

Network Upgrades identified in the Novus II LGIA. SPP rejected Novus II's proposed language because the SPP Tariff³ provides no mechanism for adjusting an interconnection customer's cost responsibility for upgrades that are required for its interconnection in the event a subsequent event would cause the same upgrade to otherwise be included in SPP's transmission expansion plan. Furthermore, consistent with Order No. 2003⁴ and Commission policy, SPP evaluated the Novus II interconnection request based on the system topology that existed during the study period. During that time, there were no priority projects or other upgrades *already* in the SPP transmission expansion plan that would alleviate the need for the upgrades in the Novus II LGIA.

In their protest, the Novus Parties argue that SPP now must restudy the Novus II interconnection request "to take into account . . . conditions resulting from transmission expansion projects" recently conditionally approved by the SPP Board and must include language in the Novus II LGIA permitting such

³ Southwest Power Pool, FERC Electric Tariff, Fifth Revised Volume No. 1 ("SPP Tariff").

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,171, *order on reh'g*, Order No. 2003-C, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,190 (2005), *aff'd sum nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

restudies.⁵ As explained below, the SPP Tariff does not provide for such a restudy and a restudy would be inconsistent with Commission policy. Accordingly, the Commission should reject Novus II's protest and accept the Novus II LGIA without modification or further restudy.

II. CONTRARY TO THE NOVUS PARTIES, RESTUDIES OF INTERCONNECTION REQUESTS THAT TAKE INTO ACCOUNT CHANGED SYSTEM CONDITIONS (E.G. SUBSEQUENT APPROVAL OF PRIORITY PROJECTS) WOULD BE INCONSISTENT WITH THE SPP TARIFF AND COMMISSION POLICY.

A. Restudy Of The Novus II Interconnection Request To Account For The SPP Board's Subsequent Approval Of Priority Projects Is Inconsistent With Commission Precedent And The SPP Tariff.

The Novus Parties' contention that the SPP Tariff and Commission precedent require restudies of interconnection requests to take account of "changed system conditions resulting from transmission expansion projects such as high priority upgrades . . . and the implementation of the proposed Highway/Byway regional transmission upgrade cost allocation methodology" is wrong.⁶ As the Commission repeatedly has held, "a project's queue position forms the basis for determination of an interconnection customer's cost responsibilities for the construction of facilities or upgrades to accommodate its

⁵ See, e.g., Motion To Intervene And Protest Of Novus Windpower, LLC And Novus Wind II, LLC, Docket No. ER10-1233-000, at 12, 20 (June 2, 2010) ("Novus Protest").

⁶ *Id.* at 12.

request.”⁷ Further, the interconnection customer is “responsible (and later may receive credits) for funding the cost of (1) all Network Upgrades (*other than those already in the Transmission Provider’s current expansion plan*) that must be constructed to support that Interconnection Customer’s In-Service Date.”⁸

As Novus II has acknowledged, the so-called “priority projects” that it insists SPP should “take into account” in determining Novus II’s cost responsibility were not approved by the SPP Board at the time that SPP tendered Novus II its interconnection agreement.⁹ In fact, when the Novus II project was studied, when SPP tendered the LGIA to Novus II, and when SPP filed the LGIA with the Commission, the priority projects had not yet been approved. It was not until April 2010 that the SPP Board approved the priority projects, and even then the approval was only conditional.¹⁰ Therefore, at the time Novus II entered the

⁷ *Neptune Reg’l Transmission Sys., LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (“*Neptune*”), *reh’g denied*, 111 FERC ¶ 61,455, at P 19 (2005) (“*Neptune Rehearing*”), *aff’d sub nom. Pub. Serv. Gas & Elec. Co.*, 485 F.3d 1164 (D.C. Cir. 2007) (collectively the “*Neptune Proceeding*”); *see also, Chesapeake Transmission, L.L.C. v. PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,234, at P 38 (2006) (“[T]he interconnection customer’s queue position serves as ‘an important baseline for the process that leads to an Interconnection Agreement.’”).

⁸ Order No. 2003-A at P 320 (emphasis added).

⁹ *See, e.g.*, Novus Protest at 11 (“Novus II received its first version of the LGIA . . . on October 9, 2009, the ‘final’ LGIA was tendered to Novus on or about March 22, 2010”); *see id.* at 6 (“[t]he Priority Project list appears in the SPP Priority Projects Phase II report, dated February 2010, which was approved by the SPP Board of Directors in April 2010.”).

¹⁰ The SPP Board conditioned the approval of the priority projects on the Commission’s acceptance of the SPP proposed Highway-Byway rate design (Cont’d . . .)

interconnection queue and throughout the study period, the priority projects were not “known” and thus should not have been, and were not, considered in determining Novus II’s cost responsibility.¹¹

Furthermore, as in the *Neptune Proceeding*, where the Commission held that restudies were improper to account for subsequent generation retirements that were unknown as of the interconnection customer’s queue date, allowing restudies to account for priority projects included in the SPP transmission expansion plan after the Novus II project was studied and the Novus II LGIA was tendered would defeat an important function of the queue process -- to provide certainty to transmission providers and customers.¹² As the Commission explains, “[i]f an interconnection customer is required to anticipate unspecified events occurring after its System Impact Study is completed, *other than costs arising from changes from higher-queued generators*, individual interconnection customers would be unable to make reasoned business decisions.”¹³ Without certainty in the queue

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proposal, which the Commission did not accept until June 17, 2010. *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010).

¹¹ See *Neptune Rehearing* at P 19 (“[T]he queue system ensures that an interconnection customer does not pay for costs occurring after it joins the queue, other than for events defined by the tariff, where the potential costs are reasonably known, such as higher queued projects dropping out.”).

¹² See *Neptune* at P 23 (“[T]he queue position provides a potential customer a reasonable degree of certainty as to its financial costs.”).

¹³ *Id.* (emphasis added).

process “there exists the possibility for unlimited changes, creating the potential for havoc for interconnection providers and customers alike.”¹⁴

The Novus Parties further err in contending that Attachment O of the SPP Tariff “expressly permits restudy to take into account a situation as that presented here.”¹⁵ As the Novus Parties note, Attachment O states that “interconnection facilities and network upgrades associated with generation interconnection is [*sic*] governed by Attachment V.”¹⁶ Attachment V of the SPP Tariff limits restudy of the Definitive Interconnection Impact Study to the following circumstances: (1) a higher or equal priority queued project drops out of the queue; (2) a higher queued project is modified; or (3) a point of interconnection is re-designated due to unanticipated results of an Interconnection Feasibility Study or Preliminary Interconnection System Impact Study.¹⁷ Clearly, none of these restudy triggers includes subsequent approval of priority projects after an interconnection request is studied. Moreover, Section II of Attachment O does not provide that “subsequent studies” will be conducted under such circumstances to change an interconnection customer’s cost responsibility.

¹⁴ *Neptune Rehearing* at P 19.

¹⁵ Novus Protest at 14.

¹⁶ *Id.* at 14.

¹⁷ SPP Tariff, Attachment V § 8.6. Attachment V contains SPP’s generation interconnection procedures.

The Novus Parties’ reliance on the *Brookings Order*¹⁸ is misplaced.¹⁹ The Novus Parties liken the Novus II situation to that of the interconnection customer in the *Brookings Order*, where, as the Novus Parties describe, “the Commission found that Midwest ISO erred when it failed to consider the level of cost responsibility of a wind generator for a transmission line upgrade (the Brookings Line) that was included as part of the CAPX-2020 project, the costs of which were regionally shared.”²⁰ However, the Novus Parties ignore that, unlike here, where the priority projects were not approved at the time SPP studied the Novus II request, the upgrade for which the Midwest ISO assigned cost responsibility to a group of interconnection customers already was in the Midwest ISO transmission expansion plan. In the *Brookings Order*, the Commission found that the upgrades in question “had been assumed in the base case covering the out-year horizon” suggesting that “the Brookings Line was needed for more than interconnection purposes.”²¹ Accordingly, the Commission rejected the proposed cost allocation and concluded that the evidence did not support Midwest ISO’s proposal to

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 (2010), *order on reh’g*, 131 FERC ¶ 61,165 (2010) (“*Brookings Order*”).

¹⁹ Novus Protest at 14.

²⁰ *Id.* at 15.

²¹ *Brookings Order* at P 17.

allocate the costs of the Brookings Line as a network upgrade.²² The *Brookings Order* provides no support for restudying the Novus II interconnection request to account for *subsequent* changes to SPP’s transmission expansion plan.

B. While The Restudy Of The Novus II Interconnection Project May Be Triggered By A Higher-Queued Project Withdrawing From The Queue, The Restudy Should Not Consider The Subsequent Inclusion Of Priority Projects In The SPP Transmission Expansion Plan.

While the Novus Parties are correct that a higher-queued project has dropped out of the queue and that will trigger a restudy of the Novus II interconnection project, they are wrong that such a restudy should “take into account the existence of, and plan for the construction of, all approved Base Plan Upgrades for which notifications to construct have been issued prior to the time for the restudy results are finalized.”²³ The queue process serves two functions. First, “by looking to the date of each customer's position in the queue, the interconnection provider may determine which interconnection costs should be allocated to an interconnection customer, and which costs belong to the system

²² *Id.* at P 18. In the *Brookings Order*, the Commission did not hold that an interconnection customer cannot be allocated any costs for an upgrade that may address other system-wide needs. Rather, it held that “the evidence submitted” did not support “allocation of 100 percent of the costs of the Brookings Line” to a group of interconnection projects (*id.* at P 22) and that language included in the interconnection agreement “was not sufficient to limit” the interconnection customer’s cost responsibility for the upgrade “such that they were funding only the cost of the upgrades that would not have been necessary but for their interconnection.” *Id.* at P 41. Here, as discussed in section II.C *infra*, Novus II only is being allocated the costs of the portion of the Hitchland-Woodward line that was determined to be necessary for its interconnection.

²³ Novus Protest at 13.

itself.”²⁴ Second, the interconnection customer, by looking at its queue position, “may assess its business risks . . . based upon circumstances existing as of the queue date,” and not subsequent events other than “events defined by the tariff, where the potential costs are reasonably known, such as higher queued projects dropping out.”²⁵ Therefore, when a higher-queued project drops out of the queue, as is the case here, the purpose of the required restudy will be to determine the impact that the withdrawal has on the lower-queued projects, not to assess the impact of subsequent events that occurred after the interconnection request was studied, such as the conditional approval of priority projects. The mere fortuitousness of a higher-queued project having withdrawn should not enable an interconnection customer to have its cost allocation take account of all manner of other *subsequent* events that have occurred. Accordingly, the priority projects should not be included in the restudy model for the Novus II project.²⁶

C. Restudy Of The Novus II Project Is Not Necessary To Prevent Construction Of Duplicative Facilities.

Contrary to the Novus Parties’ assertions, restudy of the Novus II project is unnecessary “to ensure that duplicative and/or unnecessary facilities are not

²⁴ *Neptune* at P 23.

²⁵ *Neptune Rehearing* at P 19.

²⁶ If, however, the restudy indicates that as a result *solely* of the higher-queued project withdrawing from the queue, the single circuit Hitchland-Woodward 345 kV transmission line that was allocated to Novus II is no longer needed for the Novus II interconnection, Novus II no longer would be held responsible for the costs of such upgrade.

built.”²⁷ Based on the system configuration at the time SPP studied the Novus II interconnection request (which did not include the priority projects), SPP determined that the single circuit Hitchland – Woodward line was required to facilitate the interconnection of the Novus II project. In other words, the upgrade was a “but-for” facility.²⁸ The fact that the SPP Board now conditionally has approved a double circuit line at Hitchland to Woodward does not mean duplicative facilities will be built. The double-circuit plan simply modifies the upgrade.²⁹ SPP will not construct both a double circuit line and redundant single circuit line along the same path, as the Novus Parties intimate.³⁰ Rather, one double circuit 345 kV line will be constructed. Novus II will be assigned the cost of a single circuit line, which is required for its interconnection,³¹ while the cost to add a second circuit will be allocated to the system as a whole as a Base Plan Upgrade. There will be no unnecessary duplication of facilities.

²⁷ Novus Protest at 18; *see also id.* at 15.

²⁸ *See Brookings Order* at P 23 (“[A] generator can only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of the generator.”).

²⁹ *See SPP Tariff*, Attachment O § II (“Transmission upgrades related to an approved interconnection agreement may be deferred or supplemented by other upgrades based upon the results of subsequent studies.”).

³⁰ Novus Protest at 15, 18.

³¹ *See Brookings Order* at P 22 (“Midwest ISO may determine through its study process that a large upgrade, such as the Brookings line, should be built because it will both accommodate the interconnection of a group of projects and address other system-wide needs. However, the cost responsibility for a group of
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III. RESTUDY OF THE NOVUS II INTERCONNECTION REQUEST IS NOT REQUIRED TO PREVENT UNDUE DISCRIMINATION.

Contrary to the Novus Parties, permitting restudy of the Novus II interconnection request is not required to remedy any undue discrimination.³² First, as explained above, neither the SPP Tariff nor Commission policy provides for restudies of interconnection requests to account for subsequent changes in the transmission system except those related to the status of higher-queued projects. The Novus Parties note that, in the interconnection agreement filed in Docket No. ER09-1258, for Novus, SPP agreed to a non-conforming provision indicating that further studies would be necessary to determine whether the network upgrades listed in the agreement would be necessary if network upgrades were authorized under the SPP transmission plan, balanced portfolio, or other SPP-Board-approved process.³³ In that instance, the cost and ramification to others of a further study would be minimal. The upgrades were much smaller in scope³⁴ and only a single lower-queued project – Novus II – could be affected by the results of a further

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interconnection customers remains limited to the cost of the facilities that would not be needed but for the interconnection of the group.”).

³² Novus Protest at 16-17.

³³ The Commission accepted the Novus interconnection agreement by letter order, expressly without precedential effect. *See Sw. Power Pool, Inc.*, Letter Order, Docket No. ER09-1258-000 (July 22, 2009).

³⁴ There were approximately \$2.2 million in assigned upgrades in the interconnection agreement and approximately \$4 million in upgrades were to be constructed pursuant to an agreement with another affected system.

study that might eliminate the upgrade. No one else would be affected. In contrast, the estimated cost of the Hitchland – Woodward line at the center of the current controversy is over \$80 million. Furthermore, rather than a single other interconnection request being affected, the studies for a cluster of generation interconnection requests of approximately 5900 MW behind Novus II are based on the Hitchland – Woodward line being in place.³⁵ Because the potential ramification to others with regard to restudies of the Novus II LGIA, SPP was unable to accommodate Novus II’s request for a non-conforming agreement. The two situations are entirely different and there is no undue discrimination between Novus and Novus II.

Second, the Novus Parties’ contention that “the refusal to permit restudy is also discriminatory vis a vis other Interconnection Customers” lacks any merit.³⁶ The Novus Parties assert that “Interconnection Customers with projects further behind in the interconnection process will receive the benefits of the high priority projects to be included as Base Plan Upgrades if the new transmission cost allocation procedures are approved,” but others like Novus II will not because they cannot obtain restudies and will have to pay for duplicate facilities.³⁷ Under the

³⁵ In the Queue Reform docket (Docket No. ER09-1254), Novus II elected to opt out of the first generation interconnection cluster and be studied on its own. Hence, the Hitchland – Woodward line was determined to be necessary “but-for” its interconnection, rather than for a cluster.

³⁶ Novus Protest at 16.

³⁷ *Id.* at 17.

queue process established in the SPP Tariff and by Order No. 2003, generation interconnection customers may benefit more or less from upgrades included in a transmission provider's transmission expansion plan than other Generation Interconnection Customers, depending on their queue position. The Commission emphatically has held that an interconnection customer's queue position "forms the basis for the determination of an interconnection customer's cost responsibilities for the construction of facilities or upgrades."³⁸ Thus, the fact that a later-queued generation project may "benefit" from a different configuration of the transmission system (i.e., the addition of an EHV Base Plan Upgrade) does not unduly discriminate against the lower-queued project. No restudies are required to remedy discrimination. To permit restudies for interconnection customers that already have interconnection agreements to determine the impact of later-approved Base Plan Upgrades or priority projects, as the Novus Parties suggest, would be contrary to SPP's generation interconnection process,³⁹ Order No. 2003,⁴⁰ and the Commission's decision in the *Neptune Proceeding*.⁴¹

³⁸ *Neptune Rehearing* at P 19.

³⁹ See SPP Tariff, Attachment V §§ 8.6, 8.11.

⁴⁰ Order No. 2003 permits re-studies only if: (1) a higher-queued project withdraws from the queue, (2) a higher-queued project requires a modification, or (3) the project's point of interconnection is re-designated. Order No. 2003 at P 161; *pro forma* Standard Large Generator Interconnection Procedures §§ 6.4, 7.6, 8.5.

⁴¹ *Neptune* at P 23; *Neptune Rehearing* at PP 19-20.

Third, the fact that in its Highway/Byway proposal, submitted in Docket No. ER10-1069,⁴² “SPP proposes to take into account the Base Plan Upgrades when assessing transmission service requests”⁴³ creates no discrimination issues between Transmission Customers and Generation Interconnection Customers, as the Novus Parties claim.⁴⁴ As Mr. Dillahunty testified in Docket No. ER10-1069, the Highway/Byway proposal does not affect the existing cost allocation methodology for generation interconnections.⁴⁵ Nor does the Highway/Byway proposal change how the need for upgrades in the generation interconnection process or transmission service study process is determined. Currently, consistent with Order Nos. 2003 and 2003-A, under the existing SPP Tariff, Generation Interconnection Customers bear the responsibility for funding Network Upgrades *not already included* in SPP’s transmission expansion plan that are necessary to interconnect their facilities to the transmission system.⁴⁶ To permit the restudies

⁴² See Southwest Power Pool, Inc., Submission of Tariff Revisions to Modify Cost Allocation Methodology, Docket No. ER10-1069-000 (Apr. 19, 2010) (“Highway/Byway Filing”).

⁴³ Novus Protest at 17.

⁴⁴ See Motion to Intervene and Limited Protest of Novus Windpower, LLC and Novus Wind II, LLC, Docket No. ER10-1069-000 (May 17, 2010).

⁴⁵ Highway/Byway Filing, Exhibit No. SPP-1 at 6-7.

⁴⁶ SPP Tariff, Attachment V § 4.2.5 and Appendix 6 § 11.3; *see also* Order No. 2003-A at P 320 (“[W]e clarify that the Interconnection Customer is responsible (and later may receive credits) for funding the cost of (1) all Network Upgrades (other than those already in the Transmission Provider’s current expansion plan) that must be constructed to support that Interconnection Customer’s In-Service Date”).

that the Novus Parties desire would require ignoring this policy and modifying the generation queue process the Commission established in Order No. 2003 and its progeny, which is beyond the scope of this proceeding.

In addition, unlike upgrades required for new or changed Designated Resources (i.e., upgrades required for network service or Base Plan Upgrades), upgrades required for generation interconnections currently do not qualify for Base Plan Funding. This does not change under the Highway/Byway proposal. In short, under the current Commission-accepted SPP Tariff, upgrades required for generation interconnections and Base Plan Upgrades are treated differently with regard to cost allocation, which will remain the case after the Highway/Byway methodology is in place.⁴⁷

⁴⁷ The Novus Parties also note that Novus II is disadvantaged because it is subject to “stringent new suspension provisions,” while higher-queued projects are not. Novus Protest at 3. The Commission addressed SPP’s new suspension provisions in Docket No. ER09-1254 in which the Novus Parties participated. This issue is far outside the scope of this proceeding.

IV. CONCLUSION.

For the reasons stated in SPP's May 12, 2010 filing and in this answer, the Commission should accept the unexecuted Novus II LGIA for filing without modification.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of June, 2010.

A handwritten signature in cursive script that reads "Carrie L. Bumgarner". The signature is written in black ink and has a long, sweeping horizontal stroke at the end.

Carrie L. Bumgarner

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