

171 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Southwest Power Pool, Inc.

Docket No. ER19-1980-002

ORDER DENYING REHEARING

(Issued May 19, 2020)

1. On May 24, 2019, as amended on August 21, 2019, Southwest Power Pool, Inc. (SPP) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² an unexecuted Generator Interconnection Agreement (GIA) among SPP as transmission provider, Haystack Wind Project, LLC (Haystack) as interconnection customer, and Nebraska Public Power District (NPPD)³ as transmission owner (Amended Haystack GIA).⁴ On October 18, 2019, the Commission rejected without prejudice the Amended Haystack GIA.⁵ On November 18, 2019, Haystack requested rehearing, which we deny in this order.

I. Background

2. On December 20, 2013, SPP submitted reforms to its generator interconnection procedures (GIP) and *pro forma* GIA.⁶ Among other things, SPP proposed increased

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ NPPD is a publicly-owned electric utility and political subdivision of the state of Nebraska.

⁴ The Amended Haystack GIA was designated as Substitute Original Service Agreement No. 3555 under SPP's Open Access Transmission Tariff (Tariff).

⁵ *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,056 (2019) (October 2019 Order).

⁶ SPP's GIP is contained in Attachment V of its Tariff. SPP's *pro forma* GIA is Appendix 6 to Attachment V.

milestone requirements to enter later stages of the interconnection process and a new milestone requirement termed the “initial payment.”⁷ SPP stated that it intended the initial payment to deter interconnection customers with speculative projects from entering into a GIA.⁸ In conditionally accepting SPP’s proposed milestone requirements, the Commission found that the proposed changes to milestone requirements, including the initial payment, may reduce late-stage terminations and would reduce iterative restudies for lower-queued customers.⁹

3. As described in the October 2019 Order, Haystack plans to construct a 300 MW wind generating facility that will interconnect to the SPP-controlled transmission system at NPPD’s existing 345 kV Hoskins Substation, the point of interconnection. Three transmission owner’s interconnection facilities¹⁰ are necessary to interconnect the Haystack generating facility; two of these transmission owner’s interconnection facilities are shared facilities between Haystack and other interconnection customers. The interconnection of the Haystack generating facility will also require the construction of a 12-mile generator tie line, termed the Gen Tie Line. Haystack has elected to exercise its option to build the Gen Tie Line,¹¹ and it will pay for the full cost of the

⁷ Article 11.6 in SPP’s *pro forma* GIA requires interconnection customers to make an initial payment equal to the greater of: (1) 20% of the total cost of network upgrades, shared network upgrades, transmission owner’s interconnection facilities, and/or distribution upgrades listed in the GIA, or (2) \$4,000/MW of the size of the generating facility. Article 11.6 also provides that the initial payment is due within 30 days of the later of: (1) the execution of the GIA by all parties to the GIA; (2) acceptance by the Commission, if the GIA is filed unexecuted and the initial payment is protested by the interconnection customer; or (3) filing of the unexecuted GIA, and the interconnection customer does not contest the initial payment.

⁸ *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,201, at P 53 (2014) (citing *Sw. Power Pool, Inc.*, Filing, Docket No. ER14-781-000, Hendrix Testimony at 43 (filed Dec. 20, 2013)).

⁹ *Id.* P 67.

¹⁰ Transmission owner’s interconnection facilities are “all facilities and equipment owned, controlled, or operated by the Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the GIA, including any modifications, additions, or upgrades to such facilities and equipment.” SPP Tariff, Attachment V, Appendix 6, Article 1 (Definitions).

¹¹ October 2019 Order, 169 FERC ¶ 61,056 at P 6 (citing Haystack June 14 Protest at 4). Under the option to build provisions in SPP’s *pro forma* GIA applicable at the time of the requested effective date of the Amended Haystack GIA, an interconnection customer may elect the option to build the transmission owner’s interconnection facilities

Gen Tie Line.¹² SPP's initial Haystack GIA failed to include the Gen Tie Line in the calculation of the initial payment, even though the Gen Tie Line was classified as a transmission owner's interconnection facility. After Commission staff asked SPP for clarification on this matter in a July 22, 2019 deficiency letter, SPP amended the GIA to include the Gen Tie Line in the calculation of the initial payment, acknowledging its prior mistake.¹³

4. In the October 2019 Order, the Commission found that the Gen Tie Line was appropriately classified as a transmission owner's interconnection facility.¹⁴ The Commission stated that Article 11.6 in SPP's *pro forma* GIA provides that the costs of transmission owner's interconnection facilities should be included in the calculation of the initial payment. However, the Commission found that it was unclear whether the calculation of the revised initial payment followed the requirements prescribed in the SPP Tariff. Accordingly, the Commission rejected the Amended Haystack GIA.¹⁵

5. On March 20, 2020, SPP submitted a revised executed GIA among SPP, Haystack, and NPPD in Docket No. ER20-1351-000. On April 10, 2020, Haystack protested the filing,¹⁶ and on April 24, 2020, SPP filed a motion for leave to answer and answer.¹⁷ In

and standalone network upgrades if the transmission owner cannot meet the in-service date, initial synchronization date, and/or commercial operation date selected by the interconnection customer. SPP Tariff, Attachment V, Appendix 6, Articles 5.2.1 and 5.2. See also *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

¹² October 2019 Order, 169 FERC ¶ 61,056 at P 5 (citing Amended Haystack GIA, Appendix A, sections 1(c) and 11).

¹³ *Id.* P 6 (citing Amended Haystack GIA, Appendix A, sections 1(c) and 11).

¹⁴ *Id.* P 27.

¹⁵ *Id.* P 28.

¹⁶ Haystack, Motion to Intervene and Protest, Docket No. ER20-1351-000 (filed Apr. 10, 2020).

¹⁷ SPP, Motion for Leave to Answer and Answer, Docket No. ER20-1351-000 (filed Apr. 24, 2020) (SPP ER20-1351 Answer).

an order being issued concurrently in Docket No. ER20-531-000, the Commission is addressing the executed GIA.

II. Procedural Matters

6. On December 5, 2019, SPP filed a motion for leave to answer Haystack's request for rehearing, and an answer. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2019), prohibits an answer to a request for rehearing. Accordingly, we deny SPP's motion to answer and reject SPP's answer to Haystack's rehearing request.

III. Discussion

7. On rehearing, Haystack claims that the October 2019 Order failed to address whether including the Gen Tie Line costs in the calculation of the initial payment is just and reasonable. Haystack asserts that the order does not address the circumstances presented here, where the costs included are not to be borne by the transmission owner or the transmission provider, but by the interconnection customer. Haystack claims that the Commission has failed to demonstrate reasoned decision-making.¹⁸

8. Haystack further contends that including the costs associated with the Gen Tie Line as part of its initial payment is unduly discriminatory.¹⁹ In support, Haystack points to a number of interconnection agreements that SPP has filed with the Commission where costs associated with transmission owner's interconnection facilities are not included in the calculation of the initial payment owed where, as here, the construction costs of those facilities are to be borne by the interconnection customer instead of the transmission owner.

9. We deny rehearing. First, we disagree with Haystack's assertion that the October 2019 Order failed to demonstrate reasoned decision-making. The October 2019 Order states that Article 11.6 in SPP's *pro forma* GIA provides that the costs of transmission owner's interconnection facilities are to be included in the calculation of the initial payment. The Gen Tie Line—located between the point of change of ownership and the point of interconnection—meets the definition of transmission owner's interconnection facilities in SPP's *pro forma* GIA.²⁰ Accordingly, given that that the Gen Tie Line is a transmission owner's interconnection facility, the Commission correctly determined that SPP's inclusion of the cost of the Gen Tie

¹⁸ Haystack Request for Rehearing at 3-4.

¹⁹ *Id.* at 4.

²⁰ October 2019 Order, 169 FERC ¶ 61,056 at P 29.

Line in the initial payment is consistent with SPP's *pro forma* GIA, and Haystack does not persuade us that requiring that the Gen Tie Line costs be included in the calculation of the initial payment is unjust and unreasonable. Furthermore, as noted by SPP and acknowledged by the Commission in the proceeding accepting the initial payment as part of SPP's *pro forma* GIA, the initial payment is a project readiness milestone meant to deter speculative projects from entering into a GIA.²¹ Allowing an interconnection customer to forego paying aspects of this project readiness milestone because it chooses to exercise the option to build transmission owner's interconnection facilities would subvert the intended purpose of the initial payment and result in unjust and unreasonable treatment among SPP's interconnection customers.

10. We also disagree with Haystack's characterization that including the costs associated with the Gen Tie Line as part of the required initial payment is unduly discriminatory. In its request for rehearing, Haystack identified a number of GIAs in which SPP failed to include costs associated with facilities that are to be borne by an interconnection customer in initial payment calculations, even though the facilities were classified as transmission owner's interconnection facilities. In its answer in Docket No. ER20-1351-000, SPP states that due to an administrative oversight, it failed to include certain transmission owner's interconnection facilities in the calculation of initial payments for the GIAs identified by Haystack.²² SPP states that it has updated its internal processes to prevent these errors from occurring in the future.²³ Although Haystack points to instances where SPP has omitted the costs from the initial payment, we note that the Commission has not previously addressed this issue. In light of the requirements of SPP's Tariff, as described above, we continue to find that the costs associated with transmission owner's interconnection facilities must be included in the initial payment, in accordance with SPP's Tariff. Accordingly, SPP's omission of such costs from prior agreements does not require the omission of such costs here.

²¹ *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,201 at PP 53, 67.

²² SPP ER20-1351 Answer at 10-11.

²³ *Id.* at 11.

The Commission orders:

Haystack's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.