

March 23, 2010

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

RE: *Southwest Power Pool, Inc.*, Docket No. ER10-_____
Submission of Large Generator Interconnection Agreement and Request
for Expedited Action and Shortened Notice Period

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and section 35.13 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. § 35.13, Southwest Power Pool, Inc. ("SPP") submits an executed Large Generator Interconnection Agreement ("LGIA") between SPP as Transmission Provider, Laredo Ridge Wind, LLC ("Laredo Ridge") as Interconnection Customer, and Nebraska Public Power District ("NPPD") as Transmission Owner ("Laredo Ridge LGIA").¹ SPP is submitting the Laredo Ridge LGIA for filing because it includes provisions that do not conform to the *pro forma* LGIA in SPP's Open Access Transmission Tariff ("SPP Tariff").² SPP requests an effective date of March 5, 2010 for the Laredo Ridge LGIA. At the request of Laredo Ridge and NPPD, SPP also requests that the Commission establish a shortened period for comments and accept the Laredo Ridge LGIA on an expedited basis.

I. Background

SPP is a Commission-approved Regional Transmission Organization ("RTO"). It is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 56 members in nine states and serves more than 5 million customers in a 370,000 square-mile area. Its members include 14 investor-owned

¹ A copy of the Laredo Ridge LGIA, which is designated as Original Service Agreement No. 1980, is attached as Exhibit I to this transmittal letter. In addition, SPP, Laredo Ridge, and NPPD are collectively "the Parties."

² See SPP Tariff at Attachment V, Appendix 6 (hereinafter "the *pro forma* LGIA").

utilities, 9 municipal systems, 11 generation and transmission cooperatives, 4 state agencies, 5 independent power producers, 10 power marketers, and 3 independent transmission companies.

Laredo Ridge is a Delaware limited liability company. Laredo Ridge is an affiliate of Edison Mission Group (“EMG”). Laredo Ridge will construct a 79.9 MW wind generation facility (“Facility”), which consists of fifty-four (54) General Electric 1.5 MW wind turbines outside of Petersburg, Nebraska. The Laredo Ridge LGIA provides for the interconnection of the Facility to NPPD’s transmission system.

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 Federal Power Act.³ Pursuant to Nebraska statutes, NPPD is engaged in the generation, transmission, and delivery of electric power and energy to wholesale and retail customers throughout the state of Nebraska. NPPD is governed by an independent 11-member Board of Directors popularly elected from NPPD’s chartered territory.

In 2008, SPP made several filings to enable NPPD to become a member in SPP. Specifically, in Docket No. ER08-1601-000, SPP filed revisions to its Bylaws, Tariff, and Membership Agreement to facilitate NPPD’s membership in SPP (“September 30 Filing”).⁴ On November 26, 2008, the Commission approved the September 30 Filing, which included the NPPD Membership Agreement.⁵

On February 5, 2010, NPPD, EMG, and Laredo Ridge entered into a twenty year Power Purchase Agreement (“PPA”) whereby NPPD would purchase the power from the Facility. To facilitate the PPA and to interconnect the Facility to the NPPD transmission system, the Parties entered into the Laredo Ridge LGIA on March 5, 2010. Because of NPPD’s unique status under Nebraska state law, NPPD requested certain revisions to the Laredo Ridge LGIA, as discussed below. Many of the non-conforming revisions described below were added to accommodate the PPA, Nebraska state law,⁶ and/or to

³ 16 U.S.C. § 824(e).

⁴ See Southwest Power Pool, Inc., Docket No. ER08-1601-000, Revisions to Bylaws, Tariff, and Membership Agreement (Sept. 30, 2008). The NPPD-specific Membership Agreement Amendments, which was included in the September 30 Filing as Exhibit No. 5, is hereinafter the “NPPD Membership Agreement.”

⁵ *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,239 (2008) (“November Order”).

⁶ The Laredo Ridge LGIA is governed by Nebraska law. See Laredo Ridge LGIA at Article 14.2.1 (“The validity, interpretation and performance of this LGIA and
(Cont’d . . .)

correspond to revisions to Commission-approved language in the NPPD Membership Agreement.

II. Description and Justification of Non-Conforming Provisions Included in the Laredo Ridge LGIA

A. Article 1 - Definitions

In the definition of “Force Majeure,” includes the additional phrase “acts or threats of terrorism and actions to prevent or protect against the same” to the list of events that qualify as Force Majeure.⁷ This addition insures the security of the Facility. NPPD requested, and all Parties consented to, this addition.

In addition, the definition of “Governmental Authority,” is revised to remove “Transmission Owner,” from the phrase, “provided, however, that such term [Governmental Authority] does not include Interconnection Customer, Transmission Provider, *Transmission Owner* or any Affiliate thereof.”⁸ The Parties removed Transmission Owner from this definition because the Transmission Owner, i.e., NPPD, is a Governmental Authority.

B. Article 2.2

In Article 2.2, the Parties modified the term of the LGIA from ten years to twenty years. Article 2.2 of the *pro forma* LGIA provides that the Parties may request a period longer than ten years for the effective date of the LGIA and that the term will be specified in the individual agreements. Consistent with the *pro forma* LGIA, the Parties selected a twenty year term for the LGIA. The Commission previously has accepted other LGIAs with similar modifications to Article 2.2.⁹

C. Article 2.3.1

In Article 2.3.1, the Parties added the following non-conforming language:

(. . . cont'd)

each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.”).

⁷ See Laredo Ridge LGIA at Definitions.

⁸ See *id.* (emphasis added to show removed terms).

⁹ See *Sw. Power Pool, Inc.*, 129 FERC ¶ 61,122 (2009); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER09-1234-000 (July 22, 2009).

Written Notice. This LGIA may be terminated by (1) either Interconnection Customer or Transmission Owner after giving twelve (12) months advance written notice to the other Parties which termination is to be effective after the twentieth anniversary of the Commercial Operation Date, or (2) by either Transmission Provider or Transmission Owner notifying FERC after the Generating Facility permanently ceases Commercial Operation; provided that no termination under this Section 2.3.1 shall be effective unless and until a termination of the Power Purchase Agreement between Interconnection Customer and Transmission Owner (or any successor power purchase agreement) is legally effective.¹⁰

This language ensures that the Laredo Ridge LGIA remains effective for the term of the PPA (which is twenty years) and only can be terminated if the PPA also is terminated. This language is appropriate because the interconnection of the Facility to NPPD's transmission system pursuant to Laredo Ridge LGIA is required to facilitate NPPD's purchase of power from the Facility under the PPA, thus necessitating that both agreements be simultaneously effective. The Parties also added non-conforming language requiring twelve months notice prior to termination. The Parties added this language because the 12-month notice provides the Parties assurance that existing service would not be disrupted and that adequate time is provided for making alternate arrangements.

D. Article 5.12

In Article 5.12, the phrases "use, licenses, rights of way and easements" and "licenses, rights of way and easements" are replaced by the word "access." NPPD requested these revisions because Nebraska statute prohibits NPPD from conveying any interest or control of its property to a private power producer (Laredo Ridge in this case).¹¹ As interpreted by NPPD, Nebraska law does not allow NPPD to give Laredo Ridge broad rights to its land that could potentially give Laredo Ridge control over NPPD property. Furthermore, access rights in Article 5.12 are subject to "regulatory approval." In this case, NPPD is the regulatory body that would approve the access rights to NPPD property. NPPD policy is to restrict non-utility entities, such as Laredo Ridge, to the bare minimum rights with respect to access to NPPD transmission system property and interconnections. Consistent with this policy, NPPD requested the above revisions to Article 5.12.

¹⁰ See Laredo Ridge LGIA at Article 2.3.1.

¹¹ See Neb. Rev. Stat. § 70-646.01 (2010) (Statute providing "the plant, property, or equipment of a public power district shall never, by sale under foreclosure, receivership, bankruptcy proceedings, outright sale, or lease, become the property or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit.").

E. Article 5.13

NPPD requested the removal of the phrase “including use of its eminent domain authority” from Article 5.13 to accommodate Nebraska law. Specifically, under Nebraska law, NPPD can only exercise its right of eminent domain for a public purpose and obtain land that will be devoted to a public purpose.¹² As such, NPPD cannot use its eminent domain authority to benefit only a single power producer, such as Laredo Ridge. By removing this phrase from the Laredo Ridge LGIA, NPPD will not be required to use its eminent domain authority to facilitate the installation of facilities and/or network upgrades on a third parties’ land, which could be in contravention of Nebraska law.

F. Article 13.5.1

The Parties added the phrase “and safety of Transmission Owner’s [NPPD] workers” to Article 13.5.1.¹³ This additional language is consistent with Section 8 of the Commission-accepted NPPD Membership Agreement and further ensures the safety of NPPD’s employees.¹⁴

G. Article 14.1

Article 14.1 is revised to add the phrase “or Transmission Owner” to the last sentence in Article 14.1.¹⁵ This addition clarifies that, by entering the Laredo Ridge

¹² See *Chimney Rock Irrigation Dist. v. Fawcus Springs Irrigation Dist.*, 359 N.W.2d 100, 101 (Neb. 1984).

¹³ See Laredo Ridge LGIA at Article 13.5.1 (“Transmission Provider and/or Transmission Owner may take whatever actions or inactions with regard to the Transmission System or Transmission Owner’s Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health *and safety and safety of Transmission Owner’s workers*, (ii) preserve the reliability of the Transmission System or Transmission Owner’s Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.”) (new language italicized).

¹⁴ See NPPD Membership Agreement at Section 8 (“Member reserves the right to exercise Operational Authority over Member’s Tariff Facilities (1) to protect public safety and the safety of its workers . . .”).

¹⁵ See Laredo Ridge LGIA at Article 14.1 (“Each Party’s obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing

LGIA, NPPD will not waive its non-jurisdictional rights and status. This language is consistent with Section 5 of the Commission-accepted NPPD Membership Agreement.¹⁶

H. Article 18.1

The Parties added the phrase “in the performance” to Article 18.1.¹⁷ NPPD and Laredo Ridge requested the addition of the phrase to clarify this section.

III. Effective Date, Waiver and Request for Shortened Notice Period and Expedited Action

SPP requests an effective date of March 5, 2010 for the Laredo Ridge LGIA. Pursuant to section 35.11 of the Commission’s rules and regulations, 18 C.F.R. § 35.11, SPP requests a waiver of the Commission’s 60-day notice requirement set forth at 18 C.F.R. § 35.3. Waiver is appropriate because the Laredo Ridge LGIA is being filed no later than 30 days after the effective date of the agreement.¹⁸

In addition, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212, on behalf of NPPD and Laredo Ridge, SPP requests that

(. . . cont’d)

notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer *or Transmission Owner* to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act, the Public Utility Holding Company Act of 2005, or the Public Utility Regulatory Policies Act of 1978 as amended by the 2005 Energy Policy Act.” (new language italicized).

¹⁶ See *id.* at Section 5 (section prohibiting waiver of jurisdictional immunity).

¹⁷ See Laredo Ridge LGIA at Article 18.1 (“The Parties shall at all times indemnify, defend, and hold the other Parties harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Parties’ action or inactions *in the performance* of its obligations under this LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.”) (new language italicized).

¹⁸ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh’g*, 65 FERC ¶ 61,081 (1993).

the Commission establish a shortened period for comments on this filing and require that such comments be submitted no later than March 30, 2010, and that the Commission accept the Laredo Ridge LGIA on an expedited basis in order to allow commencement of construction as soon as possible. Laredo Ridge and NPPD have authorized SPP to represent that they support SPP's request for a shortened notice period and expedited action.

IV. Additional Information

A. Information Required by Section 35.13 of the Commission's Regulations, 18 C.F.R. § 35.13:

(1) Documents Submitted with this Filing:

Included with this transmittal letter are the following:

(a) Exhibit I: Clean copy of the Laredo Ridge LGIA; and

(b) Exhibit II: Redlined pages of the Laredo Ridge LGIA illustrating the non-conforming language.

(2) Effective Date:

As discussed above, SPP respectfully requests that the Commission accept the Laredo Ridge LGIA with an effective date of March 5, 2010.

(3) Service:

SPP is serving a copy of this filing on the representatives for the Parties listed in the Laredo Ridge LGIA.

(4) Basis of Rate:

All charges will be determined in accordance with the SPP Tariff.

B. Communications

Copies of this filing have been served upon all Parties to the Laredo Ridge LGIA. Any correspondence regarding this matter should be directed to:

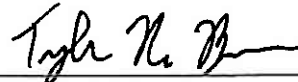
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V. Conclusion

For all the foregoing reasons, SPP respectfully requests that the Commission accept the Laredo Ridge LGIA with an effective date of March 5, 2010.

Respectfully submitted,



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Tyler R. Brown

**Attorneys for Southwest Power
Pool, Inc.**

Exhibit I

INTERCONNECTION AGREEMENT

entered into by the

Southwest Power Pool, Inc.,

Nebraska Public Power District

and

Laredo Ridge Wind, LLC

entered into on the 5th day of March, 2010

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GEN-2006-038N019

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STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

THIS STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

("Agreement") is made and entered into this 5th day of March 2010, by and among Laredo Ridge Wind, LLC, a Delaware limited liability company organized and existing under the laws of the State of Delaware ("Interconnection Customer" with a Large Generating Facility), Southwest Power Pool, Inc., a corporation organized and existing under the laws of the State of Arkansas ("Transmission Provider") and Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska organized and existing under the laws of the State of Nebraska ("Transmission Owner"). Interconnection Customer, Transmission Provider and Transmission Owner each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Transmission Provider functionally controls the operation of the Transmission System; and,

WHEREAS, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

WHEREAS, Transmission Owner owns facilities to which the Large Generating Facility is to be interconnected and may be constructing facilities to allow the interconnection; and,

WHEREAS, Interconnection Customer, Transmission Provider and Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used or the Open Access Transmission Tariff (Tariff).