

169 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER19-1980-000
ER19-1980-001

ORDER REJECTING TARIFF FILING

(Issued October 18, 2019)

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) as transmission owner (Amended Haystack GIA).³ In this order, we reject the Amended Haystack GIA without prejudice, as discussed below.

I. Background

2. NPPD is a publicly-owned electric utility and political subdivision of the state of Nebraska. It is not a public utility as defined by the FPA. In 2008, SPP filed revisions to its Bylaws, Tariff, and Membership Agreement to enable NPPD to become a member of

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. part 35 (2019).

³ The Haystack GIA is designated as Original Service Agreement No. 3555 under SPP's Open Access Transmission Tariff (Tariff). *See* Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1 at Attachment V, Appendix 6 (*pro forma* GIA).

SPP. On November 26, 2008, the Commission accepted the filing, which included the NPPD Membership Agreement.⁴

3. 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 facilities⁵ are necessary to interconnect the Haystack generating facility, two of which are shared facilities between Haystack and other interconnection customers. One of these customers, Sholes Wind Energy, LLC (Sholes Wind), is constructing a 160 MW wind generating facility,⁶ a higher-queued project relative to the Haystack project.⁷ A 14.5-mile generator tie line will connect the Sholes Wind generating facility, at its collector substation, to the Hoskins Substation.⁸

4. The second interconnection customer, Plum Creek Wind, LLC (Plum Creek), is constructing a 230 MW wind generating facility,⁹ a project concurrently queued with the Haystack project.¹⁰ The interconnection of Plum Creek's and Haystack's generating facilities requires the construction of a new Satellite Substation, located on the 14.5-mile Sholes Wind generator tie line, with approximately 8.5 miles of the line extending from

⁴ *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,239 (2008).

⁵ 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 Generator Interconnection Agreement, including any modifications, additions, or upgrades to such facilities and equipment. Transmission Owner's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades, or Network Upgrades." SPP Tariff, Attachment V, Appendix 6, Article 1 (Definitions).

⁶ *See Sw. Power Pool, Inc.*, Docket No. ER17-587-000 (Jan. 18, 2017) (delegated order); *Sw. Power Pool, Inc.*, Docket No. ER18-650-000 (Mar. 6, 2018) (delegated order).

⁷ Haystack June 14 Protest at 3-4.

⁸ Amended Haystack GIA, Appendix A, Sections 1(d) and 11; *see also* NPPD June 2019 Answer at 3.

⁹ *See Sw. Power Pool, Inc.*, Docket No. ER18-650-000 (Mar. 6, 2018) (delegated order).

¹⁰ NPPD June 27 Answer at 4.

the Satellite Substation to the Sholes Wind collector substation and the remaining six miles extending from the Satellite Substation to the point of interconnection with the Hoskins Substation. This 6-mile portion of the Sholes Wind generator tie line, termed the Gen Tie Link, will be used by Haystack and Plum Creek to connect the new Satellite Substation to the point of interconnection at the Hoskins Substation. Plum Creek and Haystack will each be responsible for 50 percent of the cost of the Satellite Substation,¹¹ and Sholes Wind, Plum Creek, and Haystack will each be responsible for approximately 33 percent of the cost of the Gen Tie Link.¹²

5. In addition, the interconnection of the Haystack generating facility will require the construction of a 12-mile generator tie line, termed the Gen Tie Line, from the Haystack generating facility collector substation to the new Satellite Substation. Haystack will pay for the full cost of the Gen Tie Line.¹³

6. The Satellite Substation, Gen Tie Link, and Gen Tie Line are classified as transmission owner's interconnection facilities in the Amended Haystack GIA.¹⁴ Interconnection customers have elected to exercise their option to build these facilities. Plum Creek is constructing the Satellite Substation, Sholes Wind is constructing the Gen Tie Link, and Haystack is constructing the Gen Tie Line.¹⁵ Under the current option to build provisions in SPP's *pro forma* GIA,¹⁶ which are based on the option to build provisions established in Order No. 2003,¹⁷ an interconnection customer may elect the option to build the transmission owner's interconnection facilities and stand

¹¹ Amended Haystack GIA, Appendix A, Sections 1(b) and 11.

¹² *Id.*, Appendix A, Sections 1(d) and 11; *see also* NPPD June 27 Answer at 4.

¹³ Amended Haystack GIA, Appendix A, Sections 1(c) and 11.

¹⁴ *Id.*, Appendix A.

¹⁵ Haystack June 14 Protest at 4.

¹⁶ SPP Tariff, Attachment V, Appendix 6, Articles 5.2.1 and 5.2.

¹⁷ *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).

alone 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.

7. Pursuant to Nebraska state law,¹⁸ privately developed renewable energy generation projects in Nebraska are required to enter into a Joint Transmission Development Agreement (JTDA) in addition to a GIA. Accordingly, Plum Creek and Sholes Wind have executed JTDAs with NPPD. Haystack will also be subject to a JTDA with NPPD.¹⁹

II. May 2019 Filing

8. SPP states that the Haystack GIA provides for the interconnection of Haystack's generating facility to NPPD's transmission system. SPP further states that the Haystack GIA contains provisions that do not conform to the *pro forma* GIA in the SPP Tariff. SPP explains that many of these non-conforming provisions are necessary to accommodate Nebraska state law and/or correspond to provisions in the NPPD Membership Agreement. SPP also indicates that Haystack declined to execute the Haystack GIA due to a dispute between Haystack and NPPD regarding information in the appendices to the Haystack GIA.²⁰

III. Notices and Responsive Pleadings

9. Notice of SPP's May 24, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 25,253 (2019), with interventions and protests due on or before June 14, 2019. On May 30, 2019, NPPD filed a timely motion to intervene, and on May 31, 2019, Plum Creek filed a timely motion to intervene. On June 14, 2019, Haystack filed a timely motion to intervene and protest. On June 27, 2019, NPPD filed an answer to the protest, and on July 11, 2019, Haystack filed an answer to NPPD's answer. On July 12, 2019, NPPD filed an additional answer.

10. On July 22, 2019, Commission staff issued a letter advising SPP that its May 24, 2019 filing was deficient (Deficiency Letter). On August 21, 2019, SPP submitted a response to the Deficiency Letter and an amended version of the Haystack GIA (August 2019 Filing).

¹⁸ Neb. Rev. Stat. §70-1014.02 (2019).

¹⁹ Haystack June 14 Protest at 4-5.

²⁰ May 2019 Filing, Transmittal at 1-2.

11. Notice of SPP's August 2019 Filing was published in the *Federal Register*, 84 Fed. Reg. 45,143 (2019), with interventions and protests due on or before September 11, 2019. On September 11, 2019, Haystack filed a protest, and on September 26, 2019, NPPD filed an answer to the protest. On October 3, 2019, Haystack filed an answer to NPPD's answer.

IV. Discussion

A. Procedural Matters

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

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept Haystack and NPPD's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

14. We reject the Amended Haystack GIA without prejudice, as discussed below. We note that Haystack, in its June 14 Protest, raised issues in addition to those discussed below. Given our rejection of the Amended Haystack GIA based on potential oversight and overbuild costs contained in the GIA, we need not address additional issues at this time.

1. Initial Payment and Oversight Costs

a. May 2019 Filing

15. Under the terms of the Haystack GIA,²¹ SPP proposes to require Haystack to make a deposit to NPPD for 10 percent of the cost of the Gen Tie Line, estimated at \$12,000,000, for transmission owner activities.

b. Responsive Pleadings to May 2019 Filing

16. In its protest, Haystack asserts that the Haystack GIA does not explain what the transmission owner activities covered by this deposit entail or why 10 percent of Haystack's estimated costs is a reasonable estimate for such activities. According to

²¹ Amended Haystack GIA, Appendix A, Sections 1(c) and 3(f), and Appendix B, Item 8.

Haystack, during negotiations, NPPD indicated that these activities include oversight of Haystack's construction of the Gen Tie Line. Haystack notes that in Order 2003-A, the Commission did not require that the transmission owner be reimbursed for construction oversight costs in cases where the interconnection customer exercises the option to build.²² At a minimum, Haystack requests that the Commission require SPP to remove the 10 percent deposit of the estimated cost of the Gen Tie Line from the Haystack GIA.²³ Similarly, Haystack objects to the inclusion of transmission owner oversight costs in Haystack's allocated costs for the Satellite Substation and Gen Tie Link.

17. Haystack claims that under normal SPP practice, the Gen Tie Line would be designated as an interconnection customer's interconnection facility²⁴ and not as a transmission owner's interconnection facility and requests that the Commission require SPP to reclassify the Gen Tie Line as an interconnection customer's interconnection facility. Haystack contends that, but for the Haystack GIA's requirement to transfer ownership of the facility to NPPD upon completion, it would function as a typical tie line owned by the generator.²⁵ Haystack alleges that the Gen Tie Line is designated as a transmission owner's interconnection facility because NPPD erroneously insists that it must own transmission facilities required to interconnect a privately developed renewable energy generation facility, such as the Haystack project. Haystack asserts that if the Gen Tie Line were classified as an interconnection customer's interconnection facility, NPPD would not be entitled to force Haystack to pay 10 percent of the costs of the project to NPPD, or impose onerous design requirements on Haystack.²⁶

²² Haystack June 14 Protest at 12-13 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at PP 218-219).

²³ *Id.* at 12-14.

²⁴ Interconnection customer's interconnection facilities are "all facilities and equipment, as identified in Appendix A of the Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities." SPP Tariff, Attachment V, Appendix 6, Article 1 (Definitions).

²⁵ Haystack June 14 Protest at n.9 (citing *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶61,211, at P 10, *order denying reh'g*, Order No. 807-A, 153 FERC ¶61,047 (2015)).

²⁶ *Id.*

18. In response, NPPD represents that it has incurred, and will continue to incur, costs associated with activities which would not be necessary but for Haystack's construction of the Gen Tie Line. NPPD explains that Appendix A to the Haystack GIA does not contain a detailed accounting of such activities because they are typically agreed upon by the project developer and NPPD as the project progresses. NPPD further explains that these activities include NPPD's review of documentation applicable to the developer's scope of work as well as construction-related items, including: installation of final tie-in of the Gen Tie Line to the substation; installation of the conductor from the dead end of the substation bay terminals; protection relays and relay/settings and trip checking of all breakers; telecommunications installation; security installation; metering installation; and calibration of metering equipment. NPPD argues that 10 percent is an accurate estimate in its experience, and that in any event, it should be allowed to recover actual costs incurred, as nothing in the SPP Tariff prohibits such cost recovery.²⁷

19. NPPD argues that the Commission should deny Haystack's request that SPP reclassify the Gen Tie Line as an interconnection customer's interconnection facility. NPPD asserts that the Gen Tie Line will be owned by NPPD upon completion and, therefore, the Gen Tie Line is properly classified as a transmission owner's interconnection facility.²⁸

c. August 2019 Filing

20. SPP states that NPPD provided information indicating that the 10 percent deposit for the Gen Tie Line includes compensation to NPPD for oversight costs for the Gen Tie Line and that the deposit will also be used to compensate NPPD for other construction-related items. SPP also states that NPPD confirmed that oversight costs were included in the cost estimate of the Satellite Substation. SPP states that NPPD clarified that the cost estimate was developed in the facilities study for Haystack and Plum Creek's interconnection requests and assumed that NPPD, as the transmission owner, would construct the Satellite Substation. SPP states that NPPD explained that the cost estimate included labor and other costs specifically for oversight functions, including supervision and commissioning, as well as construction-related tasks. SPP also states that NPPD indicated that Sholes Wind provided the cost estimate for the Gen Tie Link and that this estimate would represent actual, verifiable costs for this segment of the project.²⁹

²⁷ NPPD June 27 Answer at 10-11.

²⁸ *Id.* at 11.

²⁹ August 2019 Filing, Transmittal at 4-5.

21. In addition, SPP explains that the Gen Tie Line and Satellite Substation are located between the point of change of ownership and the point of interconnection. Therefore, SPP asserts that, per the terms of Section 1 of Attachment V of the SPP Tariff, these facilities are appropriately classified as transmission owner's interconnection facilities. SPP states that NPPD also indicated that the "location of the placement of the point of change of ownership is based on the policy of the NPPD Board of Directors."³⁰

22. SPP states that in preparing its response, it identified an error in the calculation of the initial payment³¹ in the Haystack GIA.³² SPP explains that because the Gen Tie Line is classified as a transmission owner's interconnection facility, in accordance with Article 11.6 of the Haystack GIA, SPP should have included the cost estimate of the Gen Tie Line in the calculation of Haystack's initial payment. SPP further explains that it is submitting revisions to the Haystack GIA to correct the initial payment.³³ Further, SPP states that it removed the requirement for Haystack to make a 10 percent deposit of the cost of the Gen Tie Line from the Amended Haystack GIA because that deposit is included in the revised initial payment.³⁴

d. Responsive Pleadings to August 2019 Filing

23. Haystack objects to including the cost estimate of the Gen Tie Line in the calculation of its initial payment, given that Haystack is the party constructing the facility. Haystack points out that the calculation of the initial payment in Article 11.6 in the Amended Haystack GIA excludes the cost of interconnection customer's

³⁰ *Id.* at 5-6.

³¹ Article 11.6 in SPP's *pro forma* GIA requires interconnection customers to make an initial payment equal to the greater of: (1) 20 percent 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.

³² In the May 2019 Filing, SPP only included Haystack's allocated share of the cost for the Satellite Substation in its calculation of Haystack's initial payment.

³³ August 2019 Filing, Transmittal at 3. SPP submitted revisions to the Haystack GIA to correct the amount of the initial payment from \$1,450,000 to \$3,850,000.

³⁴ *Id.* at 7.

interconnection facilities and that the Gen Tie Line, under normal SPP practice, would be designated as an interconnection customer's interconnection facility.³⁵

24. Haystack asserts that Nebraska law does not require the Gen Tie Line to be a transmission owner's interconnection facility or otherwise govern the location of points of interconnection or change of ownership. Haystack argues that Nebraska law defers to the agreement of the parties on these points as expressed in a JTDA, which has yet to be negotiated.³⁶

25. In response to Haystack's protest, NPPD contends that categorizing the Gen Tie Line as a transmission owner's interconnection facility and designating the point of change of ownership as the location where the transmission line is attached to the developer's collector substation is consistent with governing precedent under Nebraska law. NPPD explains that the location of the point of change of ownership is based on the policy of the NPPD Board of Directors, a relevant governmental authority within the meaning of Article 14.1 of the Amended Haystack GIA.³⁷

e. Commission Determination

26. As an initial matter, we deny Haystack's request to reclassify the Gen Tie Line as an interconnection customer's interconnection facility. In its September 26 answer, NPPD provides evidence that the point of change of ownership for the Haystack generating facility is consistent with the policy of the NPPD Board of Directors, a recognized governmental authority. Accordingly, pursuant to Article 14.1 in the SPP *pro forma* GIA,³⁸ the NPPD Board of Directors' policy establishes the location of the point of change of ownership for the Gen Tie Line. As a facility located between the point of change of ownership and the point of interconnection, the Gen Tie Line is therefore appropriately classified as a transmission owner's interconnection facility.

27. Because the Gen Tie Line is appropriately classified as a transmission owner's interconnection facility, we find that it is appropriate to include the cost estimate for the Gen Tie Line in the calculation of Haystack's initial payment. Article 11.6 in SPP's *pro*

³⁵ Haystack September 11 Protest at 7-8.

³⁶ *Id.*

³⁷ NPPD September 26 Answer at 6.

³⁸ Article 14.1 of SPP's *pro forma* GIA states that each party's obligation under the GIA shall be subject to its receipt of any required approval or certificate from one or more governmental authorities. As applied to the Amended Haystack GIA, the NPPD Board of Directors is considered a relevant governmental authority.

forma GIA provides that the costs of network upgrades, shared network upgrades, transmission owner's interconnection facilities, and/or distribution upgrades should 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. Accordingly, we find that SPP's inclusion of the cost of the Gen Tie Line in the initial payment is consistent with SPP's *pro forma* GIA.

28. However, it is unclear whether the calculation of the revised initial payment follows the requirements prescribed in the SPP Tariff. Accordingly, we reject the Amended Haystack GIA.

29. The option to build provisions in the current SPP *pro forma* GIA are based on the option to build provisions established in Order No. 2003. In Order No. 2003-A, the Commission rejected requests to require the interconnection customer to reimburse the transmission owner for construction oversight costs when the interconnection customer exercises the option to build. The Commission stated that the transmission owner may engage in oversight activities to satisfy itself that the interconnection customer is abiding by the transmission owner's standards and specifications for the construction of facilities; however, the Commission considered these expenses part of the cost of doing business, which the transmission owner could avoid by meeting the interconnection customer's proposed construction milestones and constructing the facility itself.³⁹ Accordingly, we find that NPPD should not collect costs for its oversight of interconnection customers' construction of the Gen Tie Link, Satellite Substation, and Gen Tie Line.

30. While SPP removed the 10 percent deposit for the Gen Tie Line from the Amended Haystack GIA, it is unclear whether the total cost estimate for the Gen Tie Line and Satellite Substation allocated to Haystack—upon which the initial payment is based—includes costs for NPPD's oversight of interconnection customers' construction of transmission owner's interconnection facilities. In the August 2019 Filing, SPP states that NPPD indicated that costs for oversight functions included in the cost estimate for the Satellite Substation originated from the facilities study and assumed that the transmission owner would be constructing the facilities;⁴⁰ however, it is unclear whether costs for NPPD's oversight of Plum Creek's construction of the Satellite Substation are also included in the total cost estimate for the Satellite Substation. Similarly, it is unclear whether costs for NPPD's oversight of Haystack's construction of the Gen Tie Line are included in the total cost estimate for the Gen Tie Line. We find that, consistent with Order No. 2003-A, NPPD's costs for oversight of interconnection customers' construction of transmission owner's interconnection facilities should not be included in

³⁹ Order No. 2003-A, 106 FERC ¶ 61,220 at PP 218-219.

⁴⁰ August 2019 Filing, Transmittal at 5.

the total cost estimates for the Satellite Substation and the Gen Tie Line, upon which Haystack's initial payment will be based.

31. Upon refileing the Haystack GIA, SPP should ensure that the cost estimates for the Gen Tie Link, Satellite Substation, and Gen Tie Line do not include estimated costs for NPPD's oversight of interconnection customers' construction of transmission owner's interconnection facilities. Further, SPP should ensure that the calculation of the initial payment is based on cost estimates for the Satellite Substation and Gen Tie Line that do not include such oversight costs.

2. Overbuild Costs

a. May 2019 Filing

32. Under the terms of the Amended Haystack GIA, Haystack is allocated 50 percent of the costs for the Satellite Substation, estimated at \$7,250,000.⁴¹

b. Responsive Pleadings to May 2019 Filing

33. In its protest, Haystack alleges that the design of the Satellite Substation includes the purchase, grading, graveling, and fencing of a parcel of land that is larger than required to interconnect Haystack, Plum Creek, and Sholes Wind to the NPPD transmission system. Haystack claims that the necessary facilities could reasonably be constructed on a plot less than half the size, at a savings of hundreds of thousands of dollars. Haystack requests that the Commission require NPPD to exclude overbuild costs from Haystack's allocated cost for the Satellite Substation.⁴²

34. In response, NPPD argues that the estimated costs of the Satellite Substation—including room for 12 additional breakers and other facilities—is beyond the scope of the instant proceeding, as the Plum Creek GIA, which includes these costs, was already accepted by the Commission. NPPD notes that Haystack did not object to these costs when it entered into a memorandum of understanding with NPPD in November 2018. NPPD also contends that acquiring the land to accommodate future growth is good utility practice and that such issues are the exclusive jurisdiction of the relevant state regulatory agency.⁴³

35. In its July 11 answer, Haystack argues that because the Satellite Substation is classified as a transmission owner's interconnection facility, it is not appropriate

⁴¹ Amended Haystack GIA, Appendix 1, Section 1(b).

⁴² Haystack June 14 Protest at 10-11.

⁴³ NPPD June 27 Answer at 7-8.

to size the facilities to accommodate future expansions and to pass through to the interconnection customer the increased costs associated with such overbuilding. Haystack reasons that if the Satellite Substation were a network upgrade, it might be prudent to build the upgrade with future third-party expansion in mind. However, because the Satellite Substation is not a network upgrade, Haystack contends that this transmission owner's interconnection facility should be designed and constructed for the "sole use" of the affected interconnection customers. Haystack also asserts that, based on the specifications required by NPPD, the cost of the Satellite Substation will exceed the facilities study cost estimate by approximately 40 percent.⁴⁴

c. August 2019 Filing

36. Regarding the size of the land acquired for the Satellite Substation, SPP represents that NPPD stated that while the facility is being constructed to accommodate the three current interconnection customers, there are three projects in SPP's interconnection queue that also plan to interconnect at the Satellite Substation. SPP states that NPPD clarified that Haystack will only be allocated the cost of the land, not the cost of building the facilities to accommodate future interconnection customers.⁴⁵

d. Responsive Pleadings to August 2019 Filing

37. In its protest, Haystack argues that requiring it to pay half the costs for the oversized parcel of land and related site improvements for the construction of the Satellite Substation does not meet the "but for" standard set forth by the Commission.⁴⁶ Haystack also contends that if it is required to pay half the cost of the extra land to accommodate future additional interconnections, any such future projects should also be required to reimburse Haystack for an allocated share of the land acquisition and site improvements.⁴⁷

38. In response, NPPD concedes that a 40-acre parcel of land, as opposed to the 80-acre parcel purchased by Plum Creek, would be sufficient for the Satellite Substation. However, NPPD indicates that Plum Creek represented that the land owner was not willing to sell a smaller plot of land. NPPD states that Haystack's concern regarding

⁴⁴ Haystack July 11 Answer at 3-4.

⁴⁵ August 2019 Filing at 6-7.

⁴⁶ Haystack September 11 Protest at 4-5 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 694-695).

⁴⁷ *Id.*

reimbursement will be addressed in the JTDA that remains to be negotiated between NPPD and Haystack. NPPD represents that it is NPPD's policy to include provisions in the JTDA requiring NPPD to seek recovery of the costs associated with generator tie lines and substations from future interconnection customers that utilize such facilities. NPPD affirms that it will refund all recovered amounts to Haystack and Plum Creek.⁴⁸

39. In its October 3 answer, Haystack clarifies that its objection is to the size of the required 40-acre parcel of land. Haystack alleges that 20 acres or fewer would be sufficient for the current size of the Satellite Substation.⁴⁹

e. Commission Determination

40. It is unclear whether Haystack's portion of the costs of the Satellite Substation only include costs associated with Haystack's interconnection request. Accordingly, we reject the Amended Haystack GIA on this basis as well.

41. We note that in a proceeding involving Midwest Independent Transmission System Operator, Inc.'s (MISO) proposed allocation of the costs of network upgrades to a group of interconnection customers, the Commission found that transmission providers are afforded some discretion in determining what facilities should be built in order to accommodate the interconnection of a project or group of projects.⁵⁰ In that case, the Commission found that MISO, the transmission provider, could determine through its study process that a larger upgrade should be built because it would both accommodate the interconnection of the group of projects and address other system-wide needs. However, the Commission also found that the cost responsibility for that group of interconnection customers remained limited to the cost of the facilities that would not be needed "but for" the interconnection of the group.⁵¹ The Commission accepted the larger facility, but, on compliance, the Commission required MISO to remove any cost assignment beyond each customer's share of the cost of the facilities that would not be needed but for the interconnection of each customer.⁵²

⁴⁸ NPPD September 26 Answer at 4-5.

⁴⁹ Haystack October 3 Answer at 1-2.

⁵⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,165, at P 21 (2010) (*MISO*).

⁵¹ *Id.* P 22.

⁵² *Id.*

42. Here, we find that the proposed allocation of the costs of the Satellite Substation to Haystack in the Haystack GIA have not been sufficiently justified. Consistent with *MISO*, if SPP refiles the Haystack GIA, SPP should demonstrate that only Haystack's share of the costs of the facilities (including land, gravel, and fencing) that would not be needed "but for" Haystack's interconnection have been assigned to Haystack.

43. We also remind the parties that Article 9.9.2 of the SPP *pro forma* GIA provides interconnection customers a right to compensation for future third party use of transmission owner's interconnection facilities.

3. Conflict Language

a. Responsive Pleadings

44. According to Haystack, NPPD requires language in a JTDA providing that, in the event of a conflict between language in the JTDA and GIA, the JTDA controls. Haystack emphasizes that in Order No. 888-A, the Commission stated that under the Supremacy Clause of the United States Constitution, state law does not override the Commission's authorities and responsibilities under the FPA.⁵³ Haystack requests that the Commission require SPP to amend the Haystack GIA to include language resolving conflicts between the GIA and JTDA in favor of the GIA.

45. NPPD contends that Haystack's requested amendment is contrary to the NPPD Membership Agreement and the SPP Tariff. NPPD explains that Haystack's reliance on the Commission's discussion in Order No. 888-A of the Supremacy Clause is misplaced, as Order No. 888-A predated Commission rulings in the intervening years approving amendments to NPPD's Membership Agreement designed to address conflicts with state law.⁵⁴ NPPD asserts that the JTDA should take precedence because Article 14 of the

⁵³ Haystack June 14 Protest at 15-16 (citing *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 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,293 (cross-referenced at 78 FERC ¶ 61,220), *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

⁵⁴ NPPD June 27 Answer at 12-14 (citing *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,239, at P 15 (2008); *TRANSLink Development Co., LLC*, 104 FERC ¶ 61,148, at P 9 (2003) (*TRANSLink*)).

Haystack GIA states that the parties' obligations under the GIA are subject to required approvals from governmental authorities, which will require Haystack to certify to the Nebraska Power Review Board that it has entered or will enter into a JTDA. NPPD adds that Article 14.2 states that the GIA shall be governed by the laws of the state where the point of interconnection is located.⁵⁵

b. Commission Determination

46. We find Haystack's request for an amendment to the Haystack GIA to provide that the GIA controls in the event of a conflict with the JTDA to be unnecessary. In the order accepting NPPD's Membership Agreement with SPP,⁵⁶ the Commission accepted Section 39.1 of the SPP Tariff to address potential conflicts between the SPP Tariff and state laws or regulations, or rate schedules of public-power entities. Specifically, pursuant to Section 39.1 in the SPP Tariff, in the event that the governing board of the public-power entity determines that a conflict exists between the SPP Tariff (or a rate schedule under the SPP Tariff such as the Haystack GIA) and an agreement subject to state jurisdiction (such as the JTDA), the state jurisdictional agreement shall govern with respect to the application of the SPP Tariff to the public-power entity. However, the public-power entity—in this case, NPPD—is required to file necessary documents notifying the Commission of the governing board determination of such a conflict and explaining both the conflict and what actions the governing board is taking in response to that determination.⁵⁷

The Commission orders:

The Amended Haystack GIA is hereby rejected without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁵ NPPD July 12 Answer at 3-4.

⁵⁶ *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,239.

⁵⁷ SPP Tariff, Section 39.1; *see also* *TRANSLink*, 104 FERC ¶ 61,148 at P 9.