

166 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket No. ER18-2324-000

ORDER ON WAIVER REQUESTS

(Issued January 17, 2019)

1. On August 27, 2018, as supplemented on November 2, 2018, NorthWestern Corporation (NorthWestern) submitted, pursuant to Rule 207(a)(5) of the Commission's regulations,¹ a request for three sets of waivers of the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (SPP Tariff) related to NorthWestern's Large Generator Interconnection Agreement (LGIA) with Rolling Thunder I Power Partners, LLC (Titan Wind) (Titan Wind LGIA), in order to convert the agreement, which currently is a service agreement under the NorthWestern South Dakota Open Access Transmission Tariff (NorthWestern Tariff), to a three-party Generator Interconnection Agreement (GIA) under the SPP Tariff. For the reasons discussed below, we grant in part, deny in part, and dismiss in part NorthWestern's requests for waiver.

I. Background and Overview of Filing

2. NorthWestern is a public utility engaged in the generation, transmission, and distribution of electricity and the supply and transportation of natural gas. NorthWestern's electric facilities are located primarily in Montana and South Dakota. In South Dakota, NorthWestern is a transmission owner within SPP, and the majority of transmission and generator interconnection services over NorthWestern's South Dakota transmission facilities are now provided by SPP under the SPP Tariff. This filing involves only NorthWestern's South Dakota operations and service under the NorthWestern Tariff and the SPP Tariff.²

¹ 18 C.F.R. § 385.207(a)(5) (2018).

² NorthWestern's Montana transmission facilities are not physically interconnected with its South Dakota facilities. Transmittal at 3. In this order, all references to NorthWestern's transmission system mean NorthWestern's transmission system in South Dakota.

3. NorthWestern states that Titan Wind is an existing generator that interconnected with the NorthWestern transmission system and became operational in 2009. In 2015, NorthWestern joined SPP and transferred control of its transmission facilities to SPP. NorthWestern explains that, at that time, there was a dispute over whether certain NorthWestern facilities qualified as “Transmission Facilities” under Attachment AI to the SPP Tariff, including facilities that are part of the radial line that connects Titan Wind to NorthWestern transmission facilities pursuant to the Titan Wind LGIA. NorthWestern and SPP resolved this disagreement as part of a settlement in which, among other things, NorthWestern agreed to conform to SPP’s definition of Transmission Facilities in Attachment AI of the SPP Tariff.³ NorthWestern states that as a result of the dispute, the interconnection service provided for in the Titan Wind LGIA pursuant to the NorthWestern Tariff was not transferred to service provided under the SPP Tariff in 2015, and Titan Wind is now the only interconnection customer remaining under the NorthWestern Tariff.⁴

4. NorthWestern states that because the NorthWestern and SPP definitions of Transmission Facilities differ, there is a 75-foot gap between the point of interconnection specified in the existing Titan Wind LGIA and the point of interconnection with the SPP-controlled transmission system.⁵ Therefore, NorthWestern states that in order to complete its transition into SPP, NorthWestern seeks to revise the description of the point of interconnection in the Titan Wind LGIA so that it conforms to SPP’s definition of Transmission Facilities. NorthWestern states that this change will not alter Titan Wind’s operations or the physical point where Titan Wind’s power currently enters the SPP transmission system, and that the two points of interconnection are electrically identical.⁶

II. Waiver Requests

5. In this filing, NorthWestern requests three sets of one-time, limited waivers of the SPP Tariff related to the Titan Wind LGIA: (1) waivers regarding the point of interconnection; (2) a Dispatchable Variable Energy Resource (DVER) waiver; and (3) waivers of SPP GIA provisions. NorthWestern states that because Titan Wind is an existing generator that is not changing its existing configuration, NorthWestern is requesting waivers in order to convert the Titan Wind LGIA under the NorthWestern

³ See *NorthWestern Corp.*, 157 FERC ¶ 61,008 (2016); *NorthWestern Corp.*, Offer of Settlement, Docket No. ER15-2069-000, at Article 2.4 (filed Aug. 12, 2016).

⁴ Transmittal at 3-4.

⁵ *Id.* at 6.

⁶ *Id.* at 2, 6.

Tariff to a three-party GIA under the SPP Tariff without incurring additional costs or triggering any of the requirements that apply when new generators request interconnection service under the SPP Tariff. On November 2, 2018, NorthWestern supplemented its filing with a detailed, one-line diagram of the proposed change in the point of interconnection, which NorthWestern states demonstrates that the change in the point of interconnection is on paper only and does not involve a physical change. NorthWestern states that the requested waivers will enable NorthWestern to complete its transition to SPP.⁷ NorthWestern asserts that the point of interconnection, DVER, and SPP GIA waivers each satisfy the four criterion that the Commission has used in granting waivers of tariff provisions.⁸

A. Waivers Regarding Point of Interconnection

6. NorthWestern seeks waiver of SPP's interconnection procedures to revise the description of the point of interconnection in the Titan Wind LGIA to conform to the definition of Transmission Facilities under Attachment AI of the SPP Tariff, as required by the settlement agreement. Specifically, NorthWestern is seeking waiver of sections 2.2-2.4, 3-4, and 6-8 of Attachment V to the SPP Tariff.⁹ NorthWestern states that changing the description of the point of interconnection is a change on paper only. However, according to NorthWestern, SPP stated that because Titan Wind's current point of interconnection is not on the SPP-controlled transmission system, SPP's generator interconnection procedures require NorthWestern and Titan Wind to submit a new generator interconnection request and undergo the associated interconnection studies before Titan Wind can modify the definition of the point of interconnection.¹⁰ Therefore, NorthWestern requests waiver of SPP's interconnection procedures regarding the processing and study of new interconnection requests so that NorthWestern and Titan Wind can revise the description of the point of interconnection. NorthWestern states that, if this waiver request is granted, the parties will not have to undergo the processes and studies in sections 2 through 8 of Attachment V and will be able to proceed directly to

⁷ *Id.* at 1-3.

⁸ *Id.* at 9-12 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,008, at P 10 (2018); *Sw. Power Pool, Inc.*, 157 FERC ¶ 61,244, at P 24 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at PP 12-13 (2016)).

⁹ *Id.* at 7.

¹⁰ *Id.* at 6-7.

converting the existing LGIA into an SPP three-party GIA in accordance with section 11 of Attachment V of the SPP Tariff.¹¹

B. DVER Waiver

7. NorthWestern seeks waiver of section 2.2(10) of Attachment AE in the SPP Tariff, which requires variable energy resources to register as DVERs but exempts from this requirement any “wind-powered Variable Energy Resource with an interconnection agreement executed on or prior to May 21, 2011 and that commenced Commercial Operation before October 15, 2012.”¹² NorthWestern seeks this waiver to allow NorthWestern and Titan Wind to convert the Titan Wind LGIA to an SPP *pro forma* GIA without triggering this registration requirement due to the forthcoming new execution date, noting that if Titan Wind were to retain its existing two-party LGIA, it would retain its grandfathered status as a Non-Dispatchable Variable Energy Resource (NDVER) and would not be subject to this requirement.¹³

8. NorthWestern states that this waiver would not exclude Titan Wind from any future requirement that all NDVERs in SPP register as DVERs, if SPP proposes and files such a requirement and it is accepted by the Commission.¹⁴

C. SPP GIA Waivers

9. NorthWestern requests waiver of certain operational provisions of the SPP *pro forma* GIA. First, NorthWestern seeks waiver of Article 8.4¹⁵ and Appendix C, which would require Titan Wind to provide meteorological and forced outage data and to install output reduction controls.¹⁶

¹¹ *Id.* at 2, 5-7.

¹² SPP Tariff, Attachment AE (MPL), § 2.2(10) (Application and Asset Registration) (10.1.0).

¹³ Transmittal at 2, 7-8.

¹⁴ *Id.* at 8.

¹⁵ In its filing, NorthWestern refers to “Section 8.4” when referring to the SPP *pro forma* GIA provision covering meteorological and forced outage data. *Id.* at 2, 8-9, 12. We understand NorthWestern to be referring to Article 8.4, “Provision of Data from a Variable Energy Resource,” which describes this data requirement.

¹⁶ *Id.* at 2, 8-9.

10. Second, NorthWestern seeks waiver of the primary frequency response requirements that SPP added to its *pro forma* GIA to comply with Order No. 842.¹⁷ NorthWestern states that the primary frequency response requirements are intended to apply only to newly-installed generation; however, it is requesting this waiver out of an abundance of caution.¹⁸

11. Third, NorthWestern requests waiver of any future requirement to install Phasor Measuring Units, as may be applicable at the time that Titan Wind converts its existing LGIA to a three-party SPP *pro forma* GIA. NorthWestern notes that the Commission recently rejected SPP's proposed changes to its *pro forma* GIA to require certain new generators to install Phasor Measuring Units. Thus, NorthWestern states that this waiver request would only apply if SPP submits a revised Phasor Measuring Units proposal to the Commission and the Commission accepts it.¹⁹

III. Notice and Responsive Pleadings

12. Notice of NorthWestern's August 27, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 45,120 (2018), with interventions and protests due on or before September 17, 2018. SPP and Titan Wind filed timely motions to intervene.

13. Notice of NorthWestern's November 2, 2018 supplement was published in the *Federal Register*, 83 Fed. Reg. 56,315 (2018), with interventions and protests due on or before November 9, 2018. None was filed.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁷ *Essential Reliability Services and the Evolving Bulk-Power System – Primary Frequency Response*, Order No. 842, 83 Fed. Reg. 9636 (Mar. 6, 2018), 162 FERC ¶ 61,128 (2018) (Order No. 842). *See also Sw. Power Pool, Inc.*, Docket No. ER18-1562-000 (Aug. 30, 2018) (delegated order) (accepting SPP's Order No. 842 compliance filing).

¹⁸ Transmittal at 8-9.

¹⁹ *Id.* at 3, 8 (citing *Sw. Power Pool, Inc.*, 164 FERC ¶ 61,087, at P 26 (2018)).

B. Substantive Matters

15. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²⁰ We dismiss NorthWestern's requested waivers regarding the point of interconnection as unnecessary, grant the DVER waiver as having satisfied the Commission's waiver criteria, and dismiss or deny the SPP GIA waivers as unnecessary or speculative, as discussed below.

1. Waivers Regarding Point of Interconnection

16. We agree with NorthWestern that Titan Wind should not be required to proceed through the interconnection study process, as it is an existing generator that is proposing a change to the description of the point of interconnection in the Titan Wind LGIA so that it conforms to SPP's definition of Transmission Facilities, and it is not physically changing its operations, technology, or interconnection configuration. However, we find that the waivers requested regarding the point of interconnection are unnecessary because the provisions in the SPP Tariff that would require Titan Wind to submit a new interconnection request and proceed through SPP's interconnection process do not apply in these circumstances because there is no material modification to the point of interconnection.²¹

17. Because there is no physical change to the existing interconnection configuration or change in Titan Wind's operations, we find that the change described by NorthWestern is a reclassification of facilities from network transmission facilities to interconnection facilities, rather than a material modification to the point of interconnection.²² The supplemental one-line diagram of the old and new points of interconnection filed by NorthWestern confirms that there will be no physical changes to the point of

²⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

²¹ SPP Tariff, Attachment V (GIP), § 4.4 (Modifications) (1.1.0).

²² See *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,380, at PP 54-55 (2015) (finding that the reclassification of distribution facilities as transmission facilities, resulting in an existing wind generator interconnecting to the MISO transmission system for the first time, did not trigger the MISO interconnection procedures for the existing wind generator that was not increasing its output or otherwise making a material change to its operations).

interconnection. Accordingly, we dismiss NorthWestern's request for waivers regarding the point of interconnection as unnecessary.

2. DVER Waiver

18. We find that NorthWestern's request for waiver of section 2.2(10) of Attachment AE in the SPP Tariff meets the Commission's criteria for waiver. First, NorthWestern states that it and Titan Wind acted in good faith because converting the existing two-party Titan Wind LGIA to a three-party SPP *pro forma* GIA is consistent with Commission policy and will give SPP contractual privity with a generator located in SPP.²³ We agree. The Commission has required parties that revise an interconnection agreement after joining a Regional Transmission Organization (RTO) to convert the agreement to a three-party agreement to ensure the RTO has the ability to operate a safe and reliable transmission system.²⁴ Converting the Titan Wind LGIA to a three-party SPP GIA is consistent with that precedent and will give SPP, the party with operational control over NorthWestern's transmission system and the party that provides generator interconnection services over those facilities, contractual privity with Titan Wind, a generator located within SPP.

19. Second, we agree with NorthWestern that the waiver is of limited scope because it applies on a one-time basis, only to NorthWestern's agreement with Titan Wind, and it does not affect any other interconnection agreements.²⁵

20. Third, NorthWestern argues that the waiver addresses a concrete problem because, in converting its existing two-party LGIA to a three-party SPP *pro forma* GIA, Titan Wind could be forced to register as a DVER.²⁶ We agree that this waiver addresses a concrete problem. Specifically, the SPP Tariff exempts wind-powered resources from registering as DVERs if they have interconnection agreements executed before May 2011 and commenced operations before October 2012. Titan Wind's current LGIA was executed in 2009, and the generating facility became operational that year, which meets these exemption criteria. Without waiver, Titan Wind would be required to register as a DVER solely because its forthcoming three-party GIA, reflecting the updated point of interconnection on the SPP transmission system, will be executed after May 2011.

²³ Transmittal at 10-11.

²⁴ See *Cinergy Services, Inc.*, 107 FERC ¶ 61,260, at PP 15-16 (2004).

²⁵ Transmittal at 11.

²⁶ *Id.*

21. Fourth, we agree with NorthWestern that the waiver does not have undesirable consequences because it will maintain Titan Wind's existing status under section 2.2(10) of Attachment AE.²⁷

22. Additionally, in its filing, NorthWestern notes that if SPP proposes – and the Commission accepts – a revision to the SPP Tariff to require all variable energy resources to register as DVERs, then this waiver requested by NorthWestern would not apply to SPP's proposal, and Titan Wind would be subject to the requirement to register as a DVER.²⁸ We note that, on November 16, 2018, SPP filed such a proposal in Docket No. ER19-356-000, which is currently pending before the Commission.

3. SPP GIA Waivers

23. First, NorthWestern requests waiver of Article 8.4 and Appendix C of the SPP *pro forma* GIA, which would require Titan Wind to establish operational requirements that it would not be subject to if it were to retain its existing two-party LGIA with NorthWestern. We dismiss NorthWestern's waiver request and find that these requested waivers are unnecessary based on NorthWestern's representation that "it is not aware of any additional SPP requirements that Titan Wind would have to comply with under [Article] 8.4 and Appendix C of the SPP GIA that it is not already complying with today."²⁹ We note that, if the parties later find that they require a change from SPP's *pro forma* GIA, the parties retain the option to file an executed or unexecuted non-conforming GIA without the provisions they believe should not apply and justify the exclusion of those provisions.³⁰

²⁷ *Id.*

²⁸ *Id.* at 8.

²⁹ *Id.* at 9.

³⁰ See *Sw. Power Pool, Inc.*, 132 FERC ¶ 61,062, at P 3 (2010) ("The Commission analyzes such non-conforming filings ... to ensure that operational or other reasons make a non-conforming agreement necessary. For example, the Commission recognizes that non-conforming agreements may be necessary for a small number of interconnections with specific reliability concerns, novel legal issues, or other unique factors. Thus, 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.").

24. Second, Northwestern requests waiver of Order No. 842, which requires newly interconnecting large and small generating facilities to have primary frequency response equipment as a condition of interconnection. This requirement does not apply to Titan Wind as an existing generator. In Order No. 842, the Commission stated that the Final Rule applies:

to all newly interconnecting large and small generating facilities that execute or request the unexecuted filing of a LGIA or [Small Generator Interconnection Agreement] on or after the effective date of this Final Rule as well as all existing large and small generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of this Final Rule. We are not requiring changes to existing interconnection agreements that were executed, or filed unexecuted, prior to the effective date of this Final Rule.³¹

Titan Wind has not taken any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after May 15, 2018, the effective date of Order No. 842. As the three-party SPP *pro forma* GIA will not be the result of a new interconnection request, but rather the result of NorthWestern completing its transition to SPP, the requirements of Order No. 842 do not apply here. As such, we dismiss as unnecessary NorthWestern's request for waiver of Order No. 842 primary frequency response requirements.³²

25. Third, NorthWestern requests waiver of any future Phasor Measuring Units requirements. We deny this request as premature and speculative because these requirements do not currently exist in the SPP Tariff.

³¹ Order No. 842, 162 FERC ¶ 61,128 at P 252. *See also id.* PP 132, 143.

³² *See MATL LLP*, 165 FERC ¶ 61,108, at P 9 (2018).

The Commission orders:

The requested waivers are hereby granted, denied, or dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.