

156 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Duke Energy Florida, LLC

Docket No. ER16-2304-000

ORDER ACCEPTING GENERATOR INTERCONNECTION AGREEMENTS
SUBJECT TO CONDITIONS AND DIRECTING REFUNDS

(Issued September 26, 2016)

1. On July 28, 2016, pursuant to section 205 of the Federal Power Act (FPA),¹ Duke Energy Florida, LLC (Duke Energy) submitted three late-filed, non-conforming generator interconnection agreements between itself and two qualifying facilities.² In addition, Duke Energy informed the Commission that it had not listed several conforming generator interconnection agreements in its Electric Quarterly Reports (EQRs). In this order, we accept the late-filed agreements, subject to condition, and order time-value refunds and a refund report, as discussed below. We also direct Duke Energy to file corrected EQRs, as discussed below.

I. Description of Filing

2. Duke Energy asserts that after it discovered that it had not appropriately filed two non-conforming generator interconnection agreements between itself and Telogia Power, LLC (Telogia), it conducted a review of other interconnection agreements for similar issues. Based on that review, Duke Energy discovered that it inadvertently excluded several conforming generator interconnection agreements from its EQRs and that it had not filed a non-conforming generator interconnection agreement between itself and G2 Energy, LLC (G2 Energy).³ Accordingly, Duke Energy's filing includes

¹ 16 U.S.C. § 824d (2012).

² Duke Energy July 28, 2016 Filing (Filing).

³ Duke Energy July 28, 2016 Transmittal Letter at 3 (Transmittal Letter).

three non-conforming generator interconnection agreements.⁴ Duke Energy asserts that these generator interconnection agreements are subject to the Commission's jurisdiction because the Telogia and G2 Energy are qualifying facilities that do not exclusively sell power to Duke Energy.⁵

3. With respect to the non-conforming agreement with Telogia, Duke Energy states that, in May 2004, it executed a generator interconnection agreement with Telogia and the Florida Power Corporation (2004 Telogia Interconnection Agreement).⁶ According to Duke Energy, Article 6 of the 2004 Telogia Interconnection Agreement assesses a customer charge and operations, maintenance, and repair charges. Duke Energy asserts that the Florida Public Service Commission has exclusive jurisdiction over the customer charge because it covers costs "which relate to the fact that [Telogia] is a station power customer."⁷ Duke Energy asserts that the operations, maintenance, and repair charges are subject to the Commission's jurisdiction⁸ and, therefore, are subject to the Commission's time-value refund policy.⁹

⁴ Duke Energy Florida, LLC, Tariffs, Rate Schedules and Service Agreements, [OATT SA No. 155, G2 Energy GIA, 0.0.0](#) and [OATT SA No. 156, Telogia GIA, 0.0.0](#).

⁵ Transmittal Letter at 2, 5 (citing *Western Massachusetts Elec. Co.*, 59 FERC ¶ 61,091, *order on reh'g*, 61 FERC ¶ 61,182 (1992), *aff'd sub nom. Western Massachusetts Elec. Co. v. FERC*, 165 F.3d 922 (D.C. Cir. 1999); *Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,183 (2007), *order on reh'g*, 123 FERC ¶ 61,061 (2008); *Florida Power & Light Co.*, 133 FERC ¶ 61,121 (2010)).

⁶ Transmittal Letter at 5. The 2004 Telogia Interconnection Agreement became effective on June 1, 2004. *Id.*

⁷ *Id.* at 5. Article 6.1 provides that "Telogia Power shall be responsible for all [Florida Public Service Commission] approved charges for any retail service that may be provided by [Duke Energy]. Telogia Power shall be billed the current approved rate of \$74.42 monthly for the costs of meter reading and other administrative costs." *Id.* at 5-6.

⁸ *Id.* at 4. The monthly operations, maintenance, and repair charges are equal to 50 percent of the net interconnection costs. *Id.*

⁹ See *infra* P 13 (describing the Commission's time-value refund policy).

4. Duke Energy states that on August 19, 2009, the 2004 Telogia Interconnection Agreement was superseded by an Interim Interconnection and Test Operating Agreement (2009 Telogia Interconnection Agreement).¹⁰ According to Duke Energy, Appendix B of the 2009 Telogia Interconnection Agreement does not assess a state-jurisdictional customer charge and only assesses a monthly equipment rental charge, which, Duke Energy states, is subject to the Commission's jurisdiction and, therefore, is subject to the Commission's time-value refund policy.¹¹

5. With respect to G2 Energy, Duke Energy states that on May 10, 2010, the parties entered into a generator interconnection agreement, which was superseded on June 2, 2010, with an Interim Interconnection and Test Operating Agreement (G2 Interconnection Agreement).¹² According to Duke Energy, section 12 of the G2 Interconnection Agreement provides that G2 Energy "shall be billed and pay the costs for designing and building interconnection facilities...."¹³ Duke Energy asserts that aside from the actual interconnection costs, G2 Energy was not charged any other interconnection fees or ongoing charges, although section 9 of the G2 Interconnection Agreement states that G2 Energy is required to pay Duke Energy for all reasonable costs associated with administering metering equipment.¹⁴ Duke Energy argues that, according to the Commission's precedent,¹⁵ the Commission will not direct time-value refunds if doing so will cause a public utility to operate at a loss. Thus, Duke Energy argues, because it collected the actual costs to interconnect G2 Energy's facilities, the

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6; Filing, OATT Service Agreement No. 156, Appendix B (Charges).

¹² Transmittal Letter at 5.

¹³ *Id.* at 5.

¹⁴ Filing, OATT Service Agreement No. 155, § 9.1.

¹⁵ Transmittal Letter at 8-9 (citing *Carolina Power & Light Co.*, 87 FERC ¶ 61,083, at 61,357 (1999) (finding that time-value refunds are not "open-ended," but rather are limited to "an amount that permits a public utility to recover its variable costs"); *Int'l Transmission Co.*, 152 FERC ¶ 61,043 (2015) (finding that that in the case of unfiled generator interconnection agreements, there is a floor to protect the companies from constructing the interconnection facilities at a loss and that such floor includes direct and indirect costs)).

Commission should not direct time-value refunds for revenues that it collected under the G2 Interconnection Agreement.¹⁶

6. In addition, Duke Energy states that it identified several conforming, Commission-jurisdictional generator interconnection agreements that were not listed in its EQRs.¹⁷ Duke Energy states that its agreement with Quantum Lake Power terminated on February 18, 2016.¹⁸ Duke Energy asserts that its interconnection agreement with Covanta was executed on July 1, 2014, and that it is only assessing a customer charge that is state jurisdictional.¹⁹ Similarly, Duke Energy asserts, under the interconnection agreement with Florida Power Development, which was assigned to Duke Energy in March 2013, it is only assessing a customer charge that is state jurisdictional. With respect to remedies, Duke Energy argues that the Commission does not typically impose a time-value refund on a utility for failing to list a conforming or market-based agreement in its EQRs.²⁰ Further, Duke Energy seeks permission to file corrected EQRs only after the Third Quarter of 2013 due to changes to EQR software that occurred around that time.²¹

¹⁶ *Id.* at 9.

¹⁷ The three separate agreements are between Duke Energy and three other entities: Quantum Lake Power, LLC (Quantum Lake Power); Covanta Lake II, Inc. (Covanta); and Florida Power Development, LLC (Florida Power Development). *Id.* at 7.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 8 (citing, *e.g.*, Audit Report for Public Service Electric & Gas Company, Docket No. PA13-13 (Oct. 16, 2014) (no time-value penalty when company failed to report certain contracts in EQR and Commission found the company lacked effective controls to ensure all jurisdictional transactions were reported in its EQR filings); Audit Report for Southern California Edison Company, Docket No. PA12-16-000 (Apr. 24, 2013) (no time-value penalty when Southern California Edison Company failed to report nine service agreements in a timely manner in EQR filings); Cleco Power Company, Docket. No. PA11-9-000 (Oct. 6, 2011) (no time-value penalty when Cleco Power Company's EQR filings contained a number of errors including missing and inaccurate contract and transaction data)).

²¹ *Id.* at 7-8.

7. Finally, Duke Energy “seeks an effective date of September 26, 2016, 60 days from the date of the filing,” and states that it is not seeking a waiver to permit an earlier effective date.²²

II. Notice of Filing and Responsive Pleadings

8. Notice of Duke Energy’s filing was published in the *Federal Register*, 81 Fed. Reg. 51,438 (2016), with protests and interventions due on or before August 18, 2016. None was filed.

III. Discussion

9. The Commission accepts this filing subject to condition,²³ effective September 27, 2016,²⁴ and directs Duke Energy to make time-value refunds and submit a refund report, as discussed below. We also direct Duke Energy to file corrected EQRs, as discussed below.

A. Jurisdiction

10. As stated in *Western Massachusetts Electric Company*,²⁵ and reiterated in the *Prior Notice Orders*,²⁶ the Commission alone exercises authority over qualifying facility interconnections with utilities standing between the qualifying facility and its purchaser, including agreements under which third-party utilities, which do not purchase a

²² *Id.* at 9.

²³ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission’s conditions by withdrawing its filing.

²⁴ Duke Energy’s requested effective date of September 26, 2016, is one day short of the full notice period. The Commission begins counting the 60 days from the date the Commission has a complete filing, and allows itself 60 full days. Thus, absent a waiver of notice, the proposed rate or change cannot become effective until the 61st day.

²⁵ 61 FERC ¶ 61,182 at 61,662.

²⁶ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 62 FERC ¶ 61,128, *order on reh’g*, 64 FERC ¶ 61,139, at 61,979-61,980, *order on reh’g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice Orders*).

qualifying facility's generated power, nevertheless transmit qualifying facility's power in interstate commerce.²⁷ Here, the qualifying facilities that are interconnected to Duke Energy's transmission system sell power to other utilities;²⁸ accordingly, the Commission has jurisdiction over the G2 Interconnection Agreement and the 2004 and 2009 Telogia Interconnection Agreements.

11. As for the charges that are assessed under these interconnection agreements, section 205(c) of the FPA requires that all rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission be filed with the Commission at least 60 days in advance of commencement of jurisdictional service.²⁹

12. As mentioned earlier, Duke Energy asserts that certain charges that it assessed under the Telogia agreements are state jurisdictional because they are related to Telogia's role as a station power customer. Specifically, Duke Energy argues that under the 2004 Telogia Interconnection Agreement, the customer charge, which allows Duke Energy to charge interconnection customers for the costs of reading meters and other administrative tasks, is exclusively state jurisdictional because it is related to Telogia's role as a station power customer. In addition, Duke Energy asserts that the 2009 Telogia Interconnection Agreement only assesses a monthly equipment rental fee, which Duke Energy acknowledges is subject to the Commission's jurisdiction. However, we note that section 9.1 of the 2009 Telogia Interconnection Agreement requires the generator to pay "[a]ll reasonable costs" for the administration of metering equipment and data. Thus, aside from the equipment rental fee, Duke Energy may assess a meter administration charge to Telogia, not unlike the customer charge assessed under the 2004 Telogia Interconnection Agreement.³⁰ Even if, as Duke Energy states, charges for station power are generally considered non-jurisdictional retail sales,³¹ we are concerned that the terms

²⁷ *Western Massachusetts Elec. Co.*, 61 FERC at 61,661-61,665; *see also Prior Notice Orders*, 64 FERC at 61,991 ("We are presented with no reason to overturn our precedent [in *Western Massachusetts Electric Company*]).

²⁸ *See supra* P 2 & note 5.

²⁹ 16 U.S.C. § 824d (2012).

³⁰ Filing, OATT Service Agreement No. 156, § 9.1 (emphasis added).

³¹ *See USGen New England, Inc.*, 99 FERC ¶ 61,169, *order on reh'g*, 100 FERC ¶ 61,199, at PP 2, 6 (2002) (citing *PJM Interconnection, LLC*, 93 FERC ¶ 61,061 (2000), *order on declaratory petition*, 94 FERC ¶ 61,251, *order on reh'g*, 95 FERC ¶ 61,333 (2001) (holding that a generator's self-supply of station power is not within the

(continued...)

of 2004 and 2009 Telogia Interconnection Agreements may include metering costs for energy (other than Telogia's station power energy) that are subject to the Commission's jurisdiction. Therefore, to the extent that charges Duke Energy is assessing to Telogia under the 2004 and 2009 Telogia Interconnection Agreements are applicable to determining transmission charges for the energy produced by Telogia's generating station and transmitted on the transmission system, such charges are jurisdictional to the Commission and, therefore, subject to the Commission's time-value refund policy, as discussed below.

Time-Value Refunds

13. FPA Section 205 requires that public utilities must file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service.³² If a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced, we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to 18 C.F.R. §35.19a, for the entire period that the rate was collected without Commission authorization.³³

14. As indicated above, Duke Energy acknowledges that the G2 Interconnection Agreement and the 2004 and 2009 Telogia Interconnection Agreements were not filed with the Commission before Duke offered jurisdictional services pursuant to the agreements.³⁴ Therefore, Duke Energy must provide Telogia with time-value refunds of any revenue that it collected under the late-filed 2004 and 2009 Telogia Interconnection Agreements. Accordingly, we direct Duke Energy to make time-value refunds to Telogia within 30 days of the date of this order consistent with section 35.19a of the Commission's regulations³⁵ and file a refund report within 30 days of making such time-value refunds.

Commission's jurisdiction because it does not involve a sale, and that a third-party's sale of station power is likewise not within our jurisdiction because it is a sale for end-use).

³² 18 C.F.R. § 35.3(a)(1) (2016).

³³ *Prior Notice Orders*, 64 FERC at 61,979-61,980.

³⁴ Transmittal Letter at 8.

³⁵ We note that this is not the first time Duke Energy or one of its affiliates has failed to file a jurisdictional agreement in a timely manner as required by FPA

(continued...)

15. Duke Energy asserts that it charged G2 Energy the actual costs of interconnection and will operate at a loss if the Commission assesses a time-value refund on revenues that it collected under the G2 Interconnection Agreement. As noted by Duke Energy, the Commission's time-value refund policy for late-filed agreements does not require the utility to operate at a loss;³⁶ therefore, if the utility is only recovering its out-of-pocket costs incurred to provide the service, there is no requirement to make time-value refunds. However, we find that Duke Energy has not demonstrated that providing time-value refunds to G2 Energy will cause it to operate at a loss under the G2 Interconnection Agreement. In addition, similar to the 2009 Telogia Interconnection Agreement discussed above, section 9.1 of the G2 Interconnection Agreement requires G2 Energy to pay Duke Energy for all reasonable costs associated with installing and administering metering equipment. Thus, to the extent that Duke Energy charges G2 Energy metering charges for energy that G2 Energy produced and transmitted on the transmission system, such charges would be jurisdictional to the Commission and subject to time-value refunds. Therefore, we direct Duke Energy to either make time-value refunds to G2 Energy or demonstrate that doing so would cause Duke Energy to operate at a loss, consistent with section 35.19a of the Commission's regulations, within 30 days of this order. Duke Energy must file a refund report within 30 days of making time-value refunds to G2 Energy.

section 205. *See e.g.*, Duke Energy Carolinas, LLC, Application, Docket No. ER16-952-000 (filed Feb. 14, 2016); Duke Energy Carolinas, LLC, Application, Docket No. ER16-953-000 (filed Feb. 17, 2016); Duke Energy Florida, LLC, Application, Docket No. ER16-578-000 (filed Dec. 18, 2015); Duke Energy Progress, LLC, Application, Docket No. ER16-579-000 (filed Dec. 18, 2015); and Duke Energy Ohio, Inc., Application, Docket No. ER14-1076-000 (Filed Jan. 17, 2016). We have referred this matter to the Commission's Office of Enforcement for further examination and inquiry as appropriate. Duke is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

³⁶ *Int'l Transmission Co.*, 140 FERC ¶ 61,151 at P 26 (citing *see Carolina Power & Light Co.*, 87 FERC ¶ 61,083 (1999); *Southern Cal. Edison Co.*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light*, 98 FERC ¶ 61,276, *order on reh'g*, 99 FERC ¶ 61,320 (2002)).

B. Non-Conforming Agreements

16. Under Order Nos. 2003³⁷ and 2006,³⁸ “an Interconnection Agreement that does not precisely match the Transmission Provider's approved standard [Large Generator Interconnection Agreement] or that is unexecuted must be filed in its entirety.”³⁹ Further, “the Transmission Provider should clearly indicate where the agreement does not conform to its standard Interconnection Agreement, preferably through red-lining and strike-out.”⁴⁰ Duke Energy contends that the G2 Interconnection Agreement and the 2004 and 2009 Telogia Interconnection Agreements are non-conforming; however, it fails to indicate which aspects of the agreements do not conform to its standard generator interconnection agreement. Accordingly, we direct Duke Energy to file red-line agreements that indicate which terms and conditions do not conform to its Commission-approved standard generator interconnection agreements, within 30 days of the date of this order.

C. Electric Quarterly Reports

17. Under section 35.10b of the Commission's regulations, “each public utility...shall file an updated Electric Quarterly Report with the Commission covering all services it provides pursuant to this part....”⁴¹ As mentioned earlier, Duke Energy failed to file its EQRs for the aforementioned conforming agreements on a timely basis as required by section 35.10b of the Commission's regulations. In such cases, the Commission's guidelines in Docket No. AD12-6 requires public utilities to file revised EQRs to correct

³⁷ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 13 (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), *cert. denied*, 552 U.S. 1230 (2008).

³⁸ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at P 562, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

³⁹ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 13.

⁴⁰ *Id.*

⁴¹ 18 C.F.R. § 35.10b (2016).

the prior 12 quarters of data, starting from the date of its filing.⁴² Accordingly, we deny Duke Energy's request to file corrected EQRs only after the third quarter of 2013, and direct Duke Energy to file corrected EQRs for the prior 12 quarters from the date of its filing. Similarly, following the Commission's acceptance for filing of Duke Energy's non-conforming agreements, Duke Energy must report these agreements in its EQRs and file corrected EQRs to correct the prior 12 quarters of data, starting from the date of its filing.

The Commission orders:

(A) The G2 Interconnection Agreement, and the 2004 and 2009 Telogia Interconnection Agreements, are hereby accepted for filing, subject to condition, as discussed in the body of this order.

(B) Duke Energy is hereby directed to submit, within 30 days of this order, the red-line copies of the G2 Interconnection Agreement, and the 2004 and 2009 Telogia Interconnection Agreements, as discussed in the body of this order.

(C) Duke Energy is hereby directed to make time-value refunds to Telogia, as discussed in the body of this order, within 30 days of the date of this order.

(D) Duke Energy is hereby directed to either make time-value refunds to G2 Energy or demonstrate that doing so would result in a loss to Duke Energy, within 30 days of this order.

(E) Duke Energy is hereby directed to file refund reports with the Commission within 30 days of the date time-value refunds are made pursuant to Ordering Paragraphs (C), and if applicable, (D).

⁴² See *Retrospective Review under Executive Order 13579 – Plan for Retrospective Analysis of Existing Rules*, 76 Fed. Reg. 70,913 (2011) (directing filers to correct previously-filed EQRs by correcting the most recent 12 reports, i.e. three years of data, with a note placed in the EQR stating that other reports may also contain the error); see also *Implementation Guidance for Executive Order 13579*, <http://www.ferc.gov/docs-filing/eqr/q2-2013/ref-help.asp> (last visited September 16, 2016).

(F) Duke Energy is hereby directed to file corrected EQRs, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.