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Public Service Commission

October 3, 2003

VIA ELECTRONIC FILING

The Honorable Magalie R. Salas
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Standardization of Small Generator Interconnection Agreements and Procedures, Docket No. RM02-12-000

Dear Ms. Salas:

Forwarded herewith are comments of the Florida Public Service Commission in the above-mentioned proceeding regarding standardization of small generator interconnection agreements and procedures.

Should you have questions, staff contacts are Cindy Miller at (850) 413-6082 or Mark Futrell at (850) 413-6992.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standardization of Small Generator	**)**	**Docket No. RM02-12-000**
Interconnection Agreements and Procedures	**)**	

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) hereby files to express concerns with several issues in the Notice of Proposed Rulemaking (the Rulemaking) issued July 24, 2003. Primarily, the FPSC questions the Federal Energy Regulatory Commission's (the Commission's or FERC's) authority to extend its jurisdiction over distribution. In addition, we raise a continuing concern on cost allocation that results in the spreading of costs across the general body of ratepayers for transmission and distribution upgrades that are not needed "but for" the interconnection of the new small generator. Lastly, we ask the FERC to clarify its position on tax implications for transmission providers.

1. **The FERC has erred in attempting to extend its jurisdiction to distribution**.

In Paragraph 25 of the Rulemaking, the FERC asserts that it has some jurisdiction over distribution-level interconnections. The recent case, *Detroit Edison Company v. Federal Energy Regulatory Commission*, 334 F.3d 48 (D.C. Cir. 2003), appears to state otherwise. The Court criticizes that "FERC would rewrite the statute to exclude only 'facilities used exclusively in local distribution.'" The Court held that the FERC exceeded its statutory jurisdiction and vacated the orders under review. "Such an interpretation would eviscerate state jurisdiction over numerous local facilities, in direct contravention of Congress' intent." The Court found that Section 201(b)(1) of

the Federal Power Act denies FERC jurisdiction over local distribution facilities. Also, the Court noted that the FERC's orders "totally ignore Order 888's carefully formulated seven-factor test for distinguishing between local distribution facilities and 'FERC-jurisdictional facilities,'" which the Court had upheld in *Transmission Access Policy Study Group v. FERC*, *225F .3d 667, 690-691* (D.C. Dir.2000).

FERC's proposed rules apply to a request to interconnect to a public utility's facilities used for transmission in interstate commerce and 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. The FERC says that in a case where the 'distribution' facilities have a dual use, i.e., the facilities are used for both wholesale sales and retail sales, the proposed rules would apply to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce.

In fact, such a dual use designation makes no sense for states without retail choice. In almost all bundled states, all sales made back to a franchised utility would fall under a wholesale designation. Sales by a generator to another retail customer are - for the most part[1] - not permitted since only franchised utilities can make sales directly to an end-use customer. The FPSC believes that since the FERC has no authority over distribution-level interconnections, whether they are "dual use" or not, that such language should be removed from the proposed rule.

2. **The FERC should allow flexibility on cost allocation for all the interconnection upgrades.**

The FPSC remains concerned that, except for systems that are operated by independent

[1] *Self-Service wheeling to the same customer's load is permitted in Florida.*

entities (i.e., RTOs and ISOs), the FERC policy would allow for the socialization or spreading of costs, across the general body of ratepayers, for transmission upgrades that would not be needed "but for" the interconnecting customer.

The FPSC is concerned that socialization of interconnection upgrade costs will impose costs on retail customers who may not benefit from the upgraded facilities; and the socialization of costs may provide a perverse incentive to locate generating units in places where overall costs for fuel delivery, transmission, and other associated power plant costs, are not minimized. If plants are not located in the most efficient manner, costs to retail customers will increase unnecessarily.

The FPSC is concerned with the equity impacts of the elimination of direct cost assignments for facilities. The equity impacts may have a large financial consequence. Two types of interconnection services are mentioned - Energy Resources (ER) and Network Resources (NR). The problem with equity impacts arises with the NR service level. This reference appears to create an open checkbook allowing all generators to ask for the highest level of interconnection service knowing that these costs will be borne by all users of the system. Florida has a statutory requirement to add transmission lines that meet a least-cost planning criteria. The FPSC is concerned that this proposal would violate such practices.

It is possible that these additional costs will be significant. The Transmission Provider could potentially be required to construct extensive transmission backbone facilities that would permit the generator to be designated a Network Resource. In essence, except for the up-front out-of-pocket costs paid by the generator which will be reimbursed through the credit, the generator can request premium interconnection service knowing that they will be fully reimbursed for such upgrades. An unintended consequence of this NOPR could be that transmission facilities are overbuilt to the point that customers are not benefitted.

Although there are several states that have instituted retail competition, there are many states, including Florida, in which that action has not yet been taken. The FPSC is most concerned about the equity impacts in states with bundled retail service. In these instances, the socialization of network upgrade costs has the greatest potential of being disproportionately borne by those customers that are receiving minimal benefits.

Any benefits of competition, whether they be in the electric industry or elsewhere, arise mainly from cost causers paying their fair share. All else being equal, proper price signals are always preferable to costs being spread indiscriminately.

The FPSC recommends that the "but for" test, be reinstated in states where electric service remains bundled. Our alternative recommendation is that the "but for" test be applied until such time that unbundling occurs.

3. **Tax Implications should be clearly delineated.**

The Final Rule on Large Generator Interconnector Agreements addressed various tax issues, including indemnification for potential taxes imposed upon transmission providers. However, this rulemaking for Small Generator Interconnection Agreements does not provide any guidance on this issue. The FPSC urges that the FERC provide similar language in this rulemaking as that in the Final Rule for the Large Generator Interconnection Agreement.

Conclusion.

The FPSC urges the FERC to:

1) remove any language which extends FERC's jurisdiction to distribution;

2) revise the cost allocation rule on transmission and distribution upgrades so that there is not socialization of upgrade costs across the general body of ratepayers; and,

3) clarify that the tax implications are the same as in the Large Generator

Interconnection Agreement Final Rule.

Respectfully submitted

/s/

Cindy B. Miller,Esquire
Office of Federal and Legislative Liaison

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
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DATED: October 3, 2003