

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Virginia Electric and Power Company

Docket No. ER04-549-000

ORDER ACCEPTING IN PART AND REJECTING IN PART
PROPOSED TARIFF REVISIONS RELATED TO
ORDER NO. 2003

(Issued April 9, 2004)

I. Introduction

1. In this order, the Commission accepts in part and rejects in part proposed tariff revisions submitted by Virginia Electric and Power Company (VEPCO) concerning VEPCO's proposed Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA).¹ This order will benefit customers by ensuring that VEPCO has just and reasonable terms and conditions for interconnection service, thus encouraging more competitive markets while ensuring that reliability is protected.

II. Background

2. In Order No. 2003,² pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)³ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their open access transmission tariffs (OATT) a Final

¹ Virginia Electric and Power Company, FERC Electric Tariff, Second Revised Volume No. 5.

² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A), reh'g pending; see also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

³ 16 U.S.C. § 824d, 824e (2000).

Rule LGIP and Final Rule LGIA. In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the pro forma LGIP and LGIA by January 20, 2004.⁴

3. On February 11, 2004, VEPCO filed its revised LGIA and revised LGIP pursuant to Order No. 2003. VEPCO proposes variations from the pro forma LGIP and LGIA that were adopted in Order No. 2003. It points out that non-independent Transmission Providers,⁵ such as VEPCO, are permitted to propose variations to the pro forma LGIP and LGIA, if the variations are based on existing regional reliability requirements that are justified through established regional reliability standards.⁶

4. Transmission Providers are permitted to seek variations from the pro forma LGIP and LGIA not made in response to recognized regional reliability requirements. Such requests for variation are FPA section 205 filings (rather than compliance filings) and will be approved only if the Transmission Provider demonstrates that they are "consistent with or superior to" the terms of the pro forma LGIP and LGIA.⁷

5. In its February 11, 2004 filing, VEPCO proposed certain variations based on the "consistent with or superior to" standard of Order No. 2003.⁸ VEPCO requests waiver of prior notice to permit an effective date of February 12, 2004, the day after the filing.

⁴ See Notice Clarifying Compliance Procedures, supra note 2 (clarifying that the Commission will deem OATTs of Transmission Providers to be revised as of January 20, 2004).

⁵ The "Transmission Provider" is the entity with which the Generating Facility is interconnecting. The term "Generating Facility" means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the "Interconnection Customer." Additionally, any capitalized terms used in this order have the meaning specified in the definitions section of the LGIP and LGIA.

⁶ While Order No. 2003 specifically allows for variations from the LGIP and LGIA to account for existing and established regional reliability standards that are needed to ensure the safe operation of the transmission system, VEPCO did not request any such changes. See Order No. 2003 at P 822-824.

⁷ Order No. 2003 at P 825.

⁸ Even though VEPCO referred to both provisions in the LGIP and LGIA as "sections" in its transmittal letter, we will refer to the LGIP provisions as "sections," and the LGIA provisions as "articles," consistent with the terminology of Order No. 2003.

III. Notice and Responsive Pleadings

6. Notice of VEPCO's filing was published in the Federal Register,⁹ with motions to intervene and protests due on or before March 3, 2004. Motions to intervene were timely filed by Tenaska, Inc. (Tenaska), Southern Company Services, Inc.,¹⁰ the Virginia Municipal Electric Association No. 1 (VEMA), and the North Carolina Electric Membership Corporation (NCEMC). In addition, Tenaska filed comments while VEMA and NCEMC filed individual protests.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Proposed Modifications to the LGIP

1. VEPCO's Justifications

8. VEPCO's filing includes the following proposed modifications to the pro forma LGIP. First, VEPCO seeks to modify the definition of "Network Upgrades" in section 1.0 of the pro forma LGIP to clarify that Network Upgrades refer to additions or upgrades to the Transmission System at the point where Interconnection Facilities, not the Interconnection Customer, connect to the Transmission System.

9. Section 3.1 of the pro forma LGIP deals with Interconnection Requests. VEPCO proposes to modify section 3.1 to clarify that at the time of the execution of the Interconnection Feasibility Study, the Interconnection Customer must select a definitive single Point of Interconnection. VEPCO states that this is consistent with the remainder of the LGIP.

10. Sections 4.4.1, 4.4.2, and 4.4.3 of the pro forma LGIP deal with modifications to the Interconnection Request that the Interconnection Customer submits to the Transmission Provider. In section 4.4.1, VEPCO seeks to clarify that an Interconnection Customer must make a new Interconnection Request for any proposed plant increase. VEPCO claims that this modification is superior to the language in the pro forma LGIP in

⁹ 69 Fed. Reg. 8,399 (2004).

¹⁰ Southern Company Services, Inc. filed a motion to intervene on behalf of itself and Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies).

that it states more clearly the intent of the section. VEPCO adds that section 4.4.2 has been modified in an attempt to more specifically describe how a decrease in plant size is to be determined. Finally, VEPCO wishes to modify section 4.4.3 by stating that, if the Transmission Provider and Interconnection Customer agree to change the Point of Interconnection as set forth in sections 4.4, 6.1, and 7.2 of the LGIP, such a change will not be considered a Material Modification. VEPCO submits that this modification will enable the Interconnection Customer to change the Point of Interconnection without having to make a new Interconnection Request, as long as both parties agree.

11. Section 5.2 of the pro forma LGIP discusses what procedures take effect if the Transmission Provider transfers control of its Transmission System to a successor Transmission Provider while an Interconnection Request is pending. VEPCO proposes to modify section 5.2 to include the word "Customer" after the word "Interconnection" in the second sentence. VEPCO asserts this modification clarifies the intent of this provision.

12. VEPCO also proposes to add section 11.4 to its LGIP to require the Interconnection Customer to pay the Transmission Provider for actual costs, including legal, consulting, administrative and general costs to negotiate, file and obtain Commission acceptance of the LGIA. VEPCO cites Southern Company Services, Inc. v. FERC, 2003 U.S. App. Lexis 26401 (D.C. Cir. 2003) (Southern) as justification.

13. Section 13.3 of the pro forma LGIP discusses obligations for Study Costs. VEPCO seeks to modify section 13.3 to hold the Interconnection Customer responsible for paying the Transmission Provider's actual costs for Interconnection Studies, including any optional Interconnection Studies. These costs would include legal, consulting, administrative and general costs. VEPCO states that this provision has also been modified to include relevant billing provisions for the payment of such costs. VEPCO again refers to the Southern order to justify its proposed changes to section 13.3.

14. Appendix 1 of the pro forma LGIP is the pro forma Interconnection Request. VEPCO proposes a reformatted version of Appendix 1. While the reformatted version asks for the same information as the pro forma version, it also requests additional information. VEPCO states that some wording has been modified for clarity. The reformatted version also would require a brief description of the fuel type used. For generator step-up transformers, it would require information on transformer neutral impedance and additional data if a three-winding transformer is used.

15. VEPCO also seeks to modify sections 6.0 and 7.0 of Appendices 2, 3, and 5 of the pro forma LGIP. Appendix 2 is the Interconnection Feasibility Study Agreement, Appendix 3 is the Interconnection System Impact Study Agreement, and Appendix 5 is the Optional Interconnection Study Agreement. The modification in section 6.0 of each of these appendices adds language to clarify which costs the Interconnection Customer is responsible for paying to the Transmission Provider consistent with section 13.3 of the LGIP. VEPCO states that relevant billing provisions have also been added.

16. VEPCO proposes to modify section 7.0 of each of these appendices by deleting references to provisions that are not needed in the Interconnection Feasibility Study Agreement. VEPCO claims that both the Transmission Provider and the Interconnection Customer will be protected by incorporating the relevant provisions of its filed LGIP.

17. Sections 5.0 and 6.0 of Appendix 4 of the pro forma LGIP would also be modified consistent with the changes VEPCO proposes in Appendices 2, 3, and 5. Appendix 4 is the Interconnection Facilities Study Agreement. The modification in section 5.0 is to add language to clarify the costs the Interconnection Customer is responsible for paying to the Transmission Provider consistent with section 13.3 of the LGIP. VEPCO states that relevant billing provisions have also been added. Section 6.0 of this appendix is modified by deleting references to provisions that are not needed in the Interconnection Feasibility Study Agreement. VEPCO claims that both the Transmission Provider and Interconnection Customer will be protected by incorporating the relevant provisions of its filed LGIP.

2. Comments

18. Tenaska, VEMA, and NCEMC (collectively, the Commenters) oppose VEPCO's proposed modifications because VEPCO's filing fails to demonstrate that they are in fact "consistent with or superior to" the pro forma LGIP.

19. Tenaska and NCEMC oppose VEPCO's proposal to add new section 11.4 to its LGIP on the grounds that it will charge the Interconnection Customer the costs of negotiating and filing the Interconnection Agreement. Tenaska takes the position that these costs should be part of VEPCO's cost of doing business as the Transmission Provider. It argues that VEPCO's reliance on the Southern court ruling is unavailing, since the ruling does not provide the Transmission Provider with carte blanche authority to add any costs the Transmission Provider desires to the Interconnection Agreement. Further, NCEMC states that there is no corresponding provision in Order No. 2003 and that VEPCO has not demonstrated that this modification is consistent with or superior to the pro forma LGIP, which clearly does not burden the Interconnection Customer with such costs. NCEMC also cites to case law stating that parties should bear their own legal costs.¹¹

3. Commission Determination

20. We will accept the minor typographical changes in section 5.2 of the LGIP. We will also accept VEPCO's proposed change to the definition of "Network Upgrades" in section 1.0 of the LGIP because the proposed language helps to more accurately state the intended meaning of the term, and is therefore superior to the pro forma LGIP. We note

¹¹ See, e.g., *Buckhannon Bd. & Care Home V. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001).

that VEPCO must however revise this definition to comply with the definition established on rehearing in Order No. 2003-A.

21. We will reject the changes in the following sections as not having been shown to be "consistent with or superior to" the pro forma LGIP: section 3.1; section 4.4.1; section 4.4.2; section 4.4.3; section 11.4; section 13.3; Appendix 1; sections 6.0 and 7.0 of Appendices 2, 3, and 5; and sections 5.0 and 6.0 of Appendix 4.

22. VEPCO has not demonstrated that these changes are consistent with or superior to the pro forma LGIP. Merely stating that a proposed modification is intended to clarify a pro forma provision does not meet VEPCO's burden of demonstrating that its variations are "consistent with or superior to" Order No. 2003. Moreover, some of VEPCO's arguments, such as its argument related to section 11.4, are really collateral attacks on Order No. 2003. Therefore, we will reject VEPCO's proposed changes identified above.

C. Proposed Modifications to the LGIA

1. VEPCO's Justifications

23. VEPCO also proposes several modifications to the pro forma LGIA. In Article 1.0, it seeks to modify the definition of "Force Majeure" to include an act of terrorism. VEPCO states that this change is consistent with the definition of Force Majeure in its interconnection agreements. VEPCO also proposes to modify the term "Network Upgrades" to clarify that Network Upgrades refer to additions or upgrades to the Transmission System at the point where Interconnection Facilities, not the Interconnection Customer, connect to the Transmission System.

24. VEPCO seeks to add a definition of "Monthly Facilities Charge" in Article 1 of the pro forma LGIA in order to support later provisions describing VEPCO's practice of charging an Interconnection Customer for maintenance and operation of a Transmission Owner's Interconnection Facilities. VEPCO also proposes to add a new Appendix G to the pro forma LGIA, which provides the details of the Monthly Facilities Charge, and changes to Article 10.5 in order to incorporate Appendix G.

25. Article 4.1 of the pro forma LGIA discusses Interconnection Product Options. VEPCO seeks to clarify that the Interconnection Customer must select one of the two types of interconnection product options. VEPCO claims that this modification clarifies the intent of this article. Article 4.3.1 deals with the Interconnection Customer's responsibility for ensuring that its output matches the scheduled delivery. VEPCO proposes to modify Article 4.3.1 by deleting duplicative language, and to specify that the agreement shall be in writing. Specifically, VEPCO wishes to eliminate the phrase "consistent with the scheduling requirements of the Transmission Provider's FERC approved market structure . . .," since it appears elsewhere in the article.

26. VEPCO proposes to add a new Article 5.16.2 to its LGIA to state that if a higher queued interconnection customer withdraws from the queue or terminates its interconnection agreement, then the Transmission Provider will restudy the Interconnection Customer's Interconnection Request. VEPCO proposes to have the Interconnection Customer be responsible for the costs of such restudies. This proposed modification would also hold the Interconnection Customer responsible for any reassignment of Network Upgrade costs resulting from the higher queued interconnection customer's withdrawal or termination. VEPCO submits that paragraph 409 of Order No. 2003 allows this modification. VEPCO claims that its proposed modification is superior to Order No. 2003 because any generator seeking to interconnect with VEPCO's Transmission System will be aware at the time it makes its Interconnection Request that it will be responsible for such financial contingencies. VEPCO claims that this modification will also insure that all generators seeking to interconnect with its Transmission System will be treated on a comparable basis. VEPCO suggests that it is appropriate to address this contingency generally because it is a very realistic contingency that exists for all Interconnection Customers.

27. Article 5.17.8 (ii) of the pro forma LGIA discusses refunds on taxable items. VEPCO wishes to modify Article 5.17.8(ii) to insert the word "interest" at the beginning of the subsection in order to clarify the intent of the provision.

28. Article 6.2 of the pro forma LGIA says that each party will perform, at its own expense, routine inspections and tests of its facilities. VEPCO proposes to modify Article 6.2 to clarify that either party has the right to require the other party to perform testing in accordance with the requirements of the Applicable Reliability Council. VEPCO asserts that this language is superior to the language in Order No. 2003 since the definition of Good Utility Practice does not specifically refer to the Applicable Reliability Council as that term is defined in the LGIA.

29. Article 9.6.3 of the pro forma LGIA deals with payments for reactive power. VEPCO proposes to make the requirements of Article 9.6.3 consistent with those in Article 9.6.1 of the LGIA. It seeks to modify Article 9.7.6, which deals with Power Quality, by deleting the whole paragraph and replacing it with detailed provisions describing the applicable American National Standards Institute (ANSI) and Institute of Electrical and Electronics Engineers, Inc. (IEEE) standards. VEPCO states the ANSI and IEEE standards pertain to different aspects of power quality and, because these standards are complementary to each other, they should not conflict.

30. Article 9.10 of the pro forma LGIA discusses how parties will cooperate with one another in the analysis of disturbances. VEPCO seeks to modify Article 9.10 by making a minor editorial change that replaces the word "oscillography" with "an oscillograph." VEPCO also seeks to add language clarifying the information that the Parties will provide each other in accordance with Good Utility Practice.

31. VEPCO seeks to modify Article 18.3.5 (naming additional insured) of the pro forma LGIA by correcting a typographical error (changing the word "policies" to "policies"). VEPCO also seeks to add language to make the provision consistent with Article 18.1, which provides that indemnification under the LGIA does not apply to acts of gross negligence or intentional wrongdoing by the indemnified party. VEPCO claims that the proposed additional language is intended to make clear that if a party is named as an additional insured, it is only being covered for liability as provided for under the LGIA.

32. VEPCO proposes to modify Article 18.3.6 of the pro forma LGIA, which discusses provisions that specify that the insurance policies are primary to the Indemnified Party, by adding language to recognize that a Party may be self-insured and to add the same limitation as proposed for Article 18.3.5.

33. Article 30.10 of the pro forma LGIA details how parties may amend the appendices to the LGIA by mutual agreement. VEPCO seeks to modify Article 30.10 by adding language stating that mutually-agreed changes to milestones need not be filed at the Commission. It asserts that this language is superior to the Final Rule in that it allows the Parties to avoid filing costs while not disadvantaging other Interconnection Customers in the queue because dates that concern other Interconnection Customers are kept current in the internet posting of the queue.

2. Comments

34. The Commenters oppose VEPCO's proposed modifications on the grounds that VEPCO's filing fails to demonstrate that its changes to the Commission's interconnection provisions are "consistent with or superior to" the pro forma LGIA.

35. The Commenters oppose VEPCO's proposed changes to Article 5.16.2 of the pro forma LGIA because the Commission in paragraph 409 of Order No. 2003 explicitly rejected requests that language be added that would require the Interconnection Customer to be responsible for any reassignment of Network Upgrade costs resulting from the termination of an earlier-queued generator.

36. The Commenters further disagree with VEPCO's new Monthly Facilities Charge definition and any new tariff provisions and the appendix that go along with it. Tenaska states that Commission does not allow a Transmission Provider to collect these types of charges for network facilities.¹² Tenaska takes the position that an Interconnection Customer should only be assessed actual operating and maintenance charges incurred for work on the Transmission Provider's Interconnection Facilities (consistent with Good Utility Practice) instead of collecting the monthly facilities charge that VEPCO proposes. NCEMC protests new Appendix G and argues that it needs to be clarified by filling in the blanks in the percentage multiplier for the charge for use of distribution equipment and

¹² See Duke Energy Corp., 95 FERC ¶ 61,279 at 61,980 (2001).

transmission equipment. NCEMC contends that this omission allows undue discrimination and could result in a double recovery for the equipment.

3. Commission Determination

37. We will accept the minor typographical change in Article 18.3.5 of the LGIA, where VEPCO is replacing the word "policies" to "policies." The rest of the proposed modifications in Article 18.3.5 are rejected, as discussed below. Additionally, we agree with VEPCO that its proposed modification of LGIA Article 5.17.8(ii) helps to more accurately state the intended meaning of the provision. We will also accept VEPCO's proposed change to the definition of "Network Upgrades" in Article 1.0 of the LGIA, for the same reason we accept this change in its LGIP. We note that VEPCO must however revise this definition to comply with the definition established on rehearing in Order No. 2003-A.

38. We will reject the changes in the following articles: the definition of "Force Majeure" in Article 1, Article 4.1, Article 4.3.1, Article 5.16.2, Article 5.17.3, Article 5.17.8 (iii),¹³ Article 6.2, Article 9.6.3, Article 9.7.6, Article 9.10, Article 18.3.6, and Article 30.10. We agree with the Commenters that VEPCO has not demonstrated that these changes are consistent with or superior to the pro forma LGIA. Merely stating that a proposed modification is intended to clarify an existing pro forma provision does not meet VEPCO's burden of demonstrating that its variations are "consistent with or superior to" Order No. 2003. We further agree with the Commenters that VEPCO's proposal to add a new Article 5.16.2 contradicts paragraph 409 of Order No. 2003. Therefore, we will reject VEPCO's proposed changes identified above.

39. Tenaska misconstrues VEPCO's proposal to add a "Monthly Facilities Charge" to the pro forma LGIA. Tenaska believes this charge is associated with network facilities when, in fact, the "Monthly Facilities Charge" is for expenses related to interconnection facilities. However, VEPCO has not shown why it needs the "Monthly Facilities Charge" in its LGIA, since the Final Rule already allows the Transmission Provider to collect operating and maintenance expenses from the Interconnection Customer in Article 10.5 of the LGIA. Therefore, we will reject the definition of "Monthly Facilities Charge" in Article 1, the changes in Article 10.5, and the new Appendix G. Again, VEPCO has not justified why these provisions are "consistent with or superior" to Order No. 2003.

D. VEPCO's Proposal for Attachment N of the OATT

40. Lastly, VEPCO proposes to leave Attachment N of its pre-January 20, 2004 OATT in place to accommodate current Interconnection Customers who choose to

¹³ The Commission notes that VEPCO made changes to Articles 5.17.3 and 5.17.8(iii) (inserting the words "provided, however") without identifying them or explaining the reasoning for the changes in its transmittal letter.

continue the processing of their Interconnection Requests under this attachment. VEPCO states it is doing this because section 5.1.1.2 of the pro forma LGIP requires the Transmission Provider to offer Interconnection Customers who signed an Interconnection Study Agreement before the effective date of the LGIP the option of either continuing the study process or proceeding under the LGIP. It further states that section 5.1.2 of the pro forma LGIP provides a transition period of sixty days, which may be extended, to move from the current interconnection procedures to the LGIP. In its transmittal letter, VEPCO assures the Commission that it will delete Attachment N from its OATT once all current Interconnection Customers have decided whether they want to proceed under Attachment N or the LGIP.

41. While the Commission's January 8, 2004 notice deemed VEPCO's OATT revised as of January 20, 2004 (thus removing Attachment N as of that date),¹⁴ we will allow VEPCO to reinstate Attachment N for the reasons stated in Order No. 2003.¹⁵ We will accept VEPCO's proposal on Attachment N with the understanding that VEPCO will delete Attachment N from its OATT after all eligible Interconnection Customers have determined whether they want to proceed under Attachment N or the LGIP.

E. Conclusion

42. As discussed above, we accept in part and reject in part VEPCO's proposed tariff revisions concerning its LGIP and LGIA.

43. We will grant waiver of the Commission's prior notice requirement to permit the accepted changes, as discussed above, to be effective February 12, 2004, as requested.¹⁶

44. VEPCO is hereby directed to submit the pro forma LGIP and LGIA, as revised in Order No. 2003-A and with the variations we are accepting herein, within 30 days of the date of this order.

The Commission orders:

(A) VEPCO's proposed tariff revisions concerning its LGIP and LGIA are hereby accepted in part and rejected in part, as discussed in the body of this order. The accepted provisions are effective February 12, 2004.

¹⁴ Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

¹⁵ See Order No. 2003 at P 186.

¹⁶ See Central Hudson Gas & Electric Corp., et al., 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1992).

(B) VEPCO is hereby directed to submit the pro forma LGIP and LGIA, as revised in Order No. 2003-A and with the variations we are accepting herein, within 30 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.