

134 FERC ¶ 61,224
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 22, 2011

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER11-2725-000

Wright & Talisman, P.C.
Attention: Tyler R. Brown
1200 G Street, N.W.
Suite 600
Washington, D.C. 20005

Reference: Elk City II Generator Interconnection Agreement

Ladies and Gentlemen:

1. On January 21, 2011, Southwest Power Pool, Inc. (SPP) filed a Generator Interconnection Agreement (GIA) between SPP as transmission provider, Elk City II Wind, LLC (Elk City II) as interconnection customer, and Public Service Company of Oklahoma (PSCO) as transmission owner, designated as First Revised Service Agreement No. 1605.¹ SPP states that it is filing the Elk City II GIA because it contains provisions that may not conform to SPP's *pro forma* GIA.² SPP requests an effective date of December 22, 2010 for the Elk City II GIA. SPP also requests waiver of the 60-day prior notice requirement because it filed the Elk City II GIA no later than 30 days after the effective date of service.

¹ The Elk City II GIA supersedes an existing GIA (Original Sandstone GIA) between SPP as transmission provider, PSCO as transmission owner, and Sandstone Wind, LLC (Sandstone) as interconnection customer. SPP reported the Original Sandstone GIA in its Electric Quarterly Reports. Sandstone assigned this interconnection agreement to Elk City II effective November 12, 2010.

² SPP's *pro forma* GIA is contained within Appendix 6 of Attachment V in its Open Access Transmission Tariff (Tariff).

2. In its transmittal letter, SPP explains that Sandstone had put the Original Sandstone GIA under suspension before assigning it to Elk City II. Upon assignment, Elk City II provided notice to SPP and PSCO of its intention to proceed and come out of suspension. SPP and Elk City II mutually agreed to revise the Original Sandstone GIA to enable work to commence under the interconnection agreement. The parties entered into a letter agreement, pursuant to Article 30.10 of the *pro forma* GIA,³ to revise the appendices in the Original Sandstone GIA. SPP states that the Elk City II GIA is identical to the Original Sandstone GIA except for the revisions agreed to in the letter agreement.

3. Specifically, SPP states it has revised section 9 of Appendix A to specify that the parties anticipate that the network upgrades for which Elk City II is responsible will not be completed prior to Elk City II's requested in-service date. Consequently, PSCO has agreed to use a temporary Point of Interconnection until the necessary network upgrades are completed, provided adequate metering, telecommunication, and other technical arrangements are in place.⁴ SPP claims the Commission has accepted a temporary Point of Interconnection in a previous interconnection agreement filed with the Commission.⁵

4. SPP also indicates that section 10 of Appendix A, as well as a portion of Appendix B, reference a construction agreement between Elk City II and PSCO.⁶ SPP states that the Elk City II GIA supersedes the construction agreement and that all work performed under the construction agreement is deemed to have been performed under the Elk City II GIA. Section 10 also acknowledges that Elk City II has paid a sum to PSCO under the construction agreement, which has been taken into account in the payment schedule and accounting in Appendix B of the Elk City II GIA. SPP claims the Commission has

³ Article 30.10 in the *pro forma* GIA provides that parties may, by mutual agreement, amend the appendices to a GIA by a written instrument executed by the parties.

⁴ A one-line schematic diagram of the temporary Point of Interconnection is contained in Figure A-1 of Appendix A in the Elk City II GIA.

⁵ SPP Transmittal Letter at 3 (*citing Southwest Power Pool, Inc.*, 129 FERC ¶ 61,122 (2009)).

⁶ SPP states the construction agreement, entered into on October 1, 2010, allowed Elk City II and PSCO to begin engineering, procurement, and construction of a portion of the transmission owner's interconnection facilities and network upgrades.

accepted interconnection agreements that contain similar provisions referencing construction agreements.⁷

5. SPP states it has also made several revisions to Appendix C of the Elk City II GIA that may not completely conform to the *pro forma* GIA. Section 6.4 of Appendix C specifies that, at the time of the execution of the Elk City II GIA, Elk City II plans to operate its generating facility in PSCO's control area. However, Elk City II has the option to change control areas but must provide six months' notice to PSCO before making the change. Section 6.4 also indicates that Elk City II must comply with PSCO's metering and telemetry requirements for operating the generating facility in a different control area. SPP asserts this provision protects the transmission owner in cases where a generating facility interconnected to its system requests to operate in another control area where the transmission owner has no authority.⁸

6. Section 6.6 in Appendix C requires Elk City II to submit preliminary specifications of its interconnection facilities to SPP and PSCO no more than 60 days after the effective date of the Elk City II GIA. SPP claims this is reasonable because the language affords Elk City II additional time to provide the specifications.⁹ Appendix C also contains revisions addressing the prohibition of simultaneous interconnections, the provision of station power, and the completion of the interconnection. SPP asserts the Commission has approved interconnection agreements containing provisions similar to those proposed in Appendix C of the Elk City II GIA.¹⁰

7. SPP states that Appendix E of the Elk City II GIA contains non-conforming language providing that, within 10 days of commercial operation of its generating facility, Elk City II will deliver to SPP and PSCO a letter containing the official commercial operation date. SPP states that PSCO requested this provision because the commercial operation date identified in Appendix B of the Elk City II GIA will have passed prior to Commission action on the Elk City II GIA.¹¹

⁷ SPP Transmittal Letter at 4 (*citing Southwest Power Pool, Inc.*, 129 FERC ¶ 61,122 (2009) and *Southwest Power Pool, Inc.*, Docket No. ER05-651-003 (November 30, 2005) (unpublished letter order)).

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* (*citing Southwest Power Pool, Inc.*, 129 FERC ¶ 61,122 (2009) and *Southwest Power Pool, Inc.*, Docket No. ER10-680-000 (March 25, 2010) (unpublished letter order)).

¹¹ *Id.* at 6.

8. Notice of SPP's filing was published in the *Federal Register*, 76 Fed. Reg. 5574 (2011), with interventions and protests due on or before February 11, 2011. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motion to intervene serves to make the entity that filed it party to this proceeding. NextEra Energy Resources, LLC (NextEra) submitted a motion to intervene and comments.

9. In its comments, NextEra asserts that SPP should not have filed the Elk City II GIA with the Commission because it conforms to SPP's *pro forma* GIA. NextEra argues that the revisions to the appendices in the Elk City II GIA do not amend the terms and conditions of the *pro forma* GIA and merely provide case-specific details regarding Elk City's interconnection. NextEra claims the Commission has clarified that providing these details in the GIA appendices does not render the GIA non-conforming in nature.¹² NextEra recommends that the Commission reject the Elk City II GIA and direct SPP to report the agreement in its Electric Quarterly Reports.

10. For the reasons discussed below, we will accept the Elk City II GIA effective December 22, 2010, as requested. We also grant waiver of the Commission's 60-day notice requirement because SPP filed the Elk City II GIA no later than 30 days after the effective date of service.¹³

11. The Commission analyzes non-conforming interconnection agreements to ensure that reliability concerns, novel legal issues, or other unique factors necessitate their non-conforming provisions.¹⁴ A party seeking a case-specific deviation from an approved *pro forma* interconnection agreement bears a burden to explain what makes the interconnection unique and why the nonconforming changes are operationally necessary

¹² NextEra Comments at 2 (citing *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,062, at P 16 (2010) and *Southwest Power Pool, Inc.*, 133 FERC ¶ 61,040, at P 14 (2010)).

¹³ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (“[W]aiver of notice will be granted if service agreements are filed within 30 days after service commences.”).

¹⁴ See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (*PJM*); *Southern Company Servs., Inc.*, 116 FERC ¶ 61,231, at P 14 (2006) (*Southern*).

(not merely “consistent with or superior to” to the *pro forma* interconnection agreement).¹⁵

12. The parties to the Elk City II GIA agreed to the use of a temporary Point of Interconnection to allow Elk City II to meet its desired in-service date before all network upgrades are fully operational. We find that the provision of a temporary Point of Interconnection deviates from the *pro forma* GIA and SPP’s interconnection procedures. Typically, a change to the Point of Interconnection would constitute a Material Modification under these procedures.¹⁶ However, we find that SPP has adequately demonstrated that operational and case-specific factors—such as reassignment of the interconnection agreement and the generating project coming out of suspension—make the use of a temporary Point of Interconnection appropriate in this situation in order for Elk City II to meet its desired in-service date. In addition, we find that Appendix A contains adequate explanation of the conditions necessary for utilizing this temporary Point of Interconnection. Overall, we find that SPP has demonstrated that operational and case-specific concerns necessitate the inclusion of this non-conforming provision in the Elk City II GIA, requiring its filing with the Commission as a non-conforming interconnection agreement, contrary to NextEra’s claim.

13. We also find that the proposed provision in section 6.6 of Appendix C also deviates, to a lesser extent, from the terms and conditions in the *pro forma* GIA and is non-conforming in nature. The time interval indicated in section 6.6 of Appendix C differs from the one specified in Article 5.10.1 of the *pro forma* GIA.¹⁷ However, because the deadline specified in Article 5.10.1 has passed and because of the situation surrounding the project coming out of suspension, we find that SPP has adequately explained why this deviation is necessary.

14. We agree with NextEra’s assessment that the provisions in Appendix E and sections 6.1, 6.3, 6.4, and 6.5 in Appendix C, as well as the information regarding the construction agreement in Appendices A and B, do not deviate from the terms and conditions of the *pro forma* GIA and merely imbue the Elk City II GIA with case-specific information. However, since the Elk City II GIA contains some non-conforming provisions, it must still be filed with the Commission as a non-conforming agreement.

¹⁵ See, e.g., *PJM*, 111 FERC ¶ 61,098 at P 9; *Southern*, 116 FERC ¶ 61,231, at P 14.

¹⁶ See SPP Tariff, Attachment V § 4.4.2.

¹⁷ Article 5.10.1 of SPP’s *pro forma* GIA specifies that the interconnection customer must submit initial specifications to the transmission owner at least 180 days prior to initial synchronization of the generating facility.

The Commission orders:

The Elk City II GIA is hereby accepted effective December 22, 2010, as discussed in the body of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.