

146 FERC ¶ 61,073
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 7, 2014

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER14-591-000

Southwest Power Pool, Inc.
Attention: Tessie Kentner
201 Worthen Drive
Little Rock, AR 72223

Dear Ms. Kentner:

1. On December 10, 2013, Southwest Power Pool, Inc. (SPP) filed an unexecuted Generator Interconnection Agreement (Interconnection Agreement) between SPP, as Transmission Provider, and Lincoln Electric System (Lincoln), as Interconnection Customer and Transmission Owner (December 10 Filing).
2. SPP states that the Interconnection Agreement conforms to the *pro forma* Generator Interconnection Agreement in SPP's Open Access Transmission Tariff (OATT).¹ According to SPP, Lincoln objects to the requirement in article 18.3.4 of the Interconnection Agreement that Lincoln carry excess liability coverage of \$20 million for each occurrence and thus requested that SPP file the Interconnection Agreement unexecuted. Specifically, SPP states that Lincoln believes that its current excess liability coverage of \$10 million for each occurrence is sufficient because: (1) a third-party consulting firm audit found Lincoln's insurance policies to be "conservative" given the company's size and financial position; (2) Lincoln's current excess liability coverage exceeds Nebraska's statutory limitation of liability for tort claims;² and (3) Lincoln's liability insurance carrier requires it to change coverage limits on a company-wide basis,

¹ SPP Open Access Transmission Tariff at Attachment V, Appendix 6.

² December 10 Filing at 2 (citing Nebraska Political Subdivisions Tort Claims Act, Neb. Rev. Stat. § 13-926).

which would increase Lincoln's premium by \$94,418 per year (an increase of 26 percent over its current premium).

3. SPP explains that it declined to lower the excess liability insurance requirement in article 18.3.4, because it did not view Lincoln's position as having met the Commission's standard for accepting deviations from *pro forma* interconnection agreements.³ Additionally, SPP notes that Lincoln is currently subject to identical insurance requirements in article 18.3.4 of an interim generator interconnection agreement, effective August 23, 2013 (Interim Agreement), and Lincoln did not raise any concerns with the insurance requirements prior to entering into that agreement.⁴

4. SPP requests that the Commission waive its 60-day prior notice requirement and permit the Interconnection Agreement to become effective on November 26, 2013, on the basis that the Interconnection Agreement has been filed no later than 30 days after the requested effective date.⁵

5. Notice of SPP's filing was published in the *Federal Register*, 78 Fed. Reg. 76,606 (2013), with interventions and protests due on or before December 31, 2013. On December 31, 2013, Lincoln filed a motion to intervene and protest. SPP filed a motion for leave to answer and answer to Lincoln's protest on January 21, 2014. On January 28, 2014, Lincoln filed an answer to SPP's answer. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the unopposed, timely motion to intervene serves to make Lincoln a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the answers filed by SPP and Lincoln because they have provided information that assisted us in our decision-making.

6. In its protest, Lincoln argues that the \$20 million per occurrence excess liability insurance requirement in article 18.3.4 of the Interconnection Agreement will needlessly increase costs to Lincoln and its customers without providing any corresponding benefit.

³ *Id.* at 2-3 (citing *New York Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,180, at P 9 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,421, at PP 11-12 (2005); *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,062, at P 3 (2010) (*SPP*); *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163, at PP 10-11 (2005)).

⁴ *Id.* at 3.

⁵ *Id.* (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993)).

Lincoln reasons that, because the Nebraska Tort Claims Act limits recovery by claimants to one million dollars for any person for any number of claims arising out of a single occurrence, and five million dollars for all claims arising out of a single occurrence, its current excess liability coverage is adequate.⁶ Lincoln asserts that article 14.2.1 of the Interconnection Agreement expressly recognizes the applicability of Nebraska law. Moreover, Lincoln notes that the Commission, in accepting the insurance requirements in its *pro forma* Small Generator Interconnection Agreement (SGIA), stated that it would not require interconnection customers to obtain additional insurance if the insurance they already had was sufficient.⁷ According to Lincoln, SPP's reliance on the fact that the insurance requirements in article 18.3.4 conform to the Commission's *pro forma* Large Generator Interconnection Agreement (LGIA) is misplaced, because Lincoln's proposed facility has a generating capacity of only 4.8 MW. Thus, Lincoln maintains that its Interconnection Agreement should be compared to the Commission's *pro forma* SGIA, which requires only that interconnection customers maintain "a reasonable amount" of insurance.⁸ Lincoln points out that comments submitted in connection with the proposal ultimately adopted by the Commission for the *pro forma* SGIA emphasized the importance of honoring state law insurance requirements.⁹ Additionally, Lincoln asserts that the fact that it did not object to article 18.3.4 in the Interim Agreement is not relevant, as customers may be willing to agree to terms on an interim basis that would not be acceptable for the full life of the facility being interconnected.¹⁰

7. In its answer, SPP asserts that Lincoln's reliance on the *pro forma* SGIA is misplaced, because SPP revised its OATT to use a single Generator Interconnection Agreement (based on the Commission's *pro forma* LGIA) for all generators over 2 MW.¹¹ SPP also asserts that the Commission has rejected requests by interconnection

⁶ Lincoln Protest at 4-5.

⁷ *Id.* at 5-6 (citing *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at PP 330, 332 (Order No. 2006), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006)).

⁸ *Id.* at 6-7 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 333).

⁹ *Id.* at 7-8 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at PP 303, 332).

¹⁰ *Id.* at n.9.

¹¹ SPP Answer at 2-4 (citing *Southwest Power Pool, Inc.*, Docket No. ER10-681-000 (March 26, 2010) (unpublished letter order accepting amendments to SPP's OATT to

(continued...)

customers to deviate from the *pro forma* insurance provisions, based on the rationale that the potential benefits from these modifications should be made available to all interconnection customers in a transparent, non-discriminatory manner.¹² Finally, SPP points out that, even if the Commission were to grant Lincoln's requested deviation, Lincoln would be subject to the same *pro forma* insurance requirements under a subsequent Generator Interconnection Agreement arising from a new interconnection request for which Lincoln is the transmission owner.¹³

8. In its January 28, 2014 answer, Lincoln asserts that the fact that SPP's *pro forma* Generator Interconnection Agreement is modeled on the Commission's *pro forma* LGIA does not change the fact that SPP's standard excess liability provision would impose on Lincoln an insurance requirement that is inconsistent with Nebraska law.¹⁴ Lincoln emphasizes that it is requesting only "a very narrow and limited modification to reflect a novel legal issue arising out of Nebraska law applicable to political subdivisions of the state."¹⁵ Lincoln distinguishes its situation from the cases cited by SPP, in which the Commission rejected negotiated modifications to *pro forma* language because the modifications did not present unique circumstances. Rather, the modifications involved common circumstances faced by similarly situated customers.¹⁶ By contrast, Lincoln contends that it is not similarly situated to other entities in the SPP footprint; therefore, granting its requested modification on this narrow legal issue would not be subjective or discriminatory.¹⁷ Finally, Lincoln explains that its reference to the Commission's *pro forma* SGIA was intended to show that its requested deviation from SPP's *pro forma*

incorporate procedures for small generating facilities into its existing large generator interconnection procedures)).

¹² *Id.* at 4 (citing *Southern Co. Servs., Inc.*, 116 FERC ¶ 61,231, at P 15 (2006); *MidAmerican Energy Co.*, 116 FERC ¶ 61,018, at P 12 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,257, at PP 23-24 (2006)).

¹³ *Id.* at 5.

¹⁴ Lincoln Answer at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4.

Generator Interconnection Agreement is nevertheless consistent with the Commission's established policy for generators of its size.¹⁸

9. In Order No. 2003, the Commission required Transmission Providers to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.¹⁹ At the same time, the Commission recognized that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for variations from a Transmission Provider's *pro forma* generator interconnection agreement.²⁰ The filing party "bears a high burden to justify and explain that its changes are not merely 'consistent with or superior to' the pro forma agreement, but are necessary changes."²¹

10. Based on Lincoln's representations, we find that Lincoln's status as a municipal entity subject to limited liability provisions under Nebraska state law presents a unique circumstance that necessitates a non-conforming agreement.²² Here, deviating from the *pro forma* language is necessary to allow Lincoln to realize the benefits of the distinct status afforded to it by Nebraska law. Accordingly, we will conditionally accept the Interconnection Agreement for filing to be effective November 26, 2013, as requested, subject to SPP making a filing within 30 days of the date of this order, revising article 18.3.4 to add a proviso, as requested by Lincoln, stating that Lincoln shall not be

¹⁸ *Id.* at 5.

¹⁹ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 11, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004) (Order No. 2003-B), *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).

²⁰ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 913-915.

²¹ *SPP*, 132 FERC ¶ 61,062 at P 3. See also Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140.

²² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,199, at P 6 (2010); *Florida Power & Light Co.*, 118 FERC ¶ 61,176, at P 10 (2007).

required to carry excess liability insurance coverage exceeding its current coverage of \$10 million for each occurrence, which already exceeds the limitation on liability established in Nebraska Revised Statute § 13-926.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.