

If the QF primarily generates electricity for sale in wholesale markets under non-PURPA agreements, they argue, the Final Rule should apply. Cal Cogen argues that this approach is in keeping with the Commission's Regulations, which give the States the responsibility for QF interconnections,¹³² and Commission precedent, which holds that an interconnection agreement in which an interconnected utility purchases a QF's total output falls under state authority.¹³³

812. Similarly, SoCal Edison and PG&E request that the Commission clarify that the Final Rule LGIP and Final Rule LGIA will not apply to a QF selling to the interconnected utility or to on-site customers. Calpine requests that generating facilities currently interconnected to the Transmission System under non-FERC-jurisdictional arrangements, such as QFs, that subsequently become FERC-jurisdictional by terminating their QF status or deciding to sell power in the wholesale market, not be treated as "new" generating facilities or "new" Interconnection Customers under the interconnection procedures. While only the contractual arrangements have changed, the physical interconnection requirements remain unchanged, and as long as the Generating Facility's output will be substantially the same after conversion, no Interconnection Studies are necessary and the Interconnection Customer should not be placed in the Transmission Provider's interconnection queue with new Generation Facilities. Rather, the Interconnection Customer should only have to execute the Commission-jurisdictional interconnection agreement to become effective upon termination of the state-jurisdictional agreement. Independent Producers, which makes a similar argument, notes that treating a newly jurisdictional former QF as a new interconnection would be discriminatory since this would essentially require that facilities be interconnected twice. If an existing QF is already in the "base case" used to determine impacts of new generators, and this same base case is used to analyze the interconnection of the existing QF, there will be no effect.

Commission Conclusion

813. The Commission's Regulations govern a QF's interconnection with most electric utilities in the United

States,¹³⁴ including normally nonjurisdictional utilities.¹³⁵ When an electric utility is obligated to interconnect under Section 292.303 of the Commission's Regulations, that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.¹³⁶ But when an electric utility interconnecting with a QF does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.¹³⁷

814. Thus, the Commission has jurisdiction over a QF's interconnection to a Transmission System if the QF's owner sells any of the QF's output to an entity other than the electric utility directly interconnected to the QF. Because the presence of any output sold to a third party determines Commission jurisdiction, we reject Cal Cogen and ELCON's requests that we establish jurisdiction over QF interconnections based on the amount of energy sold to a third party. Accordingly, this Final Rule applies when the owner of the QF seeks interconnection to a Transmission System to sell any of the output of the QF to a third party. This jurisdiction applies to a new QF that plans to sell its output to a third party, and to an existing QF interconnected to a Transmission System that historically sold its total output to an interconnected utility or on-site customer and now plans to sell output to a third party. Nevertheless, consistent with the Commission's Regulations, states will continue to exercise authority over QF interconnections when the owner of the QF sells the output of the QF only to an interconnected utility or to on-site customers.

¹³⁴ 18 CFR 292.303, 292.306 (2003).

¹³⁵ The absence of interstate commerce in Alaska, Hawaii, portions of Texas and Maine, and Puerto Rico is not germane to the Commission's jurisdiction over QF matters under PURPA. See 16 U.S.C. 2602 (2000).

¹³⁶ See *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 at 61,661–62 (1992) (*Western Massachusetts*), *aff'd sub nom. Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 926 (D.C. Cir. 1999).

¹³⁷ See *id.* at 61,661–62. The Commission further clarified that the use of facilities for non-jurisdictional services is not dispositive when determining jurisdiction: "The fact that the facilities used to support the jurisdictional service might also be used to provide various nonjurisdictional services, such as back-up and maintenance power for a QF, does not vest state regulatory authorities with authority to regulate matters subject to the Commission's exclusive jurisdiction." *Id.* at 61,662.

815. Finally, regarding a former QF interconnected to a Transmission System that sells electric energy at wholesale in interstate commerce, we conclude that the owner of the QF need not submit an Interconnection Request if it represents that the output of the generating facility will be substantially the same as before. A QF, under the Commission's Regulations,¹³⁸ must provide electric energy to its interconnecting utility much like the interconnecting utility's other Network Resources, since the utility must purchase the QF's power to displace its own generation. When the owner of a QF that was formerly interconnected to a Transmission System seeks to sell energy at wholesale and represents that the output of its generator will be substantially the same after conversion, it would be unreasonable for a Transmission Provider to require the former QF to join the interconnection queue.

5. Variations From the Final Rule

816. In the NOPR, we proposed to allow a Transmission Provider to justify variations from the non-price terms and conditions of the interconnection provisions of the Final Rule using the approach taken in Order No. 888. Order No. 888 allows two types of variations. First, public utilities may seek to use regional differences to justify proposed changes to certain specifically identified OATT provisions when the proposed alternative provision is "reasonable, generally accepted in the region, and consistently adhered to by the [T]ransmission [P]rovider."¹³⁹ Second, public utilities may argue that proposed changes to any OATT provision are "consistent with or superior to" the terms of the OATT. In the NOPR, we also stated that if a legitimate need for regional variations in specific provisions in the Final Rule LGIP and Final Rule LGIA were identified, we would consider adopting specific provisions that permit regional variations.

Comments

817. While a few commenters, including Cinergy, Dynegy, and SoCal Edison, support the proposed provision, others seek greater flexibility to propose changes based on regional differences for provisions other than those the Commission identified as specific eligible provisions. For example, several commenters argue that the Commission should allow variations for regional

¹³⁸ 18 CFR 292.303 (2003).

¹³⁹ See Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,770.

¹³² Citing 18 CFR 292.306, 292.308 (2003).

¹³³ Citing *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 (1992), *aff'd sub nom. Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922 (D.C. Cir. 1999).