

133 FERC ¶ 61,132
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 12, 2010

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER10-2608-000

Wright & Talisman, P.C.
Attention: Tyler R. Brown
1200 G Street, NW
Suite 600
Washington, DC 20005

Reference: Union Wind Generator Interconnection Agreement

Dear Mr. Brown:

1. On September 13, 2010, Southwest Power Pool, Inc. (SPP) filed a Generator Interconnection Agreement (GIA) between SPP as transmission provider, Union Wind, LLC (Union Wind) as interconnection customer, and KCP&L Greater Missouri Operations Company, Inc. (KCP&L-GMO) as transmission owner. SPP states that the Union Wind GIA provides for the interconnection of 55 wind turbines with step-up transformers for a total of 110 MW of output to KCP&L-GMO's transmission system. SPP states that it is filing the Union Wind GIA because it contains two provisions that do not conform to SPP's *pro forma* GIA.¹

2. First, SPP explains that Appendix A of the Union Wind GIA includes a non-conforming provision that describes how three higher-queued interconnection projects will affect Union Wind's responsibility for network upgrade costs. SPP states that Union Wind's cost responsibility will be greater if the higher-queued projects withdraw from the

¹ SPP's *pro forma* GIA is contained within Appendix 6 of Attachment V in its Open Access Transmission Tariff.

interconnection queue. SPP asserts that the non-conforming provisions set forth in Appendix A are consistent with Order No. 2003² and that the Commission has accepted similar provisions in other GIAs.³

3. Second, SPP states that Appendix C of the Union Wind GIA includes a non-conforming provision that allows either the transmission provider (SPP) or the transmission owner (KCP&L-GMO) to disconnect Union Wind's generating facility if either party determines (1) that Union Wind is not operating its generation facilities in accordance with good utility practice or (2) that Union Wind's operating practices threaten the safety of persons, property, or the integrity of the transmission system. SPP states that the Commission has accepted similar provisions in other GIAs.⁴

4. Notice of SPP's filing was published in the *Federal Register*, 75 Fed. Reg. 57,749 (2010), with interventions and protests due on or before October 4, 2010. No interventions, comments, or protests were filed.

5. For the reasons discussed below, we will reject the Union Wind GIA because it contains a provision in Appendix C that does not conform to SPP's current *pro forma* GIA, and which SPP has not shown to be necessitated by operational or other concerns. In addition, we find that SPP erroneously refers to provisions in Appendix A as non-conforming, when in fact these provisions do conform to SPP's *pro forma* GIA.

6. In Order No. 2003, the Commission required transmission providers to offer their customers interconnection service consistent with *pro forma* interconnection documents.⁵ The use of *pro forma* interconnection documents ensures that customers are receiving non-discriminatory service and streamlines the interconnection process by eliminating the

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

³ SPP, September 13, 2010 Transmittal Letter at 3 (citing *Southwest Power Pool, Inc.*, Docket No. ER10-814-000 (April 27, 2010) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER10-1245-000 (July 23, 2009) (unpublished letter order)).

⁴ *Id.* (citing *Southwest Power Pool, Inc.*, Docket No. ER09-1219-000 (July 24, 2009) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER09-1234-000 (July 22, 2009) (unpublished letter order)).

⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 1-4.

need for customers to negotiate the individual terms of each agreement. This reduces transaction costs and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.

7. At the same time, the Commission recognized that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for the filing of a non-conforming interconnection agreement.⁶ In such cases, the transmission provider should indicate clearly where the agreement does not conform to its *pro forma* interconnection agreement and explain its justification for each non-conforming provision of the interconnection agreement.⁷

8. The Commission analyzes such non-conforming filings to ensure that operational or other reasons necessitate the non-conforming agreement.⁸ A transmission provider seeking a case-by-case specific deviation from a *pro forma* interconnection agreement bears a high burden, and it must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.⁹

9. We find that SPP has not fully explained what makes the Union Wind interconnection unique, nor has it explained how the non-conforming provision in Appendix C is necessary to accommodate operational concerns associated with the interconnection. In support of this provision, SPP merely states that the Commission has accepted similar provisions in the past through delegated letter orders. However, as the Commission has explained previously, reliance on an unpublished delegated letter order is unpersuasive because such orders do not constitute legal precedent binding on the Commission.¹⁰

⁶ See *Southwest Power Pool Inc.*, 129 FERC ¶ 61,121, at P 14 (2009) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,078, at P 6 (2006); Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 913-915).

⁷ See *id.* (citing Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140; Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 915).

⁸ See *id.* P 15 (citing *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (*PJM Order*); see also *El Paso Electric Co.*, 110 FERC ¶ 61,163, at P 4 (2005)).

⁹ See *id.* (citing *PJM Order*, 111 FERC ¶ 61,098 at P 9).

¹⁰ See *Southwest Power Pool Inc.*, 132 FERC ¶ 61,062, at P 14 (2010) (citing *Idaho Power Co.*, 95 FERC ¶ 61,482 (2001); *Cambridge Electric Light Co.*, 95 FERC ¶ 61,162 (2001); *Westar Energy, Inc.*, 124 FERC ¶ 61,090 (2008)).

10. Moreover, the non-conforming provision in Appendix C appears to be at odds with section 13.5.2 of the Union Wind GIA—a section taken verbatim from SPP’s *pro forma* GIA. Section 13.5.2 allows the transmission provider or transmission owner to disconnect Union Wind’s generating facility “when such . . . disconnection is necessary under Good Utility Practice due to Emergency Conditions.” While section 13.5.2 applies in emergency conditions, the non-conforming provision in Appendix C appears to give the transmission owner and transmission provider broader authority to disconnect the generating facility when “the Transmission Provider or Transmission Owner determines that the Interconnection Customer is not operating its generation facilities in accordance with Good Utility Practice.” In light of this apparent conflict, and the lack of any showing that the non-conforming provision is necessary to accommodate unique operational concerns associated with the interconnection, we reject it here.

11. Additionally, we find that the provisions in Appendix A that SPP categorizes as non-conforming do not deviate from SPP’s *pro forma* GIA and are therefore conforming provisions that need not be filed with the Commission. Appendix A of SPP’s *pro forma* GIA is expressly reserved for case-specific information on the interconnection facilities and network upgrades required for the interconnection of a generating facility. Thus, scenarios involving the actions of higher-queued interconnection customers—and how these actions may influence the construction of and the cost responsibility for facilities—are within the scope of the case-specific information that may be included in Appendix A of the GIA. This finding is consistent with a recent Commission order addressing similar language in Appendix A of an SPP interconnection agreement.¹¹

12. With the removal of the proposed language in Appendix C, the Union Wind GIA will conform to SPP’s *pro forma* GIA and may be included as a conforming agreement in SPP’s quarterly transaction reports, requiring no further Commission action. However, if the parties to the agreement wish to retain the non-conforming Appendix C language, SPP may re-file the Union Wind GIA with appropriate justification demonstrating why the Appendix C provision is necessary because of the unique circumstances of the Union Wind interconnection or because of operational concerns necessary to accommodate the interconnection. In the alternative, SPP may propose a revision to its *pro forma* GIA, thereby making this provision applicable to all interconnection customers.

¹¹ *Id.* P 16.

The Commission orders:

The Commission rejects the Union Wind GIA, as discussed in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.