

132 FERC ¶ 61,062  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc. Docket Nos. ER10-1316-000

Southwest Power Pool, Inc. ER10-1317-000  
(Not Consolidated)

ORDER REJECTING LARGE GENERATOR INTERCONNECTION AGREEMENTS

(Issued July 23, 2010)

1. On May 25, 2010, Southwest Power Pool, Inc. (SPP) filed two non-conforming large generator interconnection agreements (collectively, Interconnection Agreements) with the Commission.<sup>1</sup> In this order, we reject the Interconnection Agreements because they do not conform to SPP's current Commission-approved *pro forma* generator interconnection agreement (*pro forma* GIA). We therefore direct SPP to revise the Interconnection Agreements so that they conform to SPP's *pro forma* GIA and henceforth report the revised Interconnection Agreements in SPP's quarterly reports. In addition, we accept SPP's notice that the interim large generator interconnection agreement submitted in Docket No. ER10-1316-000 will be cancelled.

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<sup>1</sup> In Docket No. ER10-1316-000, Western Farmers Electric Cooperative is both the interconnection customer and transmission owner (Western Farmers LGIA). In Docket No. ER10-1317-000, Nemaha Wind Farm, LLC is the interconnection customer and Westar Energy, Inc. is the transmission owner (Nemaha LGIA). SPP is the transmission provider in both Interconnection Agreements.

## I. Background

2. In Order No. 2003,<sup>2</sup> the Commission required transmission providers, such as SPP, to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents. The use of *pro forma* documents ensures that interconnection customers are receiving non-discriminatory service, and that all interconnection customers are treated consistently and fairly. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an interconnection customer to negotiate the individual terms of each interconnection agreement. *Pro forma* documents also reduce transaction costs and eliminate the need to file interconnection agreements that conform to the *pro forma* template with the Commission.

3. Conversely, the Commission requires interconnection agreements that do not conform to the *pro forma* interconnection agreement to be filed with the Commission. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons make a non-conforming agreement necessary. For example, the Commission recognizes that non-conforming agreements may be necessary for a small number of interconnections with specific reliability concerns, novel legal issues, or other unique factors. Thus, a transmission provider seeking a case-specific deviation from its *pro forma* interconnection agreement 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.<sup>3</sup> Because of this high standard, the Commission has rejected various types of deviations from *pro forma* interconnection agreements as unnecessary.<sup>4</sup>

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<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 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).

<sup>3</sup> *See PJM Interconnection, LLC*, 111 FERC ¶ 61,163 (2005) (*PJM*).

<sup>4</sup> *See, e.g., MidAmerican Energy Company*, 116 FERC ¶ 61,018 (2006) (rejecting non-conforming deviations including stylistic changes, clarifying phrases, and modifications to insurance provisions; rejecting deviations that were requested by the customer; and rejecting deviations that the customer asserted were necessary to reflect the positions of the parties); *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,121 (2005) (rejecting deviations to correct mistakes in the *pro forma*

(continued)

4. On January 29, 2010, SPP submitted amendments to Attachment V of the SPP tariff *pro forma* interconnection procedures, and as a result, Attachment V now contains the interconnection procedures for both small generators (20 megawatts or fewer) and large generators. This merger required deletion of the qualifier “Large” in several terms, such as “Large Generator Interconnection Procedures” and “Standard Large Generator Interconnection Agreement.” In addition, the definitions for “Large Generator Interconnection Procedures” and “Standard Large Generator Interconnection Agreement” were revised. The Commission accepted these *pro forma* GIA revisions effective March 31, 2010 (March 31 Order).<sup>5</sup>

5. In addition, in Docket No. ER09-1255-000, the Commission directed SPP to modify its tariff to remove all provisions indicating that Network Resource Interconnection Service studies are performed pursuant to SPP’s Aggregate Study Process.<sup>6</sup> On August 31, 2009, SPP submitted a compliance filing pursuant to this directive, which resulted in modification to article 4.1.2.2 of the *pro forma* GIA. The Commission accepted this *pro forma* GIA revision effective April 21, 2010 (April 21 Order).<sup>7</sup>

## II. The Filings

6. For both Interconnection Agreements at issue here, SPP proposes to use its now-superseded *pro forma* GIA, which does not include the revisions that the Commission accepted in the March 31 Order and the April 21 Order. SPP states that the Interconnection Agreements were already being negotiated before the Commission issued the March 31 Order and the April 21 Order. SPP states that consequently, article 4.1.2.2 of the Interconnection Agreements does not conform to its current *pro forma* GIA. SPP also states that the Interconnection Agreements still contain the word “Large” before the terms “Generator Interconnection Procedures,” “Generating Facility,” and “Standard

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agreement); *PJM, supra*, n. 3 (rejecting a one-sided indemnification provision and changes corresponding to a cancelled agreement); and *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,277 (2008) (*Midwest ISO*) (rejecting two interconnection agreements containing deviations that were based on previous *pro forma* language because new *pro forma* language had been accepted before the interconnection agreements were executed).

<sup>5</sup> *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER10-681-000 (Mar. 26, 2010).

<sup>6</sup> *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116 (2009).

<sup>7</sup> *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,058 (2010).

Generator Interconnection Agreement.” Similarly, SPP states that throughout the Interconnection Agreements, the parties refer to the agreement as the “LGIA” instead of the “GIA.” In addition, SPP states that the Interconnection Agreements contain the definitions for “Standard Large Generator Interconnection Procedures” and “Standard Large Generator Interconnection Agreement” instead of the definitions for “Generator Interconnection Procedures” and “Generator Interconnection Agreement.”

7. SPP states that the language that differs from the current *pro forma* GIA is non-substantive, and that the Commission should accept the Interconnection Agreements based on the earlier *pro forma* LGIA version as just and reasonable.<sup>8</sup>

8. SPP explains that the Interconnection Agreements contain other non-conforming provisions. Specifically, SPP states that article 2.2 indicates that the Interconnection Agreements will remain in effect for a period of 25 years, instead of for 10 years, as its *pro forma* GIA states. SPP contends that this change is consistent with article 2.2 of its *pro forma* GIA, which allows parties to specify that the term of a GIA may exceed 10 years.<sup>9</sup>

9. SPP further explains that the appendices of the Interconnection Agreements contain many routine provisions that the Commission previously determined “do not deviate from the *pro forma* LGIA, but merely imbue the . . . LGIA with information the *pro forma* LGIA already contemplates will be incorporated.”<sup>10</sup> However, SPP contends that the Interconnection Agreements include a non-conforming note at the beginning of Appendix A specifying that in the event that other interconnection customers suspend, terminate, or request unexecuted filings of their interconnection agreements, additional studies may be required that could result in changes to the interconnection customers’ interconnection facilities and network upgrades, as well as to the interconnection customers’ cost obligations for those facilities. SPP states that the purpose of this note is

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<sup>8</sup> Nemaha LGIA Transmittal Letter at 3 and Western Farmers LGIA Transmittal Letter at 3, citing *PJM Interconnection, LLC*, Letter Order, Docket No. ER09-1330-000 (Aug. 6, 2009) (in which the Commission accepted a non-conforming interconnection service agreement that was based on an earlier version of the *pro forma* interconnection service agreement that did not contain recently accepted revisions to the *pro forma* interconnection service agreement).

<sup>9</sup> SPP Tariff, Attachment V, Appendix 6, article 2.2.

<sup>10</sup> Nemaha LGIA Transmittal Letter at 4 and Western Farmers LGIA Transmittal Letter at 5, citing *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,022, at P 13 (2009) ; see also *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116, at P 20 (2009), *order on reh’g*, *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,058 (2010).

to inform the interconnection customers of conditions that may lead to restudies. SPP notes that the Commission previously has accepted other interconnection agreements submitted by SPP with similar notes.<sup>11</sup>

10. Finally, SPP requests that the Commission accept the Interconnection Agreements effective as of May 14, 2010. SPP also requests that the Commission accept a notice of cancellation of Original Service Agreement No. 1845 (Western Farmers Interim LGIA),<sup>12</sup> effective as of May 14, 2010, because the Western Farmers LGIA will supersede it.

### **III. Notice of Filings and Responsive Pleadings**

11. Notice of SPP's filing in Docket No. ER10-1316-000 was published in the *Federal Register*, 75 Fed. Reg. 37,787 (2010), with interventions and protests due on or before June 30, 2010. Western Farmers filed a timely motion to intervene.

12. Notice of SPP's filing in Docket No. ER10-1317-000 was published in the *Federal Register*, 75 Fed. Reg. 32,453 (2010), with interventions and protests due on or before June 15, 2010. None were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

13. 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 entities that filed them parties to the proceeding.

#### **B. Substantive Issues**

14. We reject SPP's request to accept the Interconnection Agreements with language that does not conform to SPP's current *pro forma* GIA, which reflects the revisions that the Commission accepted in the March 31 Order and the April 21 Order. While the Interconnection Agreements may have been in the course of negotiations before these modifications were accepted, both Interconnection Agreements were executed after the

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<sup>11</sup> Nemaha LGIA Transmittal Letter at 5 and Western Farmers LGIA Transmittal Letter at 6, citing *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-1258-000 (July 22, 2009); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-1057-000 (June 10, 2009).

<sup>12</sup> See *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-1716-001 (July 2, 2010).

revisions to the *pro forma* GIA were accepted.<sup>13</sup> Moreover, SPP's reliance on the letter order issued in Docket No. ER09-1330-000<sup>14</sup> is unpersuasive because, as an unpublished delegated letter order, it does not constitute legal precedent binding on the Commission.<sup>15</sup> Therefore, we require SPP to revise both Interconnection Agreements so that they conform to SPP's current *pro forma* GIA.<sup>16</sup>

15. Changing the Interconnection Agreements so that they are consistent with SPP's current *pro forma* GIA will not result in any material change to the Interconnection Agreements. As SPP points out, article 2.2 of the *pro forma* GIA already contemplates the possibility that the term of such agreements may remain in effect for a period other than 10 years, providing that: "[T]his GIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as Interconnection Customer may request (Term to be specified in individual agreements) . . . ." Therefore, we find that the provision of the Interconnection Agreements that states that they will remain in effect for 25 years is not a deviation from the *pro forma* GIA. Rather, this provision is merely a specification of the individual agreements that is expressly considered and allowed by the provisions of the *pro forma* GIA. As such, it does not require further Commission approval.

16. Similarly, we find that the provision added to Appendix A does not deviate from SPP's *pro forma* GIA, but merely imbues the Interconnection Agreements with greater detail regarding the need for additional studies that may be required and that could result in changes to the interconnection customers' interconnection facilities and network upgrades if other interconnection customers suspend, terminate, or request unexecuted filings of the generator interconnection agreements. This provision merely specifies what

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<sup>13</sup> The Interconnection Agreements were executed on May 14, 2010.

<sup>14</sup> *PJM Interconnection LLC*, Letter Order, Docket No. ER09-1330-000 (Aug. 6, 2009).

<sup>15</sup> *Idaho Power Co.*, 95 FERC ¶ 61,482 (2001); *Cambridge Electric Light Co.*, 95 FERC ¶ 61,162 (2001); and *Westar Energy, Inc.*, 124 FERC ¶ 61,090 (2008).

<sup>16</sup> As noted above, in *Midwest ISO*, the Commission rejected two interconnection agreements containing deviations that were based on previous *pro forma* language because new *pro forma* language had been accepted before the interconnection agreements were executed. The Commission also directed Midwest ISO to "revise the proposed [i]nterconnection [a]greements so that they conform with its new *pro forma* Generator Interconnection Agreement," and required that the conforming agreements be included in Midwest ISO's quarterly reports. See *Midwest ISO* at P 12.

is required by SPP's *pro forma* generator interconnection procedures and therefore does not render the Interconnection Agreements non-conforming.

17. This order directs SPP to revise the Interconnection Agreements, and the revised Interconnection Agreements will conform to SPP's current *pro forma* GIA. A generator interconnection agreement that conforms to SPP's *pro forma* GIA must be reported only in SPP's quarterly transaction reports, and no further Commission action is required.<sup>17</sup> Accordingly, we reject both Interconnection Agreements and require that, after they are revised pursuant to the directives in this order, they should be included as conforming agreements in SPP's quarterly transaction reports.<sup>18</sup>

18. Lastly, we accept SPP's notice that the Western Farmers Interim LGIA will be cancelled effective May 14, 2010.

The Commission orders:

(A) The Commission hereby rejects the Western Farmers LGIA and directs SPP to revise the Western Farmers LGIA to conform to SPP's current *pro forma* GIA, as discussed in the body of this order.

(B) The Commission hereby rejects the Nemaha LGIA and directs SPP to revise the Nemaha LGIA to conform to SPP's current *pro forma* GIA, as discussed in the body of this order.

(C) SPP is directed to include the revised Interconnection Agreements in its quarterly transaction reports as conforming agreements.

(D) SPP's notice that the Western Farmers Interim LGIA will be cancelled is accepted effective May 14, 2010.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>17</sup> See *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,127, at P 7 (2002).

<sup>18</sup> See *supra* n.16.