

Large Generator Interconnection Final Rule also permitted, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades for a generator interconnection as soon as an independent entity has been approved by the Commission and the affected states. The Commission proposes to adopt the same policies for Small Generating Facilities that interconnect with a Transmission System operated by an independent entity. We seek comments on whether this approach is appropriate for Small Generating Facilities which interconnect to a Transmission System.

72. Because a Small Generating Facility may interconnect to a Transmission Provider's jurisdictional distribution facility for the purpose of making a sale of electricity at wholesale in interstate commerce, this NOPR also addresses cost recovery for Distribution Upgrades at or beyond the Point of Interconnection.<sup>39</sup> Consistent with the Large Generator Interconnection Final Rule, we here propose that the costs of Distribution Upgrades would be directly assigned to the Interconnection Customer. This is because Distribution Upgrades do not generally benefit all users. Distribution facilities generally deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system as is the case for transmission facilities. Accordingly, it is not appropriate that all users share the cost of Distribution Upgrades. Rather, the Interconnection Customer itself should be solely responsible for the cost of Distribution Upgrades.

11. Liability, Indemnity, Force Majeure, and Insurance (Proposed SGIA Articles 6.13, 6.14, and 6.16)

73. In the Large Generator Interconnection Final Rule, the Commission adopted indemnification and Force Majeure provisions different from those applied to transmission service that appear in the OATT, and added a new provision limiting liability for consequential damages. This NOPR proposes a similar approach. The Commission asks commenters to address whether Small Generators should be treated differently from Large Generators with respect to liability, indemnity, and Force Majeure.<sup>40</sup>

74. Consistent with the Large Generator Interconnection Final Rule that is being issued concurrently with the issuance of this NOPR, we are including a provision in the proposed SGIA requiring the Parties to maintain minimum insurance coverage. However, we are not proposing specific coverage amounts in this NOPR. We request comments on whether the Small Generator Interconnection Final Rule should also include an insurance provision, and, if so, whether the provision should differ from the one contained in the Final Rule LGIA, what kind of insurance should be required, and at what level of coverage. Commenters should address how best to balance any need for insurance against the costs of insurance since such costs may discourage Small Generating Facilities from participating in the wholesale market.

75. The Commission also asks commenters to address two other issues regarding this proposed provision: first, should required insurance coverage coincide with the size of the facility? For example, a 20 MW generator would be subject to higher coverage amounts than a 10 MW generator, which itself would be subject to higher coverage amounts than a 5 MW generator. Similarly, should there be a megawatt cutoff that would exempt certain Small Generators (e.g., those below a certain size) from some or all of the minimum insurance requirements. Second, should coverage types and amounts vary according to the type of generator so that, for example, solar or wind facilities would require different insurance coverages than gas-fired facilities.

## 12. Variations From the Final Rule on Compliance.

76. Regarding variations allowed from the Final Rule SGIP and Final Rule SGIA, consistent with the approach adopted in the Large Generator Interconnection Final Rule, we propose to apply a regional differences rationale to accommodate variations from the Final Rule during compliance, but with certain restrictions. We propose that a non-independent transmission provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination. Accordingly, we propose to allow an RTO or ISO greater flexibility than that allowed under the regional differences rationale to propose

variations from the Final Rule provisions, as further discussed below.

77. Because we intend to supplement rather than supplant any standardization work that regional reliability groups already have undertaken regarding interconnection, we propose to permit a Transmission Provider, on compliance, to offer variations based on existing regional reliability requirements as part of its regional differences justification. Because we seek greater standardization of interconnection terms and conditions, we propose to permit a non-independent Transmission Provider to use the regional differences justification only due to established regional reliability standards.

78. For other proposed deviations from the Final Rule SGIP and Final Rule SGIA not made in response to established regional reliability requirements, we propose that a non-independent transmission provider justify variations in non-price terms and conditions of the Final Rule SGIP and Final Rule SGIA using the approach taken in Order No. 888, which allows them to propose variations on compliance that are "consistent with or superior to" the OATT.

79. To clarify, if on compliance a non-RTO or ISO Transmission Provider offers a variation from the Final Rule SGIP and Final Rule SGIA and the variation is in response to established (i.e., approved by the Applicable Reliability Council) reliability requirements, then it would have to justify its variation using the regional difference rationale. If the variation is for any other reason, the non-RTO or ISO Transmission Provider must present its justification for the variation using the "consistent with or superior to" rationale that the Commission applies to variations from the OATT in Order No. 888.

80. With respect to an RTO or ISO, at the time its compliance filing is made, as discussed above, we propose to allow it to seek "independent entity variations" from the Final Rule pricing and non-pricing provisions. This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant. The RTO or ISO therefore would have greater flexibility to customize its interconnection procedures and agreements to fit regional needs.

81. Last, we invite comment on whether the proposed rule as drafted makes adequate provision to meet the

<sup>39</sup> The costs of all Interconnection Facilities, whether owned by the Small Generator or the Transmission provider, are directly assigned to the Interconnection Customer.

<sup>40</sup> The White Paper proposed that the Final Rule in Docket No. RM01-12-000 would limit the Liability of Regional Transmission Organizations,

Independent System Operators, and transmission owners that belong to RTOs and ISO.