

135 FERC ¶ 61,181
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 26, 2011

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER11-3230-000

Wright & Talisman, P.C.
Attention: Tyler R. Brown
1200 G Street, NW
Suite 600
Washington, DC 20005

Reference: Revised Western Trail Large Generator Interconnection Agreement

Dear Mr. Brown:

1. On March 30, 2011, Southwest Power Pool, Inc. (SPP) filed a revised Large Generator Interconnection Agreement (LGIA) between SPP as transmission provider, Western Trail Wind Project I, LLC (Western Trail) as interconnection customer, and Sunflower Electric Power Corporation (Sunflower) as transmission owner. SPP states that the revised Western Trail LGIA provides for the interconnection of 108 wind turbines for a total of 248.4 MW of output to Sunflower's transmission system. SPP states that it is filing the revised Western Trail LGIA because it contains a provision that does not conform to SPP's *pro forma* LGIA.¹ SPP requests that the revised Western Trail LGIA become effective February 28, 2011.

2. On November 25, 2008, SPP, Western Trail, and Sunflower entered into the original Western Trail LGIA, which the Commission accepted through delegated letter

¹ SPP's *pro forma* LGIA is contained within Appendix 6 of Attachment V in its Open Access Transmission Tariff. The *pro forma* LGIA applicable to the Western Trail LGIA is the one in effect on November 25, 2008, the day the parties to the original Western Trail LGIA executed the agreement.

order.² Western Trail subsequently changed the make and model of the wind turbines used at its generating facility. Pursuant to Article 30.10 in the original Western Trail LGIA,³ the parties entered into a letter agreement to amend the appendices of the LGIA to reflect the new technical information and update project milestones. SPP explains that, apart from the changes agreed to in the letter agreement, the revised Western Trail LGIA is identical to the original Western Trail LGIA.⁴ However, the revised Western Trail LGIA still contains a non-conforming provision present in the original Western Trail LGIA.

3. SPP states that subsection (g) in Appendix C of the revised Western Trail LGIA includes a non-conforming provision that allows either the transmission provider (SPP) or the transmission owner (Sunflower) to disconnect the Western Trail generating facility if either party determines: (1) that Western Trail is not operating its generation facilities in accordance with good utility practice; or (2) that Western Trail's operating practices threaten the safety of persons, property, or the integrity of the transmission system. SPP states that the Commission accepted this non-conforming provision in the original Western Trail LGIA and that Sunflower requested that the provision remain in the revised Western Trail LGIA.⁵

4. Notice of SPP's filing was published in the *Federal Register*, 76 Fed. Reg. 19,347 (2011), with interventions and protests due on or before April 20, 2011. Westar Energy, Inc. submitted a timely motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

5. For the reasons discussed below, we will reject the revised Western Trail LGIA because the provision in Appendix C noted above does not conform to SPP's *pro forma* LGIA and SPP has not shown this deviation to be necessitated by operational or other concerns.

² *Southwest Power Pool, Inc.*, Docket No. ER09-442-000 (February 11, 2009) (unpublished letter order).

³ Article 30.10 in the original Western Trail LGIA provides that parties to the LGIA may, by mutual agreement, amend the appendices to the LGIA by a written instrument duly executed by the parties.

⁴ SPP Filing at 2.

⁵ *Id.* at 3.

6. In Order No. 2003, the Commission required transmission providers to offer their customers interconnection service consistent with *pro forma* interconnection documents.⁶ The use of *pro forma* interconnection documents ensures that customers are receiving non-discriminatory service and streamlines the interconnection process by eliminating the need for customers to negotiate the individual terms of each agreement. This reduces transaction costs and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.

7. At the same time, the Commission recognized that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for the filing of a non-conforming interconnection agreement.⁷ In such cases, the transmission provider should indicate clearly where the agreement does not conform to its *pro forma* interconnection agreement and explain its justification for each non-conforming provision of the interconnection agreement.⁸

8. The Commission analyzes such non-conforming filings to ensure that operational or other reasons necessitate the non-conforming agreement.⁹ A transmission provider seeking a case-by-case specific deviation from a *pro forma* interconnection agreement bears a high burden, and it must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.¹⁰

9. We find that SPP has not fully explained what makes the Western Trail interconnection unique, nor has it explained how the non-conforming provision in Appendix C is necessary to accommodate operational concerns associated with the

⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 1-4 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *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), *cert. denied*, 552 U.S. 1230 (2008).

⁷ *See Southwest Power Pool Inc.*, 129 FERC ¶ 61,121, at P 14 (2009) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,078, at P 6 (2006); Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 913-915).

⁸ *See id.* (citing Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140; Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 915).

⁹ *See id.* P 15 (citing *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (PJM Order); *see also El Paso Electric Co.*, 110 FERC ¶ 61,163, at P 4 (2005)).

¹⁰ *See id.* (citing PJM Order, 111 FERC ¶ 61,098 at P 9).

interconnection. In support of this provision, SPP states that the Commission accepted this provision in the original Western Trail LGIA through delegated letter order. However, as the Commission has explained previously, reliance on an unpublished delegated letter order is unpersuasive because such orders do not constitute legal precedent binding on the Commission.¹¹

10. Moreover, as the Commission found in another proceeding concerning the same provision,¹² the non-conforming provision in Appendix C appears to be at odds with section 13.5.2 of the revised Western Trail LGIA—a section taken verbatim from SPP’s *pro forma* LGIA.¹³ Section 13.5.2 allows the transmission provider or transmission owner to disconnect Western Trail’s generating facility “when such . . . disconnection is necessary under Good Utility Practice due to Emergency Conditions.” While section 13.5.2 applies in emergency conditions, the non-conforming provision in Appendix C appears to give the transmission owner and transmission provider broader authority to disconnect the generating facility when “the Transmission Provider or Transmission Owner determines that the Interconnection Customer is not operating its generation facilities in accordance with Good Utility Practice.” In light of this apparent conflict, and the lack of any showing that the non-conforming provision is necessary to accommodate unique operational concerns associated with the interconnection, we reject it here.

11. With the removal of the proposed language in Appendix C, the revised Western Trail LGIA will conform to SPP’s *pro forma* LGIA and may be included as a conforming agreement in SPP’s quarterly transaction reports, requiring no further Commission action. However, if the parties to the agreement wish to retain the non-conforming Appendix C language, SPP may re-file the revised Western Trail LGIA with appropriate justification demonstrating why the Appendix C provision is necessary because of the unique circumstances of the Western Trail interconnection or because of operational concerns necessary to accommodate the interconnection. In the alternative, SPP may propose a revision to its *pro forma* LGIA, thereby making this provision applicable to all interconnection customers.

¹¹ See *Southwest Power Pool Inc.*, 132 FERC ¶ 61,062, at P 14 (2010) (citing *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)).

¹² See *Southwest Power Pool, Inc.*, 133 FERC ¶ 61,132, at P 5, 9-10 (2010).

¹³ That is, the *pro forma* LGIA applicable to the revised Western Trail LGIA.

12. The revised Western Trail LGIA is hereby rejected, as discussed in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.