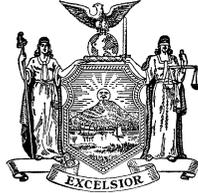


STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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General Counsel

JACLYN A. BRILLING

Acting Secretary

August 25, 2003

Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. RM02-1-000 - Standardization of
Generator Interconnection Agreements and
Procedures

Dear Secretary Salas:

For filing, please find the Petition for Clarification and Rehearing of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-7136.

Very truly yours,

Leonard Van Ryn
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standardization of Generator)
Interconnection Agreements) Docket No. RM02-1-000
and Procedures)

PETITION FOR CLARIFICATION AND REHEARING OF
THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

INTRODUCTION AND SUMMARY

Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, the Public Service Commission of the State of New York (NYPSC) hereby submits its Petition for clarification, or in the alternative, for rehearing in the captioned proceeding. Copies of all documents and correspondence should be sent to:

Dawn Jablonski Ryman General Counsel Public Service Commission of the State of New York Three Empire State Plaza Albany, New York 12223-1350	Ronald Liberty, Director Federal Energy Interven. Office of Electricity and the Environment New York State Department of Public Service Three Empire State Plaza Albany, New York 12230-1350
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In its Order No. 2003, issued on July 24, 2003, the Federal Energy Regulatory Commission (Commission) attempts to clarify its jurisdiction over the interconnection of standard large generators to "distribution" systems.¹ In doing so the Commission incorporated the jurisdictional statement from the Notice of Proposed Rulemaking (NOPR) issued on the same date

¹ Order ¶¶ 803-809.

dealing with the standardization of small generator interconnection agreements and procedures.²

The NYPSC hereby seeks clarification of the Commission's intent or, in the alternative, rehearing. The NYPSC seeks clarification to the extent the Commission appears to have confused low-voltage lines, which may be transmission lines within its jurisdiction, with "local distribution" lines, which are not. It seeks further clarification to the extent the Commission may have incorrectly asserted jurisdiction over the "netting" of a generator's production against its retail load, as being a sale for resale.

To the extent the Commission does assert any jurisdiction over "local distribution" or seeks to treat netting as sales for resale or as a basis for jurisdiction over interconnection, the NYPSC seeks rehearing.

ARGUMENT

The Commission's jurisdiction over small generators is not relevant to this large generator proceeding. The Order reaches conclusions for small generators that are not based on the factual circumstances involving large generators. Those large generators are typically connected to the grid at the

² Notice of Proposed Rulemaking Docket No. RM02-12-000, Standardization of Small Generator Interconnection Agreements and Procedures (issued July 24, 2003) ¶¶ 23-27.

transmission level, or in the alternative, may be providing sufficient output such that they will be supplying electricity that will be sold for resale or carried at the transmission level. Thus, there is no need for the Commission to reach whether the Federal Power Act's (FPA) preclusion of federal jurisdiction over "local distribution" would pertain to these large generators. To the extent it has done so, it should grant clarification or rehearing.

I. The Commission Should Clarify What It Means By "Distribution"

To the extent the Commission decides to consider this jurisdictional question for large generators, its analysis, at best, is unclear and most likely flawed. The Order uses the term "distribution" without clarifying whether it intends to refer to low-voltage lines that could be subject to the Commission's jurisdiction as transmission lines, or to "local distribution" facilities that are not subject to the Commission's jurisdiction under the Federal Power Act (FPA).

The Commission does conclude, however, that there can be dual jurisdiction over facilities that constitute "local distribution" under the FPA. Thus, it states at ¶ 804 that "where 'distribution facilities' have a dual use, i.e. the facilities are used both for wholesale sales and retail sales, the Final Rule will apply to interconnections to these facilities only for the purpose of making sales of electric

energy for resale in interstate commerce." The NYPSC finds this statement confusing because it is unclear whether the Commission seeks to assert jurisdiction over low voltage transmission lines or over "local distribution" facilities. The NYPSC accordingly seeks clarification that the Commission does not seek jurisdiction over "local distribution lines."

The NYPSC also finds the Commission's decision unclear to the extent it claims jurisdiction over sales for resale occurring on "local distribution" systems. The NYPSC believes such sales generally do not occur. It appears the Commission may be erroneously asserting jurisdiction over the netting of generators' production against their load. The NYPSC seeks clarification that this is not the case.

II. The Commission Should Grant Rehearing To The Extent It Intends To Assert Jurisdiction Over Local Distribution

If the Commission has concluded there is dual jurisdiction over "local distribution," then its analysis is subject to a number of flaws.

First, the analysis is flawed because the FPA does not provide for dual jurisdiction over "local distribution" facilities. Detroit Edison Company v. Federal Energy Regulatory Commission, 334 F.3d 48 (D.C. Cir. 2003). In Detroit Edison, the Commission asserted jurisdiction over distribution facilities that were allegedly used for both wholesale and retail distribution. The D.C. Circuit concluded that the

Commission's position contradicted the plain language of the FPA because Section 201(b) (1) denies the Commission jurisdiction over "facilities used in local distribution." 334 F.3d at 54. The Commission's theory advanced in the small generator NOPR, and repeated now in the large generator Final Rule, that there can be dual jurisdiction over "local distribution" fails under the plain language of FPA 201(b)(1) and the D.C. Circuit's decision in Detroit Edison.

Second, the Commission's decision suffers from a further defect to the extent it treats netting of retail load used by a generator on a distribution system as equivalent to a sale of electric energy for resale in inter-state commerce. The Commission has previously recognized that it does not have jurisdiction over net energy metering by a small producer. Mid American Energy Company, 94 F.E.R.C. ¶ 61,340, Order Denying Request for Declaratory Order.³ The conclusion that generators

³ In that case the Commission stated at 62,263 that:

This case presents an issue similar to that in our recent decision addressing the netting of station power used at a generating station against certain wholesale sales from the generating station. See *PJM Interconnection, L.L.C.* 94 FERC P61,251(2001)(PJM). In that case, in the context of the FPA, the Commission found that there is no sale (for end use or otherwise) between two different parties when one party is using its own generating resources for the purpose of self-supply of station power, and accounting for such usage through the practice of netting. *Id.* at slip op. at 20. In the case before us (Footnote continued on next page)

located on distribution systems may be making sales of electric energy for resale in interstate commerce seems to be contrary to that decision. If the Commission is saying that a small generator is engaged in a sale of energy for resale when it is able to reduce its load by netting energy it produces against energy it purchases, then the Commission is not appropriately reading the Federal Power Act. It is only when a generator actually produces energy resold to another entity that there would be a jurisdictional wholesale sale. FPA §201(d).

Third, even if there are sales for resale occurring on a local distribution system, then such sales would not support Commission jurisdiction over generator interconnection. Sales for resale would not affect FERC jurisdiction over the underlying facilities, which remain distribution facilities. That is, even if there is dual jurisdiction over service provided on distribution facilities, and resulting Commission jurisdiction over services provided over those facilities, that

we find likewise that no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting.

In implementing PURPA, the Commission similarly recognized that net billing arrangements like those at issue here would be appropriate in some situations, and left the decision of when to do so to state regulatory authorities.

jurisdiction would not extend to interconnection. The interconnection on such lines would represent a purely "local distribution" function that remains exempt from Commission regulation.

CONCLUSION

For the reasons given above FERC should either grant clarification or, in the alternative, rehearing of its Order 2003.

Respectfully submitted,

Dawn Jablonski Ryman
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Jonathan D. Feinberg
Assistant Counsel
Leonard Van Ryn
Assistant Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1305
(518) 474-2510

Dated: August 25, 2003

CERTIFICATE OF SERVICE

I, Jacquelynn Nash, do hereby certify that I will serve on August 25, 2003 the foregoing Petition for Clarification and Rehearing of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: August 25, 2003
Albany, New York

Jacquelynn Nash