

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. ER05-688-000

ORDER ACCEPTING LETTER AGREEMENT

(Issued May 6, 2005)

1. On March 8, 2005, Southwest Power Pool, Inc. (SPP) filed, under section 205 of the Federal Power Act (FPA),<sup>1</sup> on behalf of Southwestern Public Service Company (Southwestern Public Service)<sup>2</sup> and Wildorado Wind, LP (Wildorado), a Letter Agreement (Agreement). The Agreement provides for certain preliminary engineering and design (E&D) activities in the absence of a finalized Generator Interconnection Agreement (GIA). We will accept the Agreement for filing, to become effective on February 14, 2005. This order will benefit customers because it promotes efficiency and reliability within the transmission system.

**I. Background**

2. Southwestern Public Service is a transmission-owning member of SPP whose transmission facilities are used to provide service under the SPP Open Access Transmission Tariff (OATT). Wildorado has requested the interconnection of its wind power generating facility (Wildorado Wind Ranch)<sup>3</sup> to be constructed in Oldham County, near Bushland, Texas, to Southwestern Public Service's 230 kV transmission system. SPP and Southwestern Public Service are currently completing a Facilities Study and will provide to Wildorado a draft Generator Interconnection Agreement based on the *pro forma* Large Generator Interconnection Agreement contained in Attachment V of the SPP OATT.

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<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup>Southwestern Public Service is an affiliate of Xcel Energy Services, Inc. (Xcel).

<sup>3</sup> In November 2004, SPP completed a System Impact Study for Wildorado's 240 MW generator facilities. And, upon SPP's notification, Southwestern Public Service will commence the Facility Study to identify the equipment required for the interconnection, the estimated cost, and the construction timeline.

## II. Proposed Letter Agreement

3. The Agreement provides for the performance of E&D activities and procurement by Southwestern Public Service and Wildorado's prepayment of \$200,000. The E&D activities are related to the proposed Wildorado Wind Ranch to be owned and operated by Wildorado.

4. All charges assessed under the Agreement will be based on Southwestern Public Service's actual costs of performing the work and services. The Agreement does not obligate Southwestern Public Service to construct Southwestern Public Service interconnection facilities. However, upon the execution of the GIA, the \$200,000 prepayment will be applied toward Wildorado's obligations under the GIA. The Agreement terminates on the date that Southwestern Public Service and Wildorado enter into a GIA.

5. SPP requests waiver of the Commission's 60-day notice requirement to allow an effective date of February 14, 2005.<sup>4</sup> SPP requests this effective date to allow Southwestern Public Service and Wildorado to begin performing their obligations under the Agreement.

## III. Notice of Filing and Comments

6. Notice of SPP's filing was published in the *Federal Register*,<sup>5</sup> with protests and interventions due on or before March 29, 2005. No protests were filed. Xcel filed a motion to intervene and comments on behalf of Southwestern Public Service.

7. Xcel does not oppose SPP's filing. However, Xcel requests clarification of the following issues regarding the filing of the Agreement: (1) whether agreements for E&D services must be filed under section 35 of the Commission's regulations<sup>6</sup> and Order No. 2003;<sup>7</sup> (2) whether SPP and other transmission providers can file a form E&D service agreement under their OATTs; and (3) if the Commission accepts a form E&D service agreement, whether transmission providers still need to file individual service agreements with the Commission.

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<sup>4</sup> 18 C.F.R. § 35.3 (2004).

<sup>5</sup> 70 Fed. Reg. 13,185 (2005).

<sup>6</sup> 18 C.F.R. § 35 (2004).

<sup>7</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (2005), FERC Stats. & Regs. ¶ 31,171 (2004), *reh'g pending*.

8. According to Xcel, the Commission has not expressly stated that E&D service agreements must be filed with the Commission. Xcel also asserts that, under the Agreement, the E&D services provided by Southwestern Public Service are an extension of the planning work performed under the various Large Generator Interconnection Procedures (LGIP) study agreements which do not entail actual construction of interconnection facilities. Consequently, Xcel asks the Commission to find that SPP was not required to file the Agreement under section 35 because no OATT services are being provided.

#### **IV. Discussion**

##### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **B. Commission Determination**

10. We accept the proposed Agreement, to become effective on February 14, 2005.<sup>8</sup>

11. FPA section 205<sup>9</sup> and section 35.1 of the Commission's regulations<sup>10</sup> require public utilities to file rate schedules showing rates and charges for any transmission or sale of electric energy subject to the jurisdiction of the Commission. Public utilities must also file the classifications, practices, rules and regulations and all contracts which in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices. We disagree with Xcel's assertion that E&D agreements related to a proposed generation interconnection do not need to be filed with the Commission. The subject Agreement specifically states, "The work completed by [Southwestern Public Service] under this Letter Agreement shall apply towards [Southwestern Public Service's] obligations in the Interconnection Agreement. The payments made by Customer under this Letter Agreement shall apply towards Customer's payment obligations in the Interconnection Agreement." Clearly, the money paid and services

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<sup>8</sup> See *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *clarified*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*). The Commission will waive the 60-day notice requirement when service agreements under umbrella tariffs are filed within 30 days of the commencement of service. *Prior Notice*, 64 FERC at 61,984.

<sup>9</sup> 16 U.S.C. § 824d (2000).

<sup>10</sup> 18 C.F.R. § 35.1 (2004).

provided under the Agreement constitute a contract that relates to rates, charges, classifications, services, rules, regulations or practices. As such, and consistent with longstanding Commission precedent on such agreements, we find that the Agreement and all such agreements must be filed with the Commission.<sup>11</sup>

12. Xcel raises the issue of whether SPP and other transmission providers may submit standard form E&D agreements for Commission approval to be included in their OATTs. In the interest of uniformity and to ensure all Interconnection Customers are treated in a fair and equitable way, the Commission finds that transmission providers may file standard form E&D agreements to be included in their OATTs. Upon Commission acceptance of such standard form E&D agreements, we will not require the parties to file conforming, executed agreements. Standard form E&D agreements streamline the interconnection process by eliminating the need to negotiate each individual agreement, and reduce the need to file each individual agreement with the Commission on a case-by-case basis. However, parties must file all unexecuted or non-conforming agreements and clearly identify how and explain why the filed agreement differs from the standard form found in the transmission provider's OATT.

The Commission orders:

(A) SPP's Letter Agreement is hereby accepted for filing, to become effective on February 14, 2005, as requested.

(B) Waiver of the Commission's 60-day prior notice requirement is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>11</sup> *E.g., Prior Notice*, 64 FERC at 61,982, 61,989-91. *See also GenPower Anderson, LLC v. Duke Energy Corp. and Duke Electric Transmission*, 101 FERC ¶ 61,038 (2002) (requiring Duke Energy to file an engineering and design letter agreement entered into pending execution of an Interconnection and Operating Agreement with the Commission).