

151 FERC ¶ 61,235  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket Nos. ER14-781-002  
ER14-781-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued June 18, 2015)

1. In this order, we address requests for clarification and/or rehearing of the June 2014 Order,<sup>1</sup> which conditionally accepted in part and rejected in part Southwest Power Pool, Inc.'s (SPP) proposed revisions to its generator interconnection procedures (GIP) and *pro forma* generator interconnection agreement (GIA). We also address SPP's filing to comply with the June 2014 Order.<sup>2</sup> As discussed below, we deny the requests for clarification and/or rehearing, and conditionally accept SPP's Compliance Filing, subject to a further compliance filing.

**I. Background**

2. In 2009, SPP undertook significant revisions to its GIP.<sup>3</sup> Those queue reforms shifted the interconnection process from a "first-come, first-served" paradigm to a "first-ready, first-served" paradigm. The goals of those queue reforms were to: (1) streamline the study process, including creating a fast track approach for certain customers that meet specific milestones; (2) reduce the impact of suspended projects on other projects; (3) encourage speculative projects to enter into a preliminary queue; and (4) discourage

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<sup>1</sup> *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,201 (2014) (June 2014 Order).

<sup>2</sup> SPP July 14, 2014 Compliance Filing in Docket No. ER14-781-003 (Compliance Filing).

<sup>3</sup> *See Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114 (2009).

speculative projects from entering the final queue by increasing deposits and requiring project readiness milestones.<sup>4</sup>

3. On December 20, 2013, pursuant to section 205 of the Federal Power Act (FPA)<sup>5</sup> and section 35.13 of the Commission's regulations,<sup>6</sup> SPP submitted further reforms to its GIP<sup>7</sup> and GIA.<sup>8</sup> SPP stated that the proposed reforms built upon the 2009 queue reforms and further adapted the queue process in the GIP in order to account for current and anticipated issues in the SPP footprint. SPP proposed, among other things: (1) changes to the way that queue priority is determined in the interconnection process; (2) changes to the milestones to enter the Definitive Queue and the Interconnection Facilities Study Queue, and to execute a GIA; and (3) to require the interconnection customer to provide a deposit, upon execution of a GIA, of 20 percent of the interconnection facilities and network upgrade costs or convert the previously provided financial milestones of \$4,000/MW, whichever is greater. On February 28, 2014, Commission staff issued a letter informing SPP that the December 20 Filing was deficient and requesting additional information. On April 14, 2014, SPP submitted a response to the deficiency letter (Deficiency Response). As noted above, in the June 2014 Order, the Commission conditionally accepted in part, subject to a compliance filing, and rejected in part, SPP's proposed revisions, to be effective March 1, 2014.

## **II. Requests for Clarification and/or Rehearing and Compliance Filing**

4. American Wind Energy Association and the Wind Coalition (AWEA/Wind Coalition) and E.ON Climate & Renewables North America LLC (E.ON) filed requests for clarification and/or rehearing of the June 2014 Order in Docket No. ER14-781-002. SPP filed an answer to the requests for clarification and/or rehearing. On July 14, 2014, in Docket No. ER14-781-003, SPP submitted its Compliance Filing to comply with the June 2014 Order.

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<sup>4</sup> SPP December 2013 Filing Transmittal at 2.

<sup>5</sup> 16 U.S.C. § 824d (2012).

<sup>6</sup> 18 C.F.R. § 35.13 (2014).

<sup>7</sup> The GIP is Attachment V to the SPP Open Access Transmission Tariff (Tariff).

<sup>8</sup> The GIA is Appendix 6 to the GIP.

### **III. Notice of Filing and Responsive Pleadings**

5. Notice of SPP's Compliance Filing was published in the *Federal Register*, 79 Fed. Reg. 42,309 (2014), with interventions and protests due on or before August 4, 2014. Tri Global Energy, LLC (Tri Global) filed a motion to intervene and protest. AWEA/Wind Coalition and E.ON filed protests. On August 26, 2014, SPP filed an answer. On September 2, 2014, AWEA/Wind Coalition filed a reply to SPP's answer.

### **IV. Discussion**

#### **A. Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept SPP's and AWEA/Wind Coalition's answers because they have provided information that assisted us in our decision-making process.

8. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2014), prohibits an answer to a request for rehearing. Accordingly, we reject SPP's answer to the requests for clarification and/or rehearing filed by AWEA/Wind Coalition and E.ON.

#### **B. Substantive Matters**

9. As discussed below, we deny the requests for clarification and/or rehearing of the June 2014 Order. In addition, we conditionally accept SPP's Compliance Filing, subject to a further compliance filing.

##### **1. Requests for Clarification and/or Rehearing**

###### **a. Refund of Milestone Deposits and Initial Payments**

###### **i. June 2014 Order**

10. In the June 2014 Order, the Commission conditionally accepted SPP's proposal to remove its non-financial milestones and to change its milestone requirements in order to reduce late-stage terminations and provide that projects with viable business plans will move more easily and quickly through to commercial operation.<sup>9</sup> Similarly, the

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<sup>9</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 67.

Commission conditionally accepted SPP's proposals regarding milestone payments, finding the provisions to be reasonable to help deter speculative projects from entering the queue and not presenting a burden to serious interconnection requests. The Commission also determined that SPP's proposed refund procedures were reasonable and consistent with the principles of cost causation and the previous findings for Midcontinent Independent System Operator, Inc.<sup>10</sup>

**ii. Clarification and Rehearing Requests**

11. AWEA/Wind Coalition request clarification or, in the alternative, rehearing of the Commission's acceptance of Tariff revisions regarding the refund of deposits when a higher-queued customer withdraws from the interconnection queue. According to AWEA/Wind Coalition, section 8.9 of the GIP provides that these deposits are non-refundable and can be used to offset costs incurred by other interconnection customers who are harmed by the withdrawal of the higher-queued customer.<sup>11</sup> However, AWEA/Wind Coalition assert that SPP did not provide sufficient explanation as to what constitutes harm under section 8.9.<sup>12</sup> AWEA/Wind Coalition also allege that SPP's expert, Mr. Hendrix, provided an explanation in SPP's December 2013 Filing regarding its process for refunding deposits that differs from the explanation SPP provided in its Deficiency Response.<sup>13</sup> AWEA/Wind Coalition request that the Commission clarify that these deposits may be used only to cover costs of network upgrades funded by lower-queued interconnection customers that increase when a higher-queued customer withdraws.<sup>14</sup> In the alternative, AWEA/Wind Coalition assert that it is unjust and unreasonable for SPP to retain deposit funds to cover the costs of network upgrades, including milestone or GIA deposits, required of other interconnection customers that do not increase as the result of a withdrawal of the higher-queued customer and request rehearing of this issue.<sup>15</sup>

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<sup>10</sup> *Id.* PP 68-69.

<sup>11</sup> AWEA/Wind Coalition Request for Clarification/Rehearing at 3-4.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> *Id.* at 7, 11-12.

**iii. Commission Determination**

12. We deny AWEA/Wind Coalition's request for clarification or, in the alternative, rehearing of provisions of the Tariff regarding when refunds are to be made and how they are to be calculated when a higher-queued customer withdraws or has its GIA terminated. We find that AWEA/Wind Coalition misconstrue section 8.9 of the GIP and Article 11.6 of the GIA by taking out of context statements contained in SPP's Deficiency Response and the Hendrix testimony that accompanied SPP's December 2013 Filing. Specifically we note that the portion of the Hendrix testimony cited by AWEA/Wind Coalition is referring to the deposit under Article 11.6 of the GIA rather than section 8.9 of the GIP.<sup>16</sup> We also disagree with AWEA/Wind Coalition's analysis and assertion that SPP did not provide sufficient explanation as to what constitutes harm under section 8.9 of the GIP.

13. Section 8.9 of the GIP concerns the Interconnection Facilities Study process, which requires that a milestone deposit be made by any interconnection customer entering the Interconnection Facilities Study Queue. SPP explained in its February 4, 2014 answer that under section 8.9 of the GIP, if "withdrawal of the Interconnection Customer causes a shift in the cost of a shared Network Upgrade to an equally-queued Customer, provided the Network Upgrade is still required after the completion of a restudy, the deposit is forfeited to use towards the construction of the upgrade."<sup>17</sup> In its Deficiency Response, SPP further explained that section 8.9 of the GIP provides that the milestone payment can be retained only if the withdrawal of the interconnection request is determined by SPP to increase facility upgrade costs to other interconnection customers in the Interconnection Facilities Studies Queue. SPP explained that "[t]he milestone payment will be used for the construction of the Network Upgrade that would now be cost assigned to the Interconnection Customers who were harmed by the withdrawal."<sup>18</sup> This means, then, that in the absence of increased costs to other interconnection customers, the milestone payment will be refunded. In contrast, Article 11.6 of the GIA governs an interconnection customer's initial payment of project construction costs and, in the event of a termination of a GIA, Article 11.6.a-c of the GIA provides that SPP will refund initial payments minus certain designated costs that will be deducted from refund payments. These deducted costs include the expenses of Shared Network Upgrades or Network Upgrades that become necessary due to the termination of the GIA, or were incurred by another interconnection customer but become unnecessary when a higher-queued customer's GIA is terminated.<sup>19</sup> We find that the Tariff provisions

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<sup>16</sup> *Id.* at 5 (citing Exhibit No. SPP-1, Testimony of Charles Hendrix, at 44).

<sup>17</sup> SPP February 4 Answer at 25-26.

<sup>18</sup> SPP Deficiency Response at 8.

<sup>19</sup> SPP GIA at Article 11.6.

are clear as to when milestone deposits collected under section 8.9 of the GIP become non-refundable and when an interconnection customer is due a refund of the initial payment under Article 11.6 of the GIA. Accordingly, we deny the request for clarification.

14. We also deny AWEA/Wind Coalition's request for rehearing regarding their assertion that the refund provisions could be read to permit higher-queued customers to be assessed costs that are not increased because of their withdrawal. We do not agree with AWEA/Wind Coalition's analysis that these provisions permit SPP to withhold refunds except in those situations specifically provided for in the Tariff. Additionally, we disagree with AWEA/Wind Coalition's assertion that Article 11.6.c of the GIA is not just and reasonable. This provision permits SPP to retain some portion of the initial payment when costs have been incurred by another interconnection customer for the construction of network upgrades that are no longer required because of the termination of the higher-queued interconnection customer's GIA. This provision is just and reasonable and consistent with the Commission's cost causation principles. These costs would not have been incurred without the higher-queued interconnection customer's request for the interconnection capacity. For these reasons, we deny AWEA/Wind Coalition's request for rehearing.

**b. Termination and Transmission Credits**

**i. June 2014 Order**

15. In the June 2014 Order, the Commission conditionally accepted SPP's new Article 2.3.2 to the GIA, which permits SPP to terminate a GIA if the generating facility fails to achieve commercial operation for three consecutive years following the commercial operation date. The Commission also accepted SPP's proposed Tariff provisions addressing partial commercial operation and procedures for interconnection customers that delay commercial operation dates.<sup>20</sup> Further, in the event that a GIA is terminated or reduced, Article 2.3 provides that network upgrades funded by an interconnection customer can result in transmission credits. Article 2.4 provides that the interconnection customer's ability to receive transmission credits survives the termination of the GIA.<sup>21</sup> In the June 2014 Order, the Commission denied protestors' requests that the Commission require SPP to revise its transmission credits provisions and determined that SPP's GIA was adequate to manage transmission credits.<sup>22</sup>

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<sup>20</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 82.

<sup>21</sup> *Id.* P 81 (citing SPP February 4 Answer at 15-16).

<sup>22</sup> *Id.* P 85.

**ii. Rehearing Requests**

16. According to AWEA/Wind Coalition, transmission credits provided in Article 2.4 of the GIA are not sufficient to compensate an interconnection customer whose GIA is terminated after construction of a generator is delayed for more than three years.<sup>23</sup> Moreover, AWEA/Wind Coalition argue that it is unreasonable to allow others, such as generators that receive interconnection service, to benefit from the terminated interconnection customer's network upgrade.<sup>24</sup> AWEA/Wind Coalition explain that this situation may arise where a party has a signed GIA and funded network upgrades before the GIA was terminated. AWEA/Wind Coalition assert that such a situation is becoming more likely because SPP will be able to terminate part of the GIA when the interconnection customer does not construct its full capacity.<sup>25</sup>

17. E.ON supports AWEA/Wind Coalition's request for rehearing of the Article 2.4 provisions that award transmission credits as compensation for the funding of network upgrades when all or a portion of a GIA is terminated. E.ON argues that when all or a portion of a GIA is terminated, the interconnection customer who paid for the interconnection capacity will not use this capacity, but other interconnection customers may benefit from it. E.ON argues that if the Attachment Z2 transmission revenue crediting process does not provide compensation to the interconnection customer that funded the network upgrades, and there is no mechanism to require other benefiting interconnection customers to provide compensation, then the Tariff does not provide adequate compensation to the interconnection customer who originally paid for the network upgrades.<sup>26</sup>

**iii. Commission Determination**

18. We deny the requests for rehearing of AWEA/Wind Coalition and E.ON concerning network upgrades funded by an interconnection customer whose GIA is subsequently terminated by SPP. We do not agree with AWEA/Wind Coalition and E.ON that the Commission erred in accepting SPP's termination provision and reimbursement mechanism, which applies following the termination of the GIA and awards transmission credits for network upgrades that were paid for by the interconnection customer. In the June 2014 Order, the Commission found that

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<sup>23</sup> AWEA/Wind Coalition Request for Clarification/Rehearing at 7-8.

<sup>24</sup> *Id.* at 7-10.

<sup>25</sup> *Id.* at 7, 10.

<sup>26</sup> E.ON Rehearing Request at 8-9.

interconnection customers should not be able to retain interconnection capacity indefinitely and, therefore, the Commission accepted SPP's proposal that it be authorized to terminate a GIA if the generating facility failed to achieve commercial operation for three consecutive years following the commercial operation date.<sup>27</sup> Interconnection customers who execute a GIA and provide an initial payment for construction are undertaking a significant business risk, knowing that, under the SPP Tariff, they could jeopardize their payment if they do not meet their GIA obligations. Additionally, in the June 2014 Order, the Commission allowed interconnection customers to build their projects in phases, which is intended to reduce the possibility that part of an interconnection customer's GIA might be terminated after the three-year limit.<sup>28</sup> For these reasons, we find that AWEA/Wind Coalition and E.ON have failed to demonstrate that the Commission erred in its acceptance of SPP's termination provisions and reimbursement mechanism. AWEA/Wind Coalition ask that the Commission shift the costs of the upgrades to lower-queued customers rather than award transmission service credits for customers who have their GIAs terminated, but have constructed some network upgrades that are eligible for credits under Attachment Z2. We find that their request would defeat the purpose of protecting lower-queued customers from increased costs. Moreover, to the extent that AWEA/Wind Coalition and E.ON seek revisions to SPP's transmission credits, we note that the Commission determined in the June 2014 Order that such revisions were beyond the scope of the proposal.<sup>29</sup> We find that AWEA/Wind Coalition and E.ON have not demonstrated that the Commission erred in this finding. For these reasons, we deny rehearing.

**c. Queue Priority**

**i. June 2014 Order**

19. In the June 2014 Order, the Commission accepted SPP's proposal to revise the way queue priority is determined. Queue priority is now established when SPP receives the agreement to enter the Interconnection Facilities Study Queue stage, which determines an interconnection customer's priority over other interconnection customers and its cost responsibilities for network upgrades.<sup>30</sup> Interconnection customers in the Definitive Queue have equal priority and the same due date to meet the requirements of entering the Interconnection Facilities Study Queue stage. When these interconnection

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<sup>27</sup> June 2014 Order, 147 FERC ¶ 61,207 at P 82.

<sup>28</sup> *Id.* P 84.

<sup>29</sup> June 2014 Order, 147 FERC ¶ 61,207 at P 140.

<sup>30</sup> *Id.* P 20.

customers elect to move forward into the Interconnection Facilities Study Queue and meet the specified due date, each will be assigned a new interconnection queue position with equal queue priority. The June 2014 Order established queue priority at the later Interconnection Facilities Study Queue stage to allow viable interconnection requests to move ahead of less viable ones and make them less exposed to restudy.<sup>31</sup>

**ii. Rehearing Request**

20. E.ON argues that unless further clarification is provided, the Commission erred when it accepted SPP's proposal to establish queue priority at the Interconnection Facilities Study stage versus the Definitive Interconnection System Impact Study stage. E.ON questions how SPP will perform joint Interconnection Facilities Studies for those customers that have equal priority in the Interconnection Facilities Study Queue.<sup>32</sup> According to E.ON, the Tariff does not clearly define the order in which SPP will perform the studies if they are not conducted jointly.<sup>33</sup> E.ON explains that the Tariff does not address how network upgrade costs will be assigned among those interconnection customers if each has equal priority in the Interconnection Facilities Study Queue, or how, if at all, SPP will consider the MW impact of each project in determining network upgrade cost allocation.<sup>34</sup> Finally, E.ON contends that it is unclear how SPP will determine any contingencies that might apply to each project.<sup>35</sup>

**iii. Commission Determination**

21. We deny E.ON's request for rehearing regarding acceptance of SPP's proposal to establish queue priority at the Interconnection Facilities Study Queue stage. As the Commission explained in the June 2014 Order, one of the main objectives of SPP's proposed reforms is to move viable interconnection requests ahead of less viable ones and make them less exposed to restudy.<sup>36</sup> To the extent that E.ON raises concerns about

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<sup>31</sup> *Id.* PP 26-27.

<sup>32</sup> AWEA/Wind Coalition incorporate by reference E.ON's request for rehearing regarding the interconnection customer's use of interest and the process that will be employed in the Interconnection Facilities Studies Queue. AWEA/Wind Coalition Request for Clarification/Rehearing at 12.

<sup>33</sup> E.ON Rehearing Request at 2-5.

<sup>34</sup> *Id.* at 4-5.

<sup>35</sup> *Id.* at 4.

<sup>36</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 27.

the order in which SPP will perform the studies if they are not conducted jointly, how upgrade costs will be allocated among projects with equal queue priority, whether the megawatt impact of each project will be used in determining these costs, and how any contingencies that apply to each project will be determined, we find that these considerations are inherent in the nature of conducting group studies that existed prior to SPP's proposal in this proceeding and therefore outside the scope of this proceeding. Therefore, we find that E.ON has failed to show that the Commission erred in accepting SPP's proposal. Accordingly, we deny E.ON's rehearing request.

**d. Interest**

**i. June 2014 Order**

22. In the June 2014 Order, the Commission conditionally accepted SPP's proposed changes to its Tariff regarding milestone payments, including the procedures SPP will use to apply retained milestone payments to restudies, network upgrades, and other costs.<sup>37</sup> Specifically, the Commission found that SPP should be required to pay interest on milestone payments and initial payments under the GIA when those payments are refundable. The Commission concluded that SPP should compensate an interconnection customer for the time-value of money when the payments are refundable to the interconnection customer.<sup>38</sup>

**ii. Rehearing Request**

23. E.ON alleges that the Commission erred in directing SPP to provide interest payments on new Interconnection Facilities Studies queue deposits and initial payments under GIAs only where those payments are refundable, but not against the cost of constructing network upgrades.<sup>39</sup> According to E.ON, SPP should credit interest that accrues on milestone deposits and the initial payment toward the cost of constructing network upgrades, and after the final true-up, SPP should refund any remaining interest to the interconnection customer.<sup>40</sup> Thus, E.ON requests rehearing of the Commission's determination that interest on the security deposit, of \$3,000/MW, and on the initial payment, of \$4,000/MW or 20 percent of the interconnection facilities and network

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<sup>37</sup> *Id.* PP 67-71.

<sup>38</sup> *Id.* P 71.

<sup>39</sup> E.ON Rehearing Request at 5-8.

<sup>40</sup> *Id.* at 6-8.

upgrade costs, are available only for an interconnection customer's use when payments are refundable.<sup>41</sup>

### iii. Commission Determination

24. We deny E.ON's request for rehearing regarding the Commission's directive that SPP be required to pay interest on the milestone deposit and the initial payment only when those payments are refundable. We find that E.ON's request to credit interest that accrues on milestone deposits and the initial payment toward the construction of network upgrades is beyond the scope of this proceeding, as it concerns true-up provisions that are not at issue in this proceeding and existed prior to the current queue reform efforts.

## 2. Compliance Filing

25. As discussed below, we conditionally accept the Compliance Filing. We also find that SPP's proposed revisions that are not protested and are not specifically discussed herein are just and reasonable and accept them for filing.

### a. Milestones and Initial Payment

26. In the June 2014 Order, the Commission directed SPP to revise its proposed Tariff language in section 8.9.a, regarding the application of the milestone payment, to state that if the milestone payment is retained it would be used to pay for the costs of network upgrades that are assigned to the interconnection customers that were harmed by the withdrawal, and that SPP will refund any amount of the deposit in excess of such costs and noted that the language should mirror SPP's proposed language in section 8.9.b of the GIP.<sup>42</sup>

### i. SPP's Compliance Filing

27. SPP proposes to revise section 8.9.a to state that if the milestone payment is retained, "it shall be applied toward the cost of constructing any Network Upgrades assigned to an Interconnection Customer as a result of the withdrawal. Any remaining funds shall be refunded to the Interconnection Customer with accrued interest, if any."<sup>43</sup>

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<sup>41</sup> *Id.* at 8.

<sup>42</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 69 & n.118.

<sup>43</sup> SPP Compliance Transmittal at 6 (citing Attachment V section 8.9.a).

**ii. Protests**

28. AWEA/Wind Coalition assert that SPP's GIA retains language that is inconsistent with its proposed revisions in section 8.9. Further, AWEA/Wind Coalition contend that the language in the GIA contradicts the Commission's direction that the initial payment be refunded to a withdrawing customer unless there are network upgrades required of other customers as a result of the withdrawal. AWEA/Wind Coalition assert that, unless the refund provisions in Article 11.6 of the GIA are revised to conform to the refund provisions in section 8.9 of the GIP, SPP would be able to keep deposits even when there is no harm to lower-queued customers specifically caused by the withdrawal or termination. Specifically, AWEA/Wind Coalition request that the Commission order SPP to revise Article 11.6 of the GIA to remove references to shared network upgrades or network upgrades that are no longer required due to the termination of the GIA, which were already paid for by another interconnection customer.<sup>44</sup>

**iii. Answers**

29. SPP asserts that it has complied with the Commission's compliance directive to provide clarifying language to section 8.9.a, and that the protestors' arguments to revise the terms of the GIA go beyond the scope of the Commission's compliance directives.<sup>45</sup> SPP argues that AWEA/Wind Coalition confuse the use of the Interconnection Facilities Study security deposit provided in section 8.9 of the GIP with the use of the initial payment that interconnection customers provide pursuant to Article 11.6 of the GIA. SPP explains that, although the security deposit provided by interconnection customers for section 8.9 GIP requirements may be applied later to the initial payment for the GIA, the two provisions should be read independently. SPP contends that because circumstances and consequences of the commitment to construct network upgrades change upon execution of the GIA, the refund provisions of the GIP and GIA should be construed only in the separate applications for which they are intended.<sup>46</sup>

**iv. Commission Determination**

30. We accept SPP's revisions to its Tariff to include language in section 8.9.a of the GIP regarding the application of the milestone payment if it is retained, and find that SPP has complied with the Commission's directive in the June 2014 Order. We also find that the use and refund provisions of section 8.9 of the GIP regarding security deposits reflect

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<sup>44</sup> AWEA/Wind Coalition Protest at 4.

<sup>45</sup> SPP August 26 Answer at 5.

<sup>46</sup> *Id.* at 6.

the purposes of section 8.9 of the GIP, and these refund provisions are different from those in Article 11.6 of the GIA, which addresses the initial payment that is required upon execution of a GIA. For this reason, we reject AWEA/Wind Coalition's assertion that revisions to Article 11.6 of the GIA are needed.

**b. Interest**

31. In the June 2014 Order, the Commission directed SPP to revise its Tariff to provide for the refund of interest on the milestone and initial payments under the GIA to an interconnection customer where that payment is refunded.<sup>47</sup>

**i. SPP's Compliance Filing**

32. SPP proposes to revise section 8.9 of the GIP and Article 11.6 of both the GIA and interim GIA to provide that the amounts refunded to interconnection customers will include the interest SPP accrued on the milestones and initial payments.

**ii. Protests**

33. E.ON contends that the Commission should direct SPP to revise sections 8.9.a and 8.9.b of the GIP and Article 11.6 of the GIA to provide that "interest will be calculated in accordance with the methodology at 18 C.F.R. § 35.19a(a)(2)(iii) and will be based on the date on which the interconnection customer provided each deposit and the [i]nitial [p]ayment, as applicable."<sup>48</sup> E.ON argues that this revision will ensure there is no confusion about how interest is to be calculated, how it will accrue, and it will clearly define each party's responsibilities and rights. E.ON argues that the interconnection customer should not be deprived of the time value of its money. E.ON further argues that neither SPP nor the interconnecting transmission owner should be unjustly enriched from providing anything less than interest calculated consistent with the Commission's regulations and as provided in other provisions of SPP's GIP.<sup>49</sup>

34. AWEA/Wind Coalition request clarification as to the rate of interest contemplated in SPP's Compliance Filing. AWEA/Wind Coalition note that the current Tariff provisions state that the interest rate will be at the Commission interest rate, but they contend that the language added by SPP, when read alone, could suggest that some other interest rate is contemplated. AWEA/Wind Coalition assert that the Commission should

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<sup>47</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 71.

<sup>48</sup> E.ON Protest at 5-6.

<sup>49</sup> *Id.* at 6.

direct SPP to revise its proposed language in section 8.9 and Article 11.6 to provide “with interest accrued pursuant to the GIP section 3.6...” or “...with interest accrued calculated in accordance with section 35.19a(a)(2) of [the Commission’s] regulations.”<sup>50</sup>

**iii. Answers**

35. SPP contends that its proposed revisions to the provision of interest on milestone payments and the initial payment by adding language to section 8.9 of the GIP and Article 11.6 of the GIA comply with the Commission’s directives. SPP explains that these revisions provide that unused security deposits or portions of the Initial Payment will be refunded with accrued interest. According to SPP, it holds these funds in low-risk repository accounts, consistent with the Tariff’s treatment of similar financial security held by SPP for a customer’s transmission service.<sup>51</sup> SPP contends that the use of accrued interest is consistent with the Tariff’s provision for financial security held by SPP for a customer’s transmission service in section 7.3 of the Tariff. SPP asserts that its proposed language in section 8.9 of the GIP and Article 11.6 of the GIA satisfies the Commission’s requirement that SPP pay interest and is consistent with the treatment of other similar financial security in the Tariff.

36. In their reply, AWEA/Wind Coalition assert that there is no mention in SPP’s GIP and GIA revisions that the interest will accrue pursuant to section 7.3 of SPP’s Tariff. Further, AWEA/Wind Coalition argue that the terms of section 7.3 do not address whether accrued interest may be used by the interconnection customer to cover the cost of constructing the transmission owner’s network upgrades.<sup>52</sup> AWEA/Wind Coalition contend that SPP’s GIP and GIA Tariff provisions are replete with references to interest being calculated pursuant to 18 C.F.R. § 35.19a(a)(2) and, therefore, it is not clear why SPP contends that section 7.3 governs interest payments for the GIP and GIA. AWEA/Wind Coalition argue that SPP has not explained why comparable time value use of money is due to the interconnection customer with the new milestones and initial payment as might result with some unknown rate earned via section 7.3 of its Tariff. AWEA/Wind Coalition assert that section 7.3 should have no bearing on the interest that must be paid to the interconnection customer.<sup>53</sup> AWEA/Wind Coalition argue that the interconnection customer needs the same administrative protection that is afforded by the other SPP GIP and GIA provisions noted above – to ensure that the interconnection

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<sup>50</sup> AWEA/Wind Coalition Protest at 5.

<sup>51</sup> SPP August 26 Answer at 8 (citing SPP Tariff section 7.3).

<sup>52</sup> AWEA/Wind Coalition Reply at 3.

<sup>53</sup> *Id.* at 5.

customer is paid the just and reasonable time value use of money.<sup>54</sup> Thus, AWEA/Wind Coalition assert that the Commission should order SPP to revise section 8.9 of its GIP and Article 11.6 of its GIA to provide that the interest due to the interconnection customer be calculated in one of two ways. AWEA/Wind Coalition request that the interest should either be calculated pursuant to 18 C.F.R. § 35.19a(a)(2) or the higher of the rate SPP earns in any separate, interest bearing account (as provided in section 7.3 of its Tariff) or as provided pursuant to 18 C.F.R. § 35.19a(a)(2).<sup>55</sup>

**iv. Commission Determination**

37. We find that SPP has complied with the Commission's directive in the June 2014 Order to revise its Tariff to provide for the refund of interest on the milestone and initial payments to an interconnection customer where that payment is refunded. Further, we note that it is clear in section 8.9 of the GIP and Article 11.6 of the GIA that SPP will use accrued interest in calculating the interest component of the refund. In the June 2014 Order, the Commission did not require that interest be calculated pursuant to C.F.R. § 35.19a(a)(2), and the Commission has since accepted SPP's proposal to use accrued interest on deposits in other contexts.<sup>56</sup> Additionally, we find that the calculations of interest in section 8.9 of the GIP and Article 11.6 of the GIA are clear without any reference to section 7.3 of the Tariff. However, we find that the Tariff does not specify the time from which interest will be calculated. Accordingly, we direct SPP, in a compliance filing due within 30 days from the date of this order, to revise its Tariff in both section 8.9 of the GIP and Article 11.6 of the GIA and interim GIA to state that SPP will calculate interest from the date of collection until the date refunds are made.

**c. Application of the Revised GIP**

38. In the June 2014 Order, the Commission directed SPP to submit revisions to its Tariff that clarify how the revised GIP will apply to interconnection customers who have executed GIAs, but miss Appendix B milestones in the future.<sup>57</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 6.

<sup>56</sup> See *Southwest Power Pool, Inc.*, 149 FERC ¶ 61,177, at P 23 (2014) (The Commission accepted SPP's proposal to "calculate interest at the rate SPP earned on the deposit in an interest bearing account, rather than requiring use of the section 35.19a rate.").

<sup>57</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 129.

**i. SPP's Compliance Filing**

39. SPP proposes to revise section 5.1.2 of the GIP to clarify that any interconnection customer with an executed GIA as of March 1, 2014 shall not be subject to the revised GIP “unless the interconnection customer is currently not meeting the milestones listed in Appendix B of its GIA or subsequently does not meet the milestones listed in Appendix B of its GIA.”<sup>58</sup> SPP asserts that this additional language clarifies that the requirement to meet the Appendix B milestones is not limited to the March 1, 2014 date. Instead, SPP states that an interconnection customer with an executed GIA as of March 1, 2014 must continue to meet the milestones in Appendix B or the interconnection customer will be required to conform to sections 8.2 and 8.9 of the GIP.<sup>59</sup>

**ii. Protests**

40. E.ON contends that SPP should clarify Tariff provisions concerning the transition of an interconnection customer with an effective GIA to SPP's revised GIP as a result of missing Appendix B milestones. Specifically, E.ON asserts that the interconnection customer should be allowed to cure the breach that results from a missed milestone. Further, E.ON contends that separate from the opportunity to cure a breach, if the failure to meet a milestone has no impact on other interconnection customers in SPP's generation interconnection queue, SPP should not be allowed unilaterally to transition the interconnection customer to the revised GIP.<sup>60</sup>

41. E.ON notes that SPP's GIA, patterned after the Commission's GIA, provides an opportunity to cure a breach in Article 17.1.1, which includes an opportunity to cure a breach of the milestones listed in a GIA. E.ON asserts that the interconnection customer should have the opportunity to cure any breach according to the timetable listed in Article 17.1.1 and cure any missed milestones before the requirements of the revised GIP are imposed upon the interconnection customer. E.ON explains that, as provided by Article 17.1.1, no transition should occur where the failure to comply with a milestone in a GIA is the result of Force Majeure or an act or omission of another party. E.ON notes that SPP did not submit any evidence for the specific purpose of demonstrating that existing Article 17.1.1 has become unjust and unreasonable solely because SPP has revised certain features of its GIP. E.ON further notes that, to the contrary, SPP clarified in its answer in the initial filing that SPP is not proposing any changes to Article 17.1.1 of the GIA regarding default provisions. E.ON argues that an interconnection customer should

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<sup>58</sup> SPP Transmittal at 9 (citing Attachment V section 5.1.2).

<sup>59</sup> *Id.*

<sup>60</sup> E.ON Protest at 2-4.

be permitted the opportunity to utilize the Article 17.1.1 process and cure any missed milestone.<sup>61</sup>

42. E.ON asserts that SPP should not be allowed unilaterally to transition an interconnection customer to the revised GIP if the failure to meet a milestone has no impact on any lower-queued customer. E.ON notes that the interconnection customer will have already demonstrated that its project is not speculative by moving through all phases of SPP's queue, paying for studies and providing deposits along the way and ultimately leading to an effective GIA. According to E.ON, SPP's proposal is an attempt to address the impact of the endless cycle of "restudies for all subsequent interconnection customers whose interconnection requests are dependent on those higher-queued interconnection customers moving forward."<sup>62</sup> E.ON notes that restudy is not an issue if a specific project has no impact on lower-queued customers. E.ON argues that the June 2014 Order limited the application of SPP's new GIP and GIA provisions where there is no impact on lower-queued customers.<sup>63</sup> E.ON requests that the Commission direct SPP to revise section 5.1.2 to add, "provided, however, the transition shall not be available until the terms in [Article] 17.1.1 have been exhausted or where the failure to satisfy a milestone has no material impact on lower-queued customers."<sup>64</sup> E.ON contends that this provision strikes a just and reasonable balance between an existing GIA interconnection customer's and SPP's stated needs.<sup>65</sup>

43. Tri Global asserts that the Commission should direct SPP to include a reasonable cure period for missed Appendix B milestones. Tri Global argues that any proposal to reform a pre-existing GIA must depend on assessment of the milestone's materiality. According to Tri Global, when a transmission provider seeks to terminate a GIA due to a missed milestone, the Commission's precedent requires the transmission provider to show that termination is "not unjust, unreasonable, unduly discriminatory or preferential," and to show that termination is otherwise "consistent with the public

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<sup>61</sup> *Id.* at 3.

<sup>62</sup> *Id.* at 4 (citing June 2014 Order, 147 FERC ¶ 61,201 at P 5).

<sup>63</sup> *Id.* at 5 (citing June 2014 Order, 147 FERC ¶ 61,201 at PP 69-70 (allowing for the application of deposits *only if* the higher-queued customer action causes an impact to lower-queued customers, otherwise the deposit forfeiture provision does not apply to the higher-queued customer)).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

interest.”<sup>66</sup> Tri Global notes that the Commission considers the materiality of the missed milestone by examining whether it disadvantaged other interconnection customers, and whether the developer that missed the milestone made “good faith efforts to cure the breach.”<sup>67</sup>

44. Tri Global contends that allowing SPP to terminate or amend preexisting GIAs to impose the terms of its new GIA upon those customers for milestones that are missed, but have no material impact on the SPP’s interconnection study process or lower-queued customers would be unjust and unreasonable, and could unnecessarily impose additional costs on generation developers or deprive them of valuable contractual rights.<sup>68</sup>

45. Tri Global also asserts that, at a minimum, for customers with executed GIAs, the Commission should require SPP to provide for a cure period of 60 days, unless SPP can show that a shorter period is necessary to protect other interconnection customers against a material harm.<sup>69</sup> Finally, Tri Global states that SPP acknowledged in its answer in the initial filing that the Commission’s precedent requires amended GIAs to be filed for Commission review. Tri Global contends that the Commission should confirm that SPP will be required to file any revised executed GIA for Commission review before the revised GIA is permitted to take effect.<sup>70</sup>

### iii. Answers

46. SPP asserts that the changes requested by protesters are unnecessary. According to SPP, the intent of its reforms to the GIP was not to change existing default procedures in the GIA or to circumvent the default procedures of any existing GIA. SPP states that parties to executed GIAs have the right to cure any defaults pursuant to the terms of the GIA. SPP commits that it will follow the terms of existing GIAs, thereby negating the need for an additional compliance filing to affirm a right that already exists in the GIA. SPP notes that the issues raised by protesters are applicable only to pre-existing GIAs

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<sup>66</sup> Tri Global Protest at 3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008, at P 25 (2011)).

<sup>67</sup> *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 at P 26; *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,097, at P 33 (2012)).

<sup>68</sup> *Id.* at 4.

<sup>69</sup> *Id.* at 5.

<sup>70</sup> *Id.*

that were executed prior to March 1, 2014, and that any GIAs executed after that date will be transitioned to the revised GIP. SPP states that it will file any GIA executed prior to March 1, 2014 that must be transitioned to the new GIA on a case-by-case basis. SPP notes that, for GIAs executed on or after March 1, 2014, it will file only GIAs that do not conform to the GIA or revised GIAs that customers refuse to execute.<sup>71</sup>

#### iv. Commission Determination

47. We accept SPP's proposed revisions to its GIP and find that SPP has complied with the Commission's directive in the June 2014 Order to revise its Tariff to clarify how the revised GIP will apply to those interconnection customers who have executed GIAs, but who subsequently miss Appendix B milestones. Additionally, we find it unnecessary to require SPP to include any revisions to its Tariff in section 5.1.2 of the GIP to allow interconnection customers to cure deficiencies in Appendix B milestones before these customers are transitioned to the revised GIP. In its answer, SPP explains that this protection currently exists in Article 17.1.1 of the GIA and that it is not proposing to change those procedures, nor does it intend to circumvent those protections. If an interconnection customer misses an Appendix B milestone and fails to cure the breach, then it will be subject to the revised GIP.

48. Further, we will not require SPP to include a provision to allow interconnection customers to avoid being transitioned to the new GIP if they miss an Appendix B milestone in the future, if missing the milestone does not have a material impact on any lower-queued interconnection customers. Our consideration of any termination notice would require us to undertake a review of the circumstances of the request on a case-by-case basis,<sup>72</sup> which is consistent with precedent that provides for acceptance of a notice of

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<sup>71</sup> SPP August 26 Answer at 9-10.

<sup>72</sup> See *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,038, at P 7 (2013) (stating that the Commission's basis for accepting the notice of termination order was fact-specific); *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 at P 26 ("given the specific facts in this case, we reject the proposed termination as not being just and reasonable.").

termination where the applicant demonstrates that the proposed termination is not unjust, unreasonable, unduly discriminatory, or preferential,<sup>73</sup> or that it is consistent with the public interest.<sup>74</sup>

**d. Transition Procedures**

49. In the June 2014 Order, the Commission required SPP to revise its Tariff so that existing interconnection customers have 60 days after the issuance of this order – instead of 60 days after the effective date of SPP’s revisions (March 1, 2014) – to comply with the requirements of the revised GIP. The Commission found this revision necessary due to the delay caused by the need for SPP to supplement its filing, and necessary to provide a reasonable cure period after the June 2014 Order.<sup>75</sup>

**i. SPP’s Compliance Filing**

50. In its compliance filing, SPP proposes to revise section 5.1.3 of the GIP to specify that interconnection customers with an interconnection request that have not executed a GIA as of March 1, 2014 will transition to the revised GIP within 60 calendar days of the June 2014 Order.<sup>76</sup> SPP notes that while the June 2014 Order granted an effective date of March 1, 2014 for the revised GIP proposed in SPP’s December 2013 Filing, SPP continued to follow the study procedures outlined in the then-effective GIP from March 1, 2014 until the Commission issued the order on June 13, 2014. SPP states that during this time period it completed the DISIS-2013-002 impact study on January 31, 2014, and began interconnection facilities studies for these interconnection requests on March 3, 2014, in accordance with the then-effective GIP. SPP also states that it began the DISIS-2014-001 impact study on April 1, 2014, in accordance with the then-effective GIP. SPP notes that in light of the June 2014 Order, these completed studies and study agreements now are inconsistent with the revised GIP approved in the June 2014 Order. Further, SPP notes that many interconnection facilities studies for DISIS-2013-002 interconnection

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<sup>73</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,038 at P 6 (citing *Allegheny Power Sys., Inc.*, 102 FERC ¶ 61,318, at P 9 (2003)).

<sup>74</sup> *Id.* (citing *Duke Energy Moss Landing LLC, et al.*, 83 FERC ¶ 61,318, at 62,306 (1998), *order on reh’g*, 86 FERC ¶ 61,227 (1999)).

<sup>75</sup> June 2014 Order, 147 FERC ¶ 61,201 at P 130.

<sup>76</sup> SPP Compliance Filing Transmittal at 10 (citing Attachment V section 5.1.3).

requests have been completed, and the DISIS-2014-001 impact study was scheduled to be completed on July 31, 2014.<sup>77</sup>

51. SPP asserts that in order to comply with the now-effective GIP, it would be required to restart studies for all of these interconnection requests in a transitional DISIS cluster that was intended to begin on March 1, 2014. SPP contends that it would be most efficient and would cause less delay to modify sections 5.1.1.2 and 5.1.1.3 to link the transitions in these sections to the June 2014 Order date rather than the March 1, 2014 effective date. SPP asserts that the proposed revisions will permit SPP to process efficiently the interconnection requests received and the interconnection requests that moved into the Interconnection Facilities Study during the period from March 1, 2014 to the issuance of the June 2014 Order, provided those interconnection requests meet the transition requirements of the revised GIP. Moreover, these interconnection requests must be consistent with the Commission's directive to modify the transition period to tie to the June 2014 Order rather than the March 1, 2014 effective date.<sup>78</sup>

**ii. Commission Determination**

52. We find that SPP has complied with the Commission's directive to revise its Tariff to provide that existing interconnection customers have 60 days after the issuance of the June 2014 Order to comply with the requirements of the revised GIP. Additionally, we accept SPP's proposed revisions to sections 5.1.1.2 and 5.1.1.3 of the GIP, which link the transitions to the June 2014 Order rather than the March 1, 2014 effective date.

The Commission orders:

(A) The requests for clarification and/or rehearing are denied, as discussed in the body of this order.

(B) SPP's proposed compliance filing is conditionally accepted, as discussed in the body of this order.

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 10-11.

(C) SPP is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.