

135 FERC ¶ 61,186
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. ER11-2528-000
ER11-2528-001

ORDER ACCEPTING FOR FILING UNEXECUTED GENERATOR
INTERCONNECTION AGREEMENT, SUBJECT TO MODIFICATIONS

(Issued May 27, 2011)

1. On December 27, 2010, pursuant to section 205 of the Federal Power Act (FPA), Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted Generator Interconnection Agreement (GIA) among SPP as Transmission Provider, North Buffalo Wind, LLC (North Buffalo) as Interconnection Customer and Oklahoma Gas and Electric Company (OG&E) as Transmission Owner. In this order, we will accept the North Buffalo GIA for filing, subject to a requirement that SPP make certain modifications to the agreement.

Background

2. On December 27, 2010, SPP submitted an unexecuted GIA, which provides for the interconnection of North Buffalo's 765 MW wind generating facility (Facility) to OG&E's transmission system located in Harper County, Oklahoma. The Facility will consist of 510 General Electric 1.5 MW wind turbines, to be interconnected at OG&E's Woodward District extra high voltage (EHV) substation. SPP states that the GIA conforms to the *pro forma* GIA in Appendix 6 of Attachment V of SPP's Open Access Transmission Tariff (Tariff).

3. SPP explains in its filing that North Buffalo declined to execute the North Buffalo GIA because of a dispute concerning certain language that North Buffalo proposes to include in Appendices B and C of the North Buffalo GIA, as further explained below.

Notice and Responsive Filings

4. Notice of the filing was published in the Federal Register, 76 Fed. Reg. 546 (2011), with interventions and protests due on or before January 18, 2011. A timely

motion to intervene was filed by American Electric Power Service Corporation (AEP). North Buffalo filed a timely motion to intervene and protest. Late-filed motions to intervene were filed by OG&E, Midwest Energy, Inc., Xcel Energy Service, Inc. and jointly by Sunflower Electric Power Corporation and Mid-Kansas Electric Company (Joint Parties).

5. On January 31, 2011, SPP filed an answer to North Buffalo's protest. On February 1, 2011, AEP and Joint Parties (AEP/Joint Parties) filed an answer to North Buffalo's protest challenging North Buffalo's request to revise the GIA to allow North Buffalo to propose an alternate Point of Interconnection (POI), without this being deemed a new request for interconnection. On February 9, 2011, North Buffalo filed an answer to SPP's January 31, 2011 answer.

6. On February 22, 2011, SPP filed an answer to North Buffalo's February 9 answer. On February 23, 2011, Western Farmers Electric Cooperative filed a motion to intervene out-of-time and comments. On February 25, 2011, North Buffalo filed an answer to SPP's February 22, 2011 answer. On that same date, the Commission issued a deficiency letter directing SPP to provide additional information in support of its December 27, 2010 submittal. On March 29, 2011, SPP filed its response to the deficiency letter. On April 15, 2011, North Buffalo filed a protest to SPP's response to the deficiency letter. On May 4, 2011, SPP filed an answer to North Buffalo's protest.

Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and an answer to an answer, unless otherwise ordered by the decisional authority. We will accept the answers filed by SPP on January 31 and by AEP/Joint Parties on February 1 because they provided information that has assisted us in our decision-making process. We will reject the other answers filed in this proceeding because they merely reiterate information already provided elsewhere.

B. North Buffalo's Protest**1. Appendix B – Milestones**

9. North Buffalo argues that the footnote in Appendix B¹ should be modified to require that the deadlines be extended when SPP experiences delay in constructing previous network upgrades, because North Buffalo will not be permitted to interconnect until the previous network upgrades are completed.² Thus, North Buffalo requests that the Commission require SPP to change the word “may” to “shall” in the referenced footnote.

10. North Buffalo also requests that SPP be required to replace the term “Quarterly Tracking Report” with “quarterly report of transmission upgrade construction delays referred to in Section V of the Attachment O” of the SPP Tariff.³ North Buffalo argues that this change is necessary because the term “Quarterly Tracking Report” is nowhere defined in the GIA, nor is the definition of “Quarterly Tracking Report” in SPP’s Tariff.⁴

2. Appendix C – Request to Change the Point of Interconnection

11. North Buffalo states that when it submitted its interconnection request, SPP required North Buffalo to propose a POI at an existing substation or transmission line, because SPP would not study a proposed interconnect to a “non-approved” proposed transmission line or substation. North Buffalo asserts that it was SPP (and not North Buffalo) that moved North Buffalo’s originally proposed POI to the Woodward EHV substation. North Buffalo asserts that years after North Buffalo submitted its interconnection request, SPP decided to construct three transmission upgrades as a

¹ See GIA at B-1. The footnote in the proposed GIA follows:

“These dates may be modified by amendment should these proposed dates become unachievable due to regulatory, construction, or procurement delays associated with the Previous Network Upgrades identified in Appendix A.2.e. Such delays of Previous Network Upgrades in Appendix A.2.e will be reported by the Transmission Provider in its Quarterly Tracking Report (or its successor) and delays of the dates marked with “*” will coincide with these reported delays.”

² North Buffalo Protest at 3.

³ SPP Open Access Transmission Tariff, Attachment O “Transmission Planning Process.”

⁴ *Id.*

condition to interconnecting with the North Buffalo Facility. North Buffalo further asserts that SPP and the transmission owners involved in the construction of the transmission upgrades still have not established the precise route for the upgrades, nor have they acquired the property rights for the upgrades or applied for all the needed regulatory approvals for the upgrades.⁵

12. For these reasons, North Buffalo requests the right to designate a POI that is closer to the Facility following the final determination of the design and location of the previous network upgrades. North Buffalo proposes to give SPP a commensurate right to designate an alternative POI for the Facility as long as it would not increase the total interconnection costs to North Buffalo, and it believes this is analogous to section 4.4 of SPP's Generator Interconnection Procedure (GIP).⁶ North Buffalo further argues that its proposed revisions to Appendix C of the GIP would only allow it to propose an alternative POI in lieu of the Woodward substation POI if this would not adversely affect other customers.

C. AEP and Joint Parties' Answer

13. With respect to North Buffalo's request to designate a different POI after the effective date of its GIA, AEP/Joint Parties support SPP's proposal not to include additional language in Appendix C of North Buffalo's GIA. AEP/Joint Parties state that, under SPP's Tariff, SPP does not have provisions for changing the POI, and such a change is only allowed during the study phase of the SPP interconnection process. AEP/Joint Parties point out that section 4.4 of Attachment V of the SPP Tariff provides for modification to a generator interconnection request. Specifically, section 4.4.2 provides that unless a change to the POI meets one of the exceptions set forth in sections 4.4.1, 6.1 and 8.2, it is a "Material Modification," and the customer may then either withdraw the modification request or submit a new Interconnection Request.⁷ AEP/Joint Parties state that the exceptions in sections 4.4.1, 6.1 and 8.2 address changes that can occur within the study process; however, they maintain that none of these would apply here.

⁵ *Id.* at 4.

⁶ *Id.* at 5, citing SPP Tariff, Attachment V, section 4.4, providing that during the interconnection study phase, "either the Interconnection Customer or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request."

⁷ AEP/Joint Parties Answer at 2-3.

14. AEP/Joint Parties assert that the Milestones Schedule in Appendix B provides over two years for North Buffalo to submit a new interconnection request to SPP in order to evaluate other points of interconnection.⁸ AEP/Joint Parties state that if such a request results in a better interconnection option, North Buffalo can cancel the present GIA and proceed with an alternative location.

15. AEP/Joint Parties contend that the POI change considered by North Buffalo is more significant than changing to a different terminal at the same substation or interconnecting on the same line at a location closer to the original POI. AEP/Joint Parties state that changing the POI to a different line or station affects an entirely different part of the system and is clearly a new interconnection request that would require further study. AEP/Joint Parties contend that the proposed language in effect would allow North Buffalo to have a new interconnection request evaluated by SPP without having to go to the beginning of the SPP interconnection process. This will provide a substantial advantage over any other interconnection customer that might request an interconnection in the same new location, according to AEP/Joint Parties.

16. AEP/Joint Parties assert that approval of North Buffalo's proposal would disrupt the SPP interconnection process. AEP/Joint Parties state that it would be unwieldy, uneconomic and unfair to all other customers and SPP's members for SPP to have to divert resources to conduct individual studies. AEP/Joint Parties further assert that to allow such a change to the POI would likely delay the normal study process, create chaos and defeat the benefits of the efficient SPP generation interconnection queue process. AEP/Joint Parties believe that such a circumvention of the existing process, if allowed, could not only cause unreasonable delays but also jeopardize the stability and reliability of the transmission systems within the SPP footprint.

D. SPP Answer

17. In response to North Buffalo's protest to revise language in a footnote of Appendix B, SPP suggests that the term "Quarterly Tracking Report" be replaced with "quarterly report of transmission upgrade status referred to in Section V.6 of Attachment O to the SPP Tariff"⁹ rather than the language suggested by North Buffalo ("quarterly report of transmission upgrade construction delays referred to in Section V of the Attachment O"). SPP asserts that its proposed language more accurately describes the

⁸ Preliminary Impact Study Process provides interconnection customers an opportunity to evaluate interconnection options without having to commit to going forward in the interconnection process.

⁹ Section V.6 of Attachment O of the SPP Tariff provides that SPP must, on a quarterly basis, post the status of the upgrades on the SPP website.

report being referred to by the term “Quarterly Tracking Report.” SPP also contends that its proposed language is more consistent with the language in Attachment O of the SPP Tariff than the language proposed by North Buffalo.

18. With respect to North Buffalo’s request to designate a different POI after the effective date of its GIA, SPP contends that the language North Buffalo proposes to add to Appendix C of the North Buffalo GIA is inconsistent with the SPP Tariff. SPP explains that section 4.4.2 of the SPP Tariff provides that “any change to the POI, except those deemed acceptable under sections 4.4.1, 6.1 and 8.2, or so allowed elsewhere shall constitute a Material Modification,” and requires a new interconnection request. SPP argues that to allow North Buffalo to change the POI after the effective date of the North Buffalo GIA, without a new interconnection request, will violate the SPP Tariff.

19. SPP notes that North Buffalo does not dispute that the SPP Tariff considers a change in the POI after the completion of the interconnection study stage to be a material modification. SPP further asserts that North Buffalo cites no provisions of the SPP Tariff or Commission precedent to support its request to change its POI to an unknown point at a future time, but instead cites to section 4.4 of Attachment V of the SPP Tariff. According to SPP, this section allows either the Interconnection Customer or the Transmission Provider to change the POI, but such changes are explicitly limited to the *interconnection study phase*, and North Buffalo is well beyond the interconnection study phase. Thus, SPP concludes that North Buffalo’s attempt to apply section 4.4 to its current situation is without merit.

20. SPP contends that changes in the number and identity of the previous network upgrades that accommodate North Buffalo’s interconnection did not result in a change to the location of North Buffalo’s POI. SPP argues that the details of the previous network upgrades changed during the study process; however, those changes did not result in a new POI for North Buffalo, according to SPP. SPP also contends that it would be unreasonable to require SPP to permit interconnection customers to choose alternative non-existent POIs after the execution of their GIAs in anticipation of unknown future system conditions.

21. SPP asserts that it did not unilaterally move North Buffalo’s originally proposed POI, as North Buffalo suggests. SPP states that North Buffalo’s original interconnection request specified that “OG&E 345 kV transmission system will be the POI for North Buffalo’s project.” SPP argues that it informed North Buffalo that a more definite POI was required to study the interconnection request. During the interconnection study phase, based on the system as planned and the proximity of available POIs, SPP states that the Woodward substation was chosen as the POI for

North Buffalo's project.¹⁰ SPP contends that North Buffalo acknowledges that the System Impact Study Agreement named the Woodward substation as the POI. SPP states that, during the process of selecting the POI, North Buffalo and SPP were participants in this case, consistent with Section 4.4 of Attachment V of the SPP Tariff.

22. SPP argues that North Buffalo's interconnection request could only specify an existing POI, and not some POI identified after the fact. SPP further argues that the designation of a POI is crucial to the interconnection study process. SPP states that to permit the interconnection customers to move the POI after the study process is complete and a GIA is in place would introduce uncertainty into the interconnection queue. According to SPP, such requests will require additional studies to determine the impact of the new POI and potentially could require additional or different upgrades to accommodate the interconnection. SPP contends that without certainty and finality in the interconnection study process, the interconnection queue will become clogged because of the need to perform additional studies, and unreasonable delays could affect projects that are otherwise ready to move forward.

E. Response to Deficiency Letter

23. While the parties laid out their basic positions in the pleadings described above, they also supplemented their arguments in SPP's March 29, 2011 response to a Staff deficiency letter issued on February 25, 2011 and North Buffalo's protest thereto.

24. After reviewing all pertinent materials submitted in response to the deficiency letter and North Buffalo's protest, we find that the basic facts are not in dispute. At the time that North Buffalo submitted its interconnection request to SPP, the available POI was at the OG&E Woodward substation. During the interconnection study period, North Buffalo informally inquired about changing the POI to the Comanche substation on the proposed Spearville-Comanche-Woodward-Wichita transmission line. SPP informally responded that, if North Buffalo would formally ask SPP to revise the study parameters to substitute the Comanche substation as the POI, this would constitute a material modification that would result in North Buffalo losing its queue position. After considering this response, North Buffalo decided to keep its queue position based on the original POI and made no formal request for a revised POI. SPP completed its study and offered an interconnection to North Buffalo incorporating the original POI (at the OG&E Woodward substation). SPP then completed its process of formally adding the Spearville Comanche-Woodward transmission line to its transmission system. North Buffalo responded to the proffered GIA by declining to sign the agreement and by requesting that the POI be changed to the preferred Comanche substation. SPP refused to make this

¹⁰ The OG&E Woodward substation was an existing substation at the time of the interconnection request.

revision at this stage of the process. When no agreement was reached, North Buffalo requested that SPP file the unexecuted interconnection agreement with the Commission.

F. Commission Determination

25. We accept the North Buffalo GIA, subject to SPP making the modifications discussed below, effective December 10, 2010. We will also grant SPP waiver of the Commission's 60-day prior notice requirement, because SPP filed the GIA no later than 30 days after the requested effective date.¹¹

26. Regarding the footnote in Appendix B of the GIA, North Buffalo requests that it be modified to require that the deadlines be extended in the event that SPP experiences delays in constructing the previous network upgrades. North Buffalo would effect this change by having the Commission require SPP to change the word "may" to "shall" in the footnote of Appendix B. We will deny North Buffalo's request. The footnote in Appendix B already states that SPP will report the delays associated with the previous network upgrades listed in Appendix A.2.e of the GIA on the SPP website on a quarterly basis should there be any delays. The parties can evaluate any delay(s) at the time such delays are identified in order to determine whether the delay(s) will require changes to milestones in the GIA.

27. In addition, North Buffalo argues that the term "Quarterly Tracking Report" in the footnote is undefined and should be replaced with "quarterly report of transmission upgrade construction delays referred to in Section V of the Attachment O of the SPP Tariff." SPP is amenable to clarifying the footnote in this regard, but suggests that the term "Quarterly Tracking Report" be replaced with "quarterly report of transmission upgrade status referred to in Section V.6 of the Attachment O to the SPP OATT." We find that SPP's proposed modification sufficiently addresses the North Buffalo's concern and that it more accurately reflects the SPP Tariff. Therefore, we direct SPP to modify Appendix B to replace "Quarterly Tracking Report" with the language proposed by SPP within 30 days of the date of this order.

28. We will deny North Buffalo's request that the Commission direct SPP to revise Appendix C of the GIA to allow North Buffalo to change its POI, because we find this language inconsistent with SPP's Tariff. Section 4.4.2 of the SPP Tariff provides that "[a]ny change to the [POI], except those deemed acceptable under Sections 4.4.1, 6.1, 8.2

¹¹ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (the Commission will grant waiver of the 60-day prior notice requirement "if service agreements are filed within 30 days after service commences.").

or so allowed elsewhere, shall constitute a Material Modification.”¹² Section 4.4.2 concludes, “[t]he interconnection customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification.”

29. Section 4.4.3 states:

...the Transmission Provider shall evaluate the proposed modifications prior to making them and inform the Interconnection Customer in writing of whether the modifications would constitute a Material Modification. *Any change to the Point of Interconnection shall constitute a Material Modification.* The Interconnection Customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification. [Emphasis added].

30. In early 2009, North Buffalo executed its system impact study agreement, requesting that its POI be at the OG&E Woodward substation. Nine months after executing the system impact study agreement, North Buffalo expressed an interest in connecting to a Comanche substation on a not yet approved Spearville-Comanche-Woodward-Wichita transmission line. In April 2010, SPP’s Board granted conditional approval of the latter project.¹³

31. On June 27, 2010, SPP’s board approved the Spearville-Comanche-Woodward-Wichita 345 kV line and SPP issued a notice to construct on June 30, 2010 to the designated transmission owners. However, when the notice to construct was issued, there was no certainty that the Comanche substation would provide access to 345 kV facilities, which were necessary to accommodate the interconnection of the North Buffalo Facility.¹⁴ Thus, in performing its August 2010 restudy, it was reasonable for SPP not to study North Buffalo’s request for an alternate POI at the Comanche substation.

32. In addition, based upon information in the pleadings, the Commission finds that North Buffalo never made a formal request to change its POI during the study phase. North Buffalo informally determined from SPP that such a request would be deemed a

¹² Material Modifications are defined as those modifications that have a material impact on the cost or timing of any interconnection request with a later queue priority date.

¹³ The condition was Commission acceptance of SPP’s highway-byway proposal, which was approved by the Commission on June 17, 2010 in *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010).

¹⁴ SPP February 22, 2011 Answer at 6.

material change, and it appears that North Buffalo chose not to modify its study request to include a different POI, because it did not want to lose its queue position. However, as noted previously, the alternate POI was not available when the interconnection request was being studied.

33. Nothing in the record suggests that SPP deferred completion of the new transmission line to disadvantage North Buffalo. Rather, SPP followed its normal process. While we understand that North Buffalo would prefer to substitute a more convenient POI, that POI was not available during the study process. While this timing proved unfortunate for North Buffalo, we see no basis to direct SPP to allow North Buffalo to revise its POI at this date without submitting a new interconnection request to SPP.

34. Moreover, as a policy matter, granting North Buffalo's present request, and assuming other interconnection customers would want similar opportunities to change their POIs after their GIAs are signed, would conflict with SPP's approved tariff and could jeopardize generator interconnection queue reform.

The Commission orders:

The Commission hereby accepts for filing the unexecuted Generator Interconnection Agreement among SPP, North Buffalo and OG&E, submitted for filing by SPP on December 27, 2010, subject to a requirement that SPP make the modifications to the agreement discussed in the body of the order and file such modification within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.