

171 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of Colorado

Docket No. ER20-754-000

ORDER REJECTING SERVICE AGREEMENT

(Issued May 1, 2020)

1. On January 8, 2020, Public Service Company of Colorado (PSCo) filed, pursuant to section 205 of the Federal Power Act,¹ and section 35.13(b) of the Commission's regulations,² a non-conforming Large Generator Interconnection Agreement (LGIA) between PSCo and Nereo GC Lincoln, LLC (Nereo) (Nereo LGIA). In this order, we reject the Nereo LGIA, for the reasons discussed below.

I. Background and Filing

2. PSCo is a wholly owned utility operating company subsidiary of Xcel Energy Inc.,³ and a vertically-integrated electric utility that owns and operates transmission facilities in Colorado. Nereo is a special purpose vehicle, owned and formed by Nereo GreenCapital (SCA) SICAR to develop the 300 MW Arriba Wind Farm in Lincoln County, Colorado. Nereo plans to interconnect the Arriba Wind Farm to PSCo's transmission system using PSCo's 82-mile 335 kV Rush Creek Gen-Tie Line.⁴

3. PSCo states that the executed Nereo LGIA is based on its *pro forma* LGIA in Attachment N of the Xcel Energy OATT and is a non-conforming LGIA due to: (1) modified definitions for network upgrades and transmission provider's interconnection facilities; (2) an extended 30-year term; and (3) updates to articles 5.5.2, 8.4, 9.7.2.6, and 9.9.2. According to PSCo, the parties required

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. § 35.13(b) (2019).

³ PSCo provides wholesale transmission service, pursuant to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (Xcel Energy OATT).

⁴ PSCo Transmittal at 1-2.

non-conforming terms in order to accommodate the unique circumstances of this interconnection so that the allocation of two categories of upgrades costs are consistent with Commission policy. PSCo states that the first category relates to the allocation of reactive support upgrades, while the second relates to equipment that coordinates the deployment of reactive deployment for all generators connected to the Rush Creek Gen-Tie Line.⁵

4. PSCo explains that although the Rush Creek Gen-Tie Line is an interconnection customer interconnection facility,⁶ PSCo offers the use of the Rush Creek Gen-Tie Line for interconnection service, consistent with Order No. 807.⁷ PSCo states that the Xcel Energy OATT provides that the costs of the Rush Creek Gen-Tie Line are allocated to interconnection customers that use the line, and not to PSCo's transmission customers.⁸

5. PSCo states that the Nereo interconnection represents the last 200 MW of thermal capacity available (out of 1600 MW) for interconnection service over the Rush Creek Gen-Tie Line and that studies indicated that reactive support upgrades are needed for reliability.⁹ PSCo explains that these upgrades will be located on the Rush Creek Gen-Tie Line, which is on the interconnection customer's side of the point of interconnection.¹⁰ PSCo states that the reactive support upgrades are located between the point of interconnection to the PSCo transmission system and the point of change of ownership. PSCo states that under the *pro forma* LGIA, the location of the reactive upgrades would define the upgrades as transmission provider's interconnection facilities,

⁵ *Id.* at 2.

⁶ The Rush Creek Gen-Tie Line is owned by PSCo. PSCo's generation function – PSCo Energy Supply – is the interconnection customer. *Public Serv. Co. of Colo.*, Docket No. ER17-2535-000 (Nov. 13, 2017) (delegated order).

⁷ PSCo Transmittal at 2 (citing *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211, at P 169, *order denying reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015), which states that where the generation function of the public utility transmission provider is the owner of an interconnection customer's interconnection facility, it is appropriate, in the event of a third-party request, for the request to be processed pursuant to its affiliated public utility transmission provider's OATT).

⁸ *Id.* (referencing Xcel Energy OATT Section 46.4).

⁹ *Id.*

¹⁰ *Id.*

which would result in directly assigning the costs of such facilities to the interconnection customer.

6. PSCo states that instead of determining that these reactive support upgrades are transmission provider's interconnection facilities, PSCo proposes to modify the definition of network upgrades in the Nereo LGIA so that the cost of the reactive support upgrades can be recovered from all transmission customers.¹¹ PSCo asserts that there are two unique reasons for departing from the *pro forma* LGIA. First, PSCo states that provision of interconnection service over the Rush Creek Gen-Tie Line is a unique circumstance that is required by Order No. 807.¹² Second, PSCo states that Order No. 827¹³ requires measuring non-synchronous generators' reactive power requirements at the high-side of the generator substation, and not at the point of interconnection. According to PSCo, the Commission stated that choosing the high-side of the generator substation as a point of measurement resulted in a middle ground in terms of cost allocation to the interconnection customers.¹⁴ PSCo states that it understands that under Commission policy for non-synchronous resources reactive support upgrades that are required in addition to the support provided by the generator, and measured at the high-side of the generator substation, should be allocated like network upgrades and should not be directly assigned to the generator (as though they were transmission provider's interconnection facilities). PSCo believes that Commission policy as described in Order No. 827 requires modification of the *pro forma* definition of network upgrades under the Nereo LGIA in order to address this unique situation.¹⁵

7. In addition, PSCo explains that it is developing the Rush Creek Master Voltage Controller, which is an automatic volt/var setpoint optimizer. PSCo explains that the Rush Creek Master Voltage Controller will benefit all generators connected to the Rush Creek Gen-Tie Line, by optimizing and coordinating the voltage/var set point sent to generators.¹⁶ PSCo explains that such tools are not uncommon to facilitate operation when multiple parties connect to a common gen-tie line and would usually be allocated to the generators connecting to a common gen-tie under an agreement between generator

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (2016).

¹⁴ PSCo Transmittal at 3 (citing Order No. 827, 155 FERC ¶ 61,277 at P 39).

¹⁵ *Id.*

¹⁶ *Id.*

owners. PSCo states that the Rush Creek Master Voltage Controller will facilitate the reliable operation of the Rush Creek Gen-Tie Line, and proposes to allocate the costs of this tool proportionally to generators interconnecting to the Rush Creek Gen-Tie Line based on the MW of interconnection capacity.¹⁷ PSCo proposes that it will own the Rush Creek Master Voltage Controller and the operation and management of the tool will be funded by PSCo, but the capital cost will be allocated to the generators in proportion to their share of interconnection capacity Rush Creek Gen-Tie Line.¹⁸ PSCo states that in order to allow this cost allocation, the Nereo LGIA modifies the *pro forma* definition of transmission provider interconnection facility to reference the Rush Creek Master Voltage Controller.¹⁹

8. PSCo proposes three additional changes to the *pro forma* LGIA, specifically that the term of the agreement be extended from 10 to 30 years,²⁰ that the Nereo LGIA recognize Commission acceptance of the Engineering and Procurement Agreement,²¹ and finally that the data requirements for solar generation be removed because the resource is a wind farm.²² PSCo further requests that the Commission grant waiver of its 60-day prior notice requirement to allow the Nereo LGIA to become effective on January 9, 2020.²³ PSCo asserts that good cause exists to grant the waiver because it will expedite interconnection.²⁴

II. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 85 Fed. Reg. 2124 (Jan. 14, 2020), with interventions and protests due on or before January 29, 2020. On January 10, 2020, Nereo filed a timely motion to intervene.

¹⁷ *Id.*

¹⁸ *Id.*; Proposed Nereo LGIA art. 9.7.2.6 and 9.9.2.

¹⁹ PSCo Transmittal at 3.

²⁰ Proposed Nereo LGIA art. 2.2.

²¹ *Id.* art. 5.5.2.

²² PSCo Transmittal at 4; Proposed Nereo LGIA art. 8.4.

²³ PSCo Transmittal at 4.

²⁴ *Id.*

10. On January 30, 2020, PSCo filed a motion to withdraw the Nereo LGIA (January 30 Motion). On February 14, 2020, Guzman Energy, LLC filed a motion to intervene out-of-time and Holy Cross Electric Association, Inc. (Holy Cross) filed an out-of-time motion to intervene, a motion to re-notice the filing, and an answer to the January 30 Motion. On that same day, Nereo filed an answer to the January 30 Motion and a notice of dispute resolution.

11. On February 18, 2020, Xcel Energy Services Inc. (Xcel) filed on behalf of PSCo comments on the notice of dispute resolution and an answer. Nereo filed another answer on February 25, 2020, and on March 4, 2020, PSCo filed a motion to withdraw the January 30 Motion.

12. On March 23, 2020, pursuant to 18 C.F.R. § 375.307 (2019), the Director, Division of Electric Power Regulation – West, in the Office of Energy Market Regulation, issued a letter informing PSCo that, pursuant to section 35.17(a)(1) of the Commission’s regulations,²⁵ and in light of PSCo’s submission of its January 30 Motion, the Nereo LGIA will not become effective under section 205(d) of the FPA in the absence of Commission action.²⁶

13. In the January 30 Motion, PSCo stated that it was seeking to withdraw the Nereo LGIA because Nereo failed to comply with milestones contained in PSCo’s Large Generator Interconnection Procedures.²⁷ In its answer, Holy Cross, argued that PSCo’s attempt to withdraw its filing creates uncertainty that could adversely affect the financing for Nereo’s project.²⁸ In its February 14, 2020 answer, Nereo argues that the Nereo LGIA is an executed contract and it therefore cannot be terminated unilaterally by PSCo.²⁹ In addition, Nereo requests that the Commission not rule on PSCo’s January 30 Motion prior to March 8, 2020, i.e., 60 days from the date of the original filing.³⁰ Nereo states that it had agreed to meet the alleged missed milestone by March 3, 2020, and that if it did so, PSCo would withdraw the

²⁵ 18 C.F.R. § 35.17(a)(1) (2019).

²⁶ *Public Serv. Co. of Col.*, Docket No. ER20-754-000 (Mar. 23, 2020) (delegated order).

²⁷ PSCo Motion to Withdraw at 1.

²⁸ Holy Cross Answer at 5.

²⁹ Nereo February 14 Answer at 2.

³⁰ Nereo Notice of Dispute Resolution at 2.

January 30 Motion to Withdraw.³¹ In answer, PSCo confirms that if Nereo satisfied the milestones by March 3, 2020, it would withdraw its pending Motion to Withdraw.³² Subsequently, in its Notice of Withdrawal of Prior Motion, PSCo confirmed that Nereo had satisfactorily met the conditions agreed to, and stated that it consented to extending the deadline for Commission action in this matter until March 23, 2020.³³

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Guzman Energy, LLC's and Holy Cross's late-filed motions to intervene given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Nereo's February 25, 2020 answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

17. We reject PSCo's non-conforming Nereo LGIA as inconsistent with Order No. 2003.³⁴ In Order No. 2003-A, the Commission found that transmission provider's interconnection facilities are direct assignment facilities owned by the transmission provider on the interconnection customer's side of the point of interconnection whereas

³¹ *Id.*

³² PSCo February 18, 2020 Answer at 2.

³³ PSCo Notice of Withdrawal of Prior Motion at 2-4.

³⁴ *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).

the transmission provider's transmission system consists of facilities at or beyond the point of interconnection.³⁵ The reactive support upgrades at issue here will be located between the point of change of ownership and the point of interconnection, which would define them as transmission provider's interconnection facilities under Order No. 2003. Accordingly, under the Commission's policy, the costs of these upgrades should be directly assigned to the interconnection customer, and not allocated to transmission customers as network upgrades.

18. Further, PSCo has failed to meet its burden to justify its proposed modification to the definition of network upgrades so that the reactive support upgrades are ultimately recovered from all transmission customers. The Commission has stated that "a transmission provider seeking a case-specific deviation from its *pro forma* interconnection agreement bears a high burden to justify and explain that its changes are not merely 'consistent with or superior to' the *pro forma* agreement, but are necessary changes."³⁶ Necessary changes may include those that address specific reliability concerns, novel legal issues, or other unique factors.³⁷ We find that PSCo has not met its burden to demonstrate why these changes are necessary to address specific reliability concerns, novel legal issues, or other unique factors.

19. PSCo seeks to justify its proposed changes, stating that the deviations are consistent with Order Nos. 807 and 827. However, we disagree with PSCo's interpretation that the Commission's policy that reactive support upgrades required in addition to the support provided by the generator and measured at the high-side of the generator substation, should be allocated like network upgrades and should not be directly assigned to the generator. Order No. 827 requires that wind generators design their generating facilities to provide dynamic reactive power at the high-side of the generator substation.³⁸ Order No. 827 also does not address reactive support upgrades in addition to what is needed to maintain the required dynamic reactive power at the high-side of the generator substation. Moreover, under Order No. 827, the costs of meeting the reactive power requirements established in the Order No. 827 are borne by the interconnection customer, not allocated to transmission customers.³⁹ Further,

³⁵ Order No. 2003-A, 106 FERC ¶ 61,220 at P 76.

³⁶ *Northwestern Corp.*, 166 FERC ¶ 61,023, at n.30 (2019) (citing *Sw. Power Pool, Inc.*, 132 FERC ¶ 61,062, at P 3 (2010)).

³⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,211, at P 18 (2016).

³⁸ Order No. 827, 155 FERC ¶ 61,277 at P 1.

³⁹ Order No. 827, 155 FERC ¶ 61,277 at P 39 ("measuring the reactive power requirements at the high-side of the generator substation reasonably balances the need for

PSCo's statement that its interconnection studies indicate that the reactive support upgrades are needed for reliability does not, in and of itself, establish that it is necessary to allocate the costs of the upgrades to transmission customers.

20. Additionally, PSCo cites to a paragraph in Order No. 807 indicating that where the generation function of the public utility transmission provider is the owner of an interconnection customer's interconnection facility, it is appropriate, in the event of a third-party request, for the request to be processed pursuant to its affiliated public utility transmission provider's OATT.⁴⁰ However, PSCo has not explained how its provision of interconnection service over the Rush Creek Gen-Tie Line, as required by Order No. 807, creates a unique case that warrants treating upgrades to interconnection facilities as network upgrades. Accordingly, for these reasons, we reject the Nereo LGIA.

The Commission orders:

The proposed Nereo LGIA is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

reactive power for the transmission system *with the costs to non-synchronous generators of providing reactive power*" (emphasis added)).

⁴⁰ PSCo Transmittal at 2 (citing Order No. 807, 150 FERC ¶ 61,211 at P 169).