

128 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER09-1370-000

ORDER CONDITIONALLY ACCEPTING INTERIM LARGE GENERATOR
INTERCONNECTION AGREEMENT

(Issued August 27, 2009)

1. On June 29, 2009, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) filed an executed Interim Large Generator Interconnection Agreement² (interim interconnection agreement) with SPP as the Transmission Provider and Oklahoma Gas and Electric Company (OG&E) as both the Transmission Owner and Interconnection Customer. In this order, we conditionally accept the interim interconnection agreement, to be effective May 30, 2009, subject to SPP's amending its Open Access Transmission Tariff (OATT) to provide for interim interconnection service and Commission acceptance of such tariff amendments, and subject to SPP submitting a compliance filing, as discussed below.

I. Background

2. SPP is a Commission-approved Regional Transmission Organization (RTO), and a non-profit corporation with its headquarters in Little Rock, Arkansas. The SPP RTO currently has 54 members serving more than 5 million customers and covers a geographic area of 370,000 square miles. Its members consist of 12 investor-owned utilities, 9 municipal systems, 11 generation and transmission cooperatives, 4 state authorities, 5 independent power producers, 11 power marketers, and 2 independent transmission companies.

¹ 16 U.S.C. § 824d (2006).

² The interim interconnection agreement is designated as Original Service Agreement No. 1821, to Southwest Power Pool FERC Electric Tariff, Fifth Revised Volume No. 1.

3. OG&E, a transmission owning member of SPP, is an electric public utility with plant, property and other assets dedicated to the production, transmission, distribution and sale of electric energy to wholesale customers and to retail customers within the states of Oklahoma and Arkansas. OG&E is developing the OU Spirit Wind Farm, an approximately 100 MW wind farm near Woodward, Oklahoma, and has established a commercial operation date in 2009.

4. SPP states that over the past two years, it has received a substantial number of generation interconnection requests largely due to an increase in proposed wind-generation projects, leading to significant backlogs in its interconnection queue. Finding its current interconnection processing to be inefficient, SPP began to develop tariff revisions to its interconnection procedures through its stakeholder process. To address its current queue backlog while working to reform its interconnection procedures, SPP submitted, in Docket No. ER09-262-000, a request for a limited, one-time waiver of various provisions in its interconnection procedures to allow for the formation of two transitional interconnection queue clusters of approximately 15,000 MW each. The Commission conditionally granted the waiver request³ and accepted SPP's proposed timeline for the completion of the transitional cluster study process.⁴ Subsequently, the Commission conditionally accepted SPP's reformed interconnection procedures in Docket No. ER09-1254-000.⁵

II. SPP's Filing

5. SPP states that in its compliance filing in Docket No. ER09-262-002, SPP indicated it would be willing to consider entering into an interim interconnection agreement with a customer if the interconnection is feasible and the customer is ready to interconnect prior to SPP completing the interconnection study process. SPP states that to facilitate such agreements, SPP posted on its website, and notified interconnection customers by email of the details and general terms and conditions under which it will enter into interim interconnection agreements.⁶ SPP notes that in the Compliance Order, the Commission stated it is encouraged by SPP's intention to provide interim

³ See *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,012, at P 37 (2009).

⁴ See *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,138 (2009) (Compliance Order).

⁵ See *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114 (2009).

⁶ SPP Filing at 2 (citing the SPP OASIS at: http://sppoasis.spp.org/documents/swpp/transmission/studies/interim_ia_oasis_posting_3-6-09.pdf).

interconnection service and believes that doing so may alleviate customer concerns about delay in processing interconnection requests.⁷ SPP adds that the Commission advised SPP to amend its OATT if it chooses to provide interim interconnection service.⁸

6. SPP states it has presented to its stakeholders a proposed *pro forma* interim interconnection agreement based on SPP's current *pro forma* Standard Large Generator Interconnection Agreement and procedures for providing interim interconnection service to be incorporated into the SPP OATT. SPP also states that its stakeholders are currently considering these proposals,⁹ and that it anticipates filing tariff revisions to incorporate interim interconnection service into its OATT in the fall.

7. With regard to the instant proposal, SPP states that the proposed interim interconnection agreement with OG&E is based on its *pro forma* interconnection agreement, modified to accommodate the unique nature of interim interconnection service. SPP states that the following provisions vary from the SPP *pro forma* interconnection agreement: (1) Recitals; (2) Definitions; (3) Article 2 (Effective Date, Terms, and Termination); (4) Article 4 (Scope of Service); (5) Article 5 (Interconnection Facilities, Engineering, Procurement, and Construction); (6) Article 11.5 (Provision of Security); (7) Article 19 (Assignment); and (8) Appendices.

8. Briefly, SPP states that Article 2 (Effective Date, Term, and Termination) is modified from the *pro forma* interconnection agreement to account for the interim nature of the interconnection service being provided. This article provides that interconnection service under the OG&E interim interconnection agreement will be provided from the effective date of the agreement until there is an effective final interconnection agreement for the generating facility, the interconnection request associated with the generating facility is deemed withdrawn, or a higher-queued project goes into service, which prohibits interconnection service to the higher-queued project and OG&E simultaneously without further upgrades.

9. Article 2.4.1 (under Termination Costs) is a new provision that specifies that if the interim interconnection agreement is terminated because there is an effective final interconnection agreement in place, the cost responsibilities of the interconnection customer and transmission owner will be included in the final interconnection agreement,

⁷ *Id.* at 2-3 (citing Compliance Order, 127 FERC ¶ 61,138 at P 24).

⁸ *Id.* at 3 (citing Compliance Order, 127 FERC ¶ 61,138 at P 24).

⁹ *Id.* (citing Regional Tariff Working Group Background Materials for meetings on June 5, 2009 and June 25, 2009 at: <http://www.spp.org/section.asp?group=159&pageID=27>).

to the extent not satisfied during the term of the interim interconnection agreement. Under Article 2.4.2, termination costs are not applicable if the interim interconnection agreement is terminated because an effective final interconnection agreement is in place. Additionally, Article 2.4.2.1 provides that if the interim interconnection agreement is terminated for any reason other than the existence of an effective interconnection agreement, the interconnection customer forfeits all security paid pursuant to Article 11.5 (Provision of Security).

10. Article 4.2.2 (under Scope of Service), a new provision, addresses the provision of interim interconnection service when one or more interconnection customers with higher-queued projects request interim interconnection service or execute a final interconnection agreement, and SPP determines that interconnection service cannot be provided simultaneously to OG&E and all other customers without additional interconnection facilities, network upgrades, or distribution upgrades. SPP states that in such circumstances the higher-queued projects will take priority and receive service in the amount of available transmission capacity over the lower-queued project to ensure that lower-queued projects are not able to use the interim interconnection process to “leapfrog” higher-queued projects and use interconnection capacity upon which the higher-queued project depends.¹⁰

11. SPP states that it did not include a suspension provision because to allow suspensions would defeat the purpose of having interim interconnection service. SPP states that not permitting suspensions discourages customers from requesting interim interconnection service to gain an advantage over other projects (e.g., for marketing reasons) when such customers have no intention of going forward, which results in additional queue backlogs.¹¹ SPP also states that because the term of the interim interconnection agreement is limited, assignment of the agreement is not practical, and is therefore, not permitted.

12. SPP requests waiver of the Commission’s prior notice requirement to allow an effective date of May 30, 2009, for the interim interconnection agreement. SPP states that waiver is appropriate because the interim interconnection agreement is filed no later than 30 days after the effective date of the agreement.

¹⁰ *Id.* at 6-7. For example, if there is 150 MW of available capacity and a customer with a higher-queued project executes an interim interconnection agreement for 75 MW, OG&E’s interim interconnection service will be reduced to 75 MW on the date that the higher-queued project begins commercial operation. If the higher-queued project requires the full 150 MW, OG&E’s interim interconnection service will be terminated. *Id.* at 6.

¹¹ *Id.* at 7.

III. Notice of Filing and Responsive Pleadings

13. Notice of the June 29, 2009 filing was published in the *Federal Register*, 74 Fed Reg. 34327 (2009), with interventions and protests due on or before July 20, 2009. OG&E filed a timely motion to intervene and comments supporting the filing.

14. OG&E states that the OU Spirit Wind Farm, an approximately 100 MW wind farm near Woodward, Oklahoma with a planned commercial operation date in 2009, satisfies SPP's criteria for interim interconnection service. OG&E explains that the key obstacle in completing the OU Spirit Wind Farm on time has been SPP's delay in processing OG&E's generation interconnection request. OG&E asserts that the Commission's expeditious approval of the interim interconnection agreement on or before July 31, 2009 will allow OG&E to move forward with the construction and commissioning of the OU Spirit Wind project so that it can be placed into service by the end of the year.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

B. Substantive Matters

16. The Commission accepts the interim interconnection agreement to be effective May 30, 2009, subject to SPP's amending its OATT to provide for interim interconnection service and Commission acceptance of such tariff amendments, and subject to a compliance filing, as discussed below.

17. In Order No. 2003, the Commission required transmission providers (such as SPP) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with those documents.¹² The use of *pro forma* documents ensures that interconnection customers receive non-discriminatory service and that all interconnection customers are treated on a consistent and fair basis. Using *pro forma* documents also

¹² See *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).

streamlines the interconnection process by eliminating the need for an interconnection customer to negotiate each individual agreement. This reduces transaction costs and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.¹³

18. However, at the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for the filing of a non-conforming interconnection agreement.¹⁴ In such cases, the transmission provider should indicate clearly where the agreement does not conform to its *pro forma* interconnection agreement and explain its justification for each nonconforming provision of the interconnection agreement.¹⁵

19. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming agreement.¹⁶ We note that a transmission provider seeking a case-by-case specific deviation from a *pro forma* interconnection agreement bears a burden higher than the “consistent with or superior to” standard, the standard used by the Commission in evaluating modifications to its *pro forma* interconnection agreements and procedures. A transmission provider seeking a deviation from its approved *pro forma* interconnection agreement must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.¹⁷

20. Here, SPP has identified the portions of the interim interconnection agreement that differ from the *pro forma* interconnection agreement.¹⁸ SPP has also explained that over the past two years, it has received a substantial number of generation interconnection requests largely due to an increase in proposed wind-generation projects. SPP also states that this increase in requests has led to significant backlogs in its interconnection queue,

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,078, at P 6 (2006).

¹⁴ *Id.*; see also Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 913-915.

¹⁵ See Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140; Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 915.

¹⁶ *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (*PJM Order*); see also *El Paso Electric Co.*, 110 FERC ¶ 61,163, at P 4 (2005).

¹⁷ See *PJM Order*, 111 FERC ¶ 61,098 at P 9.

¹⁸ See *supra* P 7-11.

and that SPP has taken a number of steps, including reforming its interconnection procedures, to address the backlogs in its interconnection queue. SPP also notes that its stakeholders are currently considering a proposed *pro forma* interim interconnection agreement, and that it anticipates filing tariff revisions to incorporate the interim interconnection service into its OATT in the fall. Additionally, OG&E states that the key obstacle to completing its OU Spirit Wind Farm on time has been the delay in the processing of its interconnection request.

21. The Commission finds that while SPP has indicated where the agreement does not conform to its *pro forma* interconnection agreement and explained its justification for each nonconforming provision, SPP has not fully explained what makes the OG&E interconnection unique, nor has it identified the operational concerns or other reasons that necessitate the change. The Commission recognizes that interim interconnection service can provide benefits by allowing an interconnection customer that is ready to interconnect to receive needed interconnection service—albeit on a conditional basis—while leaving queue positions undisturbed and making use of available capacity, which results in a more efficient use of the transmission system. However, as the Commission advised SPP in the Compliance Order, it should amend its OATT if it chooses to provide interim interconnection service.¹⁹ These benefits should be available through a *pro forma* agreement to ensure that all similarly-situated interconnection customers are treated on a consistent and fair basis. Nevertheless, under the present circumstances²⁰ the Commission will conditionally accept the interim interconnection agreement, subject to SPP amending its OATT to provide for interim interconnection service within 30 days of the completion of the stakeholder review and SPP Board approval processes and subject to Commission acceptance of such tariff amendments.²¹ SPP is directed to submit, within 30 days of Commission acceptance of any tariff amendments establishing interim

¹⁹ See Compliance Order, 127 FERC ¶ 61,138 at P 24.

²⁰ These circumstances include the increase in generation interconnection requests and resulting backlogs in the SPP interconnection queue, SPP's anticipated submission of a *pro forma* interim interconnection service in the fall, and OG&E's imminent need for interconnection service to interconnect its OU Spirit Wind Farm to the SPP transmission system.

²¹ See *e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,155, at P 12 (2006) (conditionally accepting an interconnection agreement with a non-conforming provision providing for conditional network resource interconnection service subject to the Midwest ISO's filing to amend its *pro forma* interconnection agreement to reflect the conditional interconnection service and subject to the Commission's approval of the amendment).

interconnection service under the SPP OATT, a compliance filing to conform the instant interim interconnection agreement to such tariff amendments.

22. Accordingly, we conditionally accept the interim interconnection agreement, subject to conditions, as discussed above, and for good cause shown, grant waiver of the Commission's 60-day prior notice requirement to allow the interim interconnection agreement to become effective May 30, 2009, as requested.²²

The Commission orders:

(A) The interim interconnection agreement is hereby conditionally accepted, effective May 30, 2009, as requested, as discussed in the body of this order.

(B) SPP is directed to make a filing to amend its OATT to provide for interim interconnection service, as discussed in the body of this order.

(C) SPP is directed to make a filing to conform the interim interconnection agreement to any amendments to the SPP OATT establishing interim interconnection service, within 30 days of Commission acceptance of such tariff amendments, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² See *Central Hudson Gas & Elec. Corp., et al.*, 60 FERC ¶ 61,106 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).