

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Haviland Holdings, Inc.

Docket No. EL04-54-000

v.

Southwest Power Pool, Inc.

ORDER DENYING COMPLAINT

(Issued April 16, 2004)

1. In this order, the Commission denies Haviland Holdings, Inc.'s (Haviland) complaint against Southwest Power Pool, Inc. (SPP), alleging that SPP violated Attachment V in its Open Access Transmission Tariff (OATT) when it placed Cielo Windpower, LLC (Cielo), another power project customer, in front of Haviland on SPP's interconnection queue. This order benefits customers because it determines the rights and obligations of two power project customers on SPP's interconnection queue.

Complaint

2. Haviland and Cielo are both pursuing wind farm electricity-generation projects that will interconnect to an eighty (80) mile long radial, 115 kV transmission line in northeast New Mexico.¹ Haviland states that on June 20, 2001, York Research Corporation (York) entered into a lease option agreement with the Wrights, owners of property in the Mesa Redonda area located near Tucumcari, New Mexico. According to

¹ This transmission line is owned by Xcel Energy/Southwestern Public Service Company (Xcel). Xcel is a transmission owning member of SPP. New transmission and interconnection services over Xcel's radial are provided under the terms of SPP's OATT. Xcel's transmission line extends from Clovis, New Mexico to Tucumcari, New Mexico, and crosses a remote, undeveloped area of northeastern New Mexico.

Haviland, York subsequently assigned an option for the right to develop a wind energy project on the Mesa Redonda site to its subsidiary, York Greenpower Corporation (Greenpower). Haviland states further that, on October 5, 2001, York filed an interconnection request for an 80 MW wind generation facility on the Mesa Redonda site (Mesa Redonda Project) with SPP (October 5, 2001, Interconnection Request), which SPP then accepted (SPP GEN-2001-36).

3. According to Haviland, on December 20, 2001, York's creditors filed a petition for involuntary bankruptcy of York in the United States Bankruptcy Court of the Southern District of New York. On June 7, 2002, Haviland asserts, York filed a voluntary Petition for Reorganization that was confirmed by the Bankruptcy Court on October 31, 2002. According to Haviland, under the Reorganization Plan, York was dissolved, its shares and liquid assets were distributed to its creditors, and its development projects, including the Mesa Redonda Project, were transferred to Jasper Energy (Jasper). Haviland states that Jasper then assigned the Mesa Redonda Project, along with its SPP GEN-2001-36 interconnection queue position, to its subsidiary, Mesa Redonda Windpower (MRW), on December 16, 2002.

4. Haviland asserts that MRW then sold its rights and interests in the Mesa Redonda Project to Cielo on April 14, 2003. Haviland asserts further that on April 17, 2003 following unsuccessful negotiations regarding the lease agreement, Cielo notified the Wrights that it was terminating the lease for the Mesa Redonda Project. According to Haviland, Cielo then began looking for another site for a wind power facility in the area, and, on May 19, 2003, Cielo notified SPP that it had a new wind power generation facility site located in Quay County, New Mexico for the SPP GEN-2001-036 interconnection queue position.

5. In the meantime, Haviland states that on May 19, 2003, the Wrights selected it to develop a wind power project on the Mesa Redondo site. Haviland states further that it then filed an interconnection request for an 80 MW wind generation project at the Mesa Redonda site with SPP on May 22, 2003 (May 22, 2003 Interconnection Request). According to Haviland, SPP notified Haviland that its May 22, 2003 Interconnection Request was accepted and entered in the interconnection queue on June 25, 2003 (SPP GEN-2003-003).

6. Haviland alleges that SPP, on September 1, 2003, and again on September 12, 2003, notified it that Cielo's project would continue to be first in SPP's interconnection queue. Haviland states that it then contacted the Commission's Hotline staff requesting assistance in resolving the issue of whether Cielo's project or Haviland's project should

be designated first in SPP's interconnection queue. According to Haviland, the Commission's Hotline staff was unable to resolve the issue.

7. Haviland argues in its complaint that SPP's placement of Cielo in front of Haviland in the interconnection queue violates SPP's OATT and sections 1 and 3 of the associated Guidelines for Generation Interconnection Requests to SPP's Transmission System. Haviland contends that under the terms of SPP's OATT and Guidelines, Cielo's new site for the wind farm project triggers a requirement that Cielo submit a new interconnection request to SPP or, in the alternative, that Cielo submit a request to change the location of the site and its associated point of interconnection. In either case, Haviland alleges that Cielo's request for a new site for the wind farm project should be accorded a position behind Haviland on SPP's interconnection queue.

8. Haviland also argues that Cielo's placement in front of Haviland in the interconnection queue is inconsistent with the Commission's Order No. 2003 which it alleges provides that a change in the site or point of interconnection requires a new interconnection request even if there is no material modification of the impact on the transmission system.²

9. Finally, Haviland argues that Cielo did not have any right to the queue position established by York for the Mesa Redonda Project because neither Cielo nor MRW sought written approval by the Wrights for an assignment of the lease as required by section 1.18.4 of the lease.

10. Haviland, therefore, requests the Commission to order SPP to place Haviland in front of Cielo in its interconnection queue.

SPP's Answer

11. On February 5, 2004, SPP filed an answer to Haviland's complaint requesting the Commission to dismiss Haviland's complaint. In its answer, SPP provides additional information clarifying certain factual claims in Haviland's complaint. SPP notes that Cielo notified it on April 2, 2003, that Cielo had purchased the Mesa Redonda Project from MRW, along with the SPP GEN-2001-036 interconnection queue position rights. According to SPP, shortly thereafter, Cielo notified SPP that, in light of its failure to

² See 68 Fed. Reg. 49,846 (Aug. 19, 2003) and 68 Fed. Reg. 69,599 (Dec. 15, 2003), III FERC Stats. & Regs. ¶ 31,146 (July 24, 2003), order on reh'g, 106 FERC ¶ 61,220 (2004).

successfully reach agreement with the Wrights concerning the lease for the Mesa Redonda Project, it was considering alternative locations for its planned wind farm project.

12. SPP states, further, that Cielo provided it with the technical specifications for an alternative location for the proposed wind farm project on or about May 8, 2003, indicating that the new location was configured to match the size and interconnection specifications already studied and approved for the SPP GEN-2001-036 interconnection queue position, and that the interconnection point was identical to the interconnection point previously approved for SPP GEN-2001-036. SPP notes that its own review of Cielo's alternative location for the wind farm project confirmed that: (1) the point of interconnection was unchanged; (2) the planned project size was unchanged; (3) the alternative location did not introduce any other material engineering changes; and (4) no other interconnection request was pending for the line at that time.

13. SPP asserts that, at the time Haviland's subsequent interconnection request was made on May 22, 2003, SPP had already confirmed with Cielo that the original GEN-2001-036 interconnection queue position would be honored irrespective of Cielo's alternative location for the wind farm project. According to SPP, this confirmation was based on its determination that the interconnection point and associated system/operation impacts were materially unchanged. SPP emphasized that this confirmation pre-dated Haviland's May 22, 2003, request to SPP for an interconnection on the transmission line.³

14. SPP argues that Haviland's alleged list of changes and discrepancies in Cielo's relocated wind farm project do not, either individually or collectively, amount to a material change within the meaning and purpose of Attachment V of SPP's OATT and the accompanying Guidelines. According to SPP, even if SPP required Cielo to make a new interconnection request for the relocated wind farm project, the timing of Haviland's subsequent interconnection request would not result in a different queue position for Cielo. SPP notes that, with no change to either the MW size of the project or its planned interconnection point on the transmission line for the Cielo relocated wind farm project—the two variables SPP states would most directly impact operations on the SPP grid—there was no operational justification upon which SPP could refuse to honor Cielo's GEN-2001-036 queue position. SPP points out that its Guidelines do not provide for forfeiture of queue position rights upon transfer of project assets, and SPP does not require a new interconnection request when changes, such as those proposed by Cielo, do

³ SPP notified Haviland one month later, on June 25, 2003, that its interconnection request was entered on SPP's interconnection queue and designated GEN-2003-003.

not have a material impact on the interconnection. SPP notes, further, that Cielo's relocated wind farm project will tie into the transmission line at the same point originally designated for the GEN-2001-036 interconnection request.

15. SPP contends that Order No. 2003 is inapplicable to Haviland's complaint because the final rule's effective date is January 20, 2004.⁴ SPP points out that Cielo perfected its interconnection queue position prior to Haviland's interconnection request and the effective date of Order No. 2003. SPP also argues that Haviland's alleged defects relating to the Mesa Redonda lease with the Wrights are irrelevant to Cielo's demonstration of site control because Cielo provided SPP with evidence of ownership or right to acquire the relocated wind farm project prior to SPP's receipt of Haviland's interconnection request. SPP states that, with no other interconnection requests pending at the time and given the absence of any incremental system impacts associated with Cielo's relocated wind farm project, there was no operational or other basis for SPP to repudiate Cielo's interconnection queue position.

16. SPP concludes, therefore, that Cielo's interconnection queue position, GEN-2001-036, should not be disturbed in this case, and the Commission should dismiss Haviland's complaint.

Notice of Filing and Responsive Pleadings

17. Notice of Haviland's complaint was published in the Federal Register, 69 Fed. Reg. 3574 (2004), with the answer to the complaint and other comments, interventions or protests due on or before February 5, 2004.

18. On February 5, 2004, Southwestern Public Service Company (SPS) and Cielo Wind Power, LLC (Cielo) filed timely motions to intervene and comments opposing Haviland's complaint.

19. SPS states that it has an agreement with Cielo to purchase the output of Cielo's wind farm project to serve its native load customers.⁵ SPS points out that Cielo's wind farm project is much further advanced in SPP's interconnection process because York, Cielo's predecessor in interest, submitted its interconnection request to SPP on October 5,

⁴ Supra note 2.

⁵ SPS states further that it has already filed, and the Commission has accepted, its engineering and design agreement for Cielo's wind project. See Southwest Power Pool, Inc., Letter Order in Docket No. ER04-219-000 (Jan. 23, 2004).

2001, while Haviland submitted its interconnection request to SPP on May 23, 2003.⁶ SPS contends that Haviland provides no evidence to establish that it should be entitled to an interconnection queue position ahead of Cielo's queue position. SPS points out that, given the characteristics of the transmission line in that area, it makes no difference from an electrical perspective where on the line the Cielo's and Haviland's projects interconnect. Therefore, according to SPS, Cielo's relocation of the wind farm project is immaterial to interconnection on the transmission line.

20. Cielo points out that, from the time it acquired the Mesa Redonda Project and its associated GEN-2001-036 interconnection queue position in March of 2003 until June 25, 2003, the date SPP notified Haviland that its interconnection request was entered in the queue behind Cielo's interconnection request, Cielo's interconnection request was the only request in the queue for the transmission line. Cielo states that after its acquisition of the Mesa Redonda Project and the rights to the associated SPP GEN-2001-036 interconnection queue position, it determined that (1) the Mesa Redonda site for the project was not sufficient to develop a successful wind farm project, and (2) the site and its owners, the Wrights, were the subject of a foreclosure action. Cielo concluded that in light of these outstanding issues, development of a wind farm project at the Mesa Redonda site was not prudent or profitable, and notified SPP that it was considering other locations for the wind farm project.

21. Cielo states, further, that it provided SPP with technical specifications for an alternative site for the wind farm project in May 2003, and confirmed with SPP that the interconnection point and the transmission system impact were identical to those provided in the original interconnection request approved by SPP for GEN-2001-036.

⁶ SPS points out that the 80-mile 115 kV radial transmission line has limited and finite capacity, and that, as a result, the transmission capacity will only accommodate one of the wind farm projects—either Cielo's or Haviland's project, not both. According to SPS, therefore, the issue for Haviland is not its position in the interconnection queue, but rather the fact that Haviland has not requested transmission service to deliver power from its proposed wind farm project to any load and therefore will not be able to obtain transmission service for its wind farm project without paying for new transmission facilities.

Discussion

Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), SPS's and Cielo's timely, unopposed motions to intervene serve to make them parties to this proceeding.

Commission Decision

23. As an initial matter, we find that the events subject to Haviland's complaint occurred prior to the January 20, 2004, effective date of Order No. 2003. As a result, the generation interconnection procedures in Order No. 2003 are not relevant to the Commission's determination on the issues in this proceeding. Therefore, the existing generator interconnection procedures in SPP's OATT contain the relevant criteria for determining whether SPP correctly concluded that Cielo should not lose its queue position ahead of Haviland.

24. The Commission finds that SPP has complied with the Interconnection Procedures in Attachment V of its OATT and the associated Guidelines for Generation Interconnection Requests to SPP's Transmission System when it afforded Cielo's relocated wind farm project priority ahead of Haviland's wind farm project in SPP's interconnection queue.

25. Attachment V and the Guidelines are intended to elicit project information sufficient to allow SPP to analyze system and operational impacts of a proposed interconnection. The Guidelines state that "to make a Generation Interconnection Request, the applicant shall complete the "Feasibility Study Agreement" (Appendix D of Attachment V of the SPP OATT) and return it to SPP along with any pertinent data available at the time. Pursuant to the Guidelines, an applicant must submit, among other things, the following: (1) evidence of ownership in or right to acquire the site of the proposed plant; (2) size (in MW) of the proposed plant; (3) proposed method of interconnecting the plant to the SPP transmission system; and, (4) in-service date of the proposed plant. The Guidelines further state that "each Generation Interconnection request shall investigate a single interconnection arrangement. If multiple sites, configurations, or generation output levels are desired, separate requests must be made and separate Feasibility Study Agreements must be signed."⁷

⁷ Guidelines for Generation Interconnection Requests to SPP's Transmission System under SPP's Open Access Transmission Tariff.

26. Attachment V and the Guidelines do not specifically state what would constitute a change significant enough to warrant SPP requiring Cielo to submit a new interconnection request. We note further that there are no provisions in Attachment V or the Guidelines that preclude assignment or transfer of queue position rights. Likewise, there is no provision in Attachment V and the Guidelines that requires Cielo to submit a new request as a result of changes in project siting. As long as the supervening changes do not impose increased demands on the transmission system subject to SPP's OATT or result in engineering changes that would undermine the reliability/validity of SPP's operations, SPP does not require a project developer to resubmit a subsequent interconnection request (and forfeit queue position).⁸ Historically, SPP's over-riding principle in determining whether a new request must be submitted is whether the changes have a significant impact on the transmission system.

27. Cielo's decision to relocate the wind farm project from the Mesa Redonda site to another site did not change either the MW size of the wind farm project or its planned interconnection point on SPP's transmission line. In the case of wind farm projects, final siting decisions are often dependent upon wind data obtained in the study phases that follow the interconnection request. Cielo has demonstrated that its relocated wind farm project will tie into the transmission line at the same point originally designated for the GEN-2001-036 interconnection request. With no change to either the MW size of the project, or its planned interconnection point on the the SPP system, there is no evidence of any significant operational change to or impact on SPP's system.

28. It is clear from the evidence in the record that Cielo provided assurances to SPP of site control for the relocated wind farm project on May 19, 2003, a date that is prior to SPP's receipt of Haviland's interconnection request on May 22, 2003. As SPP pointed out: (1) the point of interconnection was unchanged, (2) the project size was unchanged, (3) the relocation did not cause any other significant engineering changes, and (4) no other interconnection request was pending on the transmission line at the time Cielo confirmed site control for the relocated wind farm project. Haviland has presented no evidence to refute SPP's determination that Cielo should retain its position ahead of Haviland in the interconnection queue. The Commission, therefore, denies Haviland's complaint.

⁸ SPP's Answer, p. 11.

The Commission orders:

Haviland's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.