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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."<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

20. The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT.<sup>21</sup> 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

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<sup>17</sup>Gulf 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).

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

<sup>19</sup>Order 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).

<sup>20</sup>New York v. FERC, 535 U.S. 1 (2002).

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

include only facilities at or beyond the point where the Interconnection Customer's Generating Facility interconnects to the Transmission Provider's Transmission System.<sup>22</sup> The Commission has made clear that Interconnection Agreements are evaluated by the Commission according to the just and reasonable standard.<sup>23</sup> Most improvements to the Transmission System, including Network Upgrades, benefit all transmission customers, but the determination of who benefits from such Network Upgrades is often made by a non-independent transmission provider, who is an interested party. In such cases, the Commission has found that it is just and reasonable for the Interconnection Customer to pay for Interconnection Facilities but not for Network Upgrades. Agreements between the Parties to classify Interconnection Facilities as Network Upgrades, or to otherwise directly assign the costs of Network Upgrades to the Interconnection Customer, have not been found to be just and reasonable and have been rejected by the Commission.<sup>24</sup>

22. Regarding pricing for a non-independent Transmission Provider, the distinction between Interconnection Facilities and Network Upgrades is important because Interconnection Facilities will be paid for solely by the Interconnection Customer, and while Network Upgrades will be funded initially by the Interconnection Customer (unless the Transmission Provider elects to fund them), the Interconnection Customer would then be entitled to a cash equivalent refund (i.e., credit) equal to the total amount paid for the Network Upgrades, including any tax gross-up or other tax-related payments. The refund would be paid to the Interconnection Customer on a dollar-for-dollar basis, as credits against the Interconnection Customer's payments for transmission services, with the full amount to be refunded, with interest within five years of the Commercial Operation Date. The Commission has clarified that transmission credits may be used whether or not a Generating Facility is being dispatched and that credits must be accepted for all network transmissions by the Interconnection Customer, regardless of whether the plant from which the credits originated is dispatched.<sup>25</sup> Credits are not tied to any particular Generating Facility.<sup>26</sup> The Commission has stated that peaking facilities, for instance, must be allowed to use credits even when the Generating Facility is not dispatched.<sup>27</sup> The Commission has also allowed Transmission Providers to require

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<sup>22</sup>Entergy Gulf States, Inc., 98 FERC ¶ 61,014 at 61,023, reh'g denied, 99 FERC ¶ 61,095 (2002); see Public Service Co. of Colorado, 59 FERC ¶ 61,311 (1992), reh'g denied, 62 FERC ¶ 61,013 at 61,061 (1993).

<sup>23</sup>Pacific Gas & Electric Company, et al., 102 FERC ¶ 61,070 (2003).

<sup>24</sup>See, e.g. Illinois Power Co., 103 FERC ¶ 61,032 (2003); American Electric Power Service Corp., 101 FERC ¶ 61,194 (2002).

<sup>25</sup>Entergy Services, Inc., 101 FERC ¶ 61,289 (2002).

<sup>26</sup>Id.

<sup>27</sup>Colton Power, LP, 101 FERC ¶ 61,150 (2002).