

113 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Montana Electric Generation &  
Transmission Cooperative, Inc.

Docket No. EL05-141-000

v.

NorthWestern Corporation, d/b/a  
NorthWestern Energy, and  
Montana First Megawatts I, LLC

ORDER DENYING COMPLAINT

(Issued October 11, 2005)

1. On August 12, 2005, Southern Montana Electric Generation & Transmission Cooperative, Inc. (Southern Montana) filed a complaint against NorthWestern Corporation doing business as NorthWestern Energy (collectively NorthWestern) and Montana First Megawatts I, LLC (Montana Megawatts). Southern Montana argues that NorthWestern has not complied with the Commission's Large Generator Interconnection Policy in the management of its generator interconnection queue. Southern Montana requests that the Commission direct NorthWestern to require NorthWestern's affiliate, Montana Megawatts, to submit a new interconnection request, which would allow the interconnection request of Southern Montana's Highwood Generating Station (Highwood Station) to take a queue position higher than, and be processed earlier than Montana Megawatts' interconnection request. For reasons discussed below, the Commission denies Southern Montana's complaint.

**Background**

2. Southern Montana provides wholesale electricity and related services to electric distribution cooperatives and a municipal utility in Montana.<sup>1</sup> Southern Montana is working with the United States Department of Agriculture's Rural Utilities Service

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<sup>1</sup> Southern Montana is a cooperative and its members are: Beartooth Electric, Fergus Electric, Mid Yellowstone Electric, Tongue River Electric, Yellowstone Valley Electric, and the City of Great Falls.

(RUS) to finance a 268 megawatt (MW) coal-fired electric generating project, Highwood Station, near Great Falls, Montana. Southern Montana states that the Highwood Station<sup>2</sup> will interconnect with NorthWestern's transmission system at an existing substation, the Great Falls 230kV Switchyard (Great Falls substation).

3. NorthWestern provides regulated electric and natural gas transmission and distribution services in western Montana.<sup>3</sup> Montana Megawatts, an indirect, wholly-owned subsidiary of NorthWestern, is developing a 280 MW gas-fired combined-cycle generating facility, Montana Megawatts I (Montana Megawatts project), in Great Falls.

4. On May 25, 2001, Montana Megawatts submitted an interconnection request for the Montana Megawatts project to interconnect at the Great Falls substation, with a proposed commercial operation date of November 1, 2001.<sup>4</sup> On February 12, 2003, Montana Megawatts informed NorthWestern that the commercial operation date would be extended to June 2004. On February 2, 2005, the commercial operation date for the Montana Megawatts project was extended further to January 31, 2007. Thereafter, in May 2005, Montana Megawatts and NorthWestern executed a Large Generator Interconnection Agreement (LGIA) which was listed as part of NorthWestern's Electric Quarterly Report (EQR) filed with the Commission for the second quarter of 2005.

5. Southern Montana made its interconnection request to NorthWestern on June 24, 2004, also designating the Great Falls substation as its interconnection point. On July 1, 2004, NorthWestern assigned a queue position to Southern Montana, subordinate to Montana Megawatts' queue position for the Montana Megawatts project. The commercial operation date for Southern Montana's Highwood Station is March 31, 2009.<sup>5</sup>

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<sup>2</sup> Southern Montana states that Highwood Station is being developed on a non-forgiving schedule that will accomplish a critically needed, just-in-time, replacement of expiring entitlements from the Bonneville Power Administration (BPA).

<sup>3</sup> NorthWestern also conducts electric and natural gas utility business in Montana, South Dakota, Nebraska, Iowa, and North Dakota.

<sup>4</sup> The interconnection request was made to the former Montana Power Company (MPC). NorthWestern has been the owner of electric transmission and distribution assets of MPC since February 12, 2002.

<sup>5</sup> Montana Megawatts states in its answer that Southern Montana's commercial operation date for the Highwood Station is March 31, 2009.

## Complaint

6. In the instant complaint, Southern Montana claims that NorthWestern has impermissibly granted numerous in-service date extensions to its affiliate, Montana Megawatts. Southern Montana states that when it received its queue position on July 1, 2004, Montana Megawatts' projected in-service date already had been extended from November 1, 2001 to November 2004.<sup>6</sup> Since then, however, Southern Montana explains, Montana Megawatts' commercial operation date has been extended twice to January 31, 2007.

7. Southern Montana argues that NorthWestern is in violation of the *pro forma* Large Generator Interconnection Procedures (LGIP) and LGIA of the Order No. 2003<sup>7</sup> because NorthWestern has continually refused to conclude that the extensions it has granted to Montana Megawatts amount to a material modification. Southern Montana states that Order No. 2003 is clear that cumulative extensions beyond three years in the commercial operation date of a large generating facility are material if the in-service extensions affect the cost or timing of projects with subordinated queue positions.

8. Southern Montana also contends that Commission policy favors extensions of time of no longer than three years and that the Commission has recognized that granting extensions may harm lower-queued generators.<sup>8</sup> Further, Southern Montana asserts that the extensions granted by NorthWestern total more than 63 months and thus constitute a material modification under section 4.4.3 of the *pro forma* LGIP and LGIA. Southern Montana states that its queue position should be re-ranked based on section 4.4.3, which requires that an interconnection customer that makes a material modification to submit a new interconnection request and, as a result, take a different, lower queue position.

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<sup>6</sup> We note that Northwestern's answer states that on January 20, 2004 (the effective date of Order No. 2003), the projected in-service date for the Montana Megawatts project was June 1, 2004.

<sup>7</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,662 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

<sup>8</sup> *Citing PSEG Power In-City I, LLC v. Consolidated Edison Company of New York, Inc.*, 109 FERC ¶ 61,189 (2004) (PSEG Power).

9. Southern Montana claims that as a result of these extensions, it is subject to increased costs for network upgrades, uncertainty, and delay in its financing request with the RUS for construction of its Highwood Station project. According to Southern Montana, NorthWestern has identified network upgrades costing more than \$35 million that Southern Montana would be responsible for in order to preserve system reliability.<sup>9</sup> Southern Montana requests that the Commission order NorthWestern to require Montana Megawatts to submit a new interconnection request and, as a result, process the interconnection request for the Highwood Station before it processes the interconnection request for the Montana Megawatts project.

10. Southern Montana also notes that NorthWestern has been delinquent in completing Southern Montana's Feasibility and System Impact Studies. It states that the Feasibility Study was completed 141 days after the Feasibility Study Agreement was executed, exceeding the Commission's 90-day timetable by 45 days. Southern Montana contends that NorthWestern has yet to deliver the System Impact Study when more than 226 days have passed since the System Impact Study Agreement was executed. It states that the LGIP obligates transmission providers to expend reasonable efforts to complete the Study within 90 days.

11. Southern Montana further notes that Montana Megawatts is in the process of selling its project to a third-party developer and that NorthWestern has made a 10-Q filing with the Securities and Exchange Commission reporting its effort to transfer the Montana Megawatts project to a successor developer.

### **Notice of Filing and Responsive Pleadings**

12. Notice of Southern Montana's complaint was published in the *Federal Register*,<sup>10</sup> with the answer to the complaint and interventions or protests due on or before September 1, 2005. NorthWestern and Montana Megawatts submitted timely-filed answers (respondents).

13. In their answers, respondents assert that Southern Montana's complaint is deficient and should be dismissed. They claim that the complaint does not clearly identify the harm, noting that Southern Montana states that it will suffer financial harm and lists the cost of system upgrades that may be required for its interconnection.

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<sup>9</sup> Southern Montana has identified \$34 million as an estimate cost for the network upgrades, the difference between the projected network upgrade costs of \$35.2 million for the Highwood Station and \$1.2 million for Montana Megawatts project as a financial consequence owing to the two projects' relative queue positions.

<sup>10</sup> 70 Fed. Reg. 49,270 (2005).

Respondents assert that Southern Montana does not, however, explain how this cost would change due to Montana Megawatts project's in-service date extension. They also claim that Southern Montana does not offer any evidence to support its allegations of financial harm.

14. Respondents further argue that the complaint is premature since the system upgrades may or may not occur. They note that the costs for network upgrades have not been finalized. They contend that they will not know if the network upgrades will be necessary or what the final costs will be until the studies are complete and an interconnection agreement between NorthWestern and Southern Montana is executed. They note that only one study, the Feasibility Study, out of the required three has been completed. The respondents claim that Southern Montana should file a complaint if and when it is assigned a cost responsibility after the Facilities Study is completed.

15. The respondents argue that there is no material modification as Southern Montana contends. They claim that the extension for the Montana Megawatts project satisfies the 3-year extension provision in the *pro forma* LGIP. They note that Montana Megawatts first submitted its interconnection request on May 25, 2001, before the *pro forma* LGIP and LGIA became effective on January 20, 2004. Moreover, NorthWestern argues that under section 5.1.1 of the LGIP, "any interconnection customer assigned a queue position prior to the effective date of this LGIP shall retain that queue position." NorthWestern also asserts that Montana Megawatts' extension since the effective date of the LGIP was from June 1, 2004 to January 31, 2007, which does not exceed the 3-year provision in the LGIP.

16. The respondents also assert that any exploration into selling the Montana Megawatts project to a third-party developer is irrelevant to the instant proceeding. They further argue that under NorthWestern's current tariff, pursuant to Order No. 2003, there is no prohibition against such a transfer and no material modification would result so long as the interconnection point does not change.<sup>11</sup>

17. Additionally, Montana Megawatts asserts that it is not a proper respondent because the issues in Southern Montana's complaint are directed against NorthWestern. Montana Megawatts argues that it was added as a respondent as an effort by Southern Montana to act against a competitor. Moreover, Montana Megawatts states that it is a generator like any other in NorthWestern's interconnection queue and is without any special privileges or priorities, despite its affiliate relationship with NorthWestern.

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<sup>11</sup> For support, NorthWestern cites section 4.3 of the *pro forma* LGIP: "An Interconnection Customer may transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change."

Montana Megawatts states that Southern Montana has not alleged any general or specific instances of wrongdoing by Montana Megawatts, sought any relief from Montana Megawatts, or requested the Commission to direct Montana Megawatts to take any action or to refrain from some action. Montana Megawatts further contends that it has fully complied with NorthWestern's tariff and that any reordering of queue positions would adversely and irreparably harm the Montana Megawatts project. Therefore, Montana Megawatts requests that the Commission dismiss Montana Megawatts as a respondent, but allow it to remain as an intervening party because of its interest in the proceeding.

18. On October 3, 2005, Southern Montana filed a motion to submit a limited reply to NorthWestern's answer.

## **Discussion**

### **Procedural Matters**

19. Given that Southern Montana's complaint is appropriately directed against NorthWestern, the transmission provider, Montana Megawatts, another generator (admittedly affiliated) in NorthWestern's interconnection queue, will be dismissed as a respondent in this proceeding. We will, however, treat Montana Megawatts' answer as a timely, unopposed motion to intervene that serves to make it a party to this proceeding.<sup>12</sup>

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept Southern Montana's answer and will, therefore, reject it.

### **Analysis**

21. The major issue in Southern Montana's complaint is whether NorthWestern is in violation of section 4.4.3 of the Order No. 2003 *pro forma* LGIP by granting in-service date extensions to Montana Megawatts. For reasons discussed below, the Commission denies Southern Montana's complaint.

22. Order No. 2003, which established the *pro forma* LGIP and LGIA, became effective on January 20, 2004. The LGIP defines material modification as "those modifications that have a material impact on the cost or timing of any interconnection request with a later queue priority date."<sup>13</sup> The LGIP also identifies any changes to the

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<sup>12</sup> 18 C.F.R. § 385.214 (2005).

<sup>13</sup> See *pro forma* LGIP, section 1.

interconnection point as a material modification and that an extension of less than three years is not considered material.<sup>14</sup> An interconnection customer that undertakes a material modification must submit a new interconnection request for its project, which would result in the interconnection customer taking a new queue position based on when it submitted the new interconnection request. Southern Montana asks the Commission to require NorthWestern to apply the material modification provision to require Montana Megawatts to submit a new interconnection request for the Montana Megawatts project and, as a result, take a new position in the queue lower than Southern Montana's position.

23. In the instant filing, however, Order No. 2003 does not govern all of the extensions granted by NorthWestern for the Montana Megawatts project.<sup>15</sup> Montana Megawatts submitted its original interconnection request to NorthWestern on May 25, 2001, prior to the effective date of Order No. 2003. Moreover, NorthWestern did not incorporate the 36-month provision as part of its tariff until Order No. 2003's effective date, January 20, 2004. Therefore, NorthWestern was not required to limit its extensions to Montana Megawatts to 36 months, pursuant to material modification provision, until Order No. 2003 became effective. Moreover, NorthWestern's tariff before January 20, 2004 placed no limit on in-service extensions to 36-months.<sup>16</sup>

24. Prior to Order No. 2003, the Commission granted commercial operation date extensions based on a number of factors, including whether the extension would harm the later-queued generators.<sup>17</sup> In such cases, however, extensions addressed were in the

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<sup>14</sup> Section 4.4.3 of the LGIP states: "Any change to the Point of Interconnection . . . shall constitute a Material Modification. Interconnection Customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification." Moreover, section 4.4.5 states: "Extensions of less than three (3) cumulative years in the commercial operation date of the Large Generating Facility to which the Interconnection Request relates are not material . . . ."

<sup>15</sup> The Commission previously held that generation interconnection procedures in Order No. 2003 are not relevant to a proceeding dealing with events occurring before Order No. 2003's effective date. *Haviland Holdings, Inc. v. Public Service Company of New Mexico*, 107 FERC ¶ 61,034 at P 17 (2004) (Haviland Holdings).

<sup>16</sup> In *Haviland Holdings*, the Commission stated that existing generator interconnection procedures in the transmission provider's tariff contained the relevant criteria for evaluating the events before January 20, 2004. *See Id.*

<sup>17</sup> *See, e.g., Virginia Electric and Power Co.*, 103 FERC ¶ 61,318, *order on reh'g*, 104 FERC ¶ 61,249 (2003) (granting in-service extension because the generator had already spent a substantial amount, over \$10 million, to develop the project); *Duke Energy Corp.*, 100 FERC ¶ 61,251 at P 23 (2002) (directing Duke Energy to revise its

context of an interconnection agreement and commercial operation dates memorialized therein.<sup>18</sup> For example, in *PSEG Power Inc.*, PSEG Power In-City I (In-City), filed a complaint requesting the Commission to revise an existing interconnection agreement with Consolidated Edison Company of New York (ConEd), to give In-City an additional in-service extension of 18-months.<sup>19</sup> Based on the circumstances of the case and the Commission's precedent, the Commission found that the requested 18-month extension was reasonable and directed ConEd to modify the interconnection agreement accordingly.<sup>20</sup>

25. Here, however, there was no governing interconnection agreement between NorthWestern and Southern Montana that memorialized a commercial operations date. Rather, NorthWestern was still conducting the studies required for the interconnection request when the cause for Southern Montana's complaint arose.

26. To clarify, the Commission is drawing a distinction between extensions granted prior to Order No. 2003's effective date and those granted after Order No. 2003 became effective. If a generator was granted an extension before the Order No. 2003 became effective (*i.e.*, January 20, 2004) and had not yet executed an interconnection agreement with the transmission provider, then the 36-month provision would apply to the commercial operation date that was in effect as of January 20, 2004. However, if an executed or unexecuted interconnection agreement was filed with the Commission before the effective date of the Order No. 2003, then the 36-month provision would apply to the commercial operation date specified in the interconnection agreement.<sup>21</sup> Further, if an interconnection request is submitted after January 20, 2004, then the interconnection customer may extend the commercial operation date that appears in the original interconnection request by 36 months without such extension being considered a material

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interconnection agreement to allow a reasonable in-service extension based on its tariff provision); *Florida Power & Light Co.*, 98 FERC ¶ 61,226, *order on reh'g*, 99 FERC ¶ 61,318 (2002) (finding that it was reasonable to allow an in-service extension since the generator committed to both funding the necessary upgrades and maintaining a construction schedule that would not harm lower-queued generators).

<sup>18</sup> See, *e.g.*, *Virginia Electric and Power Co.*, 103 FERC ¶ 61,318, *order on reh'g*, 104 FERC ¶ 61,249, *Duke Energy Corporation*, 100 FERC ¶ 61,251, *Florida Power & Light Co.*, 98 FERC ¶ 61,226, *order on reh'g*, 99 FERC ¶ 61,318 .

<sup>19</sup> *PSEG Power*, 109 FERC ¶ 61,189 (2004).

<sup>20</sup> *Id.* at P 16-18.

<sup>21</sup> See *e.g.*, *PSEG Power*, 109 FERC ¶ 61,189 (2004).

modification. Even after this interconnection customer signs an interconnection agreement under Order No. 2003, the 36-month extension limit applies to the commercial operation date specified in the original interconnection request.

27. In this proceeding, NorthWestern granted an extension to Montana Megawatts prior to the effective date of the Order No. 2003. Once the 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 Montana Megawatts 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.

28. In its answer, NorthWestern argues that section 5.1.1 of the LGIP requires that Montana Megawatts retain its queue position. NorthWestern is correct that section 5.1.1 states that interconnection requests assigned a queue position before the effective date of Order No. 2003 retain that position. This provision was intended to clarify that the implementation of Order No. 2003 would require neither an immediate reordering of queue positions nor the immediate submission of new interconnection requests from generators already in established queue positions. Nevertheless, after Order No. 2003 became effective, unless the interconnection customer exercised the option to continue with the study process under the pre-existing interconnection procedures,<sup>22</sup> all pending interconnection requests became subject to the requirements of Order No. 2003. As a result, an interconnection customer subject to Order No. 2003 cannot use section 5.1.1 to preserve its queue position when it takes actions that would result in it losing its queue position under other provisions of the LGIP.

29. For reasons discussed above, the Commission finds that NorthWestern did not violate the *pro forma* LGIP. Therefore, the Commission denies Southern Montana's complaint.<sup>23</sup>

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<sup>22</sup> See *pro forma* LGIP section 5.1.1.2.

<sup>23</sup> Southern Montana's argument about NorthWestern's delay in completing the System Impact Study should be addressed according to the dispute resolution in the LGIP. See *pro forma* LGIP section 13.5.

The Commission orders:

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

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.