

137 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Electric Service Company

Docket Nos. ER11-4459-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS,
SUBJECT TO COMPLIANCE FILING

(Issued November 1, 2011)

1. On September 7, 2011, El Paso Electric Company (El Paso) submitted for filing pursuant, to section 205 of the Federal Power Act (FPA),¹ revisions to its Large Generator Interconnection Procedures (LGIP). El Paso requests an effective date of November 1, 2011, for the proposed tariff revisions. For the reasons set forth below, we conditionally accept El Paso's proposed revisions to its LGIP, subject to a compliance filing within 30 days of the date of issuance of this order, effective November 1, 2011.

I. Background

2. El Paso is a vertically integrated electric utility whose primary business is serving native load in El Paso, Texas and surrounding areas. El Paso is a publicly-traded company that is directly owned by its shareholders. It has no parent, subsidiary or affiliate engaged in the energy sector. El Paso is engaged in the generation, transmission, distribution, and sale of electricity at retail and wholesale to approximately 372,000 customers in a 10,000 square mile area in west Texas and southern New Mexico. El Paso also operates under a Commission-approved OATT and owns facilities used for the transmission of electric energy in interstate commerce.²

¹ 16 U.S.C. § 824d (2006).

² El Paso Transmittal Letter at 2 - 3.

3. In Order No. 2003,³ the Commission issued standardized interconnection procedures and agreements for the interconnection of large generating facilities. The Commission's goal was to reduce undue discrimination and expedite the development of new generation while protecting reliability and ensuring that rates are just and reasonable. El Paso's LGIP was adopted to comply with the Commission's directives in Order No. 2003. Concerns about the effectiveness of queue management led the Commission to convene a technical conference on December 11, 2007. The Commission has found that "[s]urges in the volume of new generation development are taxing the current queue management approach in some regions"⁴ and that "the unprecedented demand in some regions for new types of generation, principally renewable generation, places further stress on queue management because such generation technologies can, for example, be brought online more quickly than traditional generation."⁵ El Paso states that it is located in a region facing these kinds of difficulties.

4. While the Commission has not required a particular solution, the Technical Conference Order suggested the following types of variations that, individually or in combination, could speed up queue processing while remaining faithful to the goals of Order No. 2003. These are: (1) increasing the requirements for obtaining and keeping a queue position, such as increasing deposit amounts; (2) eliminating the Interconnection Feasibility Study as a separate step to reduce processing time without harming interconnection customers; and (3) instituting a first-ready, first-served approach, under which customers who demonstrate the greatest ability to move forward with project development are processed first.⁶ The Commission also stated that we would consider methods of clustering other than the Order No. 2003 approach, which is based on a first-come, first-served paradigm as clusters are limited to requests filed within the same time frame.⁷

³ *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), *cert. denied*, 552 U.S. 1230 (2008).

⁴ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 3 (2008) (Technical Conference Order).

⁵ *Id.*

⁶ *Id.* P 15-18.

⁷ *Id.* P 18.

5. El Paso states that WestConnect,⁸ took note of the Commission's directions and established an LGIP work group in mid-2009 to address potential LGIP reforms intended to increase the efficiency of the LGIP without compromising the Commission's goals of providing open and non-discriminatory consideration and processing of generator interconnection requests. El Paso states that the work group meetings are open for participation by any stakeholder or entity and that the work group has met regularly to review and consider changes to interconnection processing. El Paso further states that all participants have been encouraged to comment on existing ideas, offer their own proposals or engage in any other manner they deem fit. According to El Paso, ultimately, all WestConnect members contributed to and support the proposed LGIP reforms discussed below.⁹

II. Notice and Responsive Pleadings

6. Notice of El Paso's filing was published in the *Federal Register*, 76 Fed. Reg. 57,726, with protests and interventions due on or before September 28, 2011. No adverse comments were filed in the proceeding.

III. Applicant's Proposal

7. El Paso states that it proposes to modify its LGIP to manage interconnection requests more efficiently. Specifically, El Paso proposes to amend its LGIP by: (1) creating queue cluster windows; (2) replacing current deposit requirements with a single, two-level deposit; (3) making deposits increasingly non-refundable as the interconnection process proceeds; (4) permitting deposits in lieu of demonstrating site control; (5) setting the interest rate paid on deposits to match the rate El Paso actually earns; (6) eliminating the Feasibility Study; (7) streamlining the time and accuracy requirements of facility studies; and (8) creating a standardized Engineering and Procurement (E&P) Agreement. El Paso argues that its proposed amendments, as discussed below, are "consistent with or superior to" its existing LGIP.¹⁰ Additionally, El Paso proposes a grandfathering mechanism for existing interconnection requests during the transition period.

⁸ El Paso is one of thirteen electric utility members providing transmission service in the Western Interconnection. Transmittal Letter at 3.

⁹ El Paso Transmittal Letter at 6 – 7.

¹⁰ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

A. Study Cluster Windows

1. Proposal

8. The tariff provision on clustering in El Paso's currently-effective LGIP requires that interconnection requests are received 180 days prior to El Paso's implementation of a study cluster window. El Paso proposes to instead establish a standard 6-month study cluster for system impact studies that would cluster all interconnection requests received during: (1) the second and third quarters of a given year; and (2) the fourth quarter of each year and the subsequent first quarter of the following calendar year. El Paso states that each 6-month period would be called a "Queue Cluster Window," and the studies for each window would initially commence on April 1 (for requests received during the fourth and first quarters) and October 1 (for the second and third quarters) of each year. El Paso states that the first Queue Cluster Window would commence upon the first date for a window reached (April 1 or October 1) following Commission approval of its filing.

2. Discussion

9. The Commission has acknowledged that there may be approaches to prioritizing queue processing that provide protection against discrimination comparable to the first-come, first-served approach, but that are more efficient.¹¹ We accept El Paso's proposal to use a standard 6-month study cluster for system impact studies as consistent with or superior to the *pro forma* LGIP because it provides better coordination of interconnection studies and more certainty regarding milestones for interconnection customers. The Commission has already accepted similar clustering approaches in other cases,¹² and this change merely standardizes the timing for the clustering windows. We find that this standardization of the cluster timing will provide greater clarity to potential interconnection customers. In addition, we find El Paso's proposal acceptable because it protects interconnection customers against discrimination by studying multiple interconnection requests within each designated Queue Cluster Window.

¹¹ Technical Conference Order, 122 FERC ¶ 61,252 at P 18.

¹² *California Independent System Operator Corp.*, 124 FERC ¶ 61,292, at P 18-19, P 33 (2008); *Public Service Co. of New Mexico*, 136 FERC ¶ 61,231, at P 75-76, 80, 82 (2011).

B. Deposits

1. Proposal

10. El Paso states that, under its current LGIP, an initial deposit of \$10,000 is an incentive for developers to secure a place in the queue for a project that may not be commercially viable and, while there are additional deposits at various stages of the process, this process creates administrative burdens and may permit interconnection customers to game the process by failing to make timely deposits. As a result, El Paso proposes to replace all current deposit requirements with a single, two-level initial deposit paid by the interconnection customer at the beginning of the interconnection process based on the size of the project. Specifically, El Paso proposes to require a deposit of \$160,000 for large generator projects (generators larger than 20 MW) with an output of up to 75 MWs and \$250,000¹³ for projects with an output greater than 75 MWs. El Paso proposes to increase the deposit provision applicable to optional interconnection studies from \$10,000 to \$25,000 for the same reasons (i.e., to favor developers with secure projects over those seeking to tie up sites based on speculation).¹⁴

2. Discussion

11. In the Technical Conference Order, the Commission found that it may be appropriate to increase the requirements for getting and keeping a queue position.¹⁵ The Commission recognized that it could be appropriate to increase the amount of the deposits required at the different stages of the process to more accurately reflect the cost of studies. The Commission stated that such a change would not only be consistent with traditional ratemaking principles, but would also increase the likelihood that only projects that are likely to be commercially viable (and hence willing to commit to the cost of such studies in advance) are in the queue.¹⁶ Similar to those findings in the Technical Conference Order, we find El Paso's proposal to be consistent with or superior to the *pro forma* LGIP,¹⁷ because it will encourage interconnection requests that are commercially viable and thus permit these requests to be processed more expeditiously and without repeated re-study. Furthermore, we find that the proposed deposit levels are

¹³ According to El Paso, this amount exceeds the current total deposit requirements in the *pro forma* LGIP, but is less than the amount normally incurred by an interconnection customer in the existing interconnection process.

¹⁴ El Paso Transmittal Letter at 9 – 10.

¹⁵ See Technical Conference Order, 122 FERC ¶ 61,252 at P 16.

¹⁶ *Id.*

¹⁷ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

not unduly discriminatory, because they are tied to generator size and reflect the actual costs interconnection customers typically incur during the interconnection process.

C. Refunds

1. Proposal

12. El Paso states that an interconnection customer currently pays only for actual costs incurred by a transmission provider to perform studies required in the interconnection process. El Paso asserts that this payment structure facilitates easy withdrawals from the queue. El Paso proposes to modify the deposit refunds as follows: (1) \$25,000 of the initial deposit will be non-refundable if the interconnection customer withdraws after the start of work performed under the system impact study; (2) \$50,000 will be deemed non-refundable when the facilities study agreement is signed by the interconnection customer; (3) the non-refundable amount will be in addition to actual costs incurred by the transmission provider in earlier stages of the process; (4) the non-refundable amounts will not be cumulative; and (5) retained deposit funds will be applied to the cost of re-study work required by the withdrawal of the applicant's interconnection request and any deposit funds remaining after paying for the cost of re-study work will be returned to the withdrawing customer.¹⁸ El Paso states that the intent of this proposal is to discourage "queue-sitting" and to encourage interconnection customers to only submit interconnection requests that will likely achieve interconnection.

2. Discussion

13. We find El Paso's proposal to modify its deposit refund obligation consistent with or superior to the *pro forma* LGIP because the procedure will encourage interconnection customers to assess the commercial viability of their interconnection requests. In addition, we note that El Paso's proposal is consistent with the Commission's traditional cost causation policy¹⁹ as it obligates the withdrawing interconnection customers to assume responsibility for costs they cause others to incur as a result of re-study work that El Paso must perform. We also find El Paso's proposal acceptable based on its commitment to return any otherwise non-refundable amount that exceeds the cost of all re-study work.²⁰ For these reasons, we accept El Paso's proposal.

¹⁸ El Paso Transmittal at 11 – 12.

¹⁹ *Southwest Power Pool, Inc.*, 128 FERC 61,114, at P 67 (2009) (citing *ISO New England, Inc.*, 115 FERC ¶ 61,145, at P 13 (2006)).

²⁰ El Paso Transmittal at 11.

D. Site Control and Deposits in Lieu of Site Control

1. Proposal

14. El Paso asserts that many variables affect an interconnection customer's ability to obtain site control throughout El Paso's footprint, such as interconnection projects on land owned by Federal or State governments as well as on land owned by Sovereign Nations. El Paso states that each such variable imposes varying requirements for securing purchase options or leases that may cause implementation and timing hurdles, but these variables do not seriously risk site control in the long term. El Paso proposes to allow a deposit in lieu of site control that will involve the following changes:

- (i) The deposit in lieu of site control will be \$160,000 for generator projects (generators larger than 20 MW) up to 75 MW or an additional \$250,000 for generator requests greater than 75 MW.
- (ii) The deposit in lieu of site control will be partially non-refundable in the same manner as the initial deposit: (a) \$25,000 at the start of the system impact study work; and (b) \$50,000 when the interconnection customer signs the facilities study agreement.
- (iii) El Paso will refund the deposit in lieu of site control when the interconnection customer demonstrates site control.

El Paso proposes that interconnection customers will be able to submit these deposits in lieu of site control commencing when the Commission accepts this proposal for filing.²¹

2. Discussion

15. We find El Paso's proposal to be consistent with or superior to the *pro forma* LGIP. To initiate an interconnection request under the currently effective LGIP, the interconnection customer is required to demonstrate site control or to post an additional deposit of \$10,000. Under El Paso's proposed LGIP, the additional deposit would be applied toward any interconnection studies pursuant to the interconnection request. If the interconnection customer demonstrates Site Control within the specified cure period, the additional deposit will be refundable; otherwise, all deposits, additional and initial, become non-refundable.²²

16. We find that El Paso's proposal here (similar to the deposits and refund obligations) will increase the likelihood that only projects that are likely to be

²¹ *Id.* at 12.

²² Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at Appendix C – Section 3.3.1 Initiating an Interconnection Request.

commercially viable (and hence willing to commit to the Deposits in Lieu of Site Control) will have a place in the queue. The deposits in lieu of site control are also tied to generator size and are non-refundable in the same manner as the initial deposit. Similar to the initial deposit, we find that the proposed deposit levels are not unduly discriminatory, because they are tied to generator size and large projects typically cost more to interconnect than small projects and likely carry a greater risk.

E. Interest

1. Proposal

17. El Paso asserts that, in today's financial climate, the interest rate that transmission providers pay on deposits in accordance with section 35.19(a) of the Commission's regulations often exceeds what transmission providers actually earn on deposits.²³ This being the case, El Paso proposes to use the actual interest rate it earns for purposes of its LGIP, instead of using 18 C.F.R. § 35.19(a)(2) to calculate interest. El Paso states that the revised interest rate methodologies will become operative on the effective date of the revised tariff following Commission approval of this proposal.²⁴

2. Discussion

18. We reject this proposal, because we find that the proposed revision is neither consistent with, nor superior to, the Commission's findings in Order No. 2003.²⁵ The Commission determined that the interest rate applicable to unpaid credits should be calculated based on an objective calculation and opted for a uniform interest rate to be applied across the board by transmission providers, rather than allowing varying interest rates for each transmission provider, based on an individual assessment of market conditions and costs.²⁶ El Paso has not shown any unique circumstances that would dictate that this requirement should be waived or modified in this instance. Within 30 days from the issuance of this order, El Paso is directed to file a revised tariff that reinstates the interest rate in accordance with section 35.19(a) of the Commission's regulations.

²³ 18 C.F.R. § 35.19(a)(2) (2011).

²⁴ El Paso Transmittal at 13.

²⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 723.

²⁶ *Id.*

F. Elimination of Feasibility Study

1. Proposal

19. El Paso proposes to eliminate the feasibility study. El Paso states that, under its proposed LGIP, interconnection customers may still hire a third-party to conduct a feasibility study at the interconnection customer's cost. El Paso argues that the overall experience of the WestConnect transmission providers is that many interconnection customers waive the feasibility study requirement, or use outside consultants to perform the study before making an interconnection request, thereby rendering moot the feasibility study process in the currently effective LGIP. El Paso further argues that, when transmission providers do perform a Feasibility Study, the results almost always subsequently change if, for example, a transmission provider considers a cluster of similar interconnection requests during the system impact study or an interconnection customer modifies its request or drops out of the queue.²⁷

2. Discussion

20. We find El Paso's proposal to eliminate the feasibility study requirement to be consistent with or superior to the *pro forma* LGIP.²⁸ In the Technical Conference Order, the Commission recognized that elimination of the Feasibility Study as a separate step could reduce processing time without harming interconnection customers.²⁹ The Commission also noted that elimination of a separate Feasibility Study could streamline the study process and could reduce interconnection requests by screening out those customers who are not willing to pay the higher deposit required for a system impact study.³⁰

²⁷ El Paso Transmittal at 13 – 14.

²⁸ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

²⁹ Technical Conference Order, 122 FERC ¶ 61,252 at P 17. We also note that section 6.1 of the LGIP provides that “[i]f Interconnection Customer and Transmission Provider agree to forgo the Interconnection Feasibility Study, Transmission Provider will initiate an Interconnection System Impact Study under Section 7 of this LGIP and apply the \$10,000 deposit towards the Interconnection System Impact Study.”

³⁰ Technical Conference Order, 122 FERC ¶ 61,252 at P 17.

G. Cost Option for Facilities Study

1. Proposal

21. El Paso's current LGIP allows an interconnection customer to obtain a facilities study cost estimate at a 20 percent level of accuracy within 90 days, or a 10 percent level of accuracy within 180 days. El Paso asserts that its current option to provide a higher level of accuracy for facilities studies does not result in a more accurate estimate, and only serves to delay the interconnection process. El Paso proposes to eliminate the option for differing levels of estimate accuracy, and, instead, to provide a cost estimate using best available information within 90 days, together with a commitment to use "best efforts" to provide the same level of accuracy that the transmission provider would use for its own construction estimates. El Paso states that it will begin offering a single cost estimate level for any cost estimates begun after the effective date of the revised tariff following Commission approval of this proposal.³¹

2. Discussion

22. The Commission finds El Paso's proposal to eliminate the option for differing levels of estimate accuracy to be consistent with or superior to the *pro forma* LGIP.³² Section 8.3, Interconnection Facilities Study Procedures, of the *pro forma* LGIP provides in pertinent part that,

[t]he Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Interconnection Customer within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: ninety (90) Calendar Days, with no more than a +/- 20 percent cost estimate contained in the report [or] one hundred eighty (180) Calendar Days, if the Interconnection Customer requests a +/- 10 percent cost estimate.

23. In other words, under the terms of the *pro forma* LGIP, if the interconnection customer desires an even more accurate estimate of costs (i.e., +/- 10 percent), El Paso honors this request, but is allowed an additional 90 calendar days (180 calendar days as opposed to 90), to complete and issue the study. According to El Paso, under its proposal it will use the best information available – the most recent costs for similar projects – to create a good faith estimate, and will no longer offer the option of preparing studies with alternate levels of accuracy. El Paso argues that the length of time between the estimate and construction is the most common source of inaccurate estimates and that, since the

³¹ El Paso Transmittal at 14 – 15.

³² Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

interconnection customer only pays the actual costs of constructing the facilities, the only impact caused by the so-called “more-accurate” estimate under the *pro forma* LGIP is an additional 90-day delay in the interconnection process. Given El Paso’s statement that it uses the best information available to create a good faith estimate regardless of the level of accuracy sought by the interconnection customer and that there is no benefit related to the chosen level of accuracy, we find that its proposal to eliminate the differing levels of estimate accuracy can potentially expedite the time it takes for the transmission provider and the interconnection customer to process an interconnection request.

H. Grandfathering of Existing Interconnection Requests

1. Proposal

24. El Paso proposes to transfer some existing interconnection customers’ requests into the queue cluster window. El Paso states that, in general, if it has initiated a Feasibility Study pursuant to an executed Feasibility Study Agreement on the effective date of the tariff revisions, El Paso will conclude that study under the terms of that agreement. On the other hand, if an interconnection customer has executed an interconnection feasibility study agreement, but El Paso has not initiated the study as of the effective date of the LGIP tariff revisions, the interconnection customer will be placed into the initial Queue Cluster Window. El Paso states that it will develop business practices to establish the exact procedures for processing the Queue Cluster Window. El Paso further states that the new study methods will commence upon the effective date of the revised tariff following Commission approval of this proposal.³³

2. Discussion

25. We find that El Paso’s proposal to grandfather existing interconnection requests for interconnection customers for whom a executed feasibility study has been initiated pursuant to an executed feasibility study agreement to be consistent with or superior to the *pro forma* LGIP. El Paso’s proposal will allow these agreements to continue to be processed without further delays, thereby expediting the interconnection process. Furthermore, El Paso’s proposal will allow those projects that are more advanced to move forward in an efficient and timely manner. We further find that it is acceptable to place in the initial Queue Cluster Window any interconnection customers with an executed feasibility study agreement, but for whom El Paso has not commenced the feasibility study as of the effective date of the revised tariff. For those interconnection customers whom a feasibility study has commenced, this proposal provides protection against discrimination by studying interconnection requests as they are made by Queue Cluster Window, and respects the first-come, first-served principle by according study

³³ El Paso Transmittal at 15-16.

rights to those customers whose interconnection requests are received within an individual cluster window, ahead of the requests received subsequently.

I. Engineering and Procurement Agreement

1. Proposal

26. El Paso states that the WestConnect transmission providers are proposing to include in their tariffs a blanket E&P Agreement for the benefit of transmission providers and their interconnection customers to avoid the need for individual agreements to be drafted and filed with the Commission for approval. El Paso asserts that having an agreement in place under the tariff will allow transmission providers and their interconnection customers to immediately begin acting under it upon its execution, rather than waiting 60 days for individual processing under Section 205 of the Federal Power Act. El Paso states that the *pro forma* E&P Agreement would be used upon the effective date of its revised tariff.³⁴

2. Discussion

27. We reject El Paso's proposal to include a blanket E&P Agreement in its LGIP as inconsistent with the *pro forma* LGIP. Order No. 2003 addressed E&P Agreements, finding that parties could enter into E&P Agreement for long lead time items prior to entering into a LGIA.³⁵ However, Order No. 2003 did not establish a *pro forma* E&P Agreement. E&P Agreements are analogous to contribution in aid of construction agreements, which must be filed with the Commission prior to collecting money from the customer.³⁶ Therefore, within 30 days from issuance of this order, APS is directed to file a revised tariff that excludes its proposed standardized E&P Agreement.

³⁴ *Id.* at 16.

³⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 226 – 228.

³⁶ *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 (1992); *American Electric Power Service Corp.*, 96 FERC ¶ 61,136 (2001).

The Commission orders:

(A) El Paso's tariff records filed in Docket No. ER11-4459-000 is hereby conditionally accepted, as discussed in the body of this order, to become effective November 1, 2011, as requested.

(B) El Paso is hereby directed to file a compliance filing, as discussed above, within 30 days of the date of issuance of this order.

By the Commission. Commissioner Spitzer is not participating.

Kimberly D. Bose,
Secretary.