

123 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Montgomery Great Falls Energy Partners LP

Docket No. EL07-102-000

v.

NorthWestern Corporation

ORDER DENYING COMPLAINT

(Issued May 16, 2008)

1. On September 17, 2007, Montgomery Great Falls Energy Partners LP (Montgomery)¹ filed a complaint with the Commission under section 206 of the Federal Power Act (FPA)² and Rule 206 of the Commission's Rules of Practice and Procedure³ against NorthWestern Corporation, d/b/a NorthWestern Energy (NorthWestern)⁴ requesting that the Commission issue an order granting relief to remedy NorthWestern's claimed failure to adhere to open-access transmission tariff (OATT) standards related to management of NorthWestern's generator interconnection queue. Montgomery claims that, as a result of such failure, NorthWestern has assigned over \$146,700,000 in estimated costs to Montgomery in order to interconnect a planned generating facility to NorthWestern's transmission system. For the reasons appearing below, the complaint is denied.

¹ Montgomery is an affiliate of Montgomery Energy Partners LP, an energy development and asset management company that builds and manages power plants throughout the world.

² 16 U.S.C. § 824e (2000).

³ 18 C.F.R. § 385.206 (2007).

⁴ NorthWestern is a public utility that provides regulated electric and natural gas transmission and distribution services in Montana, South Dakota, Nebraska, Iowa and North Dakota, with facilities located primarily in Montana and South Dakota.

2. In brief, Montgomery's new interconnection request resulted in a new, lower queue position. That new, lower queue position, in turn, effectively resulted in new, different – and higher – interconnection costs, reflecting the effect of the other ten interconnection requests that were now ahead of Montgomery in the queue. As we explain below, there was nothing inappropriate in Montgomery being assigned a new, lower queue position, and there was nothing inappropriate in the resulting interconnection costs changing. Under Order No. 2003,⁵ as explained below, changes to a proposed generator interconnection that constitute material modifications will result in the loss of a generator's queue position;⁶ a material modification is one which adversely affects, or harms, other projects lower in the queue.⁷ While Order No. 2003 allows for extension of the commercial operation date, without regard to the cause of the delay, for a cumulative period of three years, an extension greater than three years can be considered a material modification -- requiring a customer to withdraw from the interconnection queue and to submit a new interconnection request (if lower-queued interconnection customers would be harmed by such an extension).⁸ Here, as we describe below, the commercial operation date was proposed to be extended beyond three years, and such an extension can be, and here would have been, a material modification.

3. What Montgomery seeks, however, is the right to preserve the project's prior position in NorthWestern's interconnection queue – essentially, that Montgomery's project be placed ahead of other projects now ahead of it in the queue. As we explain below, we see no persuasive reason to allow Montgomery to leapfrog ahead of those other projects.

⁵ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (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) (collectively, Order No. 2003).

⁶ *Id.*, *pro forma* LGIP § 4.4.

⁷ *Id.*, *pro forma* LGIP § 1 (definition of "Material Modification").

⁸ Section 4.4.5 of the *pro forma* LGIP provides that extensions of less than three cumulative years in the commercial operation date of a generating facility are not considered material modifications requiring a customer to withdraw from the interconnection queue and submit a new interconnection request. *See id.*, *pro forma* LGIP § 4.4.5.

4. NorthWestern advised Montgomery that NorthWestern felt itself constrained by Commission precedent from extending the commercial operation date for the project; extending the date for the project, which Montgomery sought, would constitute a material modification to the existing Large Generator Interconnection Agreement (LGIA) as it would harm lower-queued interconnection customers. NorthWestern advised Montgomery, however, that NorthWestern could, in fact, allow interconnection of part of the project, 167 MW of capacity, to the transmission system without it being a material modification to the LGIA – because the existing LGIA contemplated that units would be placed in operation as they became available, and because it would not adversely affect others lower in the queue. But NorthWestern also advised Montgomery that the balance of the project would have to be filed as a new project and it would take a subordinate position in the queue. Montgomery, in turn, advised NorthWestern that it no longer desired to assume the obligations of the MMW I LGIA. It allowed cancellation of the MMW I LGIA and instead submitted a new Interconnection Request. The consequence of Montgomery's decisions was, as provided in Order No. 2003 and the LGIP, to lose its place in the NorthWestern interconnection queue, with a concomitant incurrence of substantially greater interconnection costs. Montgomery must bear the consequences of its decisions.

Background

5. The Montgomery project consists of a 277 MW (nameplate) gas-fired generating facility that is currently being constructed in Great Falls, Montana.⁹ The Montgomery project will be interconnected to NorthWestern's transmission system at NorthWestern's 230 kV Great Falls substation. The proposed commercial operation date for the Montgomery project is June 2009.

6. The Montgomery project was originally styled Montana Megawatts I (MMW I). MMW I was owned by Montana Megawatts I, LLC (Montana Megawatts), an indirect, wholly owned subsidiary of NorthWestern. Montana Megawatts planned to construct a 277 MW (nameplate) gas-fired combined-cycle generating facility. The original proposed commercial operation date for the original Montgomery project, then known as MMW I, was November 1, 2001. On May 25, 2001, Montana Megawatts submitted a request to NorthWestern to interconnect MMW I to the NorthWestern transmission system at NorthWestern's Great Falls substation. On February 12, 2003, Montana Megawatts informed NorthWestern that the commercial operation date for MMW I would be extended to June 2004. Thereafter, in September 2003, NorthWestern declared bankruptcy and announced that it had initiated efforts to transfer ownership of MMW I to

⁹ The generating facility actually consists of two 86 MW gas turbines and one 105 MW steam turbine. Complaint at 6.

an unaffiliated developer to complete the project. By that time, Montana Megawatts had invested more than \$70 million to develop MMW I, including the acquisition of a site, and had contracts for equipment and environmental permitting.

7. On May 27, 2005, Montana Megawatts and NorthWestern executed a Large Generator Interconnection Agreement, calling for a commercial operation date of January 31, 2007, which was subsequently extended to May 31, 2007 by request of Montana Megawatts. Montana Megawatts entered into an agreement to sell the generation equipment it had acquired for the MMW I project, and NorthWestern continued to market the site and various permits and contractual rights, including the initial LGIA.

8. Montgomery and NorthWestern engaged in negotiations for sale of the MMW I project to Montgomery. Such negotiations included discussions about the LGIA, which NorthWestern insisted must be completed and in service in its entirety (i.e., the entire 277 MW capacity) by June 30, 2007, citing the Commission's decision in *Southern Montana Electric Generation & Transmission Coop., Inc. v. NorthWestern Corp., d/b/a/ NorthWestern Energy and Montana First Megawatts I, LLC*, 113 FERC ¶ 61,023 (2005) (*SME*). In accordance with *SME*, any extension of the commercial operation date beyond May 31, 2007, or 36 months from the effective commercial operation date for the project,¹⁰ could constitute a material modification in the LGIA under the Large Generator Interconnection Procedures (LGIP) in NorthWestern's OATT, and result in Montgomery losing its place in the generator interconnection queue. Montgomery would then be required to submit a new Interconnection Request and take its place at the bottom of the queue. NorthWestern advised Montgomery that, although it could not extend the commercial operation date, it could, consistent with the LGIA, allow interconnection of units commercially operable by May 31, 2007, and that a new interconnection request would need to be submitted for any units not commercially operable by May 31, 2007.¹¹ Montgomery also states that it was told orally by a NorthWestern representative that the expected cost of the interconnection upon submission of a new request would be approximately \$15 million.

¹⁰ The parties to the LGIA originally agreed to a commercial operation date of June 1, 2004. The Commission, in the *SME* order, determined that June 1, 2004 would be the date from which a 36-month limitation on extensions would be counted, which was the expected commercial operation date as of the date Order No. 2003 was issued. See *SME*, 113 FERC ¶ 61,023 at P 27.

¹¹ Answer at 5-6; see also Letter from Mike Cashell of NorthWestern to Michael Young, Montana Megawatts I, LLC, dated July 26, 2006, included as a part of Attachment A to NorthWestern's Answer filed October 9, 2007.

9. Montgomery chose to forego purchase of the MMW I LGIA with its June 30, 2007 in-service date. On August 28, 2006, Montgomery entered into an agreement to purchase 100 percent of the interest in MMW I, exclusive of the LGIA.¹²

10. Montgomery subsequently submitted a *new* request to interconnect the Montgomery project to the NorthWestern transmission system on December 6, 2006.¹³ An Interconnection Feasibility Study was completed on April 3, 2007, and Montgomery requested NorthWestern to perform an Interconnection System Impact Study (SIS). NorthWestern provided the SIS report to Montgomery on July 18, 2007, which found that the system could accommodate the Project -- but with system improvements and mitigation measures. The SIS identified some \$146,000,000 in Network Upgrade costs which reflected Montgomery's new, lower queue position.

11. While not specifically challenging any of the costs identified as necessary to accommodate the Montgomery project interconnection request, Montgomery did challenge its place in the queue of projects to be completed and interconnected to NorthWestern. By letter dated August 17, 2007, Montgomery identified four projects ahead of the Montgomery project in the queue, questioning whether NorthWestern had complied with its own OATT in maintaining queue positions for those projects while extending the time for meeting certain deadlines. On September 12, 2007, NorthWestern replied that it was in compliance with its OATT, and that the projects were within the timelines of its LGIP. This complaint followed.

Montgomery's Complaint

12. Montgomery seeks a determination that it should be advanced in NorthWestern's generator interconnect queue ahead of five projects (specifically, Project Nos. 14, 20, 31, 32, and 33) that precede its project in the queue. Its claim is based on its contention that NorthWestern has mismanaged its generator interconnection queue. Montgomery claims that NorthWestern has acted in a manner inconsistent with the LGIP included in NorthWestern's OATT in allowing those five projects to extend their study dates or other

¹² On August 7, 2006, a representative of MMW I sent NorthWestern a notice of termination of the LGIA as required by Section 2.3.1 of the LGIA, which was filed with the Commission on August 14, 2006 in Docket No. ER06-1363-000. The notice of termination stated in part that Montgomery "has informed [MMW I] that it no longer desires to assume the obligations under the LGIA...." NorthWestern's filing was noticed on August 18, 2006, with comments or protests to be filed by September 5, 2006. None were filed. On September 21, 2006, the Commission issued a delegated letter order accepting the notice of termination effective August 11, 2006.

¹³ By that point, there were ten projects ahead of Montgomery's.

in-service dates without good reason for doing so. In the alternative, Montgomery seeks a determination that NorthWestern has applied its standards in an unduly discriminatory and preferential manner against Montgomery. Montgomery further claims that NorthWestern has failed to maintain the required information related to various interconnection requests on its Open Access Same-time Information System (OASIS).

13. In support of its claim that NorthWestern has mismanaged its queue in violation of NorthWestern's OATT and LGIP and the Commission's Order Nos. 2003 and 2003-A, Montgomery first contends NorthWestern has ignored the LGIP timelines for performing studies.¹⁴ Montgomery contends that under the LGIP, no more than seven months is supposed to elapse from the date an SIS for a generating project is completed and the date a Facilities Study is completed. Montgomery claims that NorthWestern has failed to comply with the LGIP study guidelines in Project No. 20 (SIS completed on May 24, 2005; over 28 months later Facilities Study not yet completed); Project No. 31 (SIS completed March 2006; over 18 months later Facilities Study not yet completed); Project No. 32 (revised SIS completed April 2006; over 16 months later Facilities Study not yet completed); and Project No. 33 (SIS completed May 2006; over 15 months later Facilities Study not yet completed). Montgomery claims that NorthWestern's decision to ignore the timelines in the LGIP have allowed over 1,200 MW of projects to remain in the queue for extended periods with no apparent progress in the study process. Montgomery states that the Commission should order NorthWestern to clear its queue of these projects.

14. Montgomery also claims that NorthWestern has failed to comply with the LGIP timelines for entering into Large Generator Interconnection Agreements (LGIA) and for in-service dates.¹⁵ It claims that Project No. 14 is not in compliance with these timelines, since the Phase II Facilities Study for that 700 MW generator was completed in October 2004, and there is no indication that a LGIA has been signed or filed unexecuted. While Montgomery recognizes that the customer and the transmission provider can agree to extend the negotiations of a final LGIA, it contends that the three years extension here goes beyond the extensions contemplated by the LGIP and by Order No. 2003, citing Order No. 2003 at P 242: "[T]his Section provides sufficient milestones and penalties to reasonably ensure that the Interconnection Customer is intent on completing the project."

15. While Montgomery claims that it does not have enough information to determine definitively whether the in-service dates of Project Nos. 14, 20 and 31 are consistent with Commission policy, it points out that the LGIP requirement has a seven-year limitation unless extended by the parties for a period up to ten years. For Project No. 31, since the

¹⁴ Complaint at 17-22.

¹⁵ *Id.* at 22-25.

request for service was submitted after the date of Order No. 2003 (July 2003), the provisions of that order govern.

16. Montgomery alternatively asks the Commission to remedy what it claims to be NorthWestern's unreasonable and unduly discriminatory treatment of its project.¹⁶ Montgomery states that it was in a position to place 172 MW of the 277 MW (nameplate) capacity of the Montgomery project into service by the June 2007 commercial operation date. Further, Montgomery states that it planned to place the remaining capacity in service only four months later, and that none of the technology associated with the project would have changed. Montgomery states that NorthWestern's transmission group rejected this approach to the project start-up, stating that if Montgomery were to place anything in service short of the full capacity of the plant, the entire project would drop to the bottom of the interconnection queue. "To avoid litigation and given the verbal estimates the NorthWestern transmission group had provided regarding the likely estimated interconnection costs that would result from a new interconnection request (no greater than \$15 million), [Montgomery] chose to forego acquiring the original LGIA from Montgomery Megawatts...and submitted a new interconnection request for the Project."¹⁷ The estimated interconnection costs of \$146 million were presented by NorthWestern to Montgomery. Montgomery claims that these costs are not properly allocated to its project because (1) the new interconnection request does not amount to a "material modification," and (2) NorthWestern has not implemented the LGIP in a non-discriminatory manner *vis-à-vis* Montgomery. Montgomery states that NorthWestern stated that it had agreed with the other project customers to an extension of the commercial operation date or of the timelines for various studies, all as permitted under the LGIP. However, Montgomery states that this is in contrast to its situation where NorthWestern's transmission group stated that Montgomery would lose its place in the queue even though the project initially would be operated at approximately 2/3 of capacity on the expected in-service date, with the project operating at its full capacity only four months later.

17. As a remedy for the alleged unreasonable conduct and undue discrimination, Montgomery requests that the Commission either remove other projects from the interconnection queue that have not satisfied the timing requirements under the LGIP, or alternatively that the Commission find that Montgomery should only be responsible for the costs of the system upgrades originally identified in the initial Facilities Study (i.e., some \$1.5 million in system upgrades). Montgomery claims that "Such a remedy would restore [Montgomery] to the position it would have been in had NorthWestern not

¹⁶ *Id.* at 26-30.

¹⁷ *Id.* at 26-27

improperly required [Montgomery] to submit a new interconnection request for the Project.”¹⁸

NorthWestern’s Answer

18. On October 9, 2007, NorthWestern filed an answer to the complaint filed by Montgomery. NorthWestern contends that it managed its interconnection queue in a manner consistent with the OATT at all times relevant to the facts and circumstances within the complaint. NorthWestern states that Montgomery’s request to clear the senior projects in the generation interconnection queue on the basis of improper application of the LGIP in its OATT is without merit. NorthWestern states that Montgomery has sought to create an impression that NorthWestern failed to adhere to the requirements of the LGIP and discriminated against Montgomery.

19. According to NorthWestern, Montana Megawatts submitted a request for interconnection of a 280 MW gas-fired generation facility near Great Falls, Montana on May 25, 2001, with a projected operating date of “June 1, 2001.”¹⁹ On May 12, 2003, Montana Megawatts informed NorthWestern that the commercial operation date of the Project would be extended to June 1, 2004. On June 24, 2004, Southern Montana Electric Generation & Transmission Cooperative, Inc. (SME) submitted a competing request for the interconnection of a 268 MW coal-fired generating facility also near Great Falls, Montana. On February 2, 2005, Montana Megawatts notified NorthWestern of another extension of the commercial operating date until January 31, 2007. NorthWestern and Montana Megawatts executed the *pro forma* LGIA in May 2005 and filed it with the Commission.

20. NorthWestern states that, in August 2005, SME filed a complaint with the Commission claiming that NorthWestern impermissibly granted numerous in-service date extensions to Montana Megawatts. The complaint was denied by the Commission on October 11, 2005, and in resolving the complaint the Commission stated that any further extension of the commercial operation date beyond 36 months may no longer be

¹⁸ *Id.* at 30.

¹⁹ According to NorthWestern, study work on MMW I was performed in 2001-2002 under policies in effect prior to the LGIP and the Commission’s order in *SME*, which established the effective date for the Study Process as January 11, 2004. The June 1, 2001 date referred to above is apparently in error. See Attachment A to NorthWestern’s answer, Interconnection Application, item 3, where the Proposed Commercial Operation date is stated to be November 2001 through December 2002.

available to the Montana Megawatts Project without it being considered a material modification.²⁰

21. NorthWestern avers that, in the summer of 2006, Montgomery became a prospective purchaser of the Montana Megawatts I project. During the negotiations and due diligence process, the commercial operation date for the project was discussed. Montgomery took the position that it could place in operation 160 MW of the proposed 280 MW by May 31, 2007, and that doing so would be sufficient to meet the commercial operation date set forth in the LGIA between Montana Megawatts and NorthWestern. NorthWestern responded that consistent with the *SME* order an additional extension of the commercial operation date must be analyzed as a potential material modification of the Montana Megawatts I LGIA. NorthWestern states that under the executed LGIA a material modification is one that has a material impact on the cost or timing of any interconnection request with a junior date. After review of the LGIA and the *SME* order, NorthWestern determined that any extension of the commercial operation date would constitute a material modification and impact junior projects in the queue. NorthWestern states that it advised Montgomery that although it could not extend the commercial operation date, it could, consistent with the LGIA, amend the existing Montana Megawatts LGIA to allow interconnection of units commercially operable by May 31, 2007, and that a new interconnection request would need to be made for any units not commercially operable by May 31, 2007.²¹

22. On August 7, 2006, a representative of MMW I sent NorthWestern a notice of termination of the LGIA as required by section 2.3.1 of the LGIA, which was filed with the Commission on August 14, 2006 in Docket No. ER06-1363-000. The notice of termination stated in part that Montgomery “has informed [MMW I] that it no longer desires to assume the obligations under the LGIA....” NorthWestern’s filing was noticed on August 18, 2006, with comments or protests to be filed by September 5, 2006. None were filed. On September 21, 2006, the Commission issued a letter order accepting the notice of termination and made it effective August 11, 2006. NorthWestern states that the termination is significant for several reasons. The Montana Megawatts I Project held the most senior position in the generation queue for the Great Falls, Montana area and therefore benefited from existing latent capacity available on the transmission system. Significant system upgrades were not necessary to accommodate the interconnection of the Montana Megawatts I Project. After the LGIA was terminated, Project No. 32

²⁰ *SME*, 113 FERC ¶ 61,023 at P 27.

²¹ Answer at 5-6; *see also* Letter from Mike Cashell of NorthWestern to Michael Young, Montana Megawatts I, LLC, dated July 26, 2006, included as a part of Attachment A to NorthWestern’s Answer filed October 9, 2007.

became the most senior queued project and is now the beneficiary of the latent capacity on NorthWestern south of Great Falls, Montana and significant upgrades are not required to interconnect Project No. 32.

23. NorthWestern states that, on October 11, 2006, it advised Montgomery to submit a request for interconnection for its project as soon as possible to secure the best queue position and to begin the interconnection process. NorthWestern states that Montgomery acknowledged the email and indicated that it understood the process and would submit an Interconnection Request. However, NorthWestern states that it did not receive an Interconnection Request until December 6, 2006, nearly two months later. By that time 10 projects were then senior to Montgomery in the queue for interconnection in the Great Falls Area.

24. NorthWestern states that Montgomery requested interconnection of a 290 MW project on December 6, 2006 and made the required deposit. NorthWestern assigned the project a queue position and made the required OASIS posting. On February 16, 2007, Montgomery requested to reduce its interconnection request to 277 MW. NorthWestern accepted the request on or about February 16, 2007 and posted the acceptance on OASIS. Montgomery was provided a Feasibility Study Agreement on January 25, 2007. Montgomery returned an executed Feasibility Study Agreement and deposit on or about February 20, 2007. Northwest performed the Feasibility Study Report for Montgomery on or about April 3, 2007. NorthWestern sent a *pro forma* SIS Agreement as required by section 7 of the LGIP on April 17, 2007. Montgomery returned the executed SIS Agreement and deposit to NorthWestern on April 19, 2007. NorthWestern performed the SIS and tendered an SIS report to Montgomery on July 18, 2007.²² Consistent with protocol and section 8.1 of the LGIP, NorthWestern also tendered the *pro forma* Facilities Study Agreement (Appendix 4 of the LGIP) to Montgomery on the same day.

25. In the SIS, NorthWestern identified a number of significant upgrades, for which Montgomery and the 10 projects senior to Montgomery would be responsible in order to interconnect to the NorthWestern transmission system. Montgomery's share of the cost of the upgrades would be approximately \$146 million. Although Montgomery inquired about the queue and certain aspects of the SIS report, it did not dispute or take issue with NorthWestern's allocation methodology or the justification for it in the SIS within the complaint.

26. On August 6, 2007, NorthWestern and Montgomery participated in a meeting pursuant to section 7 of the LGIP, to discuss the results of the SIS study. On August 8, 2007, Montgomery gave NorthWestern a letter with detailed questions and allegations of

²² The SIS report is contained in Tab C of Montgomery's complaint.

NorthWestern's non-compliance with its LGIP from Montgomery's counsel.²³ On August 10, 2007, NorthWestern stated that it was in compliance with the OATT, and that consistent with section 7.5 of the LGIP, the final SIS would be delayed up to 30 days in order to respond fully to the detailed questions posed by Montgomery.²⁴ Montgomery returned the *pro forma* Facilities Study Agreement with the required deposit to NorthWestern on August 17, 2007. Later that day, Montgomery accepted postponing the completion of the SIS an additional 30 days and questioned the reason for extending the SIS under the LGIP. On August 23, 2007, NorthWestern responded to Montgomery noting that extensions prior to the finalization of the SIS are contemplated by the LGIP and Montgomery did not object to the extension. In addition, NorthWestern noted that the questions raised on August 8, 2007 that were related to the SIS would require further review, and answers would be sent to Montgomery consistent with the LGIP. On September 6, 2007, NorthWestern put Montgomery on notice for the fourth time that it needed to designate the type of service it wished to have as required by the LGIP, either network interconnection service or energy resource interconnection service. On September 12, 2007, within the 30 day extension agreed upon by Montgomery, NorthWestern responded to the questions raised by Montgomery on August 8, 2007.²⁵ On September 12, 2007, NorthWestern and Montgomery met to discuss the SIS and Montgomery put NorthWestern on notice that it had more questions before moving forward. As a result, Northwest informed Montgomery that the SIS would not be final until the questions were answered. Again, NorthWestern reminded Montgomery that it needed to indicate what type of service it wanted.

27. NorthWestern also provided a response to Montgomery's contentions regarding the five senior projects in NorthWestern's interconnection queue which Montgomery contended should be cast out of the queue. For readability, a more detailed summary of that response is contained in the Appendix to this order, rather than in the body of this order.

28. NorthWestern states that Montgomery has taken the position that Project Nos. 20, 31, and 32 are not in compliance with the LGIP because significant amounts of time have passed since the completion of the SIS and a Facility Study has not been undertaken. Montgomery grounds its positions on the notion that the SIS's for the projects are in fact complete and NorthWestern has no ability to extend the deadline for completing studies under the LGIP.

²³ Complaint at Tab D.

²⁴ *Id.* at Tab E.

²⁵ *Id.* at Tab H.

29. NorthWestern states that Montgomery is mistaken, and that Project Nos. 20, 31, and 32 are viable and have met all obligations required under the LGIP. Transmission Providers have the ability, upon proper justification, to extend the time in which to complete interconnection studies. NorthWestern states that the LGIP establishes a presumptive deadline for the completion of the SIS, the tender of the Facilities Agreement, and the commencement of the Facilities Study. However, the LGIP also provides the Transmission Provider with the flexibility to adjust the schedule, upon proper justification, in order to properly complete the required studies. According to NorthWestern, this flexibility is clearly authorized and supported in Order No. 2003.

30. As to the timelines for Interconnection Agreements, NorthWestern states that the LGIP is clear that the Transmission Provider alone or together with the Interconnection customer can agree to extend the negotiations of the final LGIA beyond the times specified in the LGIP. As to Project No. 14, NorthWestern states that it has made satisfactory progress towards completing the interconnection, and the delay agreed to by the project in executing the LGIA is due to the appropriate inclusion of results from the complex Joint Cluster SIS and its impact on the Facilities Study process. The Joint Cluster SIS was completed on August 1, 2007. NorthWestern states that Montgomery's claims are without merit.

31. As to compliance with the in-service date timelines, NorthWestern states that it granted timely requests for extensions to the in-service dates for Project Nos. 14, 20, and 31 because they complied with sections 3.3 and section 4 of the LGIP.

32. Concerning Montgomery's contentions about undue discrimination, NorthWestern states that it has been straightforward, accommodating and responsive to Montgomery since 2006. NorthWestern states that ever since Montgomery became a prospective purchaser of Montana Megawatts I, NorthWestern communicated the ramifications of the *SME* Order and the then-current state of the LGIA between Montana Megawatts I and itself to Montgomery. NorthWestern states that Montgomery wished to proceed with the purchase of Montana Megawatts, including the project, exclusive of the LGIA between MMW I and NorthWestern. The MMW I LGIA was cancelled, withdrawn, and terminated by the Commission effective prior to the close of the sale. NorthWestern also states that it encouraged Montgomery to submit a new interconnection request as soon as possible to avoid increased costs due to senior projects. NorthWestern states that Montgomery assumed the risk of moving forward with a project with no queue position and was fully aware that as a junior queued project it might be adversely impacted by senior projects within the queue. NorthWestern states that just as it has done with all other projects in the queue, it postponed the finalization of the SIS to resolve the outstanding questions as it is permitted under Order No. 2003.

33. NorthWestern argues that the issues regarding interconnection agreements and in-service requests that Montgomery raises with regard to projects senior in the queue are

aimed at creating the faulty premise that NorthWestern allowed material modifications to other projects but not to Montgomery's project. NorthWestern states that this premise overlooks the irrefutable fact that Montgomery started at the bottom of the interconnection queue once it purchased the project from Montana Megawatts exclusive of the LGIA. As such, there is no credible basis for Montgomery to suggest that it can step into the shoes of Montana Megawatts I and be held harmless. NorthWestern states that this complaint is an attempt to shift the consequences of Montgomery's business decision from Montgomery to NorthWestern and other viable projects in the queue.

34. Finally, NorthWestern disputes that Montgomery has attempted in good faith to resolve the matters set forth in the complaint. NorthWestern states that it remains amenable to informal dispute resolution just as it proposed to Montgomery in August 2007.

Notice of Filing and Responses

35. Notice of Montgomery's complaint was published in the *Federal Register*, 72 Fed. Reg. 54,650 (2007), with comments, interventions and protests due on or before October 9, 2007. Motions to intervene and protests were filed by SME; PPL EnergyPlus, LLC and PPL Montana LLC (PPL); and Great Northern Power Development, L.P. (Great Northern). A late motion to intervene was filed by Horizon Wind Energy, LLC. (Horizon). Several of these parties hold a superior queue position to Montgomery and they filed answers to the Montgomery complaint, all denying the claims and reasons put forth by Montgomery for disrupting NorthWestern's current interconnection queue. NorthWestern filed a timely answer to Montgomery's complaint, and Montgomery filed answers to the protests as well as to NorthWestern's answer. Montgomery, focusing almost entirely on NorthWestern's actions vis-à-vis the five other projects in NorthWestern's interconnection queue that it identified in its original complaint (Project Nos. 14, 20, 31, 32, and 33), argues that the record justifies granting Montgomery the relief it has requested, and alternatively that the record is insufficient and that material facts are in dispute which warrant a trial-type evidentiary hearing. NorthWestern filed an answer in response to Montgomery's answer.

Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practices and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene of SME; PPL; and Great Northern serve to make them parties to this proceeding. We will grant the late-filed motion to intervene by Horizon, given its interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Montgomery's and NorthWestern's answers and will, therefore, reject them.

B. Claims of Queue Mismanagement and Failure to Adhere to Timelines

38. The original proposed commercial operation date for the original Montgomery project, then known as MMW I, was November 2001 through December 2002. On May 25, 2001, Montana Megawatts submitted a request to NorthWestern to interconnect MMW I to the NorthWestern transmission system at Northwestern's Great Falls substation. On February 12, 2003, Montana Megawatts informed NorthWestern that the commercial operation date for MMW I would be extended to June 2004. Thereafter, in September 2003, NorthWestern declared bankruptcy and announced that it had initiated efforts to transfer ownership of MMW I to an unaffiliated developer to complete the project.

39. On May 27, 2005, Montana Megawatts and NorthWestern executed the LGIA, calling for a commercial operation date of January 31, 2007, which was subsequently extended to May 31, 2007 by request of Montana Megawatts.²⁶ NorthWestern continued to seek a buyer for the project, including the various permits and contractual rights and, as particularly relevant here, the original LGIA.

40. Montgomery and NorthWestern engaged in negotiations for sale of the MMW I project to Montgomery. Such negotiations included discussions about the LGIA. Montgomery discussed with NorthWestern the possibility of amending the LGIA to modify and extend the milestones in the original MMW I LGIA, or, as an alternative, Montgomery stated that the simple cycle portion of the project (167 MW of the 277 MW nameplate rating) could be completed and put in operation by the June 30, 2007 commercial operation date, and that it could have project contracts in place for completion of the combined cycle portion of the project by October 2007.

²⁶ Throughout its complaint, Montgomery refers to the commercial operation date of the MMW I project as June 30, 2007. The affidavit of Frank Giacalone in Attachment A to Montgomery's complaint states the date to be June 30, 2007. Affidavit at 4, lines 4-6. However, June 30, 2007 would be beyond the 36-month time period for extensions discussed in the *SME* order, since the effective commercial operation date was established in that order as June 1, 2004. NorthWestern uses May 31, 2007 as the date beyond which an extension could result in a material modification to the MMW I LGIA. We will likewise use the May 31, 2007 date in this order to the extent appropriate.

41. NorthWestern, having reviewed the Commission's *SME* decision, advised Montgomery that any further extension of the in-service, or commercial operation, date beyond May 31, 2007 would constitute a material modification of the LGIA under the LGIP in NorthWestern's OATT, and Montgomery would lose its place in the interconnection queue. Montgomery would then be required to submit a new interconnection request and take its place at the bottom of the queue. According to NorthWestern, NorthWestern told Montgomery that NorthWestern could, however, allow Montgomery to place the 167 MW portion of the project in place by May 31, 2007, without violating Order No. 2003 or the *SME* decision, but that the remainder of the project (110 MW) would have to be considered a new project, with the accompanying required new studies and, as particularly relevant here, a new lower place in the interconnection queue. Montgomery states that it was told orally by NorthWestern representatives that the expected cost of the interconnection upon submission of a new request would likely be approximately \$15 million.

42. Apparently relying upon the oral statements of a NorthWestern employee that a new interconnection request was likely to lead to no more than \$15 million in costs,²⁷ Montgomery chose to forego purchase of the original MMW I LGIA with its June 30, 2007 in-service date for the project.²⁸ Instead, on August 28, 2006, Montgomery entered into an agreement to purchase MMW I, *exclusive of the LGIA*, thereby losing its prior preferred place in the interconnection queue.²⁹

²⁷ See Complaint at 10 and 26, and Tab A pages 6-7. Montgomery states that its discussions were with NorthWestern's Coordinator, General and Transmission Interconnection. Montgomery leaves unsaid what it believed about the scope of the Coordinator's duties or authority, and both whether and why it believed it was justified in relying on the Coordinator's statements in regard to expected costs. In fact, though, there was and is no justification for Montgomery's reliance on this estimate as detailed below.

²⁸ Montgomery, in its complaint, stated that, while the single cycle portion of the project would be completed by June 30, 2007, the combined cycle portion of the project would not but rather would be completed later in 2007. See Complaint at 9. But Montgomery wanted to maintain its queue position for both portions of the project, notwithstanding that the latter portion would enter service beyond the 3 years allowed by Order No. 2003 and the *SME* decision. See *id.* at 9-10.

²⁹ After being notified that Montgomery would not be acquiring the MMW I project's LGIA, on August 7, 2006, a representative of MMW I sent NorthWestern a notice of termination of the LGIA as required by section 2.3.1 of the LGIA, which was filed with the Commission on August 14, 2006 in Docket No. ER06-1363-000. The

(continued...)

43. Subsequently, on December 6, 2006, Montgomery submitted a *new* request to interconnect the project to the NorthWestern transmission system.³⁰ An Interconnection Feasibility Study was completed on April 3, 2007, and Montgomery requested that NorthWestern perform a SIS. NorthWestern provided the SIS report to Montgomery on July 18, 2007, which found that the system could accommodate the project -- but it would require substantial system improvements and mitigation measures. The SIS identified some \$146,000,000 in Network Upgrades costs which reflected Montgomery's new, lower queue position.

44. In sum, Montgomery's new interconnection request resulted in a new, lower queue position. That new, lower queue position, in turn, effectively resulted in new, different -- and higher -- interconnection costs, reflecting the effect of other interconnection requests that were now ahead of Montgomery in the queue. There was nothing inappropriate in Montgomery being assigned a new, lower queue position, and there was nothing inappropriate in the resulting interconnection costs changing.

45. Montgomery's complaint at issue here amounts to a request that, notwithstanding its acquisition of the MMW I project but not the LGIA and notwithstanding its submission of a new interconnection request, Montgomery nevertheless be able to preserve the project's position in the interconnection queue. That is, Montgomery asks that, notwithstanding both its decision to not accept the LGIA and its decision to submit a new interconnection request, it be placed ahead of others then in the queue. We see no persuasive reason to do so. Montgomery did not accept the MMW I project with its LGIA. In not accepting that LGIA, Montgomery knew that it would lose its queue position, and it was so informed by NorthWestern. Indeed, as described above, NorthWestern filed a notice of termination of the LGIA which the Commission accepted; Montgomery did not protest or otherwise comment on the notice of cancellation.

notice of termination states in part that Montgomery "has informed [MMW I] that it no longer desires to assume the obligations under the LGIA...." NorthWestern's filing was noticed on August 18, 2006, and provided for comments or protests to be filed by September 5, 2006. None were filed. On September 21, 2006, the Commission issued a delegated letter order accepting the notice of termination effective August 11, 2006.

Thus, Montgomery's agreement to purchase MMW I exclusive of the original LGIA followed NorthWestern's informing Montgomery that the original LGIA was being terminated, i.e., NorthWestern's sending a notice of termination to Montgomery, and followed NorthWestern's filing a notice of termination with the Commission.

³⁰ By that point, there were ten projects ahead of Montgomery's project.

46. Instead, on August 28, 2006, Montgomery agreed to purchase the MMW I project, excluding the MMW I LGIA, and on December 6, 2006, Montgomery submitted a new request to interconnect its project to NorthWestern's system. However, Montgomery's new interconnection request would require new studies based on the status of the new, then-existing interconnection queue, and Montgomery should reasonably have been aware that that was the case. Pursuant to Order No. 2003, queue position is determined by the order of an interconnection request relative to other interconnection requests based upon the date and time of its receipt by, as relevant here, NorthWestern,³¹ and any changes to a proposed generator interconnection that constitute material modifications will result in the loss of a generator's queue position.³² A material modification is one which materially and adversely affects, or harms, other projects lower in the queue.³³ Order No. 2003 allows for extension of the commercial operation date, without regard to the cause of the delay, for a cumulative period of three years; however, an extension greater than three years can be considered a material modification -- requiring a customer to withdraw from the interconnection queue and to submit a new interconnection request (if lower-queued interconnection customers would be harmed by such an extension).³⁴

³¹ Order No. 2003, *pro forma* LGIP § 1 (defining "Queue Position" as "the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider"). As relevant here, NorthWestern's LGIP tracks the language of the *pro forma* LGIP.

³² Order No. 2003, *pro forma* LGIP § 4.4. In contrast, where changes do not constitute material modifications, the interconnecting generator "shall retain its Queue Position." *Id.*

³³ *Id.*, *pro forma* LGIP § 1 (defining "Material Modification" as a modification that has "a material impact on the cost or timing of any Interconnection Request with a later queue priority date").

³⁴ Section 4.4.5 of the *pro forma* LGIP provides that extensions of less than three cumulative years in the commercial operation date of a generating facility are *not* considered material modifications, and thus would not require a customer to lose its queue position. *See id.*, *pro forma* LGIP § 4.4.5. Section 4.4.5 of the *pro forma* LGIP differs from the comparable provision of NorthWestern's LGIP in that the latter also includes a separate and express proviso that such extensions may necessitate that additional studies be done. Thus, compared to section 4.4.5 of the *pro forma* LGIP, section 4.4.5 of NorthWestern's LGIP provides even greater flexibility with regard to timeframes, providing as it does for possible additional studies and necessarily the additional time associated with such studies.

Where, as here, a suspension causes the commercial operation date to be extended beyond three years, such extension can be considered a material modification.³⁵

47. Moreover, Montgomery also should reasonably have been aware that informal oral statements of a NorthWestern employee as to the cost impacts of a new interconnection request (i.e., that the new interconnection request “was likely to lead to”³⁶ some different cost), however great or small, were subject to confirmation or modification depending on the outcome of the required studies. Order No. 2003 provides for studies to identify, *inter alia*, the estimated costs associated with the interconnection.³⁷ It does not allow informal oral representations of “likely” costs to substitute for the formal studies and formal cost estimates that such studies provide. Indeed, there would have been no need for the latter if we allowed the former to govern. Moreover, as an Interconnection Feasibility Study’s cost estimates are expressly non-binding, even more so an informal oral estimate would not be binding.³⁸ As a result, in the circumstances presented by the complaint, Montgomery cannot be relieved of its responsibility for its decision to go forward based on an informal oral statement that the expected interconnection cost would amount to about \$15 million.

48. Montgomery additionally complains, however, that there appear to be instances of other projects in the interconnection queue that are now ahead of its project that should not be; the timelines of Order No. 2003 and the LGIP, it claims, have not been followed and the other projects should be bumped down below Montgomery. Specifically, Montgomery contends that NorthWestern ignored the LGIP timelines for performing studies; Montgomery contends that under the LGIP no more than seven months is supposed to elapse from the date an SIS for a generating project is completed and the date a Facilities Study is completed. Montgomery claims that NorthWestern’s decision to ignore the timelines in the LGIP have allowed over 1200 MW of projects to remain in the queue for extended periods with no apparent progress in the study process. Montgomery states that the Commission should order NorthWestern to clear its queue of these projects.

³⁵ *SME*, 113 FERC ¶ 61,023 at P 26-27; *see also Illinois Power Co.*, 120 FERC ¶ 61,237, at P 20 (2007) (finding that transmission provider had not shown that allowing interconnection customer to extend its milestones beyond three years would harm lower queued generators).

³⁶ Complaint at 10.

³⁷ *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 34-38; *id.*, *pro forma* LGIP §§ 6.2, 8.2.

³⁸ *See id.*, *pro forma* LGIP § 6.2.

49. Northwestern responds that it managed its interconnection queue in a manner consistent with the OATT at all times relevant to the facts and circumstances in the complaint. NorthWestern states that Montgomery has taken the position that Project Nos. 20, 31, and 32, in particular, are not in compliance with the LGIP because significant amounts of time have passed since the completion of the SIS and a Facilities Study has not been undertaken. NorthWestern responds that Montgomery is mistaken and that Project Nos. 20, 31, and 32 are viable and they have met all obligations required under the LGIP. NorthWestern further states that the LGIP establishes a presumptive deadline for the completion of the SIS, and the tender and completion of the Facilities Study. However, the LGIP also allows the transmission provider the flexibility, upon proper justification, to adjust the schedule in order to properly complete the required studies. NorthWestern states that this flexibility is authorized and supported by Order No. 2003.³⁹

50. The timelines that Montgomery refers to are contained in the LGIP of NorthWestern's OATT. The timeline for the completing an Interconnection Facilities Study flows from two provisions of the LGIP. First, section 8.1 of the LGIP provides that the delivery of an Interconnection Facilities Study Agreement to an Interconnection Customer is to occur simultaneously with the delivery of the Interconnection System Impact Study, i.e., the SIS, and within 30 days, an interconnection customer is to return the executed Interconnection Facilities Study Agreement to the transmission provider. Second, section 8.3 of the LGIP provides that the transmission provider will use reasonable efforts⁴⁰ to complete the Interconnection Facilities Study and issue a draft Interconnection Facilities Study report to the interconnection customer within 180 days if the cost estimate required by the Interconnection Customer is to be within +/- ten percent.

51. This would be the seven months (30 days, i.e., one month, for the customer to return the agreement to the transmission provider, and 180 days, i.e., six months, for the transmission provider to perform the study) identified by Montgomery. However, there are at least two exceptions to this timeline. First, it assumes that there is no revision to the SIS as a result of meetings between the parties on the SIS. If there are changes, then there may be additional time for returning the executed Interconnection Facilities Study Agreement and beginning the Interconnection Facilities Study. There is no stated timeline, and no stated time limitation, for this to occur. Second, section 8.3 of the LGIP further provides that if an interconnection customer so requests or if the transmission provider determines that it will not meet the required timeline for completing the

³⁹ See the Appendix for NorthWestern's more detailed summary of these projects.

⁴⁰ "Reasonable efforts" refers to efforts that are timely and consistent with good utility practice, and are otherwise substantially equivalent to those that a party would use to protect its own interests. See Order No. 2003 *pro forma* LGIP § 1.

Interconnection Facilities Study, the transmission provider will notify the interconnection customer as to the schedule status, and provide an estimated completion date and an explanation of the reasons why additional time is required. Again, there is no stated timeline, and no stated time limitation, for this to be done. Therefore, the seven months referred to by Montgomery is not an absolute and ironclad requirement.

52. The circumstances presented by Montgomery and by the other projects differ. First, as explained above, Montgomery's new interconnection project was properly assigned a new and lower queue position; Montgomery submitted a new interconnection request, and interconnection queue positions are assigned based on the dates and times of submissions of interconnection requests. In contrast, the other projects highlighted by Montgomery did not submit new interconnection requests. Second, while a change in a project can be a material modification warranting the assignment of a new interconnection position even in the absence of a new interconnection request, we find that NorthWestern was permitted by Order No. 2003 to adjust the schedules of the other projects, and the other projects were entitled to retain their queue positions. Section 4.4 of the LGIP allows the interconnecting generator and, as relevant here, NorthWestern to extend dates with no change to the interconnecting generator's queue position,⁴¹ and section 8.3 of the LGIP, as discussed above, similarly allows for extensions in particular circumstances.⁴² The parties involved with these other projects have agreed upon extensions of time for either completing studies or meeting dates for project completion – which were allowed by the LGIP. It does not appear that there were instances of inappropriate extensions of time for the projects called into question by Montgomery.⁴³ Parties do not have unfettered discretion in delaying the commencement of projects. The timelines contained in Order No. 2003 ensure that projects are, in fact, moving forward toward implementation within a reasonable time. They are not, as explained above, absolute, however. Indeed, not only does Order No. 2003, as described above, recognize that flexibility is warranted in particular cases, but, even before Order No. 2003 was issued, we recognized the complexity of such projects, while still being mindful of the need to put them in service in a timely fashion; the Commission thus had allowed the granting of reasonable extensions in particular circumstances to foster an opportunity for

⁴¹ *Id.*, *pro forma* LGIP § 4.4.

⁴² *Id.*, *pro forma* LGIP § 8.3.

⁴³ *Id.*, *pro forma* LGIP § 8.3; *cf. id.*, *pro forma* LGIP § 3.4(x) (providing for an identification or explanation of, among other things, delays in completion of interconnections). *Accord* SME Protest at 6-8 (discussing SME's Highwood Station project, which SME identifies as Project No. 32); Great Northern Protest at 5-9 (discussing Great Northern's Nelson Creek power project, which Great Northern identifies as Project No. 20).

generation to develop.⁴⁴ Moreover, insofar as Montgomery's concern is driven by the possibility that, if its project were moved up in the queue ahead of the other projects it has identified, it would face substantially lower interconnection costs, moving its project up in the queue may not, in fact, have that effect. That is, it is not clear that moving Montgomery's project ahead of the other projects identified by Montgomery would, in fact, change the costs allocated to Montgomery; Great Northern notes that removing Great Northern's Nelson Creek power project (Project No. 20) "does not [a]ffect the cost or timing" of Montgomery's project.⁴⁵

53. Montgomery claims that NorthWestern has failed to comply with the LGIP timelines for entering into LGIAs. With respect to Project No. 14, Montgomery claims that Project No. 14 is not in compliance with these timelines since the Phase II Facilities Study for that 700 MW generator was completed in October 2004 and that there is no indication that an LGIA has been signed or filed unexecuted. The extension of the in-service date for Project No. 14 from June 2006 to March 2009 was, however, an extension of less than three years, and extensions of up to three years are allowed by section 4.4.5 of the LGIP without risk of a loss in queue position. Moreover, NorthWestern determined that Project No. 14 and Project No. 20 were closely related and both required the study of neighboring transmission systems. Therefore, NorthWestern determined that a Joint Cluster SIS was required, and two circumstances in which the LGIP allows for extensions are when no revisions to the SIS are necessary (the SIS, as noted above, precedes the Interconnection Facilities Study) and when the transmission provider is unable to complete the Interconnection Facilities Study on time (and an Interconnection Facilities Study precedes an LGIA).⁴⁶ NorthWestern states that, in fact, it began negotiating the LGIA for Project No. 14 even before the Joint Cluster SIS was completed (and this notwithstanding that the LGIP provides that a draft LGIA need be presented to an interconnecting generator only with the issuance of an Interconnection

⁴⁴ See, e.g., *Virginia Electric and Power Co.*, 103 FERC ¶ 61,318, *order on reh'g*, 104 FERC ¶ 61,249 (2003); *Consolidated Edison Company of New York, Inc.*, 101 FERC ¶ 61,185 (2002), *order on reh'g*, 102 FERC ¶ 61,254 (2003); *Duke Energy Corp.*, 100 FERC ¶ 61,251 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,226, *order on reh'g*, 99 FERC ¶ 61,318 (2002).

⁴⁵ Great Northern Protest at 3; *accord id.* at 8, 9-10 (same).

⁴⁶ See Order No. 2003 *pro forma* LGIP §§ 8.1 and 8.3 (regarding SIS's and Interconnection Facilities Studies), and 11 (regarding Interconnection Facilities Studies and LGIA's).

Facilities Study report,⁴⁷ which, as noted above, follows an SIS). However, because of the complexity of the Joint Cluster SIS and its impact on the Interconnection Facilities Study process, NorthWestern and Project No. 14 determined that it would be appropriate to postpone the Interconnection Facilities Study and the finalization of the LGIA until after the Joint Cluster SIS was completed; given the sequence of events laid out in the LGIP, which are described above, that decision, we find, was consistent with the LGIP. NorthWestern explains that it has made satisfactory progress towards completing the interconnection, and the delay agreed to by the project in executing the LGIA is due to the inclusion of results from the complex Joint Cluster SIS and its impact on the Interconnection Facilities Study process.⁴⁸ Due to the complexity of the Joint Cluster SIS and its impact on the facilities study process, all of which are necessary before an LGIA may be entered into, we find that NorthWestern's extension of Project No. 14 was reasonable.

54. Montgomery contends that, with respect to Project Nos. 14, 20 and 31, NorthWestern has possibly failed to comply with the in-service dates under the LGIP. NorthWestern states that it granted timely requests for extensions to the in-service dates for Project Nos. 14, 20, and 31. NorthWestern states that, for Project Nos. 14, 20, and 31, in every instance the extensions were granted because they complied with section 3.3 and section 4 of the LGIP. We find NorthWestern's actions with regard to these projects are consistent with sections 3.3 and 4 of the LGIP. Project No. 14 is addressed above. The other two projects, Project Nos. 20 and 31, warrant a similar conclusion that NorthWestern acted appropriately. Project No. 20 was, along with Project 14, part of the Joint Cluster SIS, and because the Joint Cluster SIS affected the necessary Interconnection Facilities Study an extension was warranted. In this regard, we also note that NorthWestern concluded that the change would not be a material modification. Under Order No. 2003, as discussed above, the key to whether a change constitutes a material modification, thus warranting assignment of a new position in an interconnection queue, is the effect on lower-queued projects. Where a change is not a material modification, again as discussed above, the change would not warrant assignment of a new and different queue position. Project No. 31's change in in-service date from December 2005 to December 2006 was within the three years allowed by section 4.4.5 of the LGIP, described above. With regard to Project No. 31's later request to extend the in-service date to December 2011, NorthWestern evaluated the request and concluded that it was not a material modification as it would not adversely affect lower-queued generators.

⁴⁷ See *id.*, *pro forma* LGIP § 11.1; *cf. id.*, *pro forma* LGIP § 11.2 (discussing negotiation of an LGIA, which may begin earlier and run later than the presentation of an Interconnection Facilities Study report).

⁴⁸ See the description in the Appendix.

We find that NorthWestern's actions were consistent with the LGIP. Having found the change would not adversely affect lower-queued generators, NorthWestern appropriately allowed the extension of the in-service date and appropriately did not assign Project No. 31 a new queue position.

55. Project Nos. 32 and 33 are little different. For Project No. 32, NorthWestern timely tendered a draft Interconnection Facilities Study Agreement shortly after completion of the SIS, which was timely executed and returned. However, NorthWestern proved unable to complete the necessary Interconnection Facilities Study within six months (in fact, the underlying SIS had to be re-done with MMW I's withdrawal of its project from the queue, and was only just completed in October 2007 – following the filing of Montgomery's complaint), and NorthWestern has stated further studies still have to be done. We see nothing in NorthWestern's actions inappropriate or inconsistent with the LGIP. As to Project No. 33, at the outset we note that when Project No. 33 first requested an extension in the in-service date NorthWestern denied the request because NorthWestern concluded that such an extension would be a material modification as there would be an adverse effect on lower-queued generators. NorthWestern subsequently tendered a draft Interconnection Facilities Study Agreement, and following a period of negotiations agreed on the terms of the agreement. Project No. 33 subsequently proposed a change in generator type, but NorthWestern concluded that the change was not a material modification as it would not adversely affect lower-queued generators, and ultimately an Interconnection Facilities Study report was provided by NorthWestern to Project No. 33 in June 2007. Again, we see nothing in NorthWestern's actions inappropriate or inconsistent with the approach provided for in the LGIP. In each instance, NorthWestern evaluated whether the change would adversely affect lower-queued generators. In one instance, NorthWestern concluded that a proposed change would, and so did not allow that change. In the other instances, NorthWestern concluded that the proposed changes would not, and so did allow those changes. That is what the LGIP requires. We see nothing in NorthWestern's actions inappropriate or inconsistent with the approach provided for in the LGIP.

56. While we incorporated certain timelines in Order No. 2003, we emphasize that mere passage of time alone may not in itself be a material modification of the LGIA with respect to a project which would warrant a change in queue position. Each project must be examined on its own merits to determine whether extensions, without changes of queue positions, are reasonable. In the projects brought to our attention here, for the reasons just explained, Montgomery has not persuaded us that NorthWestern's actions were inappropriate or inconsistent with Order No. 2003 and with the LGIP when it allowed extensions for those projects.

57. At this juncture, it is worth emphasizing the *SME* decision, which denied a complaint filed by Southern Electric Generation & Transmission Cooperative against NorthWestern. The complaint contended that NorthWestern had not complied with the

Commission's Large Generator Interconnection Procedure in the management of its generator interconnection queue, by impermissibly granting numerous in-service date extensions to its affiliate, MMW I, for the project ultimately acquired by Montgomery. The Commission found that the extensions granted to Montana Megawatts were within the policy set forth in Order No. 2003. NorthWestern had granted an extension to MMW I prior to the effective date of Order No. 2003:

“Once Order No. 2003 became effective, the 36-month limit in the *pro forma* LGIP governed any extensions from NorthWestern's commercial operation date in effect as of January 20, 2004, which was June 1, 2004. Furthermore, there was no executed interconnection agreement between NorthWestern and MMW that would indicate otherwise. Thus, the commercial operation date extension from June 1, 2004 to the currently scheduled commercial operation date of January 31, 2007 falls within the 36-month provision and does not amount to a material modification. *However, any further extensions beyond the 36 months may no longer be available for Montana Megawatts projects without being considered a material modification.*”⁴⁹

58. The circumstances of those projects about which Montgomery complains were not the same circumstances as Montgomery's project. In each instance where the commercial operation date was extended, either the change was contemplated by the LGIP or NorthWestern determined that there would be no material effect on those lower in the interconnection queue. In one instance, for example, Project 31 asked for an extension in the commercial operation date beyond three years. Upon analysis, NorthWestern granted the request because it did not constitute a material modification since it did not impact the cost or timing of the Interconnection Requests of lower-queued projects. With respect to the Montgomery project, in contrast, not only had NorthWestern been admonished in the *SME* decision respecting further extensions of time for the MMW I project, but NorthWestern also determined that allowing an extension of the sort requested by Montgomery would have a material effect on lower-queued projects and therefore could not be accommodated.⁵⁰

⁴⁹ *SME*, 113 FERC ¶ 61,023 at P 27 (emphasis added).

⁵⁰ *SME*, for example, expresses concern that Montgomery is “seek[ing] to leapfrog over *SME*'s Highwood Station project [which *SME* has identified as Project No. 32] in the generation interconnection queue,” and explains that Montgomery's complaint “would delay or derail the interconnection of *SME*'s Highwood Station project. . . or potentially impose significant additional costs.” *SME* Protest at 1; *accord id.* at 2 (“[p]ermitting Montgomery[']s] undeveloped project to jump over *SME*'s viable Highwood Station project could result in *SME*'s project being removed from further

(continued...)

59. NorthWestern advised Montgomery that it was constrained by the *SME* decision from extending the commercial operation date under the original MMW I LGIA. NorthWestern advised Montgomery that it could, in fact, allow connection of 167 MW of capacity to the transmission system without it being a material modification – i.e., that the LGIA for that project contemplated a unit-by-unit in-service date for units as they became available, and that it would have minimal effect on others in the queue. However, NorthWestern also advised Montgomery that the balance of the project would have to be filed as a new project and it would take a subordinate position in the queue. Montgomery went forward with a new Interconnection Request and the consequence of Montgomery’s decision was to lose its place in the NorthWestern interconnection queue, with the concomitant incurrence of substantially more interconnection costs. Montgomery must bear the consequences of its decisions. Accordingly, Montgomery’s complaint is denied.⁵¹

consideration for financing by the RUS,” and the Commission should “reject any request for relief that would endanger the present viability of SME’s project, or cause it to incur additional costs”), 2-3 (noting that SME’s Highwood Station project “is competing directly” with Montgomery’s project, and that Montgomery’s complaint amounts to a request either that SME’s Highwood Station project be “remove[d] from [NorthWestern’s] interconnection queue” or, alternatively, that Montgomery’s project be held harmless which “could result in additional costs being transferred to remaining transmission owners”). PPL similarly argues that “the relief that Montgomery. . . seeks from the Commission could adversely affect other innocent interconnection customers, like the PPL Companies.” PPL Protest at 2-3; *accord id.* at 5 (noting that “at least one” of PPL’s projects could be affected if there were “changes [in] the positions of other entities in the queue”). And Great Northern also objects to the removal of its Nelson Creek power project, which it has identified as Project No. 20, from NorthWestern’s interconnection queue. Great Northern Protest at 3-10.

⁵¹ As to the issue that Montgomery raises concerning inadequate information on NorthWestern’s OASIS, it appears that NorthWestern posted the vast majority of the relevant information required by Section 3.4 of the LGIP on its OASIS, *see* Order No. 2003, *pro forma* LGIP § 3.4 (providing for an identification or explanation of, among other things, delays in completion of interconnections), although it did not provide comments in the “Comments” column for Project Nos. 14 and 31 on the list of interconnection requests shown in Attachment M of Montgomery’s complaint. Section 3.4 does not dictate an exhaustive analysis, however, and, in any event, NorthWestern subsequently remedied the omission. We thus find NorthWestern’s omission not significant; the status of the projects is, in fact, reasonably apparent from the list.

C. Claims of Undue Discrimination

60. Finally, Montgomery also complains that NorthWestern's actions in agreeing to extensions of time for implementing other projects without changing their queue positions compared to its treatment of the Montgomery project amount to undue discrimination. We have discussed earlier in this order the actions complained of by Montgomery, and we find that NorthWestern's actions have not been unduly discriminatory in its dealings with Montgomery. Unlike the other projects Montgomery cites as potentially violating NorthWestern's LGIP where extensions of time were granted, NorthWestern was bound by Order No. 2003 and the *SME* decision. Once the LGIA connected with the MMW I project was rejected by Montgomery and Montgomery instead filed a new Interconnection Request, consistent with Order No. 2003 and the LGIP Montgomery was properly assigned a new, lower queue position in the generator interconnection queue. It was not unduly discriminatory to do so. The other projects highlighted by Montgomery were not in the same situation, and their treatment by NorthWestern was consistent with the approach taken by Order No. 2003. In fact, NorthWestern proposed to Montgomery an alternative that the parties could pursue – i.e., it proposed that Montgomery retain the existing LGIA for the MMW I project and connect the 167 MW of capacity that Montgomery said it could have on line by the June 30, 2007 commercial operation date, and then file a separate Interconnection Request for the balance of the 277 MW capacity it desired. Montgomery rejected that alternative. Montgomery must now bear the consequences of its decisions.

The Commission orders:

Montgomery's complaint is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

POSTURE OF CERTAIN PROJECTS WITHIN NORTHWESTERN'S INTERCONNECTION QUEUE

NorthWestern states that the complaint places Project Nos. 14, 20, 31, 32, and 33 in the generation interconnection queue at issue. NorthWestern argues that Project Nos. 14, 20, 31, 32 and 33 are ongoing and viable projects, and that NorthWestern, consistent with Order No. 2003, has worked with the existing projects in the queue to make satisfactory progress toward completion of the interconnection process. NorthWestern's answer, at 12-20, reflects the following:

Project Nos. 14 and 20

Project No. 14 submitted an Interconnection Request and deposit on August 28, 2001, prior to Order No. 2003. The in-service date on the original Interconnection Agreement was June 2006. Under the terms of section 5 of the LGIP, an Interconnection Request assigned a queue position prior to the effective date of Order No. 2003 retains its queue position within the queue. Upon the request of the project, the in-service date was extended to March 31, 2009, based upon section 4.4.5 of the LGIP which allows the transmission provider to grant extension of less than 36 months without determining if there is material modification. Also, the revised date is no more than NorthWestern's 15 year planning horizon consistent with section 3.3.1 of the LGIP. The original SIS study for this project was completed on November 21, 2002.

On March 15, 2002, prior to the issuance of Order No. 2003, NorthWestern received a generator interconnection request from a second large project in eastern Montana, Project No. 20. Project No. 14's Interconnection Request is closely tied to Project No. 20's Interconnection Request and both required the study of affected neighboring transmission systems. Project No. 14 applied to connect 700 MW to NorthWestern's transmission system without a Transmission Service Request on NorthWestern's system to move the power from the point of interconnection. Project No. 14 made a Transmission Service Request to the Bonneville Power Authority (BPA) to move 500 MW of Project No. 14's 700 MW on BPA's transmission system about the same time. Since there was no Transmission Service Request covering the other 200 MW on NorthWestern's transmission system, there was a Transmission Service Request gap between Project No. 14's point of interconnection on NorthWestern's system and its 500 MW Transmission Service Request on BPA's transmission system, as described below.

Project No. 20 also submitted a Transmission Service Request to NorthWestern and other Colstrip Transmission System owners to move power from the point of interconnection in eastern Montana to the BPA and Avista Corp. transmission systems in western Montana.

For the Project Nos. 14 and 20 SISs, a Joint Cluster SIS between NorthWestern, BPA, and Avista Corp. was required to be completed.

NorthWestern and Project No. 14 began negotiating the LGIA for Project No. 14 before the Joint Cluster SIS was completed. The Joint Cluster SIS addressed the gap, among other things, in the Transmission Service Requests. The Joint Cluster was further complicated by the fact that different and distinct major transmission upgrades were needed on both the BPA and NorthWestern systems because of the different MW requested through the respective Transmission Service Requests. Because of the complex nature of the Joint Cluster SIS and its impact on the Facilities Study process, NorthWestern and Project No. 14 delayed the commencement of the Facilities Study process. NorthWestern and Project No. 14 determined during negotiations that the Joint Cluster SIS would significantly impact the Facilities Study process and ultimately the LGIA and determined that it was appropriate to postpone the Facilities Study and the finalization of the LGIA until the Joint Cluster SIS was completed. The Joint Cluster SIS concluded when BPA completed its Transmission Service Request study on August 1, 2007.

On July 26, 2006, Project No. 20 requested a new in-service date of April 1, 2013. NorthWestern accepted the change since it was determined not to be a material modification because it did not have an impact on the cost or timing of any Interconnection Request with a lower queue position, pursuant to sections 4.4 and 4.4.3 of the LGIP. NorthWestern states that the Facilities Study process was extended because Project No. 20 was also a party to the Joint Cluster SIS that included Project No. 14 for a transmission service request from BPA. NorthWestern states that the LGIP allows NorthWestern and Project No. 20 the latitude to extend the execution of the LGIA upon mutual agreement especially where, as in this case, the result of a Joint Cluster SIS significantly impacts the Facilities Study process. Since the completion of the Joint Cluster SIS, NorthWestern has been actively engaged in completing an LGIA for Project 20 that will include aspects of this Joint Cluster SIS for the Transmission Service Request with BPA.

Project No. 31

The in-service date for Project No. 31 on its May 11, 2004 Interconnection Request was December 31, 2005. On September 30, 2005, Project No. 31 requested an extension of the in-service date to December 31, 2006. NorthWestern states that this did not violate the 36 month extension allowed in section 4.4.5 of the LGIP and was accepted. Additionally, the Project No. 31 revised in-service date is no more than the NorthWestern's 15-year planning horizon. NorthWestern states further that that it provided a SIS report to Project No. 31 on March 10, 2006. A SIS results meeting was held on April 26, 2006 and a *pro-forma* Facilities Study Agreement was sent on April 28, 2006 and received by Project No. 31 on May 1, 2006. Project No. 31 returned the

executed Facilities Study agreement on May 31, 2006, and NorthWestern commenced the Facilities Study in June 2006. These dates are consistent with the timelines in the LGIP. NorthWestern received a written request from Project No. 31 on July 26, 2006, to extend the in-service date to December 31, 2011, a date beyond the 36 months allowed for extensions in section 4.4.5 of the LGIP. After internal analysis of potential impacts on junior queue projects, NorthWestern ultimately accepted the change to the in-service date and so notified Project No. 31 on December 12, 2006. NorthWestern states that it granted the extension because extending the in-service date was not considered a material modification as defined in LGIP because it did not impact the cost or timing of the Interconnection Requests by lower-queued generation projects.

Project No. 32

Project No. 32 requested interconnection with NorthWestern and made the associated deposit on July 1, 2004. The initial SIS report was completed on October 31, 2005. NorthWestern tendered a *pro forma* Facilities Study Agreement on November 15, 2005 and Project No. 32 returned an executed Facilities Study Agreement on December 5, 2005. Due to errors with models and other technical problems, that Facilities Study was suspended and a second was completed on April 14, 2006. A third revision to the SIS study was required as the result of MMW I's withdrawal from the queue and was completed on October 10, 2007. NorthWestern states that an LGIA has not been tendered, negotiated or executed at this point because NorthWestern must perform additional analysis as allowed under section 8.3 of the LGIP. NorthWestern states that Project No. 32 has worked diligently with NorthWestern and met all the applicable requirements set forth in the LGIP.

Project No. 33

Project No. 33 requested interconnection on November 3, 2004. On May 16, 2006, NorthWestern completed the initial SIS report. On May 31, 2006, Project No. 33 requested that NorthWestern study possible modifications for a change in output. On June 30, 2006, NorthWestern rejected the request as it was determined to be a material modification under section 4 of the LGIP because it adversely affected lower-queued projects. In August 2006, and consistent with section 8 of the LGIP, NorthWestern tendered a *pro-forma* Facilities Study Agreement to Project No. 33. Through the month of September 2006, NorthWestern and Project No. 33 negotiated with respect to the *pro-forma* Facilities Study Agreement, and on or around October 4, 2006, the final Facilities Study Agreement was executed and the corresponding deposit was made. Project No. 33 later notified NorthWestern that it was switching generator types and that NorthWestern would have to perform a re-study. NorthWestern determined that the switch in generators was not a material modification since it did not affect lower queued projects and a draft Facilities Study reflecting the new generator type was provided on June 19, 2007.

NorthWestern states that Project No. 33 has provided comments and questions within the specified time in the LGIP.