authorized under the SPP transmission expansion plan, Balanced Portfolio, or other SPP Board-approved process. Novus contends that the Novus II interconnection request has been caught in the middle of several policy transitions—namely the process to reform SPP’s interconnection procedures and the development of the Highway/Byway cost allocation methodology—that have detrimentally affected its request.²⁸ Novus argues that despite its consistent attempts to emphasize the importance of coordination of the transmission planning and generation interconnection processes,²⁹ SPP continues to treat these processes separately to the detriment of interconnection customers. Novus also maintains that it is inefficient and inappropriate for an interconnection customer to fund an upgrade if an enhanced version of that same upgrade will be constructed and funded under the Highway/Byway cost allocation methodology.³⁰

17. Furthermore, Novus states that restudy is permitted under SPP’s interconnection procedures in the event that a higher or equally-queued project drops out of the queue, noting that a higher-queued project listed in the Novus II LGIA has withdrawn from SPP’s interconnection queue. Accordingly, Novus argues that SPP must perform a restudy per the list of contingencies currently listed in the LGIA. Novus seeks a ruling from the Commission that it would be improper, unjust, and unreasonable for SPP to use

²⁶ *Id.* at 12.

²⁷ *Id.* at 3-4.

²⁸ *Id.*

²⁹ *See, e.g.*, Novus Comments in Docket No. ER09-1254-000 at 2.

³⁰ Novus Protest at 19.

what it describes as out-of-date system conditions when performing this restudy of the Novus II project (i.e., SPP must include the Double Circuit Line in the restudy base case).³¹

B. SPP's June 17 Answer

18. In its answer, SPP argues that its decision not to restudy the Novus II interconnection project in light of the SPP Board's subsequent approval of the Double Circuit Line as a Priority Project is consistent with its Tariff and Commission policy.

19. SPP disputes Novus's argument that the restudy it seeks is consistent with SPP's Tariff. SPP explains that Attachment V (Generator Interconnection Procedures) of the SPP Tariff limits restudies to the following circumstances: (1) a higher or equal priority queued project drops out of the queue; (2) a higher queued project is modified; or (3) a point of interconnection is re-designated due to unanticipated results of an interconnection feasibility study or preliminary interconnection system impact study.³² SPP argues that none of these restudy triggers include subsequent approval of a Priority Project. Furthermore, SPP argues that Section II of Attachment O does not provide that "subsequent studies" will be conducted under such circumstances to change an interconnection customer's cost responsibility.

20. SPP asserts that the Commission has previously determined that "a project's queue position forms the basis for determination of an interconnection customer's cost responsibilities for the construction of facilities or upgrades to accommodate its request."³³ SPP explains that the Priority Projects were not approved by the SPP Board until April 2010—after SPP studied the Novus II project and tendered the LGIA to Novus II. SPP argues that to require restudies for events such as the subsequent approval of Priority Projects, which are not specifically listed in the LGIA, would undermine the certainty afforded by the queue process.³⁴

³¹ *Id.* at 14.

³² SPP, June 16, 2010 Answer at 6 (SPP Answer) (citing SPP Tariff, Att. V § 8.6).

³³ *Id.* at 3-4 (citing Neptune Rehearing Order, 111 FERC ¶ 61,455 at P 19).

³⁴ *Id.* at 5 (citing Neptune Order, 110 FERC ¶ 61,098 at P 23 ("If an interconnection customer is required to anticipate unspecified events occurring after its System Impact Study is completed, *other than costs arising from changes from higher-queued generators*, individual interconnection customers would be unable to make reasoned business decisions.")) (emphasis added)).

21. SPP asserts that the Brookings Order provides no support for restudying the Novus II interconnection project to account for subsequent changes to SPP's transmission expansion plan. SPP argues that the upgrade at issue in the Brookings Order was in the Midwest ISO transmission expansion plan, and it had therefore been assumed in the base case for the interconnection study. Moreover, SPP notes that the Brookings Order did not hold that interconnection customers could not be allocated costs that may otherwise address system-wide needs. Instead, SPP argues that the Brookings Order simply found that the evidence submitted did not support allocating 100 percent of the costs of the upgrade to interconnection customers.³⁵

22. SPP also argues that restudy of the Novus II project is not necessary to prevent duplicative facilities, noting that the fact that the SPP Board has conditionally approved the Double Circuit Line simply modifies the upgrade. SPP explains that while it will construct the Double Circuit Line, Novus II will be allocated the costs of the portion of the line identified as a "but for" facility in the interconnection studies, i.e., the Single Circuit Line.

23. SPP also argues that restudy of the Novus II interconnection project is not required to remedy any undue discrimination. SPP acknowledges that it previously agreed to a non-conforming provision indicating that further studies would be necessary to determine whether the network upgrades listed in the Novus I LGIA would be necessary if network upgrades were authorized under the SPP transmission expansion plan, Balanced Portfolio, or other SPP Board-approved process.³⁶ However, SPP notes that the circumstances in that case were different. SPP explains that the upgrades at issue were much smaller in scope (totaling approximately \$6.6 million) and that only a single, lower-queued project (Novus II) could be affected by the results of a further study. In contrast, SPP asserts that the estimated cost of the Single Circuit Line at issue in the instant proceeding is more than \$80 million and that numerous interconnection requests (totaling approximately 5,900 MW) could be affected.

24. Moreover, SPP argues that the fact that generators lower in the queue may benefit from the Priority Projects under the Highway/Byway cost allocation methodology does not present any issues of undue discrimination among interconnection customers. Instead, SPP asserts that such potential "benefits" are simply the result of the Commission's policy that an interconnection customer's queue position forms the basis

³⁵ *Id.* at n.22 (citing Brookings Order, 129 FERC ¶ 61,019 at P 22, 41).

³⁶ *Id.* at 11 (citing *Southwest Power Pool, Inc.*, Docket No. ER09-1258-000 (July 22, 2009) (unpublished letter order)).

of the customer's cost responsibility.³⁷ Additionally, SPP disputes the assertion that the Highway/Byway cost allocation methodology may result in undue discrimination between transmission and interconnection customers, noting that it does not affect the existing cost allocation methodology for generator interconnections.

25. SPP acknowledges that Novus is correct that a higher-queued project has dropped out of the queue, which will trigger a restudy of the Novus II interconnection project. However, SPP argues that Novus is wrong that such a restudy should take into account the existence of all approved Base Plan Upgrades for which notifications to construct have been issued prior to the time the restudy results are finalized. SPP contends that when a higher-queued project drops out of the queue, as is the case here, the purpose of the restudy is to determine the impact of the withdrawal on the lower-queued projects, not to assess the impact of subsequent events that occurred after the interconnection request was studied.³⁸

C. Novus's June 28 Answer

26. In its answer, Novus reiterates its position that SPP must include updated system conditions—including Base Plan Upgrades for which a notice to construct has been issued—when conducting its restudy of the Novus II project.³⁹ Novus argues that SPP included Base Plan Upgrades not included in the initial system impact study when restudying Novus I's interconnection request. Novus also alleges that SPP included Balanced Portfolio Projects in its system model when conducting restudies for the first transitional cluster in the queue reform proceeding,⁴⁰ even though SPP did not include these upgrades in the initial system impact study for the cluster.⁴¹

³⁷ *Id.* at 13 (citing Neptune Rehearing Order, 111 FERC ¶ 61,455 at P 19).

³⁸ *Id.* (citing Neptune Order, 110 FERC ¶ 61,098 at P 23; Neptune Rehearing Order, 111 FERC ¶ 61,455 at P 19).

³⁹ Novus, June 28, 2010 Answer at 3, 5 (Novus Answer).

⁴⁰ SPP established the first transitional cluster in a waiver proceeding prior to filing its reformed interconnection procedures in Docket No. ER09-1254-000. *See Southwest Power Pool, Inc.*, 126 FERC ¶ 61,012, *order on reh'g*, 126 FERC ¶ 61,215, *order on compliance*, 127 FERC ¶ 61,138, *order on reh'g*, 129 FERC ¶ 61,145 (2009).

⁴¹ Novus Answer at 7.

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant the late-filed motion to intervene given Xcel's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept SPP's June 17 answer and Novus's June 28 answer because they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept SPP's July 6 answer and will, therefore, reject it.

B. Commission Determination

29. We accept the Novus II LGIA, effective April 12, 2010, as requested, and we will not require SPP to include the language sought by Novus. We also grant waiver of the 60-day notice requirement because SPP filed the LGIA within 30 days of the effective date of the agreement.⁴²

30. Novus argues that the restudy of an interconnection request to account for network upgrades (i.e., Priority Projects) approved through SPP's transmission planning process is consistent with SPP's Tariff and Commission policy. We disagree.

31. Novus first argues that the non-conforming language is consistent with Attachments O (Transmission Planning Process) and V (Generator Interconnection Procedures) of SPP's Tariff. SPP points out that, while Attachment O may allow transmission upgrades related to an approved interconnection agreement to be deferred or supplemented by other upgrades based upon the results of subsequent studies, Attachment V expressly limits the contingencies that trigger a restudy to the following

⁴² See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (“[W]aiver of notice will be granted if service agreements are filed within 30 days after service commences.”).

circumstances: (1) a higher or equal priority queued project drops out of the queue; (2) a higher queued project is modified; or (3) a point of interconnection is re-designated due to unanticipated results of an interconnection feasibility study or preliminary interconnection system impact study.⁴³ We agree with SPP that Novus's argument that its proposed restudy provisions are consistent with SPP's Tariff is incorrect and fails to account for the limited contingencies enumerated in Attachment V of the SPP Tariff.

32. Our determination is also consistent with *Neptune*, in which the Commission found that "the boundaries of the re-study process must correlate to circumstances known to [the transmission provider] and the interconnection customer at the time of the initial System Impact Study, or through exercising due diligence, was reasonably ascertainable at that time (such as the risk of changes in higher-queued projects)."⁴⁴ In that proceeding, the Commission prohibited a transmission provider from restudying an interconnection customer's request due to generator retirements that occurred subsequent to the customer's initial system impact study because such events were not listed in the transmission provider's tariff as permitting re-studies. Similarly here, the announcement of the conditional approval of the Priority Projects took place well after SPP initially studied Novus II's project, and such an event is not among the list of contingencies that trigger a restudy in the SPP Tariff. Thus, the risks associated with the approval of Priority Projects (as part of SPP's ultimate Highway/Byway cost allocation methodology) cannot be said to have been known to the parties at the time of the initial system impact study with the kind of certainty as the potential impacts due to the withdrawal of higher-queued projects.

33. Additionally, Novus argues its proposed non-conforming language is supported by recent Midwest ISO orders involving the Brookings County-Twin Cities 345 kV transmission line (Brookings Line).⁴⁵ Novus contends that these orders support its position that a transmission provider cannot assign the full costs of a network upgrade to the interconnection customer when that upgrade is also included in a regional planning process. In the Brookings Orders, Midwest ISO allocated the full costs of the Brookings

⁴³ SPP Answer at 6 (citing SPP Tariff, Att. V § 8.6).

⁴⁴ Neptune Order, 110 FERC ¶ 61,098 at P 25; Neptune Rehearing Order, 111 FERC ¶ 61,455. Although *Neptune* involved the interconnection of a merchant transmission project, the applicable tariff used the same study procedures applied to generator interconnections.

⁴⁵ Brookings Order, 129 FERC ¶ 61,019; Brookings Rehearing Order, 131 FERC ¶ 61,165.

Line to a cluster of interconnection customers called the “Group 5” generators.⁴⁶ However, in addition to providing interconnection service to these interconnection customers, transmission owners in the upper Midwest were already planning to construct the Brookings Line as part of their CapX2020 Initiative, a regional planning process, to serve needs in addition to those of the Group 5 generators.⁴⁷ The Commission determined that although Midwest ISO could construct this larger upgrade, the Group 5 generators’ cost responsibility should be limited to the cost of upgrades that would not have been necessary but for their interconnection.⁴⁸

34. Here, by contrast, SPP is not trying to allocate the full cost of the larger upgrade (i.e., Double Circuit Line) to Novus II. Instead, the LGIA allocates to Novus II only the cost of the Single Circuit Line—the facility that would not be needed “but for” the Novus II interconnection request. This cost allocation is consistent with the Brookings Orders because Novus II will be allocated only the portion of the costs of the larger Double Circuit Line that have been identified through the interconnection study process. Accordingly, the Brookings Orders do not support the non-conforming restudy provisions advocated by Novus.

35. Additionally, we find that SPP has sufficiently explained its rationale for not including the restudy provisions sought by Novus. SPP states that the network upgrades for Novus I were small in nature and that further restudies could potentially affect only one other customer (Novus II). Here, however, SPP states that the upgrades are much larger in scope and that restudies could affect a number of lower-queued interconnection customers. This difference in the potential impact of restudies shows that the Novus II interconnection request is differently situated from the Novus I interconnection request, which sufficiently explains SPP’s refusal to accept the language requested by Novus II here. Therefore, we do not view SPP’s refusal to include this provision as evidence of undue discrimination.⁴⁹ Further, we agree with SPP that any potential benefits experienced by lower-queued interconnection customers because of the construction of Priority Projects is a result of Commission policy stipulating that an interconnection

⁴⁶ Brookings Order, 129 FERC ¶ 61,019 at P 5.

⁴⁷ *Id.* P 12.

⁴⁸ *Id.* P 23-24.

⁴⁹ *See, e.g., Calif. Independent System Operator Corp.*, 119 FERC ¶ 61,061, at P 69 (2007) (“[D]iscrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor”).

customer's queue position forms the basis of the customer's cost responsibility and is not a result of undue discrimination.⁵⁰

36. In addition to its request for the addition of non-conforming language in the Novus II LGIA, Novus argued in the Highway/Byway proceeding for amendments to SPP's interconnection procedures that would require SPP to restudy generator interconnections where all of the following conditions exist: (1) EHV facilities are included in the customer's interconnection agreement; (2) no authorization to proceed has been issued by the customer pursuant to terms of its interconnection agreement prior to June 19, 2009; and (3) identical or similar EHV facilities are included as Base Plan Upgrades.⁵¹ In the Highway/Byway Order, the Commission indicated that Novus's concerns regarding interconnection restudies stem from the Novus II LGIA, and that they were best addressed in the instant proceeding.⁵²

37. We reject Novus's proposed amendment to SPP's interconnection procedures in part because it implicates the broader policy issue involving the relationship between interconnection cost allocation principles and transmission planning processes. However, neither here nor in the Highway/Byway proceeding has SPP proposed to modify its interconnection procedures. Moreover, the generic modifications to SPP's interconnection procedures requested by Novus would affect numerous stakeholders. Therefore, we find this LGIA proceeding to be an inappropriate forum to generically address this policy issue. To the extent Novus believes the existing interconnection provisions are unjust and unreasonable, it can raise the issue in the stakeholder process or in a complaint proceeding.

38. Finally, Novus and SPP both acknowledge that a higher-queued interconnection customer has withdrawn its project, thus requiring a restudy of the Novus II interconnection project. Novus argues that the Commission should order SPP to use updated system conditions when performing this restudy (i.e., the Double Circuit Line should be included in the restudy base case). SPP disagrees. This issue, however, is not before us in this proceeding. The issue here is whether to accept the Novus II LGIA—not what system conditions should be used if and when a restudy of the Novus II interconnection project is performed.

⁵⁰ See Neptune Rehearing Order, 111 FERC ¶ 61,455 at P 19.

⁵¹ Highway/Byway Order, 131 FERC ¶ 61,252 at P 118.

⁵² *Id.* P 122.

The Commission orders:

The Novus II LGIA is hereby accepted, effective April 12, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.