

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Review of Generator Interconnection  
Agreements and Procedures**                    )

**Docket No. RM17-8-000**

**COMMENTS OF THE  
AMERICAN PUBLIC POWER ASSOCIATION  
AND THE LARGE PUBLIC POWER COUNCIL**

**I. INTRODUCTION AND SUMMARY OF POSITION**

The American Public Power Association (“APPA”) and the Large Public Power Council (“LPPC”) file these comments to voice their concern with respect to one specific proposal advanced by the Commission in its Notice of Proposed Rulemaking issued in this docket on December 15, 2016 (“NOPR”).<sup>1</sup> In particular, APPA and LPPC respond to the Commission’s proposal at PP 52-63 of its NOPR which would expand interconnection customers’ option to build their own interconnection facilities and stand-alone network upgrades.<sup>2</sup> As discussed below, APPA and LPPC object to this proposal based upon their concern that such expansion of interconnection customers’ option to build their own interconnection facilities and stand-alone network upgrades may compromise grid reliability.

**A. Interests of the Parties**

APPA is the national service organization representing the interests of not-for -profit, publicly-owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15% of all kilowatt-hour sales to ultimate customers and serve over 49

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<sup>1</sup> *Reform of Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 157 FERC ¶ 61,212 (2016).

<sup>2</sup> APPA and LPPC note that they are signatories to a separate set of comments filed today in this proceeding by the Non-Profit Utility Trade Associations (comprising APPA, LPPC and NRECA) which address a much broader range of issues in connection with the proposals advanced in the Commission’s NOPR.

million people, doing business in every state except Hawaii. Public power systems own approximately 10.3% of the total installed generating capacity in the nation.

LPPC is an association of the 26 largest state-owned and municipal utilities in the nation. LPPC's membership is located throughout the nation, both within and outside RTO boundaries, and its members comprise the larger, asset owning members of the public power community.

Together, the memberships of APPA and LPPC represent a diverse range of interests with respect to the issues framed by the NOPR. Many of these members own and manage large transmission systems, some within and some outside RTOs, and many operate under Open Access Transmission Tariffs (“OATTs” or “tariffs”) that include the Large Generator Interconnection Procedures (“LGIP”) and the Large Generator Interconnection Agreement (“LGIA”). Other, smaller utilities represented by APPA and LPPC do not provide interconnection service, but own or contract for interconnecting generation under an OATT.

## **II. COMMENTS**

APPA and LPPC object to the Commission’s proposal to allow interconnection customers to exercise unilaterally the option to build interconnection facilities and stand-alone upgrades. APPA and LPPC believe that existing provisions in the LGIA sensibly balance customer needs with best utility practices and reliability concerns. Under section 5.1 of the current *pro forma* LGIA, interconnection customers have the option to build these facilities if Transmission Providers provide notice that they cannot complete needed facilities within the schedule dictated by interconnection customers’ specification of their respective in-service, initial synchronization and commercial dates.

At P 59 of the NOPR, the Commission proposes to revise *pro forma* LGIA section 5.1 to allow an interconnection customer to exercise its option under the LGIA to build the

Transmission Provider's interconnection facilities and stand-alone network upgrades, regardless of whether the Transmission Provider can complete construction of those facilities consistent with the schedule designated by the interconnection customer. Under the Commission's proposal, all transmission customers would be afforded an unconditional and unilateral option to design, procure and build the interconnection facilities and stand-alone network upgrades, provided only that the interconnection customer and Transmission Provider agree as to facilities to be built, and design and construction details.<sup>3</sup>

The Commission's proposal would meaningfully expand the scope of the interconnection customer's option to build as it was conceived by the Commission in Order No. 2003<sup>4</sup> and memorialized in LGIA Article 5.1.<sup>5</sup> The Commission was explicit in Order No 2003-A that the interconnection customer "may exercise its right under the 'option to build' *only as a last resort*" if the Transmission Provider is unable to meet the milestones established by the interconnection customer.<sup>6</sup>

APPA and LPPC are concerned by the reliability impact of this proposal. While the Commission in Order No. 2003 considered the potential safety and reliability implications of allowing interconnection customers to construct Transmission Providers' interconnection facilities and stand-alone network upgrades, it did so on the basis of a proposal limited to instances in which Transmission Providers cannot meet requested construction dates.<sup>7</sup> Similarly limited was the Commission's finding in Order No. 2003 that the conditions applicable to the

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<sup>3</sup> NOPR, P 59.

<sup>4</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>5</sup> *See* Order No. 2003 at P 353.

<sup>6</sup> Order No. 2003-A at P 218 (emphasis added).

<sup>7</sup> Order No. 2003 at PP 353, 356.

option to build, as outlined in LGIA Article 5.2, adequately guard against such reliability and safety issues.<sup>8</sup>

To be sure, LGIA Article 5.2 provides certain safeguards that require the interconnection customer to design and construct transmission providers' interconnection facilities and stand-alone network upgrades in a manner consistent with good utility practice and standards provided by the transmission provider, and further afford transmission providers the right to approve the design and construction of such facilities. But the protections in LGIA Article 5.2 were adopted and implemented by the Commission with the expectation that the LGIA's option to build would be employed by interconnection customers in the limited circumstance in which transmission providers are unable to meet the construction milestones established by the interconnection customer. What is missing from these safeguards is a complete picture of system operations, long, medium and short term planning and critical awareness, and a grasp of the short- and long-term reliability implications associated with construction, interconnection and operation of interconnection facilities and network upgrades.

Moreover, transmission providers bear ultimate responsibility for the long-term reliability of their systems, for ensuring that the grid can provide interconnection customers with a level of transmission service that is commensurate with the level requested, and for ensuring that power from the interconnection customer's facilities can reliably serve load. This ultimate responsibility may be compromised to a limited extent under the current version of LGIA section 5.1, but the risk is altered dramatically under the Commission's proposal.<sup>9</sup>

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<sup>8</sup> *Id.*, P 356.

<sup>9</sup> APPA and LPPC note that in all cases, customers' options will be constrained by state and local law governing the ability of non-utilities to employ eminent domain in order to construct interconnection facilities and network upgrades. Construction by non-utility actors may or may not be permitted by state-based statutory regimes, to which the Commission has historically recognized the need to defer.

Support in the record for the proposed change is thin, resting on a transcript reference to the experience of one commenter asserting that it was able to construct needed facilities at lower cost than the interconnecting utility.<sup>10</sup> No systematic evidence corroborates this view. In similar circumstances, the Commission has been faulted for “[p]rofessing that an order ameliorates a real industry problem but then citing no evidence demonstrating that there is in fact an industry problem is not reasoned decision-making.”<sup>11</sup>

### III. CONCLUSION

For the foregoing reasons, APPA and LPPC ask the Commission not to adopt the NOPR’s proposal to expand existing provisions in the LGIA governing the interconnection customers’ right to build their own facilities.

Respectfully submitted,

#### **American Public Power Association**

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<sup>10</sup> NOPR, P 56 (citing Tr. 121:1-21).

<sup>11</sup> *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 843-44 (D.C. Cir. 2006) (citing *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983)). See also *Assoc. Gas Distributors v. FERC*, 824 F.2d 981, 1019, (D.C. Cir. 1985) (FERC cannot order “an industry-wide solution for a problem that exists only in isolated pockets.”).