

128 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER09-1255-000

ORDER ACCEPTING UNEXECUTED INTERCONNECTION AGREEMENT AND
ORDERING COMPLIANCE FILING

(Issued July 31, 2009)

1. On June 1, 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 Wind Farm Bear Creek, LLC (Bear Creek) as interconnection customer. We will refer to the unexecuted Large Generator Interconnection Agreement as Bear Creek LGIA. As discussed below, this order accepts the Bear Creek LGIA for filing effective May 29, 2009, subject to a compliance filing, as set forth herein. Under section 206 of the Federal Power Act,¹ we order SPP to restore the Order No. 2003² *pro forma* tariff provisions for Network Resource Interconnection Service (NRIS),³ as previously ordered by the Commission.⁴

¹ 16 U.S.C. § 824e (2006) (FPA).

² *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 (2004) (Order No. 2003-A), *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).

³ SPP defines NRIS as interconnection service that allows the interconnection customer to integrate its large generating facility with the transmission system in a manner comparable to that in which the transmission owner integrates its generating

(continued...)

I. Background

2. SPP is a Commission-approved regional transmission organization (RTO). 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. Sunflower is a Rural Utilities Service financed entity and thus is not a public utility regulated by the Commission, but it is fully regulated by the Kansas Corporation Commission.

4. Bear Creek is a wind generating facility under construction by Acciona Energy North America. Bear Creek will be a 135 MW generation facility consisting of 90 Acciona 1.5 MW wind turbines.

II. The Filing

5. On June 1, 2009, SPP submitted to the Commission the Bear Creek LGIA, which provides for the interconnection of the Bear Creek facility at the Sunflower Syracuse substation. SPP states that the Bear Creek LGIA contains modifications that do not completely conform to SPP's *pro forma* LGIA set forth in Attachment V, Appendix 6 of the Tariff. Generally, SPP states that these changes outline cost responsibilities and ownership of facilities designed and constructed for the interconnection of Bear Creek's facility to SPP's transmission system.

6. SPP states that Sunflower declined to execute the Bear Creek LGIA because Sunflower sought to include language in it that would commit Bear Creek 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 the 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

facilities to serve native load customers as a network resource. NRIS status in and of itself does not convey transmission service. SPP Open Access Transmission Tariff at First Revised Sheet No. 379 (Tariff).

⁴ *Southwest Power Pool, Inc.*, 122 FERC ¶ 61,060, at P 48 (2008), *order denying reh'g*, 124 FERC ¶ 61,014 (2008).

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.⁵

7. SPP states that Bear Creek also did not execute the Bear Creek LGIA because despite Bear Creek's request for NRIS, SPP tendered the Bear Creek LGIA on an Energy Resource Interconnection Service (ERIS)⁶ basis. SPP states that it did not grant NRIS to Bear Creek because Bear Creek did not follow the required procedures for obtaining such service under the Tariff. SPP states that the Tariff provides that studies for NRIS service are done in accordance with the process in Attachment Z of the Tariff, which sets forth the aggregate transmission service study process SPP uses to evaluate long-term transmission service requests. Therefore, performing the NRIS studies under Attachment Z would require Bear Creek to enter the SPP transmission service queue and to specify the load to be served. SPP states that Bear Creek failed to meet these requirements, and therefore, SPP did not study Bear Creek's request for NRIS; rather, SPP only studied Bear Creek's interconnection request for ERIS, which does not require the customer to designate a specific load.⁷

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 74 FR 31020 (2009), with interventions and protests due on or before June 22, 2009. Sunflower and Mid-Kansas⁸ (together, Intervenors) and Bear Creek filed timely motions to intervene and protest. On July 7, 2009, SPP filed an answer to Intervenors' and Bear Creek's protests.

⁵ SPP June 1, 2009 Filing at 3.

⁶ SPP defines ERIS as interconnection service that allows the interconnection customer to connect its generating facility to the transmission system to be eligible to deliver the generating facility's electric output using the existing firm or non-firm capacity of the transmission system on an as available basis. ERIS in and of itself does not convey transmission service. SPP Tariff at First Revised Sheet No. 374.

⁷ SPP June 1, 2009 Filing at 4.

⁸ Mid-Kansas Electric Company, LLC (Mid-Kansas) operates on a not-for-profit basis and was formed by the 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 owner member of SPP.

9. Intervenors express concern that they will be subject to increased scheduling and imbalance charges incurred as a result of Bear Creek's operating on Sunflower's system and participating in the energy imbalance market. Intervenors argue that SPP does not operate centralized real-time energy and ancillary services markets like those contemplated by the Commission in Order No. 2003.⁹ 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 their areas. Intervenors state that the balancing authority is subject to penalties for uninstructed deviations. Therefore, Intervenors contend that exempting generators, particularly intermittent resources such as Bear Creek, 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.¹⁰ Intervenors explain that under SPP's market rules, wind generators do not need to submit a schedule, may be price-takers, and thereby "win" in the energy imbalance market without any liability for balancing or other ancillary services or for uninstructed deviations. 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 Bear Creek.

10. 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.¹¹ In the alternative, Intervenors request that the Commission set the matter for hearing.

11. In its protest, Bear Creek states that it did everything in its power to obtain NRIS, but because SPP studies requests for NRIS pursuant to Attachment Z of the Tariff, which "requires the load to be known to perform the study," SPP effectively has no NRIS to

⁹ Intervenors June 22, 2009 Protest at 12.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 23.

offer generators.¹² Bear Creek asserts that this is unjust and unreasonable because it, like many generators requesting interconnection service, does not have a load to designate. Furthermore, Bear Creek asserts that Order No. 2003, which established NRIS, does not require such designation.¹³

12. Bear Creek states that in Order No. 2003, the Commission stated that NRIS is intended to provide the interconnection customer with an interconnection of sufficient quality to allow the generating facility to qualify as a designated network resource on the transmission provider's system without additional network upgrades.¹⁴ The Commission further explained that NRIS "does not convey the interconnection customer a reservation of transmission capacity or the right to begin taking firm or non-firm transmission service on the transmission provider's system."¹⁵ Bear Creek asserts that in no way did the Commission require NRIS customers to apply for transmission service, to be studied as if they were seeking transmission service, to be placed in a transmission queue and required to designate customers and load, or to satisfy all the requirements of network integration transmission service, which is a separate product.

13. However, Bear Creek states that in a filing submitted on August 30, 2007 (August 30, 2007 Filing), SPP proposed to delete, among other things, *pro forma* LGIA language in Article 4.1.2.2 that stated that there is no requirement that the interconnection customer's generator be designated as a network resource to obtain NRIS.¹⁶ On January 25, 2008, the Commission issued an order (January 25, 2008 Order) rejecting, in part, SPP's August 30, 2007 Filing, and specifically rejecting the deletion in Article 4.1.2.2. The Commission stated, "We reject SPP's proposed modifications of Article 4.1.2.2 because SPP's stated reason for making the changes is not sufficient to justify the

¹² Bear Creek June 22, 2009 Protest at 3, citing SPP June 1, 2009 Filing at 4.

¹³ *Id.*, citing Order No. 2003 at P 270.

¹⁴ *Id.* at 5-6, citing Order No. 2003 at P 768.

¹⁵ *Id.* at 6, citing Order No. 2003 P 778.

¹⁶ Bear Creek June 22, 2009 Protest at 4, citing *Southwest Power Pool, Inc.* Submission of Proposed Tariff Revisions to Modify Large Generator Interconnection Agreement and Procedures, Docket No. ER07-1311-000 at Exhibit II, redline of First Revised Sheet No. 478 (Aug. 30, 2007).

proposed variation. In addition, we note that SPP deleted additional portions of Article 4.1.2.2 without explanation. Therefore, we reject these provisions as unsupported.”¹⁷

14. Bear Creek states that in the compliance filing to the January 25, 2008 Order, SPP did not reinsert the language it deleted from Article 4.1.2.2 that stated that there was no requirement for the generator to be designated a network resource in order to obtain NRIS, nor did it offer any explanation for not following the Commission’s directive to do so.¹⁸ However, Bear Creek notes that the Commission accepted SPP’s compliance filing without further discussion of the modifications to Article 4.1.2.2.¹⁹ Thus, while Bear Creek acknowledges that the Commission approved the revised Tariff and LGIA changes, it contends that the Commission overlooked the deletion of this key language in SPP’s compliance filing despite the Commission’s determination in the January 25, 2008 Order that the language should not have been deleted. Therefore, Bear Creek asserts that the Commission should reject SPP’s interpretation of Article 4.1.2.2 that would require a resource to be designated as a network resource before obtaining NRIS service because it undermines the intent of Order No. 2003 and the Commission’s specific determinations in the January 25, 2008 Order.²⁰

15. In response to Intervenors’ protest, SPP contends that they have failed to demonstrate that the Bear Creek LGIA is unjust and unreasonable or inconsistent with the relevant provisions of the Tariff. SPP argues that the Commission-approved provisions in Schedule 4 of the Tariff make it clear that generation interconnection customers do not need to obtain transmission service to participate in the energy imbalance market, and therefore Intervenors’ insistence on the inclusion of such provisions has no support in the Tariff.²¹

16. SPP also states that Intervenors are collaterally challenging the energy imbalance market rules in the Tariff, which permit entities to participate in the energy imbalance market without taking transmission service. SPP states that the Commission has accepted

¹⁷ *Southwest Power Pool, Inc.*, 122 FERC ¶ 61,060 at P 48, *order denying reh’g*, 124 FERC ¶ 61,014 (2008).

¹⁸ *Southwest Power Pool, Inc.*, Submission of Compliance Filing Revising Open Access Transmission Tariff, Docket No. ER07-1311-002 (Mar. 3, 2008).

¹⁹ Bear Creek June 22, 2009 Protest at 5, citing *Southwest Power Pool, Inc., Order Denying Rehearing*, 124 FERC ¶ 61,014 (2008).

²⁰ *Id.*

²¹ SPP July 7, 2009 Answer at 5.

the Tariff's energy imbalance market provisions and Sunflower cannot challenge them here. SPP states that such matters are outside the scope of this proceeding, and by raising them here, Sunflower is attempting to bring a section 206 complaint in the form of a protest, which is impermissible.²²

17. SPP answers Bear Creek by asserting that Bear Creek failed to demonstrate that SPP's practice to conduct NRIS studies in accordance with Attachment Z is inconsistent with the Tariff. Specifically, SPP states that section 4.1.2.2 of its Commission-accepted *pro forma* LGIA provides that customers seeking NRIS must submit a request for network service pursuant to SPP's aggregate study process in Attachment Z of the Tariff. SPP explains that this provision replaced the Order No. 2003 *pro forma* LGIA language providing that there is no requirement for an interconnection customer's facility to be designated as a network resource.

18. SPP asserts that Bear Creek concedes that the Commission accepted this modification, but attempts to invalidate it by claiming the Commission questioned the revision and overlooked the matter in SPP's compliance filing. SPP argues that the Commission did not specifically address the modification in the January 25, 2008 Order, and therefore clearly accepted it. In addition, SPP states that the Commission cannot revise the Tariff retroactively in this proceeding, and Bear Creek should address any concerns it has with the Tariff in the SPP stakeholder process. Furthermore, SPP asserts that the modification to the NRIS study process is necessary to expedite processing of SPP's severely backlogged requests in the generation interconnection queue, and it notes that no other customers are questioning SPP's approved NRIS study process. Finally, SPP contends that its NRIS provision is consistent with the Commission's directive in Order No. 2003-A that the queues for NRIS and transmission delivery services "must be closely coordinated."²³

²² *Id.*, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 90 (2007) ("The 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)); and *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (complaints must be filed separately from motions to intervene and protests).

²³ SPP July 7, 2007 Answer at 9, citing Order No. 2003-A at P 541.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), 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

20. As discussed below, we accept the unexecuted Bear Creek LGIA for filing without suspension or hearing to be effective May 29, 2009, as requested. We find that the provisions SPP has added to the appendices of the Bear Creek LGIA do not constitute 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 Bear Creek LGIA with information that the *pro forma* LGIA already contemplates will be incorporated; e.g., cost responsibilities and ownership of the facilities designed and constructed as the result of the interconnection of Bear Creek's 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 Bear Creek LGIA is filed under FPA section 205 for Commission approval only because it is unexecuted.

21. We find that SPP's refusal to include a provision in the Bear Creek LGIA requiring Bear Creek to obtain transmission service to participate in the energy imbalance market is consistent with Schedule 4 of the Tariff. Accordingly, we deny Intervenors' request to declare that a generator participating in the energy imbalance market must contract for delivery service that makes the generator also liable for ancillary services. 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 Bear Creek operating on its system and participating in the energy imbalance market. Therefore, the Commission accepts the Bear Creek LGIA effective May 29, 2009, without prejudice to Intervenors seeking to revise the SPP tariff through an appropriate proceeding (e.g., through SPP submitting tariff revisions under FPA 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 an FPA 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.²⁴

22. We agree with Bear Creek that as a result of SPP's previously modified Tariff provisions, SPP effectively has no NRIS as contemplated by Order No. 2003, which we find to be unjust and unreasonable. As Bear Creek points out, the Commission originally rejected SPP's proposed modifications to Article 4.1.2.2 in the January 25, 2008 Order. Nevertheless, the compliance filing SPP filed pursuant to the January 25, 2008 Order retained these modifications. The Commission overlooked SPP's non-compliant language and inadvertently accepted it without directly addressing the specific language exempting SPP from providing NRIS. The Commission has inherent authority to correct such mistakes.²⁵ Under FPA section 206, we direct SPP to restore Order No. 2003 *pro forma* LGIA tariff provisions for NRIS. Specifically, SPP must file a compliance filing within 30 days of the date of this order to remove all provisions from the Tariff indicating that NRIS studies are performed pursuant to Attachment Z, and it must restore the language in Article 4.1.2.2 providing that an interconnection customer's facility need not be designated as a network resource.

23. We also find that the Tariff did not provide for NRIS at the time Bear Creek's interconnection request was studied. Therefore, we accept the Bear Creek LGIA noting that Bear Creek may submit a new request for NRIS upon SPP's restoration of the Order No. 2003 *pro forma* Tariff provisions for NRIS.

²⁴ *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).

²⁵ "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act." FPA § 309. *See also, Bookman v. U.S.*, 453 F.2d 1263 (Ct. Cl. 1972). "[I]t is the general rule that '[e]very tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately to modify its judgment, decree, or order.'" *Quoting 2 Davis, Administrative Law Treatise* 18.09 (1958). In *Hydro Development Group, Inc.*, 20 FERC ¶ 61,059, n.5 (1982), the Commission cited *Bookman* for the proposition that "[E]ven where they do not possess express statutory authority to modify or set aside decisions, all administrative agencies, absent express statutory prohibition or other circumstances which warrant a prohibition, have an inherent power to reconsider decisions within a short and reasonable time period."

The Commission orders:

SPP's unexecuted interconnection agreement is accepted, subject to a further compliance filing, as set forth herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.