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104 FERC ¶ 61,103

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM02-1-000; Order No. 2003]

Standardization of Generator Interconnection Agreements and Procedures

(Issued July 24, 2003)

AGENCY: Federal Energy Regulatory Commission

ACTION: Final Rule

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act to require public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs containing standard generator interconnection procedures and a standard agreement that the Commission is adopting in this order and to provide interconnection service to devices used for the production of electricity having a capacity of more than 20 megawatts, under them. Any non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting these procedures and this agreement.

EFFECTIVE DATE: This Final Rule will become effective [insert date that is 60 days after publication in the FEDERAL REGISTER.]

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Power Act "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] §§ 202 and 203, and under like directives contained in Sections 205, 206, and 207."¹⁷

19. The record underlying Order No. 888 showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.¹⁸ The Commission in Order No. 888 also thoroughly discussed the legislative history and case law involving Sections 205 and 206, concluded that it had the authority and responsibility to remedy the undue discrimination it had found by requiring open access, and decided to do so through a rulemaking on a generic, industrywide basis.¹⁹ The Supreme Court affirmed the Commission's decision to exercise this authority by requiring non-discriminatory (comparable) open access as a remedy for undue discrimination.²⁰

20. The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT.²¹ Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under Sections 205 and 206 of the Federal Power Act.

2. Commission Interconnection Case Law

21. Unless expressly changed in this Final Rule, the holdings in the Commission's existing interconnection precedents will remain a useful guide during the implementation of this Final Rule. The Commission's interconnection cases have drawn the distinction between Interconnection Facilities and Network Upgrades. Interconnection Facilities are found between the Interconnection Customer's Generating Facility and the Transmission Provider's Transmission System. The Commission has developed a simple test for distinguishing Interconnection Facilities from Network Upgrades: Network Upgrades

¹⁷Gulf States Utils. Co. v. FPC, 411 U.S. 747, 758-59 (1973); see City of Huntingburg v. FPC, 498 F.2d 778, 783-84 (D.C. Cir. 1974) (noting the Commission's duty to consider the potential anticompetitive effects of a proposed interconnection agreement).

¹⁸Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,679-84; Order No. 888-A, FERC Stats. & Regs ¶ 31,048 at 30,209-10.

¹⁹Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,668-73, 31,676-79; Order No. 888-A, FERC Stats. & Regs ¶ 31,048 at 30,201-12; TAPS v. FERC, 225 F.3d 667, 687-88 (D.C. Cir. 2000).

²⁰New York v. FERC, 535 U.S. 1 (2002) .

²¹See Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761, reh'g dismissed, 91 FERC ¶ 61,271 (2000).

