

### 3. "Distribution" Interconnections

795. We proposed in the NOPR<sup>122</sup> that we would assert authority to order interconnection when the Interconnection Customer wants to interconnect its Generating Facility with a jurisdictional transmission facility, or when it will make a wholesale sale of electric energy in interstate commerce using a public utility's "distribution" facilities.

#### Comments

796. Commenters objecting to the Commission's jurisdictional statement—chiefly Transmission Providers, public power providers, and state public utility commissions<sup>123</sup>—argue that "distribution" interconnection raises complex jurisdictional issues and that the Commission should leave this issue to the States, in part because they have experience regulating these kinds of interconnections. EEI notes that it is unclear if the Commission has authority over sales of power for resale using "distribution" facilities when the energy neither crosses state lines nor enters the interstate transmission system. The Public Power Council asks the Commission to recognize the jurisdiction of state commissions and local governing boards over the "distribution" systems of investor-owned and publicly owned utilities. SoCal Edison and PG&E ask the Commission to clarify that when a retail customer installs a generating facility that will never send energy over the Transmission System (*i.e.*, the energy will be consumed on site), this is a retail service arrangement beyond Commission jurisdiction.

797. The North Carolina Commission argues that, because it has not restructured its electric industry, any generating facility in North Carolina not owned by a vertically integrated utility would be required to sell its output at wholesale (because it cannot sell directly to retail consumers). As a result, the NOPR effectively eliminates state jurisdiction over the interconnection of generators involved in programs such as net metering or green power, which rely on simpler and less expensive interconnection procedures and agreements than those proposed by the Commission. These interconnection decisions are best left to the States.

798. APS notes that the NOPR does not address how Transmission

Providers will handle their responsibilities over transmission facilities jointly owned by jurisdictional and non-jurisdictional entities. This is a particular concern in the Western United States. APS warns that the failure to examine this issue in a separate NOPR will result in a patchwork of transmission terms and conditions that the Commission sought to avoid in Order No. 888.<sup>124</sup>

799. EEI raises other objections, noting that Commission regulation of "distribution" interconnections may create new layers of regulatory costs that will not be recoverable in retail rates. It also warns that competing and possibly conflicting state and federal interconnection requirements may encourage forum-shopping by Interconnection Customers and create problems for "distribution" providers. To discourage this, National Grid proposes that an Interconnection Customer should state whether it will make sales for resale before the Scoping Meeting provided for in Section 3.3.4 of the proposed LGIP; this will determine how the Interconnection Studies will be performed. Once established, the designation could not be changed unilaterally by the Interconnection Customer.

800. NRECA-APPA argues that, because "distribution" systems do not operate like Transmission Systems, "distribution" interconnections will require provisions not in the NOPR LGIP and NOPR LGIA, including different Interconnection Study requirements. It argues that the physical differences and economic differences between interconnection at "distribution" and transmission levels—distribution is typically "low voltage" and transmission typically is "high voltage," and "distribution" providers may lack engineering personnel necessary to evaluate Interconnection Requests—would make a single rule completely inappropriate. WEPCO argues that the NOPR LGIP and NOPR LGIA are unworkable for interconnections to the "distribution" system because "distribution" companies serve load and "distribution" systems are not designed to accommodate large generation facilities seeking to move energy off the "distribution" system. Accordingly, the Commission should clarify that the principles underlying the Final Rule LGIP and Final Rule LGIA, *i.e.*, nondiscriminatory access and comparable treatment, will be applicable to both "distribution" and

transmission, but that the documents will apply only to transmission level interconnections. State-approved tariffs should govern "distribution"-level interconnections. Nevertheless, an Interconnection Customer interconnecting to a "distribution" system still would be entitled to petition the Commission if it encountered undue discrimination.

801. Consumers see a useful analogy in the Commission's natural gas regulations. It argues that the Commission should consider adopting an approach like the blanket certificate program applied to natural gas pipelines for incidental jurisdictional uses of non-jurisdictional transportation facilities. The goal of the Commission's blanket certificate program<sup>125</sup> is to remove restraints on the flow of gas between the interstate and the intrastate market. It allows entities that are otherwise state-jurisdictional to perform incidental Commission-jurisdictional activities without subjecting them, or their incidental interstate activities, to full Commission regulation.

802. NARUC states that it "supports the Commission's statement that the NOPR [LG]IA and [LG]IP 'will apply only when a generator interconnects to the Transmission Provider's transmission system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level,'" but argues that the States "are best situated to ensure the efficient, reliable and safe interconnection of small generators to local distribution systems and should continue to have that authority, as the NOPR recognizes."<sup>126</sup> TAPS supports Commission jurisdiction over the interconnection of generators used for wholesale sales, whether the interconnection is made to transmission or "distribution," because such application is essential to prevent evasion of the intent of the NOPR to provide non-discriminatory interconnection service, and should encompass wholesale interconnections to the Distribution Systems of large jurisdictional utilities that have divested their transmission facilities to an independent transmission company or the like.

#### Commission Conclusion

803. At the outset, it is important to clarify several terms when discussing the question of jurisdiction. "Local distribution" is a legal term; under FPA Section 201(b)(1), the Commission lacks

<sup>122</sup> See Large Generator Interconnection NOPR, FERC Stats. & Regs. ¶ 32,560 at 34,178 & n.22 (2002).

<sup>123</sup> *E.g.*, Consumers, EEI, LADWP, National Grid, the North Carolina Commission, NRECA-APPA, the Public Power Council, and the Wisconsin PSC.

<sup>124</sup> Citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,673.

<sup>125</sup> 18 CFR 284.224 (2003).

<sup>126</sup> NARUC comments at 5 (citation omitted) (emphasis added by NARUC).