

106 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER04-434-000

ORDER ACCEPTING AND SUSPENDING COMPLIANCE FILING PENDING
FURTHER COMMISSION ACTION

(Issued March 19, 2004)

1. On January 20, 2004, Southwest Power Pool, Inc. (SPP)¹ submitted, in compliance with Order No. 2003,² certain proposed variations from the pro forma Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA). In this order, the Commission accepts and suspends for five months SPP's compliance filing, subject to refund and further Commission order in this proceeding. SPP is also directed to make a ministerial filing with the Commission within 30 days of the date of this order. This order benefits customers because it provides just and reasonable terms and conditions of transmission service while ensuring that reliability is protected.

¹ SPP currently has 50 members, serving more than 4 million customers in all or part of the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma and Texas. SPP's members include 14 investor-owned utilities, 6 municipal systems, 8 generation and transmission cooperatives, 3 state authorities, 1 federal power marketing agency, 2 independent power producers and 16 power marketers.

²Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-A, 106 FERC ¶ 61,220 (2004); see also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

I. Background

2. In Order No. 2003, pursuant to its responsibility under Sections 205 and 206 of the Federal Power Act (FPA) to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their open access transmission tariffs (OATT) a Final Rule LGIP and Final Rule LGIA. In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the pro forma LGIP and LGIA by January 20, 2004.³ The Commission left it to Transmission Providers⁴ to justify any variation to the pro forma LGIP or LGIA based on regional reliability requirements.⁵

A. SPP's Compliance Filing

3. In its January 20, 2004 compliance filing, SPP states that, although at the time of its filing it had an RTO application pending with the Commission and had not yet been

³ See Notice Clarifying Compliance Procedures, supra note 1 (clarifying that Commission will deem OATTs on non-independent public utilities to be revised as of January 20, 2004).

⁴ The "Transmission Provider" is the entity with which the Generating Facility is interconnecting. The term "Generating Facility" means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the "Interconnection Customer."

⁵ See Order No. 2003 at P 826. Non-independent Transmission Providers must adopt the Final Rule LGIP and Final Rule LGIA into their OATTs, with deviations from the Final Rule justified using either the "regional differences" standard, in response to established (i.e., approved by the Applicable Reliability Council) reliability requirements, or the "consistent with or superior to standard." Independent Transmission Providers may submit terms and conditions that meet an "independent entity variation" standard that is more flexible than the "consistent with or superior to" and the regional differences standard. Id. at P 826-27.

found to be an RTO or ISO under Order No 2000,⁶ it is an independent Transmission Provider and should be considered one for purposes of evaluating its filing.⁷

4. SPP states that its proposed compliance filing differs from the Commission's Order No. 2003 pro forma LGIP and LGIA in some respects, but that its revisions satisfy any of the standards described in Order No. 2003 for evaluating deviations as they represent changes to reflect the participation of SPP, regional variations, or improvements to the pro forma language. SPP explains that the majority of its proposed changes involve conversion of the Commission's two-party agreement and procedures to a three-party agreement and procedures as well as clarifications. SPP asserts that because it is the entity that implements generation interconnections for the SPP region, the LGIP and LGIA need to be modified to reflect SPP's role.⁸

5. SPP states that, because SPP transmission owners do not currently offer new transmission service under their own OATTs, SPP, as regional tariff administrator, submits this filing on behalf of its transmission owners to satisfy any filing requirements they may have under Order No. 2003. SPP requests that the Commission issue an order within 60 days of its filing, so that SPP and its customers may begin benefiting from a standardized LGIA. SPP requests that its filing become effective on the date the Commission accepts its Order No. 2003 compliance filing.⁹

⁶ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000). On October 15, 2003, in Docket Nos. RT04-1-000 and ER04-48-000, SPP submitted a proposal to the Commission for recognition as an RTO in compliance with Order No. 2000.

⁷ SPP states that it currently provides independent transmission administration, planning, and security coordination for its region, among other duties, and has done so for a number of years. SPP states that all new transmission services involving transmission facilities subject to SPP's tariff administration are taken under SPP's OATT. SPP's OATT also includes generation interconnection procedures, and new generators interconnecting with the SPP transmission system must enter into three-party interconnection agreements with SPP and the affected transmission owner.

⁸ SPP Compliance Filing at 5, citing e.g. Order No. 2003 at P 909.

⁹ Id. at 2 and 21.

B. SPP RTO Order

6. On February 10, 2004, the Commission issued an order granting SPP RTO status, subject to its fulfillment of certain requirements that included meeting the Commission's independence and governance standards.¹⁰ SPP was directed to make a compliance filing demonstrating that these outstanding issues were completed. SPP was also directed to file its operating budget, for informational purposes, within ninety (90) days of the date that SPP obtains operational authority over transmission facilities within its footprint. Further, the Commission stated that once SPP had achieved RTO status, SPP must fulfill its commitment to: (1) complete its proposed plan for congestion management and an energy imbalance market, (2) participate in the Joint and Common Market with Midwest ISO and PJM Interconnection, LLC (PJM), and (3) develop and file a transmission cost allocation plan.¹¹ Finally, the Commission explained that, as an independent entity, SPP can assure that the transmission planning process best addresses the reliability and economic needs of the region, and assures comparability of interconnection service.

II. Notice of Filing and Responsive Pleadings

7. Notice of SPP's filing was published in the Federal Register, 69 Fed. Reg. 5,849 (2004), with comments, protests, or interventions due on or before February 11, 2004. Timely motions to intervene were filed by Tenaska, Inc., Oklahoma Gas & Electric Company, Sunflower Electric Power Corporation and Xcel Energy Services, Inc. Also,

¹⁰ Southwest Power Pool, Inc., 106 FERC ¶ 61,110 (2004) (SPP RTO Order). In sum, the order directed SPP to: (1) implement its independent board and modify its governance structure; (2) expand the coverage of SPP's tariff to assure that SPP is the sole transmission provider; (3) obtain clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; (4) have an independent market monitor in place to monitor the competitiveness and efficiency of the market; (5) obtain clear and precise authority to independently and solely determine which projects to include in the regional transmission plan and to prioritize those projects, as discussed herein; and (6) have on file with the Commission a seams agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), prior to receiving RTO authorization. Id. at P 2.

¹¹ Id. at P 2-3.

InterGen Services, Inc. and Redbud Energy LP (collectively, InterGen),¹² Oklahoma Municipal Power Authority (OMPA)¹³ and Blue Canyon Windpower II, LLC (BCII)¹⁴ filed timely motions to intervene and protest. Golden Spread Electric Cooperative, Inc. (Golden Spread)¹⁵ filed a timely motion to intervene, protest and request for hearing and suspension. On February 26, 2004, SPP filed an answer to the protests filed against it. On February 27, 2004, Golden Spread filed a supplement to its February 11, 2004 protest. SPP filed an answer to Golden Spread's supplemental protest on March 15, 2004.

8. In its protest, InterGen argues that SPP is not an independent Transmission Provider for purposes of the Final Rule and its request should be denied. Golden Spread protests SPP's degree of discretion regarding the use of Clustering under section 4.2 of SPP's proposed LGIP. InterGen, BCII and Golden Spread argue that SPP's proposed new Schedule 4-A, which imposes imbalance charges on transactions on a control-area-by-control-area basis, should be rejected because it was not properly noticed, is not required by Order No. 2003 and is beyond the scope of SPP's Order No. 2003 compliance filing. Golden Spread and OMPA argue that SPP's proposed Schedule 4-A will treat generation dispatched by Control Area operators more favorably than other

¹² InterGen is affiliated with InterGen North America, LP, which has projects in operation or active development in North America representing 4,575 MW, including the Redbud facility, a 1,200 MW gas-fired, combined-cycle plant in Luther, Oklahoma. The Redbud plant is within Oklahoma Gas & Electric's (OG&E) service territory, is interconnected to OG&E's transmission system, and is subject to SPP's regional OATT.

¹³ OMPA is a governmental agency in Oklahoma created pursuant to the Oklahoma Municipal Power Authority Act of 1981. OMPA is authorized by statute to jointly plan, finance, own and operate electric power supply facilities. OMPA acts as a wholesale power supplier to 35 municipalities in Oklahoma and is a supplier of contract capacity and supplemental energy to three cities in Kansas.

¹⁴ BCII is a subsidiary of Zilka Renewable Energy, LLC, and represents the second phase of an existing wind farm in Blue Canyon, Oklahoma. BCII will be interconnected to the Western Farmers Electric Cooperative system and currently has an interconnection request pending with SPP.

¹⁵ Golden Spread is a non-profit electric generation and transmission cooperative organized under the Texas Electric Cooperative Corporation Act. Golden Spread relies upon the transmission systems of Southwestern Public Service Company and American Electric Power Company (AEP), both currently SPP members, to serve its members' loads. Golden Spread is a transmission customer of SPP, and owns generation that is interconnected to the SPP transmission system.

generators and would inappropriately limit generators' options under LGIA Article 4.3 to the unduly discriminatory provisions of new Schedule 4-A.

9. InterGen and BCII also argue that SPP's attempt to limit credits associated with the costs of expediting construction, under LGIA Article 11.4.1, should be rejected.¹⁶ OMPA and Golden Spread protest SPP's proposed new language to LGIA Articles 11.3 and 11.4.1 that states that in order to qualify for credits, a payment must be an advance by the generator, not the payment of a transmission rate. Finally, OMPA and Golden Spread protest SPP's proposal to shorten payment periods to 20 days for Interconnection Customer invoice payments while continuing to give Transmission Owners and unsuccessful disputants 30 days under LGIA Article 12.3.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁸ prohibits an answer to a protest unless otherwise ordered by a decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process. For the same reason, we will accept the supplemental protest filed by Golden Spread and SPP's March 15 answer to Golden Spread's supplemental protest.

B. Acceptance of SPP's Compliance Filing and Suspension Period

12. Pursuant to the Commission's January 8, 2004 notice, the Commission's Order No. 2003 pro forma LGIP and LGIA have been in effect for SPP as of January 20, 2004. Further, based on the Commission's RTO Order granting SPP RTO status, subject to SPP's fulfillment of certain requirements, the Commission expects SPP to become

¹⁶ SPP modified LGIA Article 11.4.1 to provide that interconnecting customers will not get credits for the costs of expediting the construction of a network upgrade unless the transmission owner has been allowed full recovery through its wholesale and retail rates.

¹⁷ 18 C.F.R. § 385.214 (2003).

¹⁸ 18 C.F.R. § 385.213(a)(2) (2003).

independent in the near future. Thus, due to SPP's current status and the unusual procedural posture of this case, we will accept and suspend SPP's Order No. 2003 compliance filing, subject to refund, to become effective August 21, 2004¹⁹ or such earlier date as may be specified in a further order by the Commission in this proceeding. At that time, we will address the merits of SPP's proposed revisions to its OATT.²⁰

13. The January 8 notice also stated that all non-independent transmission providers are directed to make ministerial filings reflecting the Commission's Order No. 2003 pro forma LGIP and LGIA in their OATT. Thus, we direct SPP to make a filing, within thirty days of the date of this order, revising its OATT to reflect the Commission's Order No. 2003 pro forma LGIP and LGIA. The filing submitted in compliance with the instant order will serve as SPP's LGIP and LGIA until the Commission takes further action in this proceeding once SPP's status is finalized.

14. Order No. 2003 requires that when the Transmission Owner and the Transmission Provider are separate, they both must sign the LGIA.²¹ Since the pro forma LGIP and LGIA do not allocate responsibilities between the Transmission Owner and the Transmission Provider, SPP may wish to enter into a separate agreement with its members to allocate responsibilities within the pro forma LGIP and LGIA. This agreement would be an addendum to the compliance filing submitted in response to the instant order, since the interconnection customer must remain informed of the Transmission Owner's and the Transmission Provider's respective responsibilities. SPP and the Transmission Owners should refer to Order No. 2003-A for guidance on respective responsibilities for the Transmission Provider and Transmission Owner.²²

¹⁹ August 21, 2004 is five months after 60 days notice from the date of SPP's January 20, 2004 filing.

²⁰ MidContinent Area Power Pool, et al., 78 FERC ¶ 61,203 (1997); Bangor Hydro-Electric Co., et al., 78 FERC ¶ 61,258 (1997); Southern Company Services, Inc., 98 FERC ¶ 61,328 (2002).

²¹ See Order No. 2003 at P 909.

²² See, e.g., Order No. 2003-A at P 785 (explaining the general areas of responsibility that should be maintained by the Transmission Provider and Transmission Owner(s)).

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The Commission orders:

(A) SPP's Order No. 2003 compliance filing is hereby accepted and suspended, subject to refund, to become effective August 21, 2004 or such earlier date as may be specified in a further Commission order in this proceeding, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing, as discussed in the body of this order, within thirty (30) days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.