



**Davis Wright Tremain LLP**

***Distributed Power and the  
Federal Energy Regulatory Commission***

**U.S. Department of Energy  
Office of Power Technologies  
Distributed Power Program/Industrial DG  
Program Annual Review**

**By**

**Daniel M. Adamson  
Davis Wright Tremain LLP  
Washington, D.C.**

**January 29, 2002**



## **INTRODUCTION**

- Regulation of the interconnection of distributed generation (DG) will have a major influence on the costs of these technologies.
- States have been the key regulators of distributed power interconnection.
- New FERC Chairman Pat Wood has shown a strong interest in distributed power interconnection.



- Potential scope of FERC authority over interconnection is growing because competition has increased the sale of power and transmission in regional interstate electricity markets subject to federal, not State, regulation.
- This presentation is based upon a draft paper being prepared for the U.S. Department of Energy Office of Power Technologies Distributed Power Program through the National Renewable Energy Laboratory.
- A final copy of the paper will be available on the web in the near future.



## **OUTLINE OF PRESENTATION**

- Scope of FERC distributed generation interconnection authority.
- Review of FERC Case-by-Case Actions Affecting Distributed Generation.
- FERC Interconnection Standardization Advanced Notice of Proposed Rulemaking.
- Key upcoming issues/Conclusion.



## SCOPE OF FERC DG INTERCONNECTION AUTHORITY

- A very complex and controversial issue that is likely to be subject to litigation in the future.
- In general, if a distributed generator engages in a wholesale power transaction the interconnection of the facility is FERC jurisdictional. *See Transmission Access Policy Study Group v. FERC* 225 F.3d 667 at 695 (D.C. Cir. 2000); *MidAmerican Energy Company* 90 FERC ¶ 61,105 (2000) (except when PURPA applies).
- Under this precedent FERC may have jurisdiction over the interconnection of DG engaged in wholesale transactions no matter how small the facility or what type of power lines it is interconnected to.



## FERC DG AUTHORITY

- If DG is engaged in a retail transaction with a third party then whether interconnection is jurisdictional will largely depend on the nature of facilities used for transmission service. *See Transmission Access Policy Study Group v. FERC; Order No. 888 “seven-factor test.”*
- If DG exclusively devoted to self-generation no basis for FERC jurisdiction.



## FERC CASE BY CASE ACTIONS

### Commission Jurisdiction Over Distribution Grid-Level Interconnection

- *MidAmerican Energy Company* 90 FERC ¶ 61,105 (2000)- If a transmission facility is used for a wholesale transaction then FERC has jurisdiction regardless of whether it is local distribution.
- *California Independent System Operator* 94 FERC ¶61,266 (2001)- Upheld Cal ISO DG interconnection activities. Dismissed argument that Cal ISO and FERC have no jurisdiction over interconnection to State-regulated distribution lines.



## FERC CASES

- *MidAmerican Energy Company* 94 FERC ¶61,340 (2001)- Rejected attempt by MidAmerican to preempt and invalidate State net metering laws under the Public Utility Regulatory Policy Act and the Federal Power Act.
- Commission construed its jurisdiction narrowly when asked to overturn net-metering, but has generally construed its jurisdiction over distribution-level interconnect broadly.



## FERC CASES

### COMMISSION EFFORTS TO ENCOURAGE SUPPLY AND DEMAND RESPONSE

- *InPower Marketing Corporation* 90 FERC ¶61,329 (2000)- InPower sought approval to permit entities that owned back-up or self-generation to sell power at market rates to InPower. Commission approved and rejected argument that this would allow retail customers to “arbitrage retail and wholesale power markets” by buying at cost-based rates from their local utility and selling their own self-generated power at market rates.
- Based on the *InPower* precedent, the Commission granted blanket authorization for this type of activity in its *Order on Removing Obstacles to Increased Energy Supply and Reduced Demand in the Western United States* 94 FERC ¶61,272 (2001).



## FERC CASES

- *PJM Interconnection, Inc.* 92 FERC ¶61,306 (2001)- Upheld challenge to PJM Small Resource Interconnection Procedure Manual under which DG sales would be made to PJM. Some utilities urged that this proposal be rejected in favor of DG sales to local utilities only.
- *California Independent System Operator* 94 FERC ¶61,266 (2001)- Upheld Cal ISO approach to distributed generation interconnection.



## ADVANCED NOTICE OF PROPOSED RULEMAKING (ANOPR)

- In the past FERC has focused on the interconnection of large central station generating plants.
- Under the new leadership of Chairman Pat Wood, the FERC has, for the first time, indicated a strong interest in the interconnection of distributed power.
- Statement in recently issued strategic plan that it will work to “standardize interconnection of power generation plants of all sizes and technologies.” (emphasis added)



## ANOPR

- FERC announced an Advanced Notice of Proposed Rulemaking (ANOPR) on generation interconnection on October 25, 2001.
- The ANOPR is primarily concerned with issues surrounding the interconnection of central station generation.
- But, ANOPR specifically identifies as a “best practice” the establishment of “streamlined procedures” for small generation interconnection.
- The ANOPR established a consensus building process of interconnection stakeholders facilitated by Commission staff.



## ANOPR

- On January 11, 2002, the participants in the consensus process, the Interconnection Agreement and Interconnection Procedures Drafting Groups, submitted a lengthy filing to FERC that describes areas where they have achieved consensus and where they continue to disagree.
- On January 11, 2002, filing “Transmission Owners” and “Small Generators” remain far apart on many key issues, with the single exception of an agreement that interconnection study deposits should be waived for small generators.
- Key stumbling block is dispute over whether or not FERC has authority over the interconnection of distributed generation to power lines traditionally regulated by States.



## ANOPR

- In the January 11 filing, Transmission Owners state the following matters should be decided primarily under State law: expedited analysis procedures, coordination with local facilities, queue position, interconnection studies; feasibility studies, impact study/deposit, facilities studies; interconnection and operating agreement.
- By contrast, Small Generators support specific provisions in the FERC Interconnection Standardization rulemaking to address these matters in a uniform manner across the nation.
- There was also disagreement between Small Generators and Transmission Owners regarding interconnection studies for small packaged (less than 2 MW) and micro generators (less than 250kW).



## ANOPR

- Transmission Owners disagreed with the small packaged generation concept, stating that they “do not agree with a provision for technologies that have not been proven, for standards that have not been established, and for distribution facilities that are not regulated by the Commission.”
- Final comments on the ANOPR “strawman” proposal, as well as the January 11, 2002 filing that was the product of the consensus process, are due on February 1, 2002.
- Subsequently, FERC is likely to issue an Interconnection Standardization Notice of Proposed Rulemaking (NOPR) for comment and then issue a final rule later this year.



## **IMPORTANT ISSUES/CONCLUSIONS**

- The dispute over jurisdiction is a very important issue.
- FERC could play a major role in DG interconnection regulation.
- If national regulatory framework is established States might apply in areas where they have jurisdiction.
- Even if FERC jurisdiction maintained, not clear FERC will have institutional capacity to regulate DG interconnect effectively at distribution line-level.



## **IMPORTANT ISSUES/CONCLUSIONS**

- Likely that Commission will seek to implement its DG interconnection authority through Regional Transmission Organizations (RTOs).
- RTOs may have technical and institutional capacity to effectively oversee DG interconnect.
- No matter what happens with FERC, State role will be large due to localized nature of DG and fact that self-generation is exclusively State-jurisdictional.
- Finally, many proposals before Congress on FERC and DG interconnection regulation. Examination needs to be made of how these bills, if enacted, would interact with FERC's ongoing efforts.