

jurisdiction over local distribution facilities.¹²⁷ “Distribution” is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are “local distribution” facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility’s OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

804. This Final Rule applies to interconnections to the facilities of a public utility’s Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT.¹²⁸ In other words, the standard interconnection procedures and contract terms adopted in this Final Rule apply when an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made. Therefore, the Final Rule applies to a request to interconnect to a public utility’s facilities used for transmission in interstate commerce. It also applies to a request to interconnect to a public utility’s “distribution” facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT. But where the “distribution” facilities have a dual use, *i.e.*, the facilities are used for both wholesale sales and retail sales, the Final Rule applies to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce.¹²⁹

805. In response to SoCal Edison and PG&E, we clarify that we are not asserting jurisdiction over a hook-up between a retail customer and a Transmission Provider when a retail customer installs a generator that will produce electric energy to be consumed only on site.

806. Regarding the arguments that the NOPR LGIP and NOPR LGIA are designed for interconnection to a transmission system and not a “distribution” system, we expect that the majority of interconnections to jurisdictional “distribution” or other jurisdictional low-voltage facilities will be made by generators no larger than 20 MW. These Small Generators will be interconnected using the standard procedures and agreement adopted in the Small Generator rulemaking. We are proposing rules in that proceeding to accommodate the interconnection of Small Generators, mostly to jurisdictional “distribution” (not “local distribution”) and low-voltage facilities. However, in response to WEPCO’s argument, we conclude that under some circumstances (*e.g.*, interconnection to facilities below 69 kV) the Interconnection Studies in the Final Rule LGIP may be inappropriate to analyze some Large Generator Interconnection Requests. In such a case, we will allow the Transmission Provider to use modified Interconnection Studies, subject to Commission approval. The Commission expects that interconnection requests of this kind will be rare and, as a result, we do not at this time incorporate a standard study specifically designed for interconnections to low-voltage or “distribution” facilities into the Final Rule LGIP. Accordingly, a Transmission Provider may use the studies it deems appropriate to properly study the Interconnection Request, subject to Commission approval. The Commission therefore requires that a Transmission Provider, upon receipt of a request for jurisdictional interconnection to a jurisdictional “distribution” or low-voltage facility, file with the Commission an amendment to the LGIP in its OATT that describes the Interconnection Studies applicable to such requests.

807. APS raises concerns regarding joint ownership of transmission by

jurisdictional and non-jurisdictional entities. In Order No. 888, the Commission required each public utility that owns an interstate transmission facility jointly with a non-jurisdictional entity to offer service over its share of the joint facility, even if the joint ownership contract prohibits service to third parties.¹³⁰ Applying the same principle here, joint ownership does not affect the Commission’s authority to regulate the public utility. Accordingly, the Final Rule LGIP and Final Rule LGIA would apply to Interconnection Service provided by the public utility on its portion of a jointly owned facility.

808. Regarding EEI’s comment about the Commission’s authority over an interconnection for the purpose of making sales of electric energy for resale using “distribution” facilities when the energy neither crosses state lines nor enters the interstate transmission system, this question is moot because the Commission is not here extending its jurisdiction to any facility that is not already under its jurisdiction, pursuant to a Commission-filed OATT at the time the interconnection request is made.

809. Finally, regarding EEI’s objection that Commission regulation of “distribution” interconnections may create new layers of regulatory costs not recoverable in retail rates, our jurisdiction discussion above clarifies that because this Final Rule applies only where the Commission already has jurisdiction at the time interconnection is requested, this should not result in any new unrecoverable regulatory costs to a Transmission Provider.

4. Issues Relating to Qualifying Facilities

810. The NOPR did not address interconnection issues related to qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).¹³¹ Nevertheless, several commenters bring QF-related issues to our attention.

Comments

811. Cal Cogen and ELCON recommend that the Commission allow a QF to request interconnection under state authority when it either sells the majority of its output under a PURPA-based power sales agreement, or does not sell power to the wholesale market.

¹³⁰ See Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,692; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,219 (urging such public utilities to seek mutually agreeable revisions to their agreements with non-jurisdictional entities to permit third-party access to all, or at least the public utility share, of the facilities, and to file proposed revisions to such contracts with the Commission).

¹³¹ See 16 U.S.C. 2601 *et seq.* (2000).

¹²⁷ 16 U.S.C. 824(b)(1) (2000).

¹²⁸ For purposes of this paragraph, the term “Commission-filed OATT” means a tariff that is on file at, and has been approved by, the Commission.

¹²⁹ The Commission will exercise exclusive jurisdiction only over the Commission-jurisdictional service. See *Laguna Irrigation District*, 95 FERC ¶ 61,305 at 62,039 (2001) *aff’d sub nom. Pacific Gas & Electric Co. v. FERC*, 44 Fed. Appx. 170 (9th Cir. 2002); *Tex-La Electric Cooperative of Texas, Inc.*, 67 FERC ¶ 61,019 at 61,055–56, *final order*, 69 FERC ¶ 61,269 (1994) (both noting that the Commission asserts jurisdiction over the service

when the facilities are not purely “transmission” facilities). Accordingly, the Commission will continue to exercise exclusive jurisdiction over the rates, terms, and conditions of the Commission-jurisdictional service provided over the dual use “distribution” facility, but the Commission will not assert jurisdiction over all uses of that facility, because the regulation of “local distribution” of electricity to end users is reserved to the States.