

retained, but it should be expanded to apply to cooperatives with total electric energy dispositions that exceed four million MWh annually and with outside sales that do not exceed one million MWh annually. SoCal Water District also asks for a waiver for utilities with annual sales of less than four million MWh.

Commission Conclusion

830. We are sympathetic to the array of concerns raised by small Transmission Providers. Order Nos. 888 and 889 established guidelines for the granting of waivers to small entities, and this Final Rule adopts that approach and makes conforming changes to the regulatory text in Part 35 of the Commission's regulations.¹⁴¹ We recognize, for example, that it might be a financial burden on a small Transmission Provider to perform Interconnection Studies or manage the construction of Interconnection Facilities in the same manner as a larger Transmission Provider. The small Transmission Provider may simply not have the staff or expertise to efficiently accommodate all Interconnection Requests.

831. Because the possible scenarios under which small entities may seek waivers from the Final Rule are diverse, they are not susceptible to resolution on a generic basis and we will require applications and fact-specific determinations in each instance. If the circumstances that give rise to the exemption change, the waiver may no longer be appropriate. In addition, we will apply the same standards to any entity seeking a waiver, including public utilities seeking waiver of some or all of the requirements of the Final Rule, as well as non-public utilities seeking waiver of the reciprocity provision. Each entity, however, will have to apply for this waiver and demonstrate that it qualifies for the waiver as required in Order No. 888.

7. OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA

832. In the NOPR, we proposed that the Final Rule LGIP and Final Rule LGIA be subject to the reciprocity provision of Order No. 888, as incorporated into the OATTs adopted by public utilities.¹⁴² The reciprocity provision allows any public utility that provides open access transmission to a non-public utility to receive as a

condition of service non-discriminatory access in return.¹⁴³ With the addition of the Final Rule LGIP and Final Rule LGIA to the OATT, in order to meet its reciprocity obligation, a non-public utility would have to provide Interconnection Service to the Transmission Provider and the Transmission Provider's Affiliates under the same terms and conditions under which it receives service.

Comments

833. Several public power commenters, including Lakeland, LPPC, Nebraska PPD, NRECA-APPA, and the Public Power Council, request that the Commission clarify that it indeed intends to apply, without modification, the reciprocity policy as expressed in Order No. 888 to the Final Rule LGIP and Final Rule LGIA. Other commenters such as LADWP and LIPA warn that any attempt to expand the reciprocity policy to allow a generator unaffiliated with a Commission-jurisdictional Transmission Provider to require a non-public utility to comply with the reciprocity condition would be an impermissible extension of Commission jurisdiction.

834. Mirant argues that the Commission should add additional reciprocity language to every Transmission Provider's OATT that conditions the continued provision of transmission service on a non-public utility Interconnection Customer offering comparable Interconnection Service on its own transmission facilities.

835. Nebraska PPD objects to any reciprocity with respect to the Final Rule LGIP and Final Rule LGIA. In the alternative, it seeks clarification that the jurisdictional Transmission Provider may waive reciprocity. It also joins LPPC in requesting that only terms and conditions, and not the rate provisions, be subject to the reciprocity condition.

836. Pinnacle West argues that the Commission should state that the reciprocity requirement cannot be satisfied if a non-public utility fails to provide credits against transmission service bills for Network Upgrades. Otherwise, Pinnacle West continues, the non-public utilities would be engaging in prohibited "and" pricing that charges customers twice for transmission service. It states that Commission precedent has made clear that to satisfy reciprocity, a non-public utility must

charge rates comparable to the rates it charges itself.¹⁴⁴

837. TAPS explains that the reciprocity condition should impose an obligation to interconnect on a basis that is reasonable under the circumstances and comparable to the way the non-public utility treats its own interconnections. It supports the availability of a Commission waiver of the reciprocity requirement for small transmission owners.

838. Certain public power entities, including the Bureau of Reclamation, LIPA, NYTO, Southwest Transmission, and TAPS, ask the Commission to consider the statutory or regulatory restrictions applicable to public power and other non-public utilities when the Commission evaluates their reciprocity compliance filings. They request that non-public utilities be afforded sufficient flexibility to include or modify certain provisions as required by law.

839. SoCal Edison expresses concern that an interconnection with a non-public utility may require Network Upgrades to a neighboring public utility's transmission facilities, and that the neighboring public utility would have no recourse should the owner of the generator and the non-public utility proceed with the interconnection without paying the neighboring public utility's upgrade costs. It proposes that the Commission, as part of the reciprocity provision, allow a jurisdictional utility to disconnect from its non-jurisdictional neighbor unless the neighbor ensures that the interconnecting generator mitigates the effects on the jurisdictional utility's system.

Commission Conclusion

840. Some commenters may have misunderstood our reciprocity statement in the NOPR as extending reciprocity rights to public utilities that do not own, control, or operate transmission either directly or through an Affiliate. The owners of many generators are public utilities that do not own, and are not affiliated with a public utility that owns, transmission. They are thus incapable of offering reciprocity service. We wish to make it clear that this Final Rule in no way alters the applicability of the reciprocity provision in the OATT and the reciprocity policy articulated in Order No. 888 and its progeny. The point of the reciprocity requirement is to permit a public utility that provides open access transmission service to require a

¹⁴¹ See 18 CFR 35.28(d) (2003); Reg. Text 35.28(f)(3), *infra*.

¹⁴² Large Generator Interconnection NOPR, FERC Stats. & Regs. ¶ 32,560 at 34,184–185. See also Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,755.

¹⁴³ See Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760.

¹⁴⁴ Citing Missouri Basin Municipal Power Authority, 99 FERC ¶ 61,062 at 61,296 (2002).