

independent and has an interest in frustrating rival generators, the implementation of participant funding, including the “but for” pricing approach, creates opportunities for undue discrimination. As the Commission stated in the NOPR, a number of aspects of the “but for” approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers. The Commission would find any policy that creates opportunities for such discriminatory behavior to be unacceptable. Furthermore, none of the commenters in this proceeding has convinced the Commission that, in the absence of independence, it is possible to implement a “but for” pricing approach that avoids this inherent subjectivity. Therefore, the Commission continues in this Final Rule its current policy, as modified below, of requiring a Transmission Provider that is not an independent entity to provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection.

697. The Commission notes, however, that the current pricing policy does not explicitly address instances where the Generating Facility interconnects with a Transmission Provider’s jurisdictional distribution facility and, as a result, upgrades are needed on the Distribution System to accommodate the interconnection. The Commission clarifies here that, if any such interconnection is jurisdictional, the cost of such upgrades must be directly assigned to the Interconnection Customer. This is because an upgrade to the Distribution System generally does not benefit all transmission customers. Distribution facilities typically deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system as is the case for transmission facilities. Accordingly, it is not appropriate that all transmission customers share the cost of Distribution Upgrades.

698. For a Transmission Provider, such as an RTO or ISO, that is an independent entity, the Commission continues to allow flexibility regarding the interconnection pricing policy that each independent entity chooses to adopt, subject to Commission approval. We invite a Regional State Committee to establish criteria that an independent

entity would use to determine which Transmission System upgrades, including those required for generator interconnections, should be participant funded and which should not.

699. The Commission will permit, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades for generator interconnections as soon as an independent administrator has been approved by the Commission and the affected states. Allowing participant funding, *i.e.*, direct assignment of the cost of Network Upgrades is reasonable, if an independent administrator performs transmission planning and related cost allocation, as a transitional approach that may be used in anticipation of an RTO or ISO assuming operational control of the regional transmission grid within a year.¹¹³ Based on the comments in this interconnection rulemaking, we find this approach to be appropriate here. Therefore, the Commission adopts this policy in this Final Rule.

700. However, the Commission wishes to emphasize that, by allowing an independent Transmission Provider to adopt a pricing policy, such as the “but for” approach, that differs from the crediting approach that the Commission is requiring for non-independent entities, the Commission is not abandoning the goals that the Commission has established for interconnection pricing, as described above. First, even though the “but for” approach allows the cost of certain Network Upgrades to be assigned to the Interconnection Customer, it is not “and” pricing if, for example, the Interconnection Customer is allowed to receive well-defined capacity rights that are created by the upgrades. For example, PJM, which uses locational pricing, gives Firm Transmission Rights (FTRs) and Capacity Interconnection Rights (CIRs) to the Interconnection Customer in exchange for a “but for” cost payment. These are rights that are created by the Network Upgrades for which the Interconnection Customer pays, and they are well-defined, long-term and tradeable. Moreover, the Commission concludes that, even if the Interconnection Customer (or its power sales customer) is also required to pay an embedded cost-based charge for transmission service, this is not “and” pricing. This is because the Interconnection Customer pays separate charges for separate services. It pays an

access charge for transmission service that may involve an obligation to pay congestion charges, and in exchange for its “but for” payment, it receives these well-defined capacity rights, which provide some protection from having to actually pay the congestion charges.

701. Second, when the Transmission Provider is an independent entity, the Commission is much less concerned that all generation owners will not be treated comparably because independence ensures that the Transmission Provider has no incentive to treat Interconnection Customers differently.

702. Third, in this context, “but for” pricing is consistent with the Commission’s policy of promoting competitive wholesale markets because it causes the Interconnection Customer to face the same marginal cost price signal that it would face in an efficient, competitive market. This means that, in a competitive market environment, market forces could act freely to achieve the desirable level of entry of new generating capacity.

703. Finally, participant funding of transmission upgrades may provide the pricing framework needed to overcome the reluctance of incumbent Transmission Owners in many parts of the country to build transmission, with the result that badly needed transmission infrastructure could be put in place quickly.

Interconnection Pricing and the Transition to Standard Market Design

704. Several commenters assert that certain proposed Standard Market Design policies, such as locational marginal pricing, congestion revenue rights, transmission expansion pricing, and transmission planning, could affect interconnection pricing, but that the full effect cannot be determined until the Standard Market Design Final Rule is issued. Nevertheless, many of these commenters propose that, until Standard Market Design is implemented, the Commission should continue to require the Interconnection Customer to pay for Network Upgrades in exchange for future transmission service credits. Duke Energy proposes that after Standard Market Design is implemented, the crediting policy could be replaced with one that provides the Interconnection Customer with financial transmission rights in exchange for funding Network Upgrades.

705. Exelon and Sifthe recommend that, for the Transmission Provider that is not yet part of an RTO, and for an RTO that has not yet implemented LMP-based congestion pricing, the Commission continue its current policy

¹¹³ See Cleco Power LLC, *et al.*, 103 FERC ¶ 61,272 (2003); Southern Company Services, Inc., 103 FERC ¶ 61,279 (2003), *reh’g pending*.