

104 FERC ¶ 61,098

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Southwest Power Pool, Inc.

Docket No. ER03-978-000

ORDER CONDITIONALLY ACCEPTING INTERCONNECTION AND
OPERATING AGREEMENT

(Issued July 23, 2003)

1. On June 20, 2003, Southwest Power Pool, Inc. (SPP) filed a newly executed Interconnection and Operating Agreement (IA) between SPP, Blue Canyon Windpower, LLC (Blue Canyon), the interconnecting generator, and Western Farmers Electric Cooperative (WFEC),¹ the transmission owner and power purchaser. In this order, we accept the IA subject to the applicant refiling the agreement in compliance with Commission policy. This order benefits customers by requiring that the generator's interconnection and operating agreement reflect transmission credits associated with investments made in network facilities.

I. BACKGROUND

2. The IA establishes rights, obligations and costs associated with the interconnection of a new 74MW facility located north of Lawton, Oklahoma. SPP states that the IA is modeled on the Commission-approved pro forma interconnection agreement included in Attachment R of the Midwest Independent Transmission System Operator, Inc.'s Open Access Transmission Tariff.² SPP asserts that the MISO interconnection agreement is an appropriate template because it has been approved by the

¹SPP states that while WFEC is not subject to the Commission's jurisdiction, WFEC has committed its transmission facilities to service under the SPP Tariff.

²See Midwest Independent System Operator, Inc., 97 FERC ¶ 61,136 (2001).

Commission and is currently in effect. In addition, SPP states that the Commission has previously approved SPP's use of the MISO pro forma IA.³

3. SPP has modified the MISO pro forma to include, among other things, that Blue Canyon will not be entitled to credits associated with transmission service provided over the interconnection facilities once transmission service commences. Rather, the credits that Blue Canyon would otherwise receive will be reflected in the price that WFECC, as the sole purchaser, will pay for the power. Additionally, the parties have agreed to exclude provisions expressly allowing for unilateral changes to the IA Sections 205 and 206 of the Federal Power Act.

4. SPP requests an effective date of May 22, 2003 and waiver of the Commission's 60-day notice requirement to allow the effective date for the IA.

II. NOTICE OF FILING AND RESPONSIVE PLEADINGS

5. Notice of SPP's filing was published in the Federal Register, 68 Fed. Reg. 39,537 (2003), with comments, protests and interventions due on or before July 11, 2003. On July 10, 2003, WFECC filed a motion to intervene with no substantive comments. On July 11, 2003, Blue Canyon also filed a motion to intervene with no substantive comments.

III. DISCUSSION

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of WFECC and Blue Canyon serve to make them parties to this proceeding.

B. Analysis

1. Use of MISO's Pro Forma IA

7. SPP states that the Commission previously approved SPP's use of a modified MISO pro forma IA to be appropriate, that the MISO IA has been approved by the Commission and is currently in effect, and that the Commission should therefore accept

³Southwest Power Pool, Inc., 100 FERC ¶ 61,248 (2001) (September 5 Order).

modification of MISO's IA here. We will continue to allow SPP to use MISO's pro forma IA as a template for a limited time. However, SPP must abide by the Commission's previous rulings and must provide a red-lined version of any further modifications made to the compliance version of the IA accepted for filing.⁴ For example, SPP must include language required by the September 5 Order in Section 15.4 of the IA - "with credit assurance provided to Generator."⁵

2. Crediting of Investment in Network Facilities

8. No party argues that Blue Canyon is not due credits for investments it makes to interconnect with WFECC's transmission system. Indeed, the application indicates that the only costs covered by the interconnection agreement are those costs incurred for construction on the transmission owner's side of the interconnection. Under the Commission's policy, then, these facilities are network facilities for which the generator should receive transmission credits with interest. Rather, SPP states that the parties have agreed to reflect the credits due to Blue Canyon within the price for power paid by WFECC.⁶

9. This assertion, however, cannot be tested or verified, since the parties did not file the power contract and we cannot know at this point what WFECC would have paid for Blue Canyon's power absent the credit.⁷ Moreover, of concern is that the IA specifically

⁴Southwest Power Pool, Inc., Docket No. ER02-1705-002, letter order of November 13, 2002.

⁵100 FERC ¶ 61,248 at P 14.

⁶Application at pages 2, 5, 6, 55 and 56.

⁷The Commission requires separate rates for transmission and generation and does not look at the combined effect of these transactions to determine whether the combined rate is just and reasonable. See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,654-5. (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S. Ct. 1012 (2002).

provides that Blue Canyon shall not be entitled to transmission credits.⁸ In the context of interconnections, our transmission pricing policy is implemented through credits; the generator pays up front for upgrades to the transmission network needed to interconnect the generator, but when the generator takes actual delivery service, it receives credits against the full transmission rate until it has been paid back, with interest. The parties here have not justified the reflection of a credit due that pertains to transmission rates in the negotiated price for power, and thus the filed IA is not consistent with the Commission's policy. Therefore, we will conditionally accept the IA subject to the parties refiling the IA within 15 days of the date of this order to provide for transmission credits and interest consistent with Commission policy.

The Commission orders:

(A) The IA is hereby accepted for filing, to become effective on May 22, 2003, subject to the modifications discussed in the body of this order.

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

(C) Within 15 days of the date of this order, SPP must file an IA reflecting the changes discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸See IA, Appendix A, page 57, Section 1.7.