

133 FERC ¶ 61,085  
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.

El Paso Electric Company

Docket No. ER10-2599-000

ORDER ON NON-CONFORMING LARGE  
GENERATOR INTERCONNECTION AGREEMENT

(Issued October 26, 2010)

1. On September 10, 2010, El Paso Electric Company (El Paso) filed with the Commission an unexecuted, non-conforming Large Generator Interconnection Agreement (LGIA) with Macho Springs Power I, LLC (Macho Springs). In this order, we reject El Paso's non-conforming change to its *pro forma* LGIA as premature, without prejudice, as discussed below.

**I. Background**

2. El Paso is directly interconnected with Tucson Electric Power Company (Tucson) at Tucson's Springerville and Greenlee substations in eastern Arizona, near the New Mexico border. El Paso owns and/or operates a portion of two 345-kV transmission lines that run from its Luna substation (Luna) near Deming, New Mexico, to those substations: the 210-mile Springerville-Luna line and the 110-mile Luna-Greenlee line.

3. Macho Springs is developing a new 99 MW wind-powered generating facility in two phases that will be interconnected with El Paso's Springerville-Luna line, approximately 25 miles northeast of Luna. Macho Springs indicates that it plans to sell 50 MW from the first phase to Tucson, and alleges that Tucson intends to deliver the power to serve its native load using its firm transmission rights under a 1982 grandfathered agreement.<sup>1</sup> At this time, Macho Springs has not disclosed when it will

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<sup>1</sup> In 1982, El Paso and Tucson agreed to an exchange of power and transmission rights for a term of 40 years (the 1982 Agreement). After a dispute arose in 2005, the Commission ultimately found that Tucson can use its transmission rights granted under the 1982 Agreement to transmit power from Luna to either Springerville or Greenlee, so

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construct the additional resources that will generate the remaining 49 MW of power, nor has it identified to whom it intends to sell the power.

## II. Filing

4. On September 10, 2010, El Paso filed an unexecuted non-conforming LGIA to connect Macho Springs's generator to its transmission system. The single non-conforming change appears in section 11.4.1 – Repayment of Amounts Advanced for Network Upgrades. El Paso proposes to eliminate the requirement that reimbursement be made in full within 20 years of the generator's commercial operation date. The remainder of the Macho Springs LGIA remains unchanged.

5. El Paso argues that the elimination of the provision requiring a repayment by El Paso to Macho Springs for the up-front costs of the network upgrades paid for by Macho Springs, approximately \$12.3 million, is necessary to prevent a significant adverse effect on El Paso's native load ratepayers. El Paso contends that, because Macho Springs states that Tucson will not take transmission service under El Paso's open access transmission tariff (OATT) to transmit the power Tucson purchases from Macho Springs, El Paso will receive no transmission revenue from Tucson to offset the network upgrade investment costs it would be required to pay Macho Springs in 20 years. Further, El Paso argues that the required network upgrades will neither add transmission capacity nor provide reliability or economic benefits to El Paso's native load customers.

6. El Paso states that it is unaware of any case in which the Commission has addressed whether its generator reimbursement policy should apply to transactions outside of a company's OATT. El Paso explains that its proposal is intended to balance the Commission's policy of generator reimbursement with its policy of holding ratepayers harmless from the costs of new generator interconnections. El Paso contends that its proposal achieves this because it provides for reimbursement to Macho Springs through transmission credits, if and when power is transmitted under El Paso's OATT, while protecting El Paso's native load ratepayers from the rate impact that would result from a large cash payment to Macho Springs.

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long as the total capacity does not exceed 200 MW. This dispute is now before the United States Court of Appeals for the D.C. Circuit. *El Paso Electric Company v. Federal Energy Regulatory Commission*, No. 10-1194 (D.C. Cir., filed July 23, 2010).

7. El Paso requests that the Commission accept the LGIA to become effective as of September 11, 2010. In addition, El Paso requests expedited Commission action within 45 days, stating that Macho Springs has asked El Paso to make the request.

### **III. Notice of Filing and Pleadings**

8. Notice of El Paso's filing was published in the *Federal Register*, 75 Fed. Reg. 57,749 (2010), with interventions and comments due on or before October 1, 2010. On September 23, 2010, Macho Springs filed a timely motion to intervene, protest and request for expedited consideration. On October 6, 2010, El Paso filed an answer to Macho Springs's protest. On October 13, 2010, Macho Springs filed a motion for leave to answer and answer to El Paso's answer.

#### **A. Macho Springs's Protest**

9. Macho Springs protests El Paso's filing and requests that the Commission reject El Paso's non-conforming change to the LGIA. Macho Springs argues that Order No. 2003<sup>2</sup> requires all transmission providers to reimburse generators for the costs of network upgrades, plus interest, regardless of whether such upgrades provide specific benefits.<sup>3</sup> Further, Macho Springs contends that the purpose of the Commission's reimbursement policy is to balance competition and infrastructure development, the interests of interconnection customers, and the interests of native load and other transmission customers. Macho Springs explains that for these reasons, the Commission has ruled that a transmission provider must reimburse interconnection customers for the costs of network upgrades, regardless of whether the customer takes transmission service.<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> Macho Springs asserts that the network upgrades to the El Paso transmission system will provide reliability benefits to El Paso by segmenting an outage-prone line and adding a shunt reactor. Nonetheless, Macho Springs notes that it does not wish to raise the reliability issue with the Commission at this time. Macho Springs Protest at 19.

<sup>4</sup> *Id.* at 9 (citing Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 at P 13).

10. Finally, Macho Springs requests that the Commission act on El Paso's filing within 45 days – i.e., by October 25, 2010 – in order to allow Macho Springs to meet its construction milestones. Macho Springs states that it will apply for an Investment Tax Credit grant for the financing of its generator pursuant to section 1603 of the American Recovery and Reinvestment Act of 2009.<sup>5</sup> Macho Springs explains that the guidelines posted on the United States Department of the Treasury website specify that, to qualify for the grant, a project must be placed in service between January 1, 2009, and December 31, 2010 (regardless of when construction begins), or placed in service after 2010 and before the credit termination date (January 1, 2013, for large wind facilities) if construction of the project begins between January 1, 2009, and December 31, 2010.

**B. El Paso's Answer**

11. El Paso asserts that its answer is intended to address two incorrect factual statements made by Macho Springs. El Paso first asserts that the proposed interconnection will not reduce outages, improve outage restoration time, or improve transmission reliability in any way on the Springerville-Luna line.<sup>6</sup>

12. El Paso next argues that this case is one of first impression for the Commission, because the Commission has not applied Order No. 2003's reimbursement policy for network upgrades to grandfathered non-open access agreements such as the 1982 Agreement.<sup>7</sup> Thus, El Paso asserts that the Macho Springs interconnection adds no transmission capacity and provides no additional source of revenue over which the costs could be offset.<sup>8</sup> Moreover, El Paso states that the Macho Springs interconnection will not benefit the grid and will harm El Paso's low and moderate income native load ratepayers.<sup>9</sup> El Paso acknowledges that, while the Commission's pricing policy includes a general expectation that most new transmission facilities will benefit the grid, the Commission should consider whether the new Macho Springs interconnection will provide sufficient benefits to justify socializing the upgrade costs.<sup>10</sup>

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<sup>5</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

<sup>6</sup> El Paso Answer at 1.

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 1 and 3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 4.

#### 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), Macho Springs's timely, unopposed motion to intervene serves to make Macho Springs a party to this proceeding. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept El Paso's answer because it has provided information that has assisted us in our decision-making process. We will reject Macho Springs's answer because it has not provided information that assisted us in our decision-making process.

##### B. Substantive Matters

14. The Commission's established policy requires interconnection customers to provide up-front funding for the costs of necessary network upgrades, and to be reimbursed by the transmission provider who will own and operate these facilities, within a maximum 20-year time frame.<sup>11</sup> Here, El Paso has asked for relief from the 20-year time frame requirement to reimburse Macho Springs to the extent it does not receive transmission revenues directly related to Macho Springs's new generating facility.<sup>12</sup> Even if the Commission were to reconsider its policy given the circumstances alleged in the instant proceeding, the Commission finds that it is premature to determine if El Paso's requested relief is necessary at this time. It is currently not evident how much transmission revenue directly related to the Macho Springs facility El Paso will receive within the 20-year time frame specified in the *pro forma* LGIA. The pleadings in this proceeding raise a number of uncertainties that need to be clarified before the Commission can evaluate El Paso's non-conforming change to the *pro forma* LGIA. For example, currently, the potential purchaser of the remaining 49 MW of Macho Springs's phase II capacity has not been identified, nor has the type of transmission service that the purchaser would use to transmit the 49 MW. Moreover, the record in the dispute proceeding regarding the 1982 Agreement indicates that Tucson is already using a significant portion of its 200 MW of available capacity under the 1982 Agreement to move power from the neighboring Luna Generating Plant.<sup>13</sup> Finally, Tucson's rights

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<sup>11</sup> Order No.2003-C, FERC Stats. & Regs. ¶ 31,190 at P 13.

<sup>12</sup> El Paso Transmittal Letter at 5 and El Paso Answer at 6.

<sup>13</sup> See *El Paso Electric Company v. Tucson Electric Power Company*, 125 FERC ¶ 61,171 (2008). Tucson owns 190 MW of capacity at the Luna Generating Plant.

under the 1982 Agreement appear to expire within the 20-year reimbursement period specified in the *pro forma* LGIA.<sup>14</sup> Given the totality of this factual record, it is not clear whether or not El Paso will provide transmission service under its OATT related to the Macho Springs facility, or that any such service will be insufficient to cover the reimbursement. Accordingly, based on these uncertainties and on the present record, the Commission cannot determine at this time whether El Paso requires any relief from the *pro forma* LGIA related to the Macho Springs facility, even assuming such relief was available.

15. In addition, section 11.4.1 of the *pro forma* LGIA provides for negotiation of an alternative reimbursement plan with Macho Springs. We encourage El Paso and Macho Springs to explore any alternative reimbursement plans that could achieve a mutually beneficial result while still providing a mechanism for reimbursement to Macho Springs within the *pro forma* LGIA's 20-year time frame.

16. For these reasons, the Commission rejects the non-conforming change as premature, and directs El Paso to revise the LGIA to conform to El Paso's current *pro forma* LGIA, and include the LGIA in its quarterly transaction reports as a conforming agreement.<sup>15</sup>

The Commission orders:

(A) The Commission hereby rejects the non-conforming change to the LGIA, without prejudice, as discussed in the body of this order.

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<sup>14</sup> The rights under the 1982 Agreement are for a term of 40 years following the commercial operation date of the Luna-Springerville line, which occurred in April 1990. Tucson's power purchase agreement begins 20 years from the commercial operation date of the Macho Springs generating facility, which is expected to occur by December 31, 2011.

<sup>15</sup> See *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,127, at P 7, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order defining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008).

(B) The Commission directs El Paso to revise the LGIA to conform to El Paso's current *pro forma* LGIA, and to include the LGIA in its quarterly transaction reports as a conforming agreement as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.