128 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Southwest Power Pool, Inc. — Docket No. ER09-1152-000

ORDER ACCEPTING UNEXECUTED INTERCONNECTION AGREEMENT

(Issued July 14, 2009)

1. On May 15, 2009, Southwest Power Pool, Inc. (SPP) submitted an unexecuted Large Generator Interconnection Agreement between SPP as transmission provider, Sunflower Electric Power Corporation (Sunflower) as transmission owner, and Solomon Forks Wind, LLC (Solomon Forks) as interconnection customer. We will refer to the unexecuted Large Generator Interconnection Agreement as the Solomon Forks LGIA. As discussed below, this order accepts the Solomon Forks LGIA for filing effective May 8, 2009.

I. Background

2. SPP is a Commission-approved regional transmission organization. SPP administers transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

3. Sunflower is a consumer-owned corporation operated on a not-for-profit basis by six rural electric distribution cooperatives located in western Kansas. Sunflower owns, leases, and operates more than 1,100 miles of transmission lines. According to Sunflower, it is a Rural Utilities Service-financed entity and thus is not a public utility regulated by the Commission. However, Sunflower is fully regulated by the Kansas Corporation Commission and is a transmission owner member of SPP. Mid-Kansas Electric Company, LLC (Mid-Kansas) operates on a not-for-profit basis and was formed by Sunflower members to purchase the Kansas electric assets of Aquila, Inc. Mid-Kansas owns and operates approximately 1,083 miles of transmission line facilities and

associated substation facilities, and 395 MW of gas-fired generation. Mid-Kansas is also regulated by the Kansas Corporation Commission and is a transmission-owning member of SPP.

4. Solomon Forks is a wind farm constructed, owned, and operated by Acciona Energy. Solomon Forks is a 108 MW generation facility located in northwestern Kansas that consists of 72 Acciona 1.5 MW wind turbines.

II. The Filing

5. On May 15, 2009, SPP filed the Solomon Forks LGIA, which provides for the interconnection of the Solomon Forks facility at the Sunflower Mingo substation. SPP states that the Solomon Forks LGIA contains provisions that do not completely conform to SPP's *pro forma* LGIA set forth in Attachment B, Appendix 6 of SPP's open access transmission tariff (Tariff). SPP states that generally these non-conforming provisions outline cost responsibilities and ownership of facilities designed and constructed as the result of the interconnection of Solomon Forks' facility to SPP's transmission system.

6. SPP states that Sunflower declined to execute the Solomon Forks LGIA because Sunflower sought to include language in it that would commit Solomon Forks to obtain transmission service from SPP and the associated ancillary services, in order to participate in SPP's energy imbalance service market (energy imbalance market). SPP states that it did not include such language in the agreement because SPP's tariff does not require entities participating in the energy imbalance market to obtain transmission service. Specifically, SPP states that Schedule 4 of the Tariff provides that entities participating in the energy imbalance market that are not taking transmission service and that have executed a meter agent agreement are not subject to hourly non-firm point-to-point transmission service charges for any imbalance energy delivered to the energy imbalance market.[1]

III. Notice of Filing and Responsive Pleadings

7. Notice of SPP's filing was published in the *Federal Register*, 74 Fed. Reg. 25,526 (2009), with interventions and protests due on or before June 5, 2009. Sunflower and Mid-Kansas (together, Intervenors) filed a timely motion to intervene and protest. Solomon Forks filed a timely motion to intervene. On June 22, 2009, SPP filed an answer to the Intervenors' protest.

[1] SPP May 15, 2009 Filing at 3.

8. Intervenors express concern that they will be subject to increased scheduling and imbalance charges incurred from Solomon Forks' operating on Sunflower's system and participating in the energy imbalance market. Intervenors argue that SPP does not operate a centralized, real-time energy and ancillary services markets like those contemplated by the Commission in Order No. 2003.[2] Instead, SPP uses 16 balancing authorities, of which Sunflower is one, that must schedule sufficient resources and ancillary services to meet the expected load in its area. Intervenors state that the balancing authority is subject to penalties for uninstructed deviations. Therefore, Intervenors contend that exempting generators, particularly intermittent resources, from purchasing delivery services, which include an accompanying obligation to purchase regulation and imbalance ancillary services, when participating in the energy imbalance market is unjust, unreasonable, and unduly discriminatory.[3] Intervenors explain that under SPP's market rules, wind generators do not need to submit a schedule, may be price-takers, and can thereby "win" in the energy imbalance market without any liability for balancing or other ancillary services or uninstructed deviation charges. In contrast, Intervenors state that the balancing authority, in this case Sunflower, remains at risk for uninstructed deviation charges, transmission losses, and other costs as the result of the operations of wind generators like Solomon Forks.

9. Furthermore, Intervenors state that while the Commission does not include a standardized balancing provision in the *pro forma* LGIA, the Commission has stated that transmission providers may either adopt a stand-alone generator balancing service agreement or request the inclusion of a generator balancing service provision tailored to the specific circumstances of an individual interconnection agreement. Intervenors argue that Schedule 4 of the Tariff does not override Commission policy. Therefore, Intervenors request that the Commission declare that notwithstanding any provision in the SPP tariff, a generator may not participate in the energy imbalance market without SPP's study of the network upgrades required to deliver the output to load and a contract for delivery service that makes the generator also liable for ancillary services, including balancing services.[4] In the alternative, Intervenors request that the Commission set the matter for hearing.

10. In its answer, SPP contends that Intervenors have failed to demonstrate that the Solomon Forks LGIA is unjust and unreasonable or inconsistent with the relevant provisions of SPP's tariff. SPP argues that the Commission-approved provisions in Schedule 4 of the Tariff make it clear that generation interconnection customers do not

---

[2] Intervenors June 5, 2009 Protest at 10.

[3] *Id.* at 11.

[4] *Id.* at 20.

need to obtain transmission service to participate in the energy imbalance market, and therefore Intervenors' insistence on the inclusion of such provisions is unfounded and should be ignored.[5]

11. SPP also states that Intervenors challenge the energy imbalance market rules in the Tariff, which permit entities to participate in the energy imbalance market without taking transmission service, because the rules will expose balancing authorities, like Sunflower, to uninstructed deviation charges incurred by Solomon Forks. However, SPP argues that the justness and reasonableness of the energy imbalance market provisions that have been accepted by the Commission are not at issue here. Therefore, SPP contends that such matters are outside the scope of this proceeding and are an attempt to bring a section 206 complaint in the form of a protest, which is impermissible.[6]

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits answers unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

13. As discussed below, we accept the unexecuted Solomon Forks LGIA for filing without suspension or hearing to be effective May 8, 2009, as requested. We find that the provisions SPP has added to the appendices of the Solomon Forks LGIA do not constitute

---

[5] SPP June 22, 2009 Answer at 4, 5.

[6] SPP June 22, 2009 Answer at 5, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 90 (2007) ("[T]he Commission can only consider changes to currently-effective tariffs in the context of a section 206 investigation."); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,248, at P 5 (2004) (noting that the Commission has consistently rejected efforts to combine complaints with other types of filings); *Consol. Edison Co. of N.Y.*, 97 FERC ¶ 61,241, at 62,092 & n.14 (2001) (citing *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 (1990); *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (complaints must be filed separately from motions to intervene and protests).

non-conforming changes that require filing under section 205 for Commission approval. The provisions do not deviate from the *pro forma* LGIA, but merely imbue the Solomon Forks LGIA with information the *pro forma* LGIA already contemplates will be incorporated to provide greater detail regarding the cost responsibilities and ownership of the facilities designed and constructed as the result of the interconnection of Solomon Forks' facility to SPP's transmission system. Accordingly, these provisions are just and reasonable and do not require further Commission approval. The Commission clarifies that the Solomon Forks LGIA only requires filing under section 205 for Commission approval because it is unexecuted.

14. We find that SPP's refusal to include a provision in the Solomon Forks LGIA requiring Solomon Forks to obtain transmission service to participate in the energy imbalance market is consistent with Schedule 4 of the Tariff.[7] We agree with SPP that Intervenors seek to revise SPP's Schedule 4 by requesting that the Commission require a generator participating in the energy imbalance market to contract for delivery service that makes the generator also liable for ancillary services. Therefore, we deny Intervenors' request as outside the scope of this proceeding. Likewise, we will not require SPP to study the network upgrades required to deliver such generator's output to load. However, Intervenors raise concerns that Sunflower may be subject to increased scheduling and imbalance charges as a result of Solomon Forks operating on its system and participating in the energy imbalance market. Therefore, the Commission accepts the Solomon Forks LGIA effective May 8, 2009, without prejudice to Intervenors seeking to revise the SPP tariff through an appropriate proceeding (e.g., through SPP submitting tariff revisions under section 205 on behalf of the Intervenors so that they may contract with and appropriately charge for balancing area services provided to generators located within Sunflower's balancing area, or through a section 206 proceeding). To the extent Intervenors wish to place rates, terms, and conditions on transmission services provided by SPP, a public utility, they must file, or have SPP file on their behalf, such rates, terms, and conditions.[8]

[7] *Southwest Power Pool, Inc*., 114 FERC ¶ 61,289, at P 102-104 (2006).

[8] *City of Vernon*, 93 FERC ¶ 61,103, at 61,285 (2000); *reh'g denied*, 94 FERC ¶ 61,148 (2001) ("The FPA requires us to ensure the justness and reasonableness of the ISO's rates, and we cannot reach this result if we absolve from our review the portion of the ISO's costs incurred with respect to Vernon.") 94 FERC ¶ 61,148, at P 9; *rev'd*, 306 F.3d 1112 (2002); *on remand*, 101 FERC ¶ 61,353 (2002); *reh'g denied*, 115 FERC ¶ 61,297 (2006).

<u>The Commission orders</u>:

Solomon Forks LGIA is accepted for filing effective May 8, 2009, as described in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.