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Acting Secretary

October 3, 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. RM02-12-000 - Standardization of Small
Generator Interconnection Agreements and
Procedures

Dear Secretary Salas:

For filing, please find the Notice of Intervention and
Comments 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) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Standardization of Small) Docket No. RM02-12-000
Generator Interconnection)
Agreements and Procedures)

**NOTICE OF INTERVENTION AND COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK**

The New York State Public Service Commission (NYPSC) submits these Comments pursuant to the Standardization of Small Generator Interconnection Agreements and Procedures Notice of Proposed Rulemaking (NOPR) issued on July 24, 2003, and published in the Federal Register on August 19, 2003.

The NYPSC submits its Notice of Intervention in compliance with Rule 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

Dawn Jablonski Ryman
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of the State of New York
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EXECUTIVE SUMMARY

The Commission's proposal would require public utilities transmitting electric energy in interstate commerce to file revised Open Access Transmission Tariffs containing standard

interconnection procedures and a standard interconnection agreement for small generators (i.e., units capable of producing no more than 20 megawatts). The NOPR indicates that such public utilities would be required to provide interconnection service according to the standardized procedures and agreement. These rules would apply to a public utility's distribution facilities used in providing both retail and wholesale sales.¹

The NYPSC supports the Commission's initiative to establish standardized agreements and procedures for interconnecting small generators. We share the Commission's expectation that the NOPR will "reduce interconnection time and costs for Interconnection Customers and Transmission Providers, prevent undue discrimination, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and variety of new generation resources that will compete in the wholesale electricity market, and facilitate development of non-polluting alternative energy sources (such as photovoltaic, fuel cell and wind generators)."²

While we support these broad goals, we suggest several refinements and clarifications to improve the effectiveness of the final rule. These suggestions are based on our experience with New York's standard interconnection requirements. In

¹ NOPR at ¶25.

² NOPR at ¶1

particular, we recommend that the pre-certification process necessary to qualify for super-expedited procedures include specific requirements, rather than "consensus" industry standards, given that there are no national "consensus" industry standards. The Commission should also clarify that the pre-certification process is for the equipment used to interconnect the generating facility to the transmission system, not for the actual generating facility itself. Requiring pre-certification of the generating facility could be too burdensome for applicants and goes beyond the NOPR's intent of facilitating interconnections.

Similarly, several of the screening criteria that a generator must meet to receive super-expedited treatment should be eliminated in order to streamline the process while ensuring safe and reliable interconnections. As proposed, requiring that certain screening criteria be met could be so burdensome as to negate the NOPR's goal of "reduc[ing] interconnection time and costs."³

In addition, we recommend that the Commission encourage market solutions for acquiring insurance coverage. Mandating minimum insurance coverage for parties, such as small generators seeking interconnection, could deter needed investment in these facilities. Finally, we ask the Commission to clarify that the

³ NOPR at ¶102.

final rule will not apply to interconnections with local distribution facilities regardless of whether those facilities serve a dual use (i.e., they are used for both wholesale sales and retail sales).⁴ Such an approach would violate the Federal Power Act (FPA) and is unwise from a practical perspective.

COMMENTS

I. The Commission Should Clarify The Pre-certification Process

The NOPR indicates that “[i]n order to qualify for the Super-Expedited Procedures...[for interconnecting a small generating facility no larger than 2 MW to a low-voltage transmission system, the] Interconnection Customer’s Generating Facility must be precertified. The Generating Facility shall be considered precertified if an identical sample of the manufacturer’s model has been submitted to a national testing laboratory and found, after *appropriate testing*, to be in compliance with applicable *consensus industry* operational and safety *standards*.”⁵ The NYPSC suggests the following clarifications to this pre-certification process.

In particular, we seek two clarifications. First, that the interconnection facilities, and not the generating facility, are the subject of the pre-certification process. The Appendix to the NOPR states that the generating facility, rather than the

⁴ NOPR at ¶25.

⁵ NOPR at Appendix C, §3.1 (emphasis added).

interconnection facilities, is the subject of the pre-certification process.⁶ However, since the subject of this rulemaking is interconnection and requiring the pre-certification of generating facilities could be too burdensome for applicants, the Commission should clarify that it intended to require the pre-certification of the interconnection facilities themselves (i.e., utilities' interface equipment such as inverters and/or relays, etc.) and not the generating facility.

Second, the NYPSC seeks clarification on how the Commission intends to define "appropriate testing" and "consensus industry...standards." Without clarification, there will likely be disputes between applicants and utilities over how these terms should be defined, resulting in potentially lengthy delays in the pre-certification process. The problem lies in the fact that there are currently no national standards in effect for determining what is "appropriate testing" and "consensus industry...standards." The closest thing to a nationally accepted standard is the Underwriters Laboratories (UL) protocol, combined with the industry standards developed by the American National Standards Institute (ANSI) and the Institute of

⁶ Id. A generating facility is defined as an "Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities." Id. at §2.

Electrical and Electronics Engineers (IEEE). We suggest that UL 1741 (Inverters, Converters, and Controllers for Use in Independent Power Systems) be identified as an acceptable standard in testing pre-certified equipment for interconnection without additional protective devices. In conjunction with UL 1741, we suggest that FERC include the requirements for surge withstand capability contained in ANSI/IEEE C62.41 (Recommended Practice on Surge Voltages in Low-Voltage AC Power Circuits), or ANSI/IEEE C37.90.1 (IEEE Standard Surge Withstand Capability Tests for Relays and Relay Systems Associated with Electric Power Apparatus). In addition, the recently approved IEEE 1547 (Standard for Interconnecting Distributed Resources with Electric Power Systems) should also be identified as a required standard.⁷ To the extent there are other appropriate standards which have been developed, those should be included.

II. The Commission Should Refine The Screening Criteria Proposed For Interconnections

The NOPR proposes that interconnections of pre-certified small generating facilities no larger than 2 MW would be evaluated under the "Super-Expedited Screening Criteria,"⁸ which

⁷ The IEEE committees are currently working to finalize "compliance procedures," which will provide detailed requirements for meeting the IEEE 1547 standard. We expect that IEEE 1547 will eventually become the industry standard and will supplant the need for references to other specific standards.

⁸ NOPR at ¶34.

are listed in Appendix 1. These criteria are so burdensome that they could frustrate the Commission's objective of creating a fast-track process. Transmission Owners (TOs) could likely spend an inordinate amount of time studying projects under these detailed screening criteria, with little benefits. We recommend that the screening criteria in Appendix 1 be refined in order to eliminate the following criteria that present an undue burden, while retaining those criteria necessary to ensure the safe and reliable interconnection of facilities.

One of the most burdensome requirements is section 1.9 of the super-expedited screening criteria, which indicates that "[i]f the Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer." While this requirement would entail an extensive review of the proposed installation, it is difficult to envision a scenario where the failure of the installation to pass this screening criteria will have an adverse impact on the transmission system. As such, this requirement should be eliminated.

The other super-expedited screening criteria that should be eliminated include: 1) section 1.4, which appears redundant given the requirements of section 1.3; 2) section 1.7, which is

similar to the criterion in section 1.1 and would provide little gains from the additional analysis involved; and 3) section 1.8, which would entail an extensive review and is unlikely to have an adverse impact on the transmission system. As such, these sections are also unduly burdensome and should be eliminated.

In sum, we recommend that FERC re-evaluate and streamline its criteria for the "Super Expedited" procedures to better reflect the possible impacts of smaller projects on the transmission system, and as a result provide a procedure more in line with the goal of providing a fast track process.

III. The Commission Should Encourage Market Solutions For Acquiring Insurance Coverage

The NOPR seeks comment on "whether the Small Generator Interconnection Final Rule should also include an insurance provision."⁹ The NYPSC addressed this issue when it implemented standard interconnection requirements for distributed generation units of 300 kVA or less operating in parallel with radial distribution systems. While we found that "electric generation units, if interconnected or operated improperly, could easily be the cause of personal injury or property damage," we concluded that "our attempt to fashion standardized insurance requirements has created a substantial barrier to the proliferation of

⁹ NOPR at ¶74.

distributed generation units.”¹⁰ Our conclusion was based, in part, on arguments that the insurance was not only costly, but that it may not be available, “not because of the risk, but rather because of the lack of experience of insurance companies with distributed generation.”¹¹ Thus, we chose to eliminate the standardized insurance requirement and allow private market forces to develop solutions, such as creating an insurance pool or packaged insurance policies that are bundled with the sale of a generation unit. Given the potentially significant financial consequences of not having adequate insurance, we encourage the Commission to closely monitor this issue and to work with stakeholders in finding an acceptable solution.

IV. The Final Rule Should Not Apply To Interconnections With Local Distribution Facilities Regardless Of Whether Such Facilities Serve A Dual Use

The proposed rule “would apply to a request to interconnect to a public utility’s ‘distribution’ facilities...where the ‘distribution’ facilities have a dual use, i.e., the facilities are used for both wholesale sales and retail sales.”¹² Despite the fact that the NOPR states that interconnections to these

¹⁰ Case 94-E-0952, Competitive Opportunities Proceeding, Order Denying Petitions for Rehearing, Providing Clarification, Modifying Standard Interconnection Requirements, and Directing Filing of Revised Tariffs (issued November 15, 2000).

¹¹ Id. at 7.

¹² NOPR at ¶25.

facilities would only be for the purpose of making wholesale sales,¹³ the FPA does not give the Commission jurisdiction over local distribution facilities, even if they are used to provide wholesales services.¹⁴ In other words, FERC's authority over sales for resale does not give it jurisdiction over the underlying local distribution facilities, including interconnections thereto, which remain within state control. Moreover, the Commission's limited jurisdiction over interconnections, under the FPA, does not include interconnections to local distribution facilities.¹⁵

In Detroit Edison,¹⁶ the Commission attempted to assert jurisdiction over distribution facilities that were used for both wholesale and retail distribution. The D.C. Circuit concluded that the Commission's position contradicted the plain language of the FPA since §201(b)(1) denies the Commission jurisdiction over "facilities used in local distribution."¹⁷ As such, the Commission's assertion of jurisdiction over interconnections with facilities used in local distribution,

¹³ Id. (emphasis in original).

¹⁴ 16 U.S.C. §824(b).

¹⁵ 16 U.S.C. §§ 824a and 824i.

¹⁶ Detroit Edison Company v. Federal Energy Regulatory Commission, 334 F.3d 48 (D.C. Cir. 2003).

¹⁷ Id. at 54.

regardless of whether such facilities are used in wholesale or retail sales, fails under the plain language of FPA §201(b)(1) and the D.C. Circuit's decision in Detroit Edison.¹⁸

V. For Practical Reasons, States Should Implement Procedures For Interconnections With Local Distribution Facilities If They So Choose

As a practical matter, states are better equipped to regulate interconnections with local distribution systems, given that they have a significant amount of expertise in how local distribution systems are designed, built and operated. They are best positioned to ensure that interconnections are performed in a reliable manner and that interconnection disputes are resolved expeditiously. Thus, the Commission's goals could better be met if states are able to implement and administer their own rules for interconnections with the local distribution system.

However, because there may be states that do not have the resources to develop interconnection procedures, the Commission's proposal to establish a generic set of local distribution interconnection agreements and procedures for

¹⁸ To the extent that the Commission may be basing its jurisdiction over interconnections with local distribution facilities on "netting" by generators, we are opposed. The Commission has held that it does not have jurisdiction over "netting," which allows generators to offset their production against their use. Mid-American Energy Company, 94 F.E.R.C. ¶61,340, Order Denying Request for Declaratory Order (where the Commission stated 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").

states to adopt if they so choose is reasonable. For example, the final rule in this proceeding or the model small generator interconnection procedures developed by the National Association of Regulatory Utility Commissioners (NARUC) could serve as a useful template.¹⁹ In New York, we have implemented such standards and there is no practical reason to force the State and affected parties to change what is currently working well.²⁰

CONCLUSION

The NOPR presents an opportunity to encourage the development of small generation units and to achieve the various benefits associated with their development. However, refinements to the pre-certification process and screening criteria are needed. In addition, market solutions for acquiring acceptable insurance coverage should be encouraged.

¹⁹ NOPR at ¶19. As the Commission noted, the NARUC model and the proposal in the NOPR are similar in many ways.

²⁰ The NYPSC has adopted standard interconnection requirements for distributed generation units of 300 kVA or less operating in parallel with the radial distribution system. Case 02-E-1282, Standardized Interconnection Requirements and Application Process for New Distributed Generators 300kVA or Less Connected in Parallel with Radial Distribution Lines, Order Modifying Standard Interconnection Requirements (issued November 6, 2002).

Lastly, the final rule should not apply to interconnections with facilities used in local distribution.

Respectfully submitted,

Dawn Jablonski Ryman
General Counsel

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Dated: October 3, 2003
Albany, New York

CERTIFICATE OF SERVICE

I, Jacquelynn R. Nash, do hereby certify that I will serve on October 3, 2003 the foregoing Notice of Intervention and Comments 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: October 3, 2003
Albany, New York

Jacquelynn R. Nash