



Moody/Underwood

RESOLUTION NO. 6646

WHEREAS, a private developer, EOLIAN LP, (“EOLIAN”), and certain of its affiliated entities, are seeking to construct, own and operate standalone commercial-scale battery energy storage resources, or ESRs, (the “ESR Projects”), in the service territory of the Omaha Public Power District (“District”) in Nebraska and to interconnect with the District’s transmission system pursuant to Generator Interconnection Agreements (“GIAs”), under color of the Southwest Power Pool (“SPP”) Open Access Transmission Tariff (“SPP Tariff”); and

WHEREAS, the electric system in Nebraska is comprised entirely of public power entities, including the District, and there are limited exceptions under Nebraska law for the construction of electric generation facilities by private business entities and authorization of private ownership and operation within Nebraska of “privately developed renewable energy generation facilities” (Neb. Rev. Stat. §§ 70-1001.01(4) and 70-1014.02); and

WHEREAS, a privately developed renewable energy generation facility is defined by Nebraska statute as a facility that generates electricity using “solar, wind, geothermal, biomass, landfill gas, or biogas” (Neb. Rev. Stat. § 70-1001.01), a definition which does not include standalone ESRs; and

WHEREAS, because privately-owned, standalone ESRs are not included within the limited exception for private development of renewable energy generation facilities, the EOLIAN ESR Projects are not authorized to be constructed under Nebraska law; and

WHEREAS, under the SPP Tariff, an entity must be an “Interconnection Customer” to apply for and execute a GIA (SPP Tariff, Att. V, § 3.1, 11.3); and

WHEREAS, an Interconnection Customer, as defined in the SPP Tariff, must propose to interconnect a “Generating Facility” with the transmission system (SPP Tariff, Att. V, § 1); and

WHEREAS, because the proposed EOLIAN ESR Projects are not authorized by state law , and the proposed facilities cannot meet the definition of “Generating Facility” under the SPP Tariff, and so the EOLIAN entities cannot qualify to be an Interconnection Customer and therefore cannot qualify to enter into a GIA; and

WHEREAS, the Federal Energy Regulatory Commission (“FERC”) may be asked to reach a different interpretation of the effect of Nebraska law under SPP’s Tariff, thereby creating a conflict between Nebraska law and FERC’s interpretation of the SPP Tariff; and

WHEREAS, the District is a non-jurisdictional utility under the Federal Power Act and a public-power entity under the SPP Tariff, and, pursuant to the District’s Membership Agreement

with SPP, the District cannot be required to take any actions that would violate state law (SPP Membership Agreement, § 3.12); and

WHEREAS, the SPP Tariff is written to assure that the District and other non-jurisdictional entities are not forced to violate state law if such law conflicts with the SPP Tariff, as is the case here; and

WHEREAS, Section 39.1 of the SPP Tariff provides the District with a process to identify to FERC the conflict between state law and the SPP Tariff; and

WHEREAS, Section 39.1 of the SPP Tariff states that should the District's governing board, subject to state court review, determine that a conflict exists between applicable state law and provisions of the SPP Tariff, then state law shall govern over the SPP Tariff; and

WHEREAS, the Board of Directors is the duly authorized and constituted governing body of the Omaha Public Power District and is the governing board for the purposes of Section 39.1 of the SPP Tariff.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Omaha Public Power District as follows:

1. The foregoing findings are incorporated into this Resolution.
2. The Board of Directors hereby finds and determines that the EOLIAN ESR Projects are not authorized under Nebraska law.
3. The Board of Directors hereby finds and determines that, should FERC interpret the SPP Tariff to require interconnection with an ESR that, as determined here, cannot be built under Nebraska law, a conflict will exist between FERC's interpretation of the SPP Tariff and Nebraska law.
4. The Board of Directors hereby directs the District's Management and General Counsel to take all necessary actions consistent with the Board's findings and determination herein, including providing notice to FERC through the procedure set forth in Section 39.1 of the SPP Tariff.



Board Action

BOARD OF DIRECTORS

April 16, 2024

ITEM

EOLIAN LP, through its affiliates, is seeking to construct, own and operate standalone commercial-scale battery energy storage resources, or ESRs, in the District’s service territory and interconnect to the District’s transmission system through Generator Interconnection Agreements (“GIAs”).

PURPOSE

Board of Directors finds and determines that the EOLIAN ESR Projects are not authorized under Nebraska law. Further, the Board of Directors finds and determines that a conflict will exist between Nebraska state law and the Southwest Power Pool Open Access Transmission Tariff (“SPP Tariff”) if the Federal Energy Regulatory Commission (“FERC”) interprets the SPP Tariff to require interconnection with an ESR that, as determined by the Board, cannot be built under Nebraska law. The Board authorizes providing notice of the Board’s finding to the FERC through the procedure set forth in Section 39.1 of the SPP Tariff.

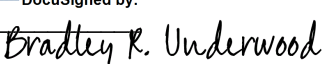
FACTS

- a. There are limited exceptions under Nebraska law for the construction of electric generation facilities by private business entities and authorization of private ownership and operation within Nebraska of “privately developed renewable energy generation facilities” (Neb. Rev. Stat. §§ 70-1001.01(4) and 70-1014.02).
- b. A privately developed renewable energy generation facility is defined by Nebraska statute as a facility that generates electricity using “solar, wind, geothermal, biomass, landfill gas, or biogas” (Neb. Rev. Stat. § 70-1001.01), a definition which does not include standalone ESRs. Because privately-owned, standalone ESRs are not included within the limited exception for private development of renewable energy generation facilities, the EOLIAN ESR Projects are not authorized to be constructed under Nebraska law.
- c. Under the SPP Tariff, an entity must be an “Interconnection Customer” to apply for and execute a GIA (SPP Tariff, Att. V, § § 3.1, 11.3), and must propose to connect a “Generating Facility” with the transmission system (SPP Tariff, Att. V, § 1).
- d. Based on the above, the proposed facilities cannot meet the definition of “Generating Facility” under the SPP Tariff, and so the EOLIAN entities cannot qualify to be an Interconnection Customer and therefore cannot qualify to enter into a GIA.

ACTION

Issuance of proposed Board Resolution and authorization by the Board of Directors for Management and General Counsel to take all necessary actions consistent with the Board’s finding that the EOLIAN ESR Projects are not authorized under Nebraska law, including providing notice to the FERC through Section 39.1 of the SPP Tariff.

RECOMMENDED:

DocuSigned by:


 Brad Underwood
 Vice President
 Systems Transformation

APPROVED FOR BOARD CONSIDERATION:

DocuSigned by:


 L. Javier Fernandez
 President and Chief Executive Officer

Attachments: Section 39.1 of SPP Tariff

Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1
Filing Category: Refiled Filing Date: 07/26/2010
FERC Docket: ER10-01960-000 FERC Action: Accept
FERC Order: Delegated Letter Order Order Date:
10/28/2010
Effective Date: 07/26/2010 Status: Effective
Section 39.1, 39.1 Subject to State Laws and Regulations and Public ... (0.0.0)

39.1 Subject to State Laws and Regulations and Public Power Rate Schedules

The participation in this Tariff by a Transmission Owner that is not a public utility under the Federal Power Act, but rather is a public-power entity, is subject in all respects to the laws and regulations of the state of its creation and to rate schedules adopted by its governing board under state law. The Commission has exclusive jurisdiction to interpret the provisions of this Tariff and how the provisions apply to such public-power entity(ies). However, in the event that the governing board of such public-power entity(ies), subject to state court review, determines that a conflict exists between the applicable state law, regulations, or rate schedules, and provisions of this Tariff as interpreted by the Commission, such state law, regulations, or rate schedules shall govern with respect to the application of this Tariff to such public-power entity(ies). Should the governing board of such public-power entity(ies) determine that such a conflict exists, the public-power entity(ies) must file, with the Commission, such necessary documents notifying the Commission of the governing board determination of such a conflict and explaining both the conflict (including what state law, regulations, or rate schedules, and what Tariff provisions are at issue) and what actions the governing board is taking in response to that determination.