

133 FERC ¶ 61,040  
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 No. ER10-2243-000

ORDER REJECTING LARGE GENERATOR INTERCONNECTION AGREEMENTS

(Issued October 15, 2010)

1. On August 26, 2010, Southwest Power Pool, Inc. (SPP) filed with the Commission revisions to a Large Generator Interconnection Agreement (LGIA) between SPP, Wildorado Wind, LLC (Wildorado) and Southwestern Public Service Company (SPS) (Revised Wildorado LGIA). SPP's filing also includes an LGIA that the parties entered into in 2005 (Original Wildorado LGIA). SPP explains that it also includes the Original Wildorado LGIA in its filing "out of an abundance of caution" because that LGIA includes provisions the Commission may consider non-conforming. SPP states that it is filing the Revised Wildorado LGIA because it retains the same potentially non-conforming provisions as the Original Wildorado LGIA.

2. In this order, we reject SPP's filing of its Original Wildorado LGIA, because it has been superseded by the Revised Wildorado LGIA, and we reject the Revised Wildorado LGIA, because it contains minor deviations from SPP's *pro forma* LGIA that was in effect at the time the parties executed the Original Wildorado LGIA (2005 *pro forma* LGIA). We direct SPP to modify the Revised Wildorado LGIA to eliminate the deviations it made to the language of the *pro forma* LGIA in effect in 2005 and henceforth include all pertinent information about the modified agreement in SPP's electronic quarterly reports.<sup>1</sup>

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<sup>1</sup> See *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,062, at P 14 (2010) (requiring SPP to conform interconnection agreements to the *pro forma* LGIA effective on the date the agreements were executed).

## **I. Background**

3. On December 22, 2005, SPP, Wildorado Wind, LP, and SPS (doing business as Xcel) entered into the Original Wildorado LGIA, with SPP as the transmission provider, Xcel as the transmission owner, and Wildorado Wind, LP, as the interconnection customer.<sup>2</sup> SPP reported pertinent information about this agreement in its electronic quarterly reports, but did not file the agreement with the Commission for approval.

4. Recently, the parties to the Original Wildorado LGIA determined that they needed to update it to reflect a delay in the commercial operation date of Phase II of the Wildorado facility. Accordingly, SPP sent a Letter Agreement to Wildorado and Xcel on March 9, 2010 proposing modifications to the Original Wildorado LGIA necessary to implement the new commercial operation date. Wildorado and Xcel executed the Letter Agreement on June 15 and June 30, 2010, respectively.

## **II. The Filing**

5. SPP states that the Revised Wildorado LGIA is identical to the Original Wildorado LGIA except for modifications to Appendices A, B, C, E, and F, modifications that were agreed to in the Letter Agreement.<sup>3</sup> SPP states that these modifications conform to the 2005 *pro forma* LGIA. However, SPP states that it is filing the two agreements with the Commission for approval because the Revised Wildorado LGIA includes provisions in the Original Wildorado LGIA that the Commission may consider non-conforming.

6. SPP lists the following provisions as potentially non-conforming:

(a) SPP adds the phrase “Transmission Owner” to a clause in the Recitals of the Original Wildorado LGIA to reflect the three-party nature of the LGIA;

(b) SPP changes a reference to the Commission's regulations in Article 5.17.8 (ii) that it finds erroneous;

(c) SPP incorporates into Appendix D language providing that the parties will cooperate reasonably to comply with the specified security arrangement details and to implement the applicable system infrastructure and operational security standards; and

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<sup>2</sup> The interests of Wildorado Wind, LP have since been assigned to Wildorado Wind, LLC (Wildorado).

<sup>3</sup> The information contained in these appendices, such as a description of the project, milestones, etc., are fill-in-the-blank type items and the Commission does not deem an agreement non-conforming when these blanks are filled in. *See Columbia Gas Transmission Corporation*, 97 FERC ¶ 61,221, at 62,002 (2001).

(d) SPP also adds language to Appendix D indicating the specific communications equipment to be used by the parties. SPP includes a communications schematic diagram to assist the parties in meeting these requirements.

7. SPP states that these additional provisions are consistent with article 8 of the 2005 *pro forma* LGIA, which addresses the communications requirements for the parties. SPP further states that the Commission has accepted other SPP interconnection agreements with similar non-conforming provisions. SPP also states that the Commission previously has accepted original LGIAs that were listed only in SPP's electronic quarterly reports when SPP submitted both the original LGIA and revised LGIA to the Commission.<sup>4</sup> Therefore, SPP argues it would be just and reasonable for the Commission to accept both the Original and Revised Wildorado LGIAs.

8. Finally, SPP requests that the Commission accept the interconnection agreements effective December 22, 2005, for the Original Wildorado LGIA and July 15, 2010, for the Revised Wildorado LGIA.

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

9. Notice of SPP's filing in Docket No. ER10-2243-000 was published in the *Federal Register*, 75 Fed. Reg. 51,992 (2010), with interventions and protests due on or before September 7, 2010. None was filed.

### **IV. Discussion**

10. For the reasons discussed below, we: (1) reject both the Original Wildorado LGIA and the Revised Wildorado LGIA; (2) require SPP to modify the Revised Wildorado LGIA to eliminate the deviations in that agreement from the 2005 *pro forma* LGIA; and (3) report all pertinent information about the modified agreement in SPP's electronic quarterly reports.

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<sup>4</sup> SPP transmittal letter at n.8 citing *Southwest Power Pool, Inc.*, Docket No. ER08-1585-000 (Nov. 18, 2008) (errata issued on Nov. 19, 2008) (unpublished letter order).

11. In Order No. 2003,<sup>5</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 transmission provider's use of *pro forma* documents ensures that interconnection customers are receiving non-discriminatory service, and that they are treated consistently and fairly. The *pro forma* documents streamline the interconnection process by eliminating the need for an interconnection customer to negotiate the individual terms of each interconnection agreement. They also reduce transaction costs and eliminate the need to file interconnection agreements that conform to the *pro forma* template with the Commission.

12. By contrast, 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>6</sup> Because of this high standard, the Commission has rejected various types of deviations from *pro forma* interconnection agreements as unnecessary.<sup>7</sup>

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<sup>5</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>6</sup> *See PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,163 (2005) (*PJM*).

<sup>7</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 ¶ 61,421 (2005) (rejecting deviations to correct mistakes in the *pro forma* agreement); *PJM*, 111 FERC ¶ 61,163 at n. 43 (rejecting a one-sided indemnification provision and changes corresponding to a cancelled agreement).

13. SPP's addition of the clarifying phrase "Transmission Owner" and its correction of one of the *pro forma*'s references to the Commission's regulations, are the kind of deviations that the Commission has rejected.<sup>8</sup>

14. With regard to the language added to Appendix D addressing the parties' security and communications arrangements, we find that this addition does not deviate from SPP's *pro forma* LGIA, but merely provides needed particulars on the specific transaction. The *pro forma* LGIA contemplates parties entering specific details about their agreements into the appendices, including Appendix D. This kind of fill-in-the-blank provision was intended to vary from case to case and does not need to be filed with the Commission.

15. Moreover, SPP's reliance on the letter order issued in Docket No. ER08-1585-000<sup>9</sup> to support its filing is unpersuasive because unpublished delegated letter orders do not constitute legal precedent binding on the Commission.<sup>10</sup>

16. Accordingly, SPP should eliminate the minor deviations it made in the Revised Wildorado LGIA. Once the agreement has been modified to be entirely consistent with the 2005 *pro forma* LGIA, SPP may report all pertinent information about the modified agreement in its electronic quarterly reports, and need not file the modified agreement with the Commission for approval. Moreover, the Original Wildorado LGIA is superseded by the Revised Wildorado LGIA and the Original Wildorado LGIA is no longer in force. SPP should reflect this in its electronic quarterly reports.

17. Lastly, we note that if SPP believes that the current Commission-approved *pro forma* LGIA contains any important errors, the solution is for SPP to file for Commission approval of a revised *pro forma* LGIA, not to file individual LGIAs on a case-by-case basis containing non-conforming terms and conditions. If SPP believes that the so-called error has no practical impact, SPP should abide by Commission-approved *pro forma* LGIA notwithstanding any errors.

The Commission orders:

(A) The Commission rejects SPP's Original Wildorado LGIA and SPP's Revised Wildorado LGIA, as discussed in the body of this order.

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<sup>8</sup> See *supra* n.7.

<sup>9</sup> See *supra* n.4.

<sup>10</sup> *Idaho Power Co.*, 95 FERC ¶ 61,482 (2001); *Cambridge Electric Light Co.*, 95 FERC ¶ 61,162 (2001); *Westar Energy, Inc.*, 124 FERC ¶ 61,090 (2008).

(B) The Commission directs SPP to modify SPP's Revised Wildorado LGIA to eliminate any deviations from the 2005 *pro forma* LGIA and report all pertinent information about the modified agreement in its electronic quarterly reports, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.