

131 FERC ¶ 61,058  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Southwest Power Pool, Inc.

Docket Nos. ER09-1255-001  
ER09-1255-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 21, 2010)

1. On August 31, 2009, Southwest Power Pool, Inc. (SPP) filed a request for rehearing of the Commission's July 31, 2009 order in this proceeding.<sup>1</sup> SPP also submitted a compliance filing on August 31, 2009, as required by the July 31 Order. On August 31, 2009, Wind Farm Bear Creek, LLC (Bear Creek) filed a request for clarification or, in the alternative, rehearing of the July 31 Order. As discussed below, the Commission denies Bear Creek's request for rehearing and/or clarification of the July 31 Order, denies SPP's rehearing request, and accepts SPP's compliance filing.

**I. Background**

2. On June 1, 2009, Southwest Power Pool, Inc. (SPP) filed an unexecuted large generator interconnection agreement between SPP as transmission provider, Sunflower Electric Power Corporation as transmission owner, and Bear Creek as interconnection customer (Bear Creek LGIA). The Bear Creek LGIA was filed on an unexecuted basis, because, as SPP explained, Bear Creek and SPP disagreed about whether or not Bear Creek had followed the correct procedure to receive Network Resource Interconnection Service (NRIS)<sup>2</sup> in accordance with SPP's Tariff.

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<sup>1</sup> *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116 (2009) (July 31 Order).

<sup>2</sup> 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 facilities to serve native load customers as a network resource. NRIS status in and of

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3. In the June 1 filing, SPP explained that article 4.1.2.2 of the Bear Creek LGIA provided that studies associated with a request for NRIS were to be conducted in accordance with SPP's aggregate study process for transmission service, which is the process SPP uses to evaluate all long-term transmission service requests.<sup>3</sup> SPP stated that because Bear Creek did not submit a request for network service pursuant to SPP's aggregate study process for transmission service, it failed to meet the requirements to be studied for NRIS. Therefore, SPP conducted a study for Energy Resource Interconnection Service (ERIS),<sup>4</sup> but not NRIS.

4. In the July 31 Order, the Commission accepted the Bear Creek LGIA but determined that because of an earlier Commission oversight and SPP's reliance on such oversight, SPP did not offer NRIS at all. When SPP previously filed proposed revisions to its large generator interconnection procedures, the Commission rejected article 4.1.2.2 of the proffered SPP *pro forma* LGIA because it did not conform to the Order No. 2003 *pro forma* LGIA.<sup>5</sup> The Commission ordered SPP to bring that article into conformance with the *pro forma* LGIA in a subsequent compliance filing, but SPP's compliance filing did not do so. The Commission, however, overlooked the omission and, thus,

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itself does not convey transmission service. SPP Open Access Transmission Tariff (Tariff) at First Revised Sheet No. 379.

<sup>3</sup> SPP Tariff, Attachment Z1 (Aggregate Transmission Service Study Procedures and Attachment Z2 (Revenue Crediting For Upgrades).

<sup>4</sup> 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. Tariff at First Revised Sheet No. 374.

<sup>5</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 *Fed. Reg.* 265 (January 4, 2005), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

inadvertently accepted the non-conforming provisions in article 4.1.2.2 in SPP's compliance filing.<sup>6</sup>

5. In the July 31 Order, the Commission noted that article 4.1.2.2 had not been brought into compliance with its earlier order, and the Commission directed SPP to remove all provisions from its Tariff indicating that NRIS studies are performed pursuant to SPP's aggregate study process for transmission service. The Commission further ordered SPP to restore the language providing that an interconnection customer's facility need not be designated as a network resource in order to obtain NRIS.<sup>7</sup> The Commission also stated that Bear Creek would be permitted to submit a new request for NRIS upon SPP's restoration of the *pro forma* tariff provisions for NRIS.<sup>8</sup>

6. On August 31, 2009, SPP filed a request for rehearing, and Bear Creek filed a request for clarification, or in the alternative, rehearing of the July 31 Order. SPP filed an answer to Bear Creek's request for clarification or rehearing, and Bear Creek filed an answer to SPP's request for rehearing. Also on August 31, 2009, SPP submitted a compliance filing pursuant to the July 31 Order.

## **II. Notice of Filing**

7. Notice of the compliance filing was published in the *Federal Register*, 74 Fed. Reg. 46,192 (September 8, 2009) with interventions and protests due on or before September 21, 2009. None was filed.

## **III. Discussion**

### **A. Procedural Matters**

8. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2009), prohibits answers to requests for rehearing. Therefore, we reject Bear Creek's and SPP's answers.

### **B. Requests for Rehearing and/or Clarification**

#### **1. SPP's Request for Rehearing**

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<sup>6</sup> July 31 Order at P 22.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* P 23.

9. SPP states that the Commission erred in requiring SPP to remove all previously approved provisions from its Tariff indicating that NRIS studies are performed in accordance with SPP's aggregate study process, and to restore the Commission's Order No. 2003 *pro forma* language providing that an interconnection customer's facility need not be designated as a network resource in order to obtain NRIS. SPP asserts that the Commission reached its determination in the July 31 Order without addressing the merits of Tariff language requiring NRIS studies to be conducted in accordance with SPP's aggregate study process for transmission service.<sup>9</sup> SPP claims that this conclusion will complicate and burden SPP's generation interconnection process, cause conflicts with SPP's aggregate study process for transmission service, and impose prohibitive upgrade costs for interconnection customers, effectively rendering NRIS meaningless within SPP.

10. SPP claims that it has been able to process its generation interconnection queue in a more efficient manner by requiring NRIS requests to be studied in the aggregate study process by way of a separate transmission service request. SPP also contends that its NRIS process is an improvement over the Commission's *pro forma* provisions because it requires that the load to be served by NRIS be specified, and thus, SPP only studies and constructs upgrades needed to serve the specified load. As explained below, SPP contends that this is beneficial for interconnection customers because it ensures that they only bear the costs of studies and upgrades for service that they will use.<sup>10</sup> Furthermore, SPP asserts that the interconnection customer benefits by having the costs of the upgrades needed to serve its load shared by the aggregate group included in the aggregate study process for transmission service,<sup>11</sup> with the potential for additional cost sharing of upgrades eligible for Base Plan Funding under the Tariff.<sup>12</sup>

11. SPP also claims that the Commission arbitrarily directed SPP to eliminate NRIS provisions from the Tariff that are nearly identical to provisions that the Commission allowed the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to place into effect in similar circumstances.<sup>13</sup> Specifically, Midwest ISO's NRIS revisions

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<sup>9</sup> SPP Rehearing Request at 5, citing July 31 Order at P 22.

<sup>10</sup> *Id.* 7.

<sup>11</sup> *Id.*, citing SPP Tariff at Attachment Z1, Section IV.

<sup>12</sup> Base Plan Funding is SPP's cost allocation methodology for certain network upgrades that are included in and constructed pursuant to the SPP transmission expansion plan in order to ensure the reliability of the transmission system. *See* Tariff at Attachment J, Section III.

<sup>13</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027

permitted additional studies and upgrades whenever an NRIS generator already interconnected with the Midwest ISO transmission system was designated as a network resource by a transmission customer. SPP states that Midwest ISO explained that this modification was necessary because congestion prior to its transition to a Day 2 bid-based energy market would be managed via North American Electric Reliability Corporation (NERC) Transmission Loading Relief (TLR) procedures, which, absent additional studies and possible upgrades for a NRIS customer, could result in inequitable redispatch of existing generating facilities.<sup>14</sup> SPP states that it also uses NERC TLR procedures to manage congestion, and without additional studies and upgrades, its generators could face unwarranted redispatch costs. In addition, SPP is also transitioning to Day-2 bid-based energy markets, making the need for special NRIS provisions a temporary one.<sup>15</sup> SPP further notes that while SPP's NRIS provisions require a generator to specify a network load before it can obtain NRIS, it contends that the net effect of both the SPP and Midwest ISO NRIS provisions is that any designation of an NRIS generator as a network resource will require additional transmission studies and the construction of additional upgrades. Because of these similarities, SPP asserts that the Commission has no basis for treating its NRIS provisions differently from Midwest ISO's.<sup>16</sup>

12. SPP states that it does not yet have bid-based energy markets like other RTOs, and thus it cannot study delivery to the market. Therefore, SPP asserts that without a specified load for an interconnection customer requesting NRIS, SPP would need to study transmission requirements for all 17 zones in the SPP RTO region, regardless of whether the interconnection customer ever intends to sell its output to each zone. Furthermore, as noted above, SPP's interconnection process requires interconnection customers to pay for all interconnection studies and upgrades needed to interconnect their generating facilities to SPP's system. Thus, SPP contends that obtaining NRIS within SPP would be so cost prohibitive that it would be virtually pointless for SPP to offer NRIS on the terms required by the July 31 Order.

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(2004) (Midwest ISO Order).

<sup>14</sup> Midwest ISO Filing, Docket No. ER04-458-001 (April 26, 2004).

<sup>15</sup> SPP states that its members are in the process of designing Day 2 markets, currently expected to be implemented in 2012. See SPP Future Market Project Plan – April 2009, [www.spp.org/publications/Project\\_Plans - April 2009.zip](http://www.spp.org/publications/Project_Plans_-_April_2009.zip). SPP Rehearing Request at 10.

<sup>16</sup> *Id.*

13. Therefore, SPP requests that if the Commission does not grant rehearing of its directive that SPP remove all provisions from the Tariff indicating that NRIS studies are performed in accordance with SPP's aggregate study process, the Commission should clarify that SPP may limit the network service that is available to an interconnection customer taking NRIS to the control area where the generating facility is located. SPP asserts that this would enable SPP to study NRIS for one transmission zone, rather than all 17 zones, thereby reducing study and upgrade costs for interconnection customers. SPP also asserts that this is consistent with Order No. 2003, in which the Commission stated that

[i]f the Transmission Provider operates more than one Control Area, it may limit the network service that is available to an Interconnection Customer taking Network Resource Interconnection Service to the Control Area where the Generating Facility is located. If the Interconnection Customer wishes to serve load in another Control Area, it must submit a separate request for transmission service to that other area, and it would be subject to the pricing provisions of the Transmission Provider's OATT for that service.<sup>17</sup>

14. SPP states that it would follow the policy set forth in Order No. 2003 by providing NRIS to interconnection customers for the zone where the generating facility is located, without the need for the facility to be designated as a network resource at the time NRIS is requested. However, because SPP operates in more than one control area, SPP states that if the interconnection customer wishes to serve network load in any other SPP zone, it would be required to submit a transmission request through SPP's aggregate study process.

## 2. Commission Determination

15. The Commission denies SPP's request to reverse the directives of the July 31 Order. SPP claims that the Commission's directive in the July 31 Order to restore the *pro forma* Order No. 2003 provisions for NRIS will complicate SPP's generation interconnection process, cause conflicts with SPP's aggregate study process, and impose prohibitive upgrade costs for interconnection customers. However, the Commission notes that Order No. 2003 permits deviations from the *pro forma* tariff only if an applicant demonstrates that the modifications meet the "independent entity variation standard."<sup>18</sup> SPP's current provisions for NRIS require interconnection customers

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<sup>17</sup> SPP Rehearing Request at 11, citing Order No. 2003 at P 771 (emphasis added).

<sup>18</sup> See Order No. 2003, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,146 at P 822-27 and Order No. 2003-A, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,160 at P 759. An RTO or ISO proposing a

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seeking NRIS to submit a request for network transmission service and to be designated as a network resource.<sup>19</sup> These requirements run directly counter to the purpose of NRIS service as set forth in Order No. 2003.<sup>20</sup> Therefore, SPP's current provisions do not meet the independent entity variation standard.

16. We also find that the provisions SPP seeks to retain are not comparable to those accepted in the Midwest ISO Order. At the time of our order in that case, Midwest ISO's tariff merely provided that additional studies and network upgrades might have been necessary if a transmission customer designated the NRIS interconnection customer's generation facility as a network resource. Further, unlike SPP's provisions, nothing in the Midwest ISO tariff required an interconnection customer to enter the queue for transmission service or required that the customer's generating facility be designated as a network resource in order to obtain NRIS.

17. However, the Commission clarifies that consistent with Order No. 2003, SPP may limit the network transmission service that is available to an interconnection customer taking NRIS to the balancing area/control area where the generating facility is located, unless the customer submits a request for transmission service for other points of delivery. Thus, it follows that the studies for NRIS would also be limited to the balancing area/control area where the generator is located.

### **3. Bear Creek's Request for Clarification, or in the Alternative, Rehearing**

18. Bear Creek requests that the Commission clarify the meaning of "new request" in the July 31 Order where the Commission stated that Bear Creek may submit a "new

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variation must demonstrate that the variation is just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003. *See, e.g., PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at P 7 ("[W]hen an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable."), *order denying reh'g*, 110 FERC ¶ 61,099 (2005); and *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order on reh'g*, 119 FERC ¶ 61,097, at P 7 (2007) (rejecting a proposed pricing variation because the RTO "had not shown that the proposal would accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing.").

<sup>19</sup> SPP Tariff, *pro forma* LGIA, article 4.1.2.2.

<sup>20</sup> Order No. 2003 at P 767.

request” for NRIS “upon SPP’s restoration of the Order No. 2003 *pro forma* Tariff provisions for NRIS.”<sup>21</sup> Specifically, Bear Creek requests that the Commission clarify that Bear Creek’s request for NRIS will be deemed submitted as of the date that Bear Creek first sought NRIS from SPP, which was March 7, 2007, thereby allowing Bear Creek to keep its queue position (Restored Request). Bear Creek asserts that this is an appropriate interpretation, especially because the Commission points out that the Tariff provisions nullifying NRIS should not have been accepted in the first place. However, Bear Creek states that if its NRIS request is truly considered new, with a new date for submission and study, Bear Creek would lose its existing queue position.<sup>22</sup>

19. To date, Bear Creek states that it has (1) properly requested NRIS with an interconnection request, (2) completed the site control requirements under the Tariff, and (3) purchased significant rights-of-way for its 20-mile interconnection line, expending approximately \$1.1 million and 30 months of time in reliance on its existing queue position for NRIS. Bear Creek states that currently the SPP studies at 100 percent output show no overloads attributable to the project based on its relatively early position in the queue. Bear Creek states that it would be a hardship for it to submit a new request and reenter the queue.

20. Bear Creek also contends that being forced to submit a new request would put it at a competitive disadvantage. Bear Creek asserts that other generators with no previous requests for NRIS would now be in a queue position equal to Bear Creek’s, which is unfair given Bear Creek’s time and money expenditures to complete SPP’s Tariff requirements for obtaining site control and purchasing rights-of-way.

21. Bear Creek points out that under Order No. 2003, changes to a proposed generator interconnection that constitute material modifications will result in the loss of a generator’s queue position.<sup>23</sup> Bear Creek states that a material modification is one that adversely affects subsequent projects in an interconnection queue.<sup>24</sup> Bear Creek states

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<sup>21</sup> Bear Creek Clarification or Rehearing Request at 2, citing July 31 Order at P 23.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 4, citing Order No. 2003, Appendix C. Standard Large Generator Interconnection Procedures § 4.4.

<sup>24</sup> *Id.*, citing *Montgomery Great Falls Energy Partners LP v. NorthWestern Corporation*, 123 FERC ¶ 61,181 (2008); see also *Midwest Independent Transmission System Operator, Inc.*, 127 FERC ¶ 61,294, at P 13 (2009) (in which the Commission found that it is not just and reasonable for Midwest ISO to retain deposit money beyond that which is necessary to conduct studies for the project and any necessary studies

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that it has not delayed or materially changed its project in any way that would justify the loss of Bear Creek's queue position. Furthermore, Bear Creek states that Commission precedent establishes that projects cannot be charged for costs incurred after a queue position is established.<sup>25</sup>

22. Bear Creek asserts that if the Commissions interprets "new request" to mean a Restored Request, a re-study would not be required.<sup>26</sup> Bear Creek asks only for SPP to perform the initial study intended in the existing queue order so that Bear Creek can move forward in reliance on the queue position it has already secured.

23. If the Commission interprets "new request" to mean a truly new request with a new queue position, Bear Creek requests clarification that any new costs resulting from Bear Creek's losing its existing queue position will be assigned to SPP. Bear Creek contends that these are costs that it would not have incurred had the Tariff been in compliance with the Commission's earlier order.<sup>27</sup>

24. In addition, Bear Creek seeks clarification that SPP should conduct its NRIS study on a system-wide basis rather than limit it to the control area where the interconnection customer is located. Bear Creek asserts that even though NRIS does not grant actual delivery rights, under Order No. 2003, it does allow an interconnection customer the capability to deliver power anywhere in a transmission provider's system.<sup>28</sup>

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caused by project withdrawal).

<sup>25</sup> *Id.*, citing *Neptune Regional Transmission System, LLC v. PJM Interconnection, LLC*, 110 FERC ¶ 61,098; *order on reh'g*, 111 FERC ¶ 61,455, at P 22 (2005) ("Projects cannot be held responsible for costs that occur after their queue positions are established, because that could lead the interconnection provider, as was the case here, to fail to . . . determine a final level of interconnection costs within a reasonable amount of time.").

<sup>26</sup> Re-studies can be provided for three discrete reasons: (1) a higher-queued project drops out; (2) a modification of a higher-queued project is required, or (3) the point of interconnection is re-designated. *See Neptune Regional Transmission System*, 111 FERC ¶ 61,455 at P 20. Bear Creek contends that none of these three reasons applies here.

<sup>27</sup> Bear Creek Clarification or Rehearing Request at 5, citing *ISO New England, Inc.*, 115 FERC ¶ 61,145 at P 13 (2006) (under cost causation principles, costs are allocated to the parties who cause the incurrence of such costs).

<sup>28</sup> Bear Creek Clarification or Rehearing Request at 5.

#### **4. Commission Determination**

25. The Commission denies Bear Creek's request to clarify that a new request for NRIS will be deemed submitted as of the date that Bear Creek first sought NRIS from SPP. As noted in the July 31 Order, at the time that Bear Creek's request for NRIS was studied, the Tariff did not provide for NRIS, and Bear Creek was only studied for ERIS. Therefore, if Bear Creek chooses to upgrade its existing ERIS to NRIS, it must submit a new request for that service upgrade and SPP would perform the requisite studies to determine any incremental upgrades necessary for NRIS. As a result, Bear Creek would also be responsible for any study costs and resulting network upgrade costs required by an NRIS request. In addition, if Bear Creek requests NRIS and wants the study to analyze Bear Creek so that it will be able to deliver to a balancing area/control area other than where it is located, Bear Creek will have to make a request for transmission delivery service consistent with the finding that SPP may limit the network transmission service that is available to an interconnection customer taking NRIS to the control area where the generating facility is located.

#### **C. Compliance Filing**

##### **1. SPP's Filing**

26. Pursuant to the July 31 Order, SPP submitted revisions to the Tariff to (1) delete provisions from section 3.2.2.2 of its *pro forma* LGIP and section 4.1.2.2 of its *pro forma* LGIA that studies for NRIS will be conducted in accordance with SPP's aggregate transmission service study process; and (2) reinstate language in section 4.1.2.2 of its *pro forma* LGIA providing that an interconnection customer's facility need not be designated as a network resource in order to obtain NRIS.

27. SPP requests that the Tariff revisions become effective on the date that the Commission accepts the compliance filing.

##### **2. Determination**

28. We find that SPP has complied with the compliance directives of the July 31 Order. SPP's proposed revisions reinstate NRIS under the Tariff as it is described in Order No. 2003. Accordingly, we accept SPP's compliance filing to become effective on the date that this order is issued.

#### **The Commission orders:**

(A) Bear Creek's request for clarification or, in the alternative, rehearing of the July 31 Order is denied as discussed in the body of this order.

(B) SPP's request for rehearing is denied as discussed in the body of this order.

(C) SPP's compliance filing is accepted for filing, effective the date that this order is issued, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.