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Before the Committee on Energy and Natural Resources
Subcommittee on Energy
United States Senate
May 7, 2009

Introduction and Summary

Madam Chairman and Members of the Subcommittee, thank you for the opportunity to speak here today.

My name is Kevin Kelly, and I am the Director of the Division of Policy Development in the Office of Energy Policy and Innovation of the Federal Energy Regulatory Commission (FERC or Commission). I appear before you as a staff witness; my testimony does not necessarily represent the views of the Commission or any individual Commissioner.

My testimony briefly describes the Commission's rulemakings related to generator interconnection, with emphasis on the rule addressing the interconnection of small generators. It also describes the Commission's limited precedent regarding "distributed generation" and "net metering."

Generator Interconnection

Before a generator can make its energy available to wholesale or retail customers, it must interconnect to a utility's transmission or distribution system. A generator interconnection is the physical and contractual means by which a

generator connects to -- and operates as part of -- a transmission or distribution system.

The Commission regulates certain generator interconnections pursuant to its authority under sections 205 and 206 of the Federal Power Act (FPA) to regulate the rates, terms, and conditions of transmission in interstate commerce by public utilities and pursuant to specific interconnection authorities granted to the Commission in sections 202(b) and 210 of the FPA. Interconnection authority under sections 202(b) and 210 is exercised on a case-by-case basis. However, pursuant to its authority to prevent undue discrimination under FPA sections 205 and 206, the Commission has acted generically to establish standard interconnection procedures to be included in the open access transmission tariffs of public utilities. The interconnection procedures minimize opportunities for undue discrimination and expedite the development of new generation. They also strike a reasonable balance between the competing goals of uniformity and flexibility while ensuring safety and reliability.

The Commission established its standard terms and conditions for generator interconnections to the transmission system in three rulemakings. The rulemakings followed consensus-building discussions among industry stakeholders regarding the best practices to include in the interconnection process. Order No. 2003, issued in July 2003, addressed *large* generators – that is, generators greater than 20 megawatts in size. Order No. 661, issued in June 2005, addressed technical issues particular to the interconnection of large wind

resources. And Order No. 2006, issued in May 2005, addressed *small* generators – that is, generators less than or equal to 20 megawatts in size.

Small Generator Interconnection

Order No. 2006 established the procedures for processing and studying interconnection requests for small generators. It provides three ways to evaluate an interconnection request. First, there is a default Study Process that could be used by any Small Generating Facility. Second, there is a Fast Track Process for a Small Generating Facility no larger than 2 MW and, finally, there is a 10 kW Inverter Process for an inverter-based Small Generating Facility no larger than 10 kW. All three are designed to ensure, first, that the proposed interconnections will be studied more quickly than the procedures applicable to large generators and, second, that the interconnections will not endanger the safety of electrical workers or the reliability of the transmission system.

Order No. 2006 also established the contractual terms to be included in the interconnection agreement ultimately signed between the small generator and the public utility. The terms and conditions are streamlined and simplified versions of the terms and conditions for interconnecting large generators. But the agreement does not apply to interconnection requests submitted under the 10 kW Inverter Process, which uses a very simplified, all-in-one document for study, construction, and operation of an interconnection.

The Order No. 2006 small generator interconnection standards apply only to public utilities and, with limited exceptions discussed below, only to

transmission (as opposed to local distribution) facilities used in interstate commerce. In Order No. 2006, as in Order No. 2003, FERC concluded that the FPA allowed it to require public utilities to offer generator interconnections to jurisdictional transmission facilities and to a very limited number of local distribution facilities on a nondiscriminatory basis. Local distribution facilities typically are low-voltage facilities used to deliver energy in one direction to retail end-users. The FPA expressly exempts local distribution facilities from FERC authority, except as specifically provided. Nevertheless, certain local distribution facilities do serve a FERC-jurisdictional function: for example, the same facilities used to distribute electric power to retail customers also may be used to deliver wholesale electric power to utilities. These local distribution facilities provide the second, FERC-jurisdictional delivery service under a FERC-approved open access transmission tariff. To determine whether a local distribution facility may be available for interconnection under FERC's interconnection rules, FERC asks this threshold question: is the local distribution facility already available for FERC-jurisdictional delivery service under an approved open access transmission tariff at the time the interconnection request is first tendered? If the answer is yes, and the generator plans to make wholesale sales of its energy, then the FERC interconnection rules apply. The Commission's assertion of authority over local distribution in these limited circumstances was appealed by the National Association of Regulatory Utilities Commissioners (NARUC) and six state

regulatory agencies, and upheld by the Court of Appeals for the D.C. Circuit on January 12, 2007. (NARUC v. FERC, 475 F.2d 1299 (D.C. Cir. 2007)).

When the Commission adopted the same approach for small generators in Order No. 2006 as it had previously for large generators, it acknowledged the rule's limited applicability in light of its lack of jurisdiction over most local distribution facilities. It was expected that many small generators would interconnect to local distribution facilities *not* already subject to FERC's interconnection rules. However, by developing interconnection rules in a process that sought industry consensus, and adopting many measures recommended by NARUC, FERC sought to harmonize state and federal interconnection practices and promote consistent, nationwide interconnection rules to help remove roadblocks to the interconnection of small generators. To this end, in Order No. 2006, FERC expressed its "hope" that states would use the rule to formulate their own interconnection rules, and thereby make Order No. 2006 the de facto national standard for small generator interconnection.

Net Metering

Net metering allows retail customers that own generation to get retail rate credit for their output by effectively running the customer's meter backwards. Net metering rules are subject to state or local rate jurisdiction unless a FERC-jurisdictional wholesale sale of power occurs. In precedent established in 2001, FERC held that a wholesale sale of power occurs under net metering only if the generator produces more energy than it needs *and* makes a net sale of energy to a

utility over the applicable billing period. (See MidAmerican Energy Co., 94 FERC ¶ 61,340 at 62,263 (2001)). If there are net sales of energy – and the generator is not a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA) – the generator must comply with the requirements of the FPA for wholesale energy sales. If the generator is a QF, and there are net sales of energy, that net sale must be consistent with PURPA and the Commission's regulations implementing PURPA.

When a generator that wishes to engage in net metering seeks to interconnect to a transmission or local distribution facility, FERC would use the same analysis it uses to determine if its interconnection rules apply. In the Order No. 2003 proceeding, FERC clarified that for its interconnection rules to apply, the net metering customer – at the time it requests interconnection–must seek interconnection to a facility already subject to a Commission-approved open access transmission tariff *and* intend to make net sales of energy to a utility (Order No. 2003-A at P 747).

Distributed Generation

Distributed generation, as defined by the Department of Energy, is electric generation that feeds into the distribution grid, rather than the bulk transmission grid, whether on the utility side or the customer side of the meter. Because the generator is connected to the distribution grid, the Commission's authority over distributed generation interconnections is limited and would be subject to the same analysis applied in Order Nos. 2003 and 2006. For the Commission's

interconnection rules to apply, the distributed generation customer – at the time it requests interconnection – must seek interconnection to a facility already subject to a Commission-approved open access transmission tariff *and* intend to make wholesale sales of energy.

Regardless of whether a distributed generator is interconnected under FERC's rules, if the distributed generator makes wholesale sales of energy in interstate commerce and is not otherwise excluded from Commission jurisdiction by FPA section 201(f) or covered by PURPA, it must comply with the requirements of the FPA for wholesale energy sales.

QF Interconnections

A slightly different analysis applies to FERC's authority over interconnection of qualifying facilities under PURPA. FERC interpreted PURPA as establishing an obligation to interconnect (Western Massachusetts Electric Co. v. FERC, 165 F.3d 922 (D.C. Cir. 1999)). Under the Commission's regulations, when an electric utility purchases the QF's total output, the relevant state exercises authority over the interconnection terms and conditions. But when an electric utility interconnecting with a QF does *not* purchase *all* of the QF's output and instead the QF's owner sells or has a contractual right to sell any of the QF's output to an entity other than the electric utility directly interconnected to the QF, FERC exercises its authority over the rates, terms, and conditions affecting or related to the interconnection.

Thank you again for the opportunity to testify today. I would be happy to answer any questions you may have.