

132 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER09-1255-003

ORDER DENYING REQUEST FOR REHEARING OR RECONSIDERATION

(Issued September 23, 2010)

1. This order addresses Wind Farm Bear Creek, LLC's (Bear Creek) request for rehearing or, in the alternative, reconsideration of the Commission's April 21, 2010 order on rehearing and compliance in this proceeding.¹ For the reasons discussed below, the Commission denies Bear Creek's request for rehearing or reconsideration.

I. Background

2. On June 1, 2009, Southwest Power Pool, Inc., (SPP) filed (June 2009 Filing) an unexecuted large generator interconnection agreement (LGIA) between SPP as transmission provider, Sunflower Electric Power Corporation as transmission owner, and Bear Creek as interconnection customer (Bear Creek LGIA). SPP filed the Bear Creek LGIA on an unexecuted basis because of a dispute between Bear Creek and SPP concerning whether Bear Creek had followed the correct procedure to receive network resource interconnection service² (NRIS) in accordance with SPP's then-effective open access transmission tariff (Tariff).

¹ *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,058 (2010) (April 21 Order).

² SPP defines NRIS as an interconnection service that allows the interconnection customer to integrate its generating facility with the transmission system in a manner comparable to that in which the transmission owner integrates its generating facilities to serve native load customers as a network resource. NRIS in and of itself does not convey transmission service. SPP Tariff, Attachment V, section 1, Fifth Revised Sheet No. 379.

3. On July 31, 2009,³ the Commission issued an order accepting the Bear Creek LGIA and directing SPP to make a compliance filing restoring language providing that an interconnection customer's facility need not be designated as a network resource in order to obtain NRIS.⁴ The Commission also stated that Bear Creek would be permitted to submit a new request for NRIS upon SPP's restoration of the *pro forma* tariff provisions for NRIS.

4. Both SPP and Bear Creek filed requests for rehearing of the July 31 Order, which the Commission denied in the April 21 Order.⁵

II. Request for Rehearing or Reconsideration

5. Bear Creek requests rehearing, or in the alternative reconsideration, of two issues decided in the April 21 Order. First, Bear Creek contends that the Commission erred in granting SPP's request to clarify that if an interconnection customer wishes to serve load in another control area, it must submit a separate request for transmission service to that other area and would be subject to further studies and the pricing provisions of SPP's Tariff for transmission service.⁶ Bear Creek claims that the Commission granted this request "with only the explanation that its decision was consistent with Order No. 2003,"⁷ and that the Commission's failure to take into account the circumstances of the SPP system "does not reflect reasoned decision making."⁸

³ *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116 (2009) (July 31 Order).

⁴ July 31 Order, 128 FERC ¶ 61,116 at P 22.

⁵ April 21 Order, 131 FERC ¶ 61,058 at P 15-16, 25, and 28.

⁶ Bear Creek Rehearing Request at 5, citing April 21 Order, 131 FERC ¶ 61,058 at P 17.

⁷ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁸ Bear Creek Rehearing Request at 5.

6. Second, Bear Creek asserts that the Commission's requirement that Bear Creek submit a new request for NRIS with a different queue placement would unjustly and unreasonably harm Bear Creek by requiring it to (1) pay deposits beyond what Bear Creek has already paid and would have paid under its original request,⁹ (2) meet requirements that are different from what they were at the time of its first NRIS request,¹⁰ and (3) lose its current queue priority, which it "has already earned in meeting the NRIS requirements that the Commission has not since rejected."¹¹

7. For these reasons, Bear Creek contends that the Commission should grant rehearing. In the alternative, Bear Creek asserts that the Commission should take this opportunity to determine that its policy objectives of ensuring that generators have non-discriminatory access to the nation's transmission grid, and the SPP transmission system specifically, would be furthered by honoring the queue positions of any NRIS request that was submitted to SPP.¹²

III. Discussion

A. Procedural Matters

8. SPP filed an answer to Bear Creek's request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2010), prohibits answers to requests for rehearing. Accordingly, we will reject SPP's answer.

B. Commission Determination

9. We will deny Bear Creek's request for rehearing or, in the alternative, reconsideration, of the April 21 Order. It is well established that "[t]he Commission does not allow rehearing of an order denying rehearing,"¹³ and has stated that "[a]ny other

⁹ *Id.* at 10 (citing SPP Tariff, Attachment V, section 3.3.1 (a new request requires a \$10,000 deposit and a demonstration of site control), section 3.6 (customer must pay all costs that transmission provider incurred prior to customer's withdrawal of its interconnection request), and sections 6-8 (includes \$220,000 in various study deposits)).

¹⁰ *Id.* (citing SPP Tariff, Attachment V, section 11.5 (reflects new security requirements)).

¹¹ *Id.* (citing SPP Tariff, Attachment V, section 4.1.2 (establishing queue priority)).

¹² *Id.* at 11.

¹³ *See Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *as amended*, 126 FERC ¶ 61,261, *order*

(continued...)

result would lead to never-ending litigation as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing unless presumably that response were word-for-word identical to what the Commission earlier said."¹⁴ The Commission also prohibits second rehearing requests raising "arguments that could and should have been made earlier."¹⁵ The only exception is where the Commission's order denying rehearing modifies the result of the earlier order.¹⁶

10. Bear Creek's rehearing or reconsideration request fails to meet the established standard for the Commission to grant rehearing. Bear Creek claims that the April 21 Order was the first time the Commission determined that SPP need not provide NRIS beyond the control area in which the generator is located. However, in response to the July 31 Order, Bear Creek itself sought clarification that NRIS service is applicable to the whole SPP service territory, and if the Commission declined to grant the clarification, then it sought rehearing of the issue.¹⁷ In the April 21 Order, the Commission denied Bear Creek's rehearing request and found that "consistent with Order No. 2003, SPP may limit the network transmission service that is available to an interconnection customer taking NRIS to the balancing area/control area where the generating facility is located, unless the customer submits a request for transmission service for other points of delivery."¹⁸ Thus, Bear Creek itself expressly sought rehearing of this issue, which the Commission denied in April 21 Order without modifying the result of the earlier order.¹⁹

on reh'g, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, *reh'g denied*, Order No. 719-B, 129 FERC ¶ 61,252, at P 37 (2009).

¹⁴ *Id.*

¹⁵ *See Southwest Public Service Co.*, 65 FERC ¶ 61,088, at 61,533 (1993) (that a party seeking rehearing belatedly "come[s] up with what it apparently believes is a better, more persuasive reason why the Commission erred (without even bothering to offer any reason why it could not or did not raise the argument earlier) is, in itself, no reason to entertain [the party's] argument.")

¹⁶ *See Southern Company Service., Inc.*, 111 FERC ¶ 61,329, at P 1 (2005), and *AES Warrior Run, Inc. v. Potomac Edison Co.*, 106 FERC ¶ 61,181, at P 1 (2004).

¹⁷ Bear Creek Rehearing Request of July 31 Order, 128 FERC ¶ 61,116 at 2.

¹⁸ April 21 Order, 131 FERC ¶ 61,058 at P 17.

¹⁹ *Id.* P 17, 25 and Ordering Paragraph (A).

Accordingly, there is no basis upon which the Commission will allow rehearing of an order denying rehearing.

11. Similarly, the July 31 Order notified Bear Creek that it would be required to submit a new request for NRIS.²⁰ In response, Bear Creek sought clarification that a new request for NRIS will be deemed submitted as of the date that Bear Creek first sought NRIS, and if not, then it sought rehearing of the point. In the April 21 Order, the Commission denied rehearing and reiterated that Bear Creek must submit a new request for NRIS.²¹ Again, the Commission denied Bear Creek's rehearing request in the April 21 Order without modifying the result of the earlier order.

The Commission orders:

Bear Creek's request for rehearing or, in the alternative, reconsideration of the April 21 Order is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ July 31 Order, 128 FERC ¶ 61,116 at P 23 (providing that SPP's "Tariff did not provide for NRIS at the time Bear Creek's interconnection request was studied. Therefore . . . Bear Creek may submit a new request for NRIS upon SPP's restoration of the Order No. 2003 *pro forma* Tariff provisions for NRIS.")

²¹ April 21 Order, 131 FERC ¶ 61,058 at P 25 and Ordering Paragraph (A).