

non-public utility that owns, controls, or operates transmission facilities to have available reciprocal transmission service from that non-public utility. The concept of reciprocity is simply irrelevant if the non-public utility does not own, control, or operate transmission facilities, as is the case with many Interconnection Customers. Because the Final Rule LGIP and Final Rule LGIA are to become a part of the OATT, the reciprocity provision in the OATT applies to interconnection as well. EEI—Alliance of Energy Suppliers, MidAmerican, and Nevada Power, among others, filed comments supporting this approach.

841. Under the reciprocity provision in Section 6 of the OATT, if the public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. Under the OATT, a public utility may refuse to provide open access transmission service to a non-public utility if the non-public utility refuses to reciprocate. A non-public utility may satisfy the reciprocity condition in one of three ways: first, it may provide service under a Tariff that has been approved by the Commission under the voluntary “safe harbor” provision. A non-public utility using this alternative submits a reciprocity Tariff to the Commission seeking a declaratory order that the proposed reciprocity Tariff substantially conforms to or is superior to the OATT. The non-public utility then must offer service under its reciprocity Tariff to any public utility whose transmission service the non-public utility seeks to use. Second, the non-public utility may provide service to a public utility under a bilateral agreement that satisfies its reciprocity obligation. Finally, the non-public utility may seek a waiver of the reciprocity condition from the public utility.¹⁴⁵

842. A non-public utility that has a “safe harbor” Tariff may add to its Tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the Final Rule LGIP and Final Rule LGIA if it wishes to continue to qualify for safe harbor treatment. A non-public utility that owns, controls, or operates transmission and that has not filed with the Commission a safe harbor Tariff and seeks transmission service from a public utility must either satisfy its reciprocity

obligation under a bilateral agreement or seek a waiver of the OATT reciprocity condition from the public utility.

843. We do not require, as Pinnacle West proposes, that a non-public utility also provide transmission credits for Network Upgrade costs, to satisfy the Commission’s reciprocity condition. With respect to a tariff filed under the “safe harbor” provision, our reciprocity policy requires that it contain rates comparable to the rates the non-public utility charges itself.¹⁴⁶ As for rates contained in a bilateral agreement, they are a fact-specific matter that will be subject to a case-by-case analysis.¹⁴⁷

844. Regarding the applicability of the reciprocity requirement to public power and other nonjurisdictional entities, we shall limit reciprocity compliance to those services a nonjurisdictional entity is capable of providing on its system.¹⁴⁸ We likewise will consider the legal and regulatory restrictions on nonjurisdictional entities’ contractual rights and tax-exempt status when we evaluate any “safe harbor” reciprocity filings.

845. Finally, since we did not propose to change the reciprocity condition articulated in the OATT in this Final Rule, SoCal Edison’s concerns are more appropriately addressed in the discussion of effects on third party systems.

8. General Comments/Clarifications

a. Insurance

846. In the NOPR, we omitted the insurance requirements originally filed in the ANOPR Consensus LGIA. Those insurance requirements would have set out the minimum coverage types and amounts that each Party to the LGIA must maintain. The NOPR did not propose insurance requirements because insurance requirements are not contained in the OATT.

Comments

847. Many commenters, primarily Transmission Providers, ask the Commission to reconsider its proposal to omit the insurance requirements.¹⁴⁹ They argue that insurance provisions are common in individually negotiated interconnection agreements and are important for managing risks and containing liability costs. The

magnitude of the costs and potential liability at issue necessitate the inclusion of insurance provisions, they claim. Entergy explains that since the indemnification provision in NOPR LGIA Article 18 likely will be inadequate to make the Transmission Provider whole, insurance is necessary to ensure that damaged Parties are made whole for a disturbance caused by a Generating Facility.

848. Several commenters, including PSNM, Southern, and Tenaska, argue that the Commission should not follow the OATT on this issue because Interconnection Service is different from transmission service in that the operation of generators poses safety and operational risks. PJMTO and PSEG note that a generation project is unlikely to obtain financing without appropriate insurance provisions within the Final Rule LGIA.

849. Some commenters, including Avista, Dynegy, FP&L, and National Grid, argue that the Commission should restore the insurance provision that appeared in the ANOPR LGIA, which included mandatory insurance types and coverage amounts. Others, including Dominion Resources, NYTO, and Progress Energy, argue that while state laws and local business practices should dictate the actual amount of coverage, the Final Rule LGIA should describe the types of insurance coverage each Party must carry. Some commenters including EEI—Alliance of Energy Suppliers state that while it is infeasible on a generic basis to stipulate the appropriate levels of insurance for all facilities, the Interconnection Customer and Transmission Provider should be required to maintain certain minimum levels of insurance as agreed by the Parties.

Commission Conclusion

850. We conclude that requiring certain minimum insurance in the Final Rule will benefit both the Transmission Provider and the Interconnection Customer and will help the Transmission Provider to avoid undue financial risk. Accordingly, we are restoring the insurance requirement in the Final Rule LGIA. The addition of this provision should help the Transmission Provider and the Interconnection Customer to manage the risks arising from Interconnection Service. The Final Rule requires that each Party, at its own expense, maintain certain minimum insurance coverages throughout the period of their interconnection agreement. These coverages include Employers’ Liability and Workers’ Compensation Insurance, Commercial General Liability Insurance,

¹⁴⁵ See Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,285–86.

¹⁴⁶ See generally Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,761; see also Long Island Power Authority, 84 FERC ¶ 61,280 at 62,333 (1998).

¹⁴⁷ Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,289.

¹⁴⁸ *Id.* at 30,286.

¹⁴⁹ E.g., American Transmission, APS, Dominion Resources, Dynegy, Entergy, FP&L, National Grid, NiSource, NYTO, Oklahoma G&E, PSNM, and Tucson Electric.