Management
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Legislative Electric Energy Task Force
Legislative Coordinating Commission
Minnesota Legislature

Community-Based Energy Development (C-BED) Advisory Task Force Report

March 28, 2008

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Contents

Executive Summary

Community-Based Energy Development (C-BED) Advisory Task Force

The Legislative Electric Energy Task Force (LEETF) is a joint House-Senate body that studies electricity issues. Legislation enacted by the Minnesota Legislature in 2007 directs the LEETF to appoint and oversee an advisory task force to examine the state's policies with respect to community-based energy development and to report recommendations to the Legislature. In the fall of 2007 the Community-Based Energy Development (C-BED) Advisory Task Force was created.

The Community-Based Energy Development (C-BED) Advisory Task Force membership included representatives of public utilities, independent power producers, municipal utilities, rural cooperatives, landowners currently engaged in C-BED and non-C-BED wind development projects, advocacy organizations for wind developers, environmental organizations, wind energy experts, tribal representatives, clean energy advocates, and staff of the Department of Commerce and the Public Utilities Commission. While the input from the staff of these agencies was critical, their participation on this task force does not constitute an endorsement or formal approval of the recommendations by their departments, which have other formal processes for policy and budget development.

C-BED Task Force Conclusions and Recommendations

Through a facilitated process a series of work groups created by the task force developed the following conclusions and recommendations. These conclusions and recommendations were reviewed by the task force, and it proposed the final product be included in this report by informal consensus.

Develop a standard contract for C-BED
Recommendation: The work group recommended the development of statutory language requiring utilities to have a template for contracts and identify provisions to adjust prices to reflect cost changes between execution of the purchase power agreement and plant commissioning. See Appendix B for an initial draft version of this language.

State incentives and facilitation of C-BED
Conclusions and Recommendations: The work group thought that incentives were important to making C-BED workable in Minnesota, but after a review of a number of possible incentives, it determined, because of current budget restrictions and the current economic environment, that it is difficult to identify new state incentives to help foster C-BED development at this time.

The work group further noted that the Renewable Wind Energy Development Assistance Program (RWEDAP), which was created by 2007 legislation to provide technical assistance to those involved in C-BED, has not started and its value in getting C-BED projects implemented has yet to be measured. A report on RWEDAP by the Department of Commerce is due to the Legislature in November 2008.

The work group recommended the State of Minnesota should create and appropriate or reallocate the resources to implement a single point of contact in state government that would cut across agency boundaries to promote an integrated approach for wind industry and C-BED development.

Midwest Independent System Operator (MISO) issues
Conclusions and Recommendations: The work group noted the MISO queue process is overwhelmed with a backlog of generator interconnection requests and recommended the state should exercise its authority to implement state interconnections as a tool to facilitate C-BED project installation. Discussions are underway to come up with agreeable legislative language, as needed, to accommodate state interconnections, where appropriate. The work group suggested the following parties to be included in language discussions: all affected utilities, MISO, transmission providers, Department of Commerce, Public Utilities Commission, and generators. See Appendix C for an initial draft version of this language.

The work group recommended a list of issues concerning MISO to be presented to the Federal Energy Regulatory Commission (FERC). They include:

- How do changes in the MSIO queue process affect the small guy (such as community-based projects and/or projects other than those owned by large corporations)? What is small? (FERC says less than 20 megawatts)
- Where is the line between federal and state jurisdiction?
- Having a purchase power agreement (PPA) or having other factors that demonstrate project viability should give the project MISO queue priority.

Who owns and who builds the infrastructure?
Conclusion: The work group recognized the need for completion of the Statewide Study of Dispersed Generation Potential or "Sweet Spot" analysis (due June of 2008) and the resolution of the legal question on appropriate state jurisdiction in oversight of certain transmission lines before any action can be taken in this topic area.

Who is the state trying to help and how are they trying to help them?
Conclusion and Recommendations: The work group discussed the option of defining or redefining terms in the C-BED statutory language. The work group determined that no substantial changes in definitions were needed at this time.

The work group recommended having the Minnesota Department of Commerce provide an advisory opinion on C-BED projects within a set number of days after a developer, providing adequate information, submits a request. Further, the work group recommended providing the Department of Commerce with some discretion in determining and weighing characteristics of what may result in a C-BED project. See Appendix D for an initial draft version of this language.

The work group recommended language that would grant counties the authority to own C-BED projects. See Appendix E for the rationale and a version of this language.

Wind Easements
The work group met and discussed issues with the current wind easement language in Minnesota statute. At the meeting, the work group agreed to pursue language modeling the South Dakota language on wind easements allowing a termination of the easement after five years if there is not a clear commitment or steps taken to begin a wind energy project. Further, the work group agreed pursuing a maximum term of fifty years for wind easements.

Additional concerns were raised during drafting of the language, and a discussion proceeded via e-mail among work group members. At the time of this writing, discussion continues but no agreement has been reached by work group members on wind easements.

Further, legislation was introduced during the 2008 Legislative Session to repeal the wind easement termination provision. See Appendix G for a copy of the legislation.

Introduction

The Legislative Electric Energy Task Force (LEETF) is a joint House-Senate body that studies electricity issues. Legislation enacted by the Minnesota Legislature in 2007 directs the (LEETF) to appoint and oversee an advisory task force to examine the state's policies with respect to community-based energy development and to report recommendations to the Legislature by January 15, 2008.

Minnesota's community-based energy development (C-BED) statutes were enacted in 2005 and amended in 2007. The statutes reflect the Legislature's desire to ensure that local economies benefit from the development of renewable sources of energy through ownership restrictions, a requirement that a majority of financial benefits over the life of such projects flows to Minnesota residents, and by providing these C-BED projects some measure of priority in the efforts of utilities to meet the Renewable Energy Standard.

The C-BED Advisory Task Force was asked to study and make recommendations on how to best implement this concept in Minnesota. The Legislative Electric Energy Task Force contracted with Management Analysis & Development (MAD) in the Department of Administration to facilitate the meetings of the C-BED Advisory Task Force.

The C-BED Advisory Task Force includes the following members:

- Mike Bull, Deputy Commissioner of Renewable Energy, Minnesota Department of Commerce
- Burl Haar, Executive Secretary, Minnesota Public Utilities Commission
- Karen Hyde, Vice President of Resource Planning, Xcel Energy
- Paul Johnson, Renewable Energy Project Development Manager, Minnesota Power
- Paul White, President, Project Resources Corporation
- Dan Yarano, Fredrikson & Byron Energy Practice Group
- Larry Johnston, Director of Corporate Development, Southern Minnesota Municipal Power Agency
- Glen Skarbakka, Manager of Resource Planning, Great River Energy
- Lee Sundberg, Director of Government Affairs, MREA
- Andrew Falk, Community Wind Advocate
- Jim Nichols, Farmer and Turbine Owner
- Mike Franklin, Director of Energy Policy, Minnesota Chamber of Commerce
- Beth Soholt, Director, Wind on the Wires
- Todd Velnosky, Business Development Manager – Wind Energy, John Deere Credit
- Duane Ninneman, Long Range Development Consultant, Clean Up the River Environment
- Thom Petersen, Government Relations Director, Minnesota Farmers Union
- Dan Juhl, founder, DanMar & Associates
- George Crocker, Executive Director, North American Water Office
- Mike Michaud, Matrix Energy Solutions
- Jeff Paulson, Principal, Jeffrey C. Paulson & Associates
- Wade Gordon, Director, Fond du Lac Tribal and Community College

- John Gostovich, Consultant, Fresh Energy
- Jay Allsup, CEO, Outland Renewable Energy
- Carl Nelson, Community Energy Program Director, The Green Institute
- Ryan Wolf, Wolf Wind Development
- Jeff Peters, Director of Marketing and Development, Missouri River Energy Services
- Lisa Daniels, Windustry
- Margaret Schreiner, Metropolitan Energy Policy Coalition

Methodology

The Community-Based Energy Development Advisory Task Force met four times from October 2007 through February 2008. This report is the result of task force deliberations. The meetings were open to the public, and additional people attended to listen to the discussion and provide input. The task force, through a facilitated process, identified what it wants C-BED to accomplish, discussed the issues or barriers to the list of accomplishments, and crafted broad strategies on what can be done to address those issues.

The task force created work groups, based on the strategies identified, to develop actions, conclusions, and/or policy recommendations to make C-BED workable in Minnesota. The work groups met in late January and early February 2008, discussed their strategic options, and developed a series of conclusions and recommendations. On February 22, 2008 the task force met to review and discuss conclusions and recommendations. The C-BED Task Force edited the conclusions and recommendations, where appropriate, and proposed they be included in this report by informal consensus. The state staff involved in these discussions provided valuable input, but their participation on the task force and these work groups does not constitute an endorsement or formal approval by their respective agencies of the conclusions and recommendations developed.

What we want C-BED to accomplish

What do we want C-BED to accomplish?						October 24, 2007
Improved Economic Benefits to Minnesota	**Range of Local Economic Impact**		**Rate-payers Don't Pay too Much**	**Clear Definition of Eligibility & Pathway to Viable Projects – standards, clarity, quickness**	**Incentives *(Allowance)* for: Diversity of Projects & Benefits to Communities**	**Viable Markets for C-BED**
	Local Ownership to Local Control	**Encourage Local Economic Benefits**				
▪ Expanded set of viable Minnesota resources (renewable energy) ▪ Improved economic benefits (as compared with out-of-state I.P.P. projects) ▪ Net economic development benefits to Minnesota	▪ Provide a mechanism for smaller projects to use existing transmission more efficiently ▪ Rapid deployment of locally-owned dispersed generation (share economic benefit across the state - reliability) ▪ Opportunity for communities impacted to participate ▪ Framework or structure to promote local participation & ownership ▪ Infrastructure costs	▪ Ensure local communities receive a significant share of benefits of wind development ▪ Meet landowner economics ▪ Maximize wind "energy dollars" supporting rural Minnesota communities ▪ Infrastructure costs	▪ Cost effectiveness tool (scale) ▪ Competitive power supply with value-added components (local benefits) ▪ Net benefits within state (don't want to rob St. Peter to pay St. Paul) ▪ Quality, competitively priced power delivered ▪ Reasonable cost – for renewable energy to utility customers ▪ Promote a level playing field	▪ Clear definition of eligibility ▪ For contracts: standards, clear, quick	▪ Allow for diversity of project ownership: different sizes, different financing, different risk vs. reward characteristics ▪ Diversity and variety of project ownership models ▪ Expand definition to include more ownership models ▪ Expand definition to include projects sized from net.meter to large wind ▪ Tool for company economic development	▪ Timely for RES – timely project operation, as promised ▪ Successful projects ▪ Deliver on investment (infrastructure and tax ownership) ▪ Reliable renewable energy project over life of generation asset ▪ Helpful tool for RES requirements for utilities (KIS principle) ▪ Good investment; for institutional investors: attract capital

Issues to C-BED

What issues or barriers do we need to address to reach the identified goals or accomplishments?

1. Community Return

- **Financial standards**
- **Define**

Issues

- Clear guidelines and rules
  - What are we counting as community return?
  - Evaluation of community risk
- Put money in local pockets
  - Invest in the community
- No clear peer-reviewed notion of community benefit for these projects
  - What do different types of wind projects bring to communities?
  - Projects advocate for themselves, may not be an objective explanation of what they bring to community
- Community should be the focus

2. Ownership & Control

- **Who defines and who controls it**

Issues

- Define "local ownership" and "control": Who defines these terms and how (process) is it defined?

3. Regulator Stability

- **Incentives and process**

Issues

- How much should we put in the law?
  - Flexibility balanced with structure
- Unclear process as to who qualifies as a C-BED project
- Policy should focus on a net economic development benefit to the state; allow for choices
- Regulate the horse race

4. Power Contracts (structure and process)

- **Transparency**
- **Clarity**
- **Flexibility**

Issues

- Standard contracts for quality projects
  - Need to cut down on administrative bureaucracy
- Experience and staying power in putting projects together
  - How do you balance between smaller projects and large-scale projects?
- Rapidly changing market
  - Legislation may not address changes year to year to keep up with marketplace

5. Interconnection & Transmission (needed infrastructure)

Issues

- Interconnection, viability and approval; will it work on the grid?
  - People/developers don't even know if they're viable until halfway through project development
- Lack of transmission structure: lines and substation transformers, etc.

6. Economic Realities of Financing (risk/reward)

Issues

- Limitation in securing financing for owners and developers; timing of making funds available
- Responsibility for unknown interconnection costs and production tax credit
  - How much will it actually cost ratepayers?
- How markets in the US attract investment
  - Has to be a competitive nature to whatever is done here
- Risk vs. Reward; reward to landowners needs to match risk
- Margins becoming thinner, more risk follows
  - Pricing, interconnection, etc.
- Feed in tariffs
  - Used in Europe, seems to work well
- Curtailment sharing

7. Competition for resources

Issues

- Political reality of "no new taxes"
  - No pool of money to draw from
- Economic development jealousy
  - Follow the money/who gets the money?
  - Local focus
- Not a level playing field
  - Different types of communities putting these projects together
  - Competing communities and competing utilities

8. Timing Concerns

- **Project certainty**
- **Coordination**

Issues

- Patience; issue is complex and it takes time to work these issue out
- Long-term project viability
  - What is going to be the market valuation?—financial questions and potential instability
  - Maintenance for machines
- Fuel for wind project
  - Wind data limited

Stand-alone Issue:

- Safety concerns: voltage/installation/operation/dismantling

Strategic Options

C-BED Advisory Task Force Meeting

December 17, 2007

Strategic Directions

What do we need to do to address these issues and accomplish our goals?

A. Develop a standard contract*	**B. State incentives and facilitation***	**C. MISO issues** (sit back and observe?)—members aren't sure that this is under the charge of the C-BED ATF, or under the state's jurisdiction**	**D. Who owns? Who builds? (Infrastructure)****	**E. Who is the state trying to help and how is it trying to help them?***
▪ Standard contracts ▪ Utilities give "priority" to their "service territory" for PPAs ▪ Feed in tariffs: technology for price because of selection, set price and then let market meet ▪ Template contract: like small wind contract	▪ Create "state" ombudsman for C-BED ▪ Expand revolving loan fund; i.e. Green Pricing Program ▪ Aggregate supply chain of turbine purchases: inventory or list; issue of "how it is done" ▪ Continue Department of Commerce fund for wind resources assessment ▪ Wind incentives like ethanol	▪ Manage broken queue process ▪ Reform MISO: define boundaries, MISO is currently under review by FERC, Legislative report ▪ MISO Queue	▪ State interconnection ▪ Develop transmission infrastructure consistent with "sweet spot" analysis: in statute, strategically enhance for future ▪ State interconnection authority for intrastate projects ▪ Provide pre-interconnection feasibility studies: pre-screening tool, who does these ▪ Real-time pricing: transmission fees based on cost of power at any given time – like HOV lane ▪ Non-utility owned lines o Privately owned and operated transmission lines o State-owned transmission; use tariff collection to pay for	▪ Flexibility with structure? ▪ C-BED qualifications: local debt and equity, local payment development fees, local ownership, local service utilization, local training and tax revenue ▪ Define "community" – models ▪ Define "benefits" – model ▪ Flexibility in project qualifications: structure allowing for market, balance, priority/advantage

*First priorities, **Second priorities

Task Force Conclusions and Recommendations

The C-BED Advisory Task Force divided into work groups based on the strategic options identified earlier in this report. The work groups ranged in size from five participants to over ten participants and met in a series of meetings from the end of January into the early weeks of February 2008. See Appendix A for work group composition. Each work group reviewed and clarified its strategic option, identified possible products, reviewed options, and developed conclusions and/or recommendations to bring back to the task force. Further, an additional work group was added to review and provide back to the task force recommendations on wind easements.

The C-BED Task Force reviewed and discussed the product of the work groups. Some of the conclusions were edited or amended, as appropriate, and the task force proposed the final product be included in this report by informal consensus.

The conclusions and recommendations are as follows:

Work Group A. Develop a standard contract for C-BED

Recommendation:

1. The work group recommended the development of statutory language requiring utilities to have a template for contracts and identify provisions to adjust prices to reflect cost changes between execution of the purchase power agreement and plant commissioning. See Appendix B for an initial draft version of this language.

Work Group B. State incentives and facilitation of C-BED

Conclusions and Recommendations:

1. The work group thought that incentives were important to making C-BED workable in Minnesota, but after a review of a number of possible incentives, it determined, because of current budget restrictions and the current economic environment, that it is difficult to identify new state incentives to help foster C-BED development at this time.

2. The work group further noted that the Renewable Wind Energy Development Assistance Program (RWEDAP), which was created by 2007 legislation to provide technical assistance to those involved in C-BED, hasn't started and its value in getting C-BED projects implemented has yet to be measured. A report on RWEDAP by the Department of Commerce is due to the Legislature in November 2008.

3. The work group recommended the State of Minnesota should create and appropriate or reallocate the resources to implement a single point of contact in state government that would cut across agency boundaries to promote an integrated approach for wind industry and C-BED development.

Work Group C. MISO issues

Conclusions and Recommendations:

1. The work group noted the MISO queue process is overwhelmed with a backlog of generator interconnection requests and recommended the state should exercise its authority to implement state interconnections as a tool to facilitate C-BED project installation. Discussions are underway to come up with agreeable legislative language, as needed, to accommodate state interconnections, where appropriate. The work group suggested the following parties to be included in language discussions: all affected utilities, MISO, transmission providers, Department of Commerce, Public Utilities Commission, and generators. See Appendix C for an initial draft version of this language.

2. The work group recommended a list of issues on MISO to be presented to FERC. They include:
    - How do changes in the MSIO queue process affect the small guy (such as community-based projects and/or projects other than those owned by large corporations)? What is small? (FERC says less than 20 megawatts)
    - Where is the line between federal and state jurisdiction?[1]
    - Having a purchase power agreement (PPA) or having other factors that demonstrate project viability should give the project MISO queue priority.

Work Group D. Who owns and who builds the infrastructure?

Conclusion:

1. The work group recognized the need for completion of the Statewide Study of Dispersed Generation Potential or "Sweet Spot" analysis (due June of 2008) and the resolution of the legal question on appropriate state jurisdiction in oversight of certain transmission lines before any action can be taken in this topic area.

Work Group E. Who is the state trying to help and how is it trying to help them?

Conclusion and Recommendations:

1. The work group discussed the option of defining or redefining terms in the C-BED statutory language. The work group determined that no substantial changes in definitions were needed at this time.

2. The work group recommended having the Minnesota Department of Commerce provide an advisory opinion on C-BED projects within a set number of days after a developer, providing adequate information, submits a request. Further the work group recommended providing the Department of Commerce with some discretion in determining and weighing characteristics of what may result in a C-BED project. See Appendix D for an initial draft version of this language.

3. The work group recommended language that would grant counties the authority to own C-BED projects. See Appendix E for the rationale and a version of this language.

[1] A legal opinion on the topic of state jurisdiction, as a response to a "white paper" raising the state jurisdiction issue, addressed this issue. See Appendix G for the 'white paper" and Appendix H for the legal memo.

Work Group F. Wind Easements

The work group met and discussed issues with the current wind easement language in Minnesota statute. At the meeting, the work group agreed to pursue language modeling the South Dakota language on wind easements allowing a termination of the easement after five years if there is not a clear commitment or steps taken to begin a wind energy project. Further, the work group agreed pursuing a maximum term of fifty years for wind easements.

Additional concerns were raised during drafting of the language, and a discussion proceeded via e-mail among work group members. Currently the statute provides that wind property rights terminate in seven years if the project to which those wind property rights applies has not begun operation. Options to change the law that were discussed via e-mail focused around determining a clear and acceptable way to verify that real estate is being used for wind projects, the time line for termination of rights (including options for extensions), and repealing the wind easement termination provision altogether. At the time of this writing, discussion continues but no agreement has been reached by work group members on wind easement termination.

Further, legislation was introduced during the 2008 Legislative Session to repeal the wind easement termination provision. See Appendix F for a copy of the legislation.

Appendices

Appendix A
Work Group members

Group A – Develop a Standard Contract
Karen Hyde
Paul Johnson
Glen Skarbakka
Lisa Daniels
Andrew Faulk
Mike Michaud

Group B – State Investment/Facilitation
Mike Bull
Lee Sundberg
Jeff Peters
Mike Franklin
George Crocker
Carl Nelson
Wade Gordon

Group C – MISO: Manage a Broken Queue
Mike Michaud
George Crocker
Karen Hyde
Glen Skarbakka
Jeff Paulson

Group D – Who Owns/Who Builds Infrastructure
Andrew Faulk
Beth Soholt
Larry Johnston
Ingrid Bjorklund
Lee Sundberg
Dan Juhl
Duane Ninneman

Group E – Who the State Helps/How to Help Them
Paul White
Mike Bull
Ryan Wolf
Margaret Schreiner
Dan Yarano
Jim Nichols
Mike Franklin
Dan Juhl
Ingrid Bjorklund
Carl Nelson

Group F – Wind Easements
Thom Peterson
Lisa Daniels
Paul Blackburn
Paul White
Paul Johnston
Beth Soholt
Duane Ninneman

Appendix B
Work Group A Recommendation: Draft Contract Language

[**Note:** The following language was an initial draft of language to start discussion on how to place this concept in statute. Neither the work group or the task force have reviewed and approved this language.]

Minn. Stat. 2007, section 216B.1612 is amended by adding a subdivision to read:

Subd 4a: Standard Contract

Section 1. Minnesota Statutes 2006, section 216B.1612, subdivision 7, is amended to read:

Subd. 7. Other C-BED tariff issues.

(a) A community-based project developer and a utility shall negotiate the rate and power purchase agreement terms consistent with the tariff established under subdivision 4.

(b) At the discretion of the developer, a community-based project developer and a utility may negotiate a power purchase agreement with terms different from the tariff established under subdivision 4.

(c) A qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying renewable energy project developer. However, the terms of the C-BED tariff may only apply to the portion of the energy production of the total project that is directly proportional to the equity share of the project owned by the qualifying owners.

(d) A project that is operating under a power purchase agreement under a C-BED tariff is not eligible for net energy billing under section 216B.164, subdivision 3, or for production incentives under section 216C.41.

(e) A public utility must receive commission approval of a power purchase agreement for a C-BED tariffed project. The commission shall provide the utility's ratepayers an opportunity to address the reasonableness of the proposed power purchase agreement unless a party objects to a contract within 30 days of submission of the contract to the commission the contract is deemed approved.

(f) A public utility must make a standard contract available setting forth proposed terms and conditions of power purchase agreements to be negotiated for C-BED projects. The standard contract, and any power purchase agreement negotiated for a C-BED project, must contain provisions for adjusting the price paid for electricity in an amount proportional to changes in the cost of turbines, interest rates, or other project costs that may change significantly between the execution of the power purchase agreement and the day of plant commissioning. The price adjustment may have the effect of raising or lowering the price paid for electricity under the terms of a power purchase agreement for a C-BED project.

Appendix C
Work Group C: Draft State Interconnection Language

[**Note:** The following language was an initial draft of language to start discussion on how to place this concept in statute. Neither the work group nor the task force has reviewed and approved this language.]

216B.16-- INTERCONNECTION OF DISPERSED GENERATION.

Subdivision 1. **Purpose.** The purpose of this section is to:
(1) establish the terms and conditions that govern the state jurisdictional interconnection and parallel operation of dispersed generation;
(2) provide cost savings and reliability benefits to customers;
(3) establish technical requirements that will promote the safe and reliable parallel operation of dispersed generation resources;
(4) enhance both the reliability of electric service and economic efficiency in the production and consumption of electricity;
(5) promote the use of dispersed resources in order to provide electric system benefits during periods of capacity constraints; and
(6) extend state authority to interconnect dispersed generation to the electrical power system to the maximum extent allowed by federal law.

Subd. 2. **Definitions.** (a) A "dispersed generator" is an electrical generator that are fueled by an eligible energy technology, as this term is defined in chapter 216B.1691, other than an energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste as a primary fuel, where all of the net power produced from the generator is sold under retail tariffs to the utility in whose service area the generator is sited or to a utility in Minnesota that is adjacent to the service area of the utility in whose service area the generator is sited.

Subd. 3. **Dispersed generation proceeding. (a)** The Commission shall exercise jurisdiction over interconnection to the electric grid to the extent that state jurisdiction does not conflict with federal law, rule or order, and shall issue orders by January 1, 2009 as the Commission finds is necessary to establish tariffs for the exercise of that jurisdiction to facilitate the standardized, cost-effective, timely, reliable and safe interconnection of dispersed renewable generation in the state. Any action taken under this authority must be done in coordination with MISO and other transmission providers to ensure reliable operation of the electric grid.
(b) The commission shall establish a standard schedule for utility interconnection of dispersed generators.
(c) The utility shall absorb any costs associated with interconnection impact mitigation under (a), but shall be allowed to recover the costs of the mitigations pursuant to 216B.16.

Subd. 4. **Dispersed generation tariff.** Within 90 days of the issuance of an order under subdivision 3:

(a) Each public utility providing electric service at retail shall file a dispersed generation tariff consistent with that order, for commission approval or approval with modification; and
(b) Each municipal utility and cooperative electric association shall adopt a dispersed generation tariff that addresses the issues included in the commission's order.
(3) The tariff financial terms and conditions associated with the energy sales from the dispersed generator shall be either according to the terms and conditions established under 216B.1611, or a CBED tariff developed under 216B.1612, or otherwise as expressly provided in law.

Subd. 5. **Reporting requirements.** (a) Each electric utility shall maintain records concerning applications received for interconnection and parallel operation of small and large dispersed generators. The records must include the date each application is received, documents generated in the course of processing each application, correspondence regarding each application, and the final disposition of each application.
(b) Every electric utility shall file with the commissioner a dispersed generation interconnection report for the preceding calendar year that identifies each dispersed generation facility interconnected with the utility's distribution system. The report must list the new dispersed generation facilities.

Appendix D
Work Group E: Draft Language on Department of Commerce Advisory Opinions on C-BED Projects

[**Note:** The following language was an initial draft of language to start discussion on how to place this concept in statute. Neither the work group nor the task force has reviewed and approved this language.]

Minn. Stat. 2007, section 216B.1612 is amended by adding a subdivision to read:

Subd. 9. Commissioner approval.

(a) The commissioner shall prepare an avisory opinion on all potential C-BED projects within 45 days of request for an opinion from a project developer that provides all the adequate information to make a C-BED determination. [Optional additional language: Such information shall include but not be limited to: . . . and include a list] The advisory opinion will state whether the project is a C-BED project and give reasons for that opinion. The commissioner's advisory opinion cannot be appealed.

(b) In issuing the advisory opinion, the commissioner may include any of the following considerations in determining a project's gross revenues for the purpose of Subd. 2(g)(2):

(1) Lease or royalty payments made to Minnesotans;

(2) Pre-development or development costs paid to Minnesotans;

(3) Financial measures reducing risks to qualifying owners: and

(4) Other economic factors benefiting the local community.

(c) The Commissioner may use a number between 35 percent and the 51 percent specified in Subd. 2(g)(2) to qualify C-BED projects if the commissioner determines that turbine costs, interest rates, or other factors beyond the control of the C-BED project developer restrict the development of projects which meet all of the C-BED criteria except the percentage requirement in that subdivision.

Appendix E
Work Group E: Draft Language to Address County Jurisdictional Concerns

Rationale:

The Minnesota Supreme Court ruled in 1959 that local governments have no powers other than those expressly conferred by statute. This rule follows the doctrine of Dillon's Rule," proposed by Iowa Supreme Court Judge John Dillon in the late 1800's. There are two exceptions to this rule. First, Minnesota law allows cities to adopt home rule charters with increased powers to act for the general welfare. Second, Minnesota specifically granted Ramsey County the power to adopt a home rule charter which was approved by Ramsey County voters in 1990. Other counties and the Metropolitan Council do not have those broad powers to act for the general welfare.

Minnesota Statute 216B.1612, subdivision 2 provides a definition of "Qualified Owner." Counties are included in that definition. The statute does not, however, explicitly state what a qualified owner may do. Subdivision 9 in our proposed amendment would give counties the specific powers which they need to participate in CBED projects.

Draft language: [**Note:** The following language was a draft of language to start discussion on how to place this concept in statute. Neither the work group nor the task force has reviewed and approved this language.]

A bill for an act
Amending Minnesota Statute §216B.1612.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Minnesota Statute §216B.1612 is amended to read:

Subd. 9. Powers. A Minnesota political subdivision or local government may plan, develop, purchase, acquire, construct and/or own a C-BED project and may sell output from that project as provided for in this section. A qualifying owner may operate, maintain, improve and expand the C-BED project subject to any restrictions in this section.

Appendix F
S.F. 3520 – Repeal of wind easement termination provision

S.F. No. 3520, 1st Engrossment - 85th Legislative Session (2007-2008)

A bill for an act

relating to energy; regulating certain property rights related to wind energy; eliminating certain duties of the Legislative Electric Energy Task Force; amending Minnesota Statutes 2007 Supplement, section 500.30, subdivision 2; repealing Minnesota Statutes 2007 Supplement, section 216C.051, subdivision 8a.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2007 Supplement, section 500.30, subdivision 2, is amended to read:

Subd. 2. **Like any conveyance.** Any property owner may grant a solar or wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded, and indexed in the office of the recorder of the county in which the easement is granted. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract; such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that an easement may terminate upon the conditions stated therein or pursuant to the provisions of section 500.20. ~~A wind easement, easement to install wind turbines on real property, option, or lease of wind rights shall also terminate after seven years from the date the easement is created or lease is entered into, if a wind energy project on the property to which the easement or lease applies does not begin commercial operation within the seven-year period.~~

EFFECTIVE DATE. This section is effective June 1, 2009.

Sec. 2. **REPEALER.**

Minnesota Statutes 2007 Supplement, section 216C.051, subdivision 8a, is repealed.

EFFECTIVE DATE. This section is effective the day following final enactment.

Appendix G
White Paper

A WHITE PAPER

ON

UNTANGLING FERC & STATE JURISDICTION

INTERCONNECTION ISSUES

AND

OPPORTUNITIES FOR DISPERSED GENERATION

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INTRODUCTION

Opportunities for interconnection of non-utility owned generators to the power system grid have evolved dramatically over the last decade. Both the State of Minnesota and the Federal Energy Regulatory Commission (FERC) have implemented standardized interconnection policies governing these non utility generators within this time frame.

In the last legislative session, the Minnesota legislature required an investigative report by the State's Reliability Administrator regarding "the potential for and barriers to interconnecting dispersed generation projects to locations on the electric grid where a generator interconnection would not be subject to the interconnection rules of the Federal Energy Regulatory Commission or the Midwest Independent System Operator (MISO)."[2] This requirement, along with the new Renewable Energy Standards, has focused attention on the legal jurisdictional issues raised by distribution interconnections, the whole collection of interconnection regulations both state and federal, and what opportunities the state may have to support the interconnection of dispersed generators.

This paper will identify what structures are in place regarding interconnections, where the jurisdiction lines have been drawn, and what opportunities exist for state assertion of additional authority over generator interconnections.

INTERCONNECTION POLICY HISTORY

In 1978 congress passed the Public Utilities Regulatory and Policy Act (PURPA).[3] This law for the first time required utilities to open up their grid system to certain non-utility generators, in particular small renewable and cogeneration facilities. Minnesota responded to this law by enacting legislation Minn. Stat. § 216B.164, and Minn. Rules Chapter 7835. There are numerous case histories showing that states have the rights to go beyond what was required by the federal laws regarding the rates that are paid under these laws. Minnesota Law sets up a statewide uniform contract for these interconnections and establishes average retail utility energy buy back rates for qualifying facilities under 40 kW capacity.

In the EPACT 1992 congress passed legislation that further opened up access to the grid for non utility owned generators. FERC responded to this law by establishing rules, for managing the access to the grid and the wholesale power transactions on the interstate power system.[4] FERC acted again a few years later to establish uniform rules for the interconnection of new generators.[5] The issue of where FERC's authority extended to bind various utilities to these rules was a major discussion point in those proceedings.

In 2001, the Minnesota legislature enacted Minn. Stat. § 216B.1611 to establish the terms and conditions that govern the interconnection and parallel operation of on-site

[2] See Minnesota Session Laws Chapter 136, Article 4, Sec. 21.
[3] See Public Law 95-617, Statutes at Large, volume 92, page 3117, and the Federal Energy Regulatory Commission regulations, Code of Federal Regulations, title 18, part 292.
[4] See FERC Orders 888 and 889 issued April 24, 1996.
[5] See FERC Order 2003 for Large Generators issued July 24, 2003, and Order 2006 for Small Generators issued May 12, 2005.

distributed generation. That law required Minnesota utilities to create tariffs modeled after a generic tariff developed by the Minnesota Public Utility Commission, that include a standard interconnection agreement that sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system, and a standard application for interconnection and parallel operation with the utility system.

FERC's Description of the Limits of its Authority over Interconnections

FERC derives its authority from the Federal Power Act. That Act only gives FERC jurisdiction over interstate commerce; this is usually interpreted as the wholesale (interstate) power market. FERC recognized that the interconnection of new generators to the large power grid could interfere with power flows associated with existing wholesale power transactions and so began Rulemaking proceedings. Its landmark Orders 2003 for large generators and Order 2006 for generators of 20 MW or less were the primary results from those efforts.[6] FERC declared its intent to establish guidelines for interconnections to ensure the fair, competitive and reliable operation of the wholesale power market.

Order 2003

In Order 2003 FERC stated:

> "The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT.[7] Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under Sections 205 and 206 of the Federal Power Act."[8]

FERC further described its intent as follows:

> "The Commission concludes that there is a pressing need for a single set of procedures for jurisdictional Transmission Providers and a single, uniformly applicable interconnection agreement for Large Generators. A standard set of procedures as part of the OATT for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable."[9] (Emphasis added)

Jurisdictional Transmission Providers are FERC regulated entities charged with implementing the Open Access to transmission provisions previously ordered by FERC. Jurisdictional transmission facilities are those elements of the transmission system

[6] FERC also issued supplemental Orders 2003A, 2003B, 2003C, and 2006A and 2006B.
[7] An OATT is an Open Access Transmission Tariff, per FERC Order 888.
[8] FERC Order 2003, para 20.
[9] FERC Order 2003, para. 11.

carrying wholesale power transactions. FERC indicated the applicability of the interconnection rules as follows.

> "This Final Rule applies to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT.128 In other words, the standard interconnection procedures and contract terms adopted in this Final Rule apply when an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made. Therefore, the Final Rule applies to a request to interconnect to a public utility's facilities used for transmission in interstate commerce. It also applies to a request to interconnect to a public utility's "distribution" facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT. But where the "distribution" facilities have a dual use, i.e., the facilities are used for both wholesale sales and retail sales, the Final Rule applies to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce."[10]

The FERC in Order 2003 also reached a discussion of the interaction of the new Interconnection Rules with the previously established interconnection procedures for QFs under PURPA Laws:

> "The Commission's Regulations govern a QF's interconnection with most electric utilities in the United States, including normally nonjurisdictional utilities. When an electric utility is obligated to interconnect under Section 292.303 of the Commission's Regulations, that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs. But when an electric utility interconnecting with a QF does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections."[11]

The FERC clearly stated that interconnections of QF facilities where all the power is sold to the local utility remain state jurisdictional interconnections. However, if any portion of the QF output is sold in the wholesale market to another entity, the FERC would assert

[10] FERC Order 2003, para 804.
[11] FERC Order 2003, para 813.

jurisdiction over that transaction for that portion of the QF output. Note there are no caveats regarding size or location of the QF imbedded in this paragraph.[12]

In response to other issues raised by parties the FERC made statements in Order 2003 about the limits of the application of its Rule:

> "In response to SoCal Edison and PG&E, we clarify that we are not asserting jurisdiction over a hook-up between a retail customer and a Transmission Provider when a retail customer installs a generator that will produce electric energy to be consumed only on site."[13]

And also:

> "Regarding EEI's comment about the Commission's authority over an interconnection for the purpose of making sales of electric energy for resale using
> "distribution" facilities when the energy neither crosses state lines nor enters the interstate transmission system, this question is moot because the Commission is not here extending its jurisdiction to any facility that is not already under its jurisdiction, pursuant to a Commission-filed OATT at the time the interconnection request is made."[14]

These comments are relevant to state authority issues. The Commission did not extend its interconnection authority to behind the meter interconnections or to other intrastate transactions that did not impact the interstate transmission system.

The interaction between the FERC interconnection rules and the distribution system became a subject of much comment and clarification throughout the rulemaking proceedings. In Order 2003, the FERC declared:

> "At the outset, it is important to clarify several terms when discussing the question of jurisdiction. "Local distribution" is a legal term; under FPA Section 201(b)(1), the Commission lacks jurisdiction over local distribution facilities. "Distribution" is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are "local distribution" facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate)."[15]

The FERC indicated that local distribution facilities are legally defined in the FPA, and that FERC did not have authority over these facilities. The FERC however muddied the

[12] FERC also affirmed this interpretation in Order 2006A, para 102.
[13] FERC Order 2003, para 805.
[14] FERC Order 2003, para 808.
[15] FERC Order 2003, para 803.

waters by pointing out that these local distribution facilities are sometimes used for jurisdictional service transactions in interstate commerce. FERC further muddied the discussion of the reach of its Rule in another comment:

> "Regarding the arguments that the NOPR LGIP and NOPR LGIA[16] are designed for interconnection to a transmission system and not a "distribution" system, we expect that the majority of interconnections to jurisdictional "distribution" or other jurisdictional low voltage facilities will be made by generators no larger than 20 MW. These Small Generators will be interconnected using the standard procedures and agreement adopted in the Small Generator rulemaking. We are proposing rules in that proceeding to accommodate the interconnection of Small Generators, mostly to jurisdictional "distribution" (not "local distribution") and low-voltage facilities. However, in response to WEPCO's argument, we conclude that under some circumstances (e.g., interconnection to facilities below 69 kV) the Interconnection Studies in the Final Rule LGIP may be inappropriate to analyze some Large Generator Interconnection Requests. In such a case, we will allow the Transmission Provider to use modified Interconnection Studies, subject to Commission approval. The Commission expects that interconnection requests of this kind will be rare and, as a result, we do not at this time incorporate a standard study specifically designed for interconnections to low-voltage or "distribution" facilities into the Final Rule LGIP. Accordingly, a Transmission Provider may use the studies it deems appropriate to properly study the Interconnection Request, subject to Commission approval. The Commission therefore requires that a Transmission Provider, upon receipt of a request for jurisdictional interconnection to a jurisdictional "distribution" or low voltage facility, file with the Commission an amendment to the LGIP in its OATT that describes the Interconnection Studies applicable to such requests."[17]

Although this paragraph is targeted a discussion of a relatively rare situation that might occur if a large generator would try to interconnect to a lower voltage facility, under 69 kV here, the discussion by FERC generates terms such as "jurisdictional distribution" as opposed to "local distribution," and also the term "other jurisdictional lower voltage facilities." The FERC clearly sees that they have some jurisdiction over interconnections on some facilities that are not clearly "transmission" facilities. FERC also declared that the Small Generator Interconnection Rules would more likely address interconnections to these types of facilities since FERC expected most of the interconnections to those types of facilities would be made by projects 20 MW or less.

After FERC issued Order 2003, the courts rendered opinions about FERC's jurisdictional reach. FERC subsequently clarified its perceived authority in its supplemental rules.[18]

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[16] NOPR means Notice of Proposed Rulemaking, LGIP means Large Generator Interconnection Procedures, LGIA means Large Generator Interconnection Agreement.

[17] FERC Order 2003, para 806.

[18] See Detroit Edison Co. v. FERC, 334 F.3d 48, 51 (D.C. Cir. 2003); accord Transmission Access Policy Study Group v. FERC, 225 F.3d 667, 696 (D.C. Cir. 2000) (TAPS).

Order 2003C

Supplemental Order 2003C incorporated the courts decisions, and FERC made the following statement about its jurisdiction:

> "When a "local distribution" facility is used to transmit energy sold at wholesale as well as energy sold at retail, we previously have called this a "dual use" facility because it is used both for sales subject to Commission jurisdiction and for sales subject to state jurisdiction. Under Order No. 2003, if such a facility is subject to wholesale open access under an OATT at the time the Interconnection Request is made, and the interconnection will connect a generator to a facility that would be used to facilitate a wholesale sale, Order No. 2003 applies and the interconnection must be subject to Commission-approved terms and conditions. Because the Commission's authority to regulate in this circumstance is limited to the wholesale transaction, we conclude that we do not have the authority to directly regulate the facility that is used to transmit the energy being sold at wholesale. In other words, while the Commission may regulate the entire transmission component (rates, terms and conditions) of the wholesale transaction – whether the facilities used to transmit are labeled "transmission" or "local distribution"– it may not regulate the "local distribution" facility itself, which remains state jurisdictional. We believe this properly respects the boundaries drawn in the FPA."[19]

Here the FERC asserted authority over even local distribution facilities but for only the limited purpose of regulating the entire transmission component (rates, terms and conditions) of the wholesale transaction. It distinguished that it cannot regulate the distribution facility itself, which remains under state jurisdiction, but it could regulate a wholesale power transaction occurring on such a facility.

Another important distinction brought out here by FERC is that regarding interconnections to such facilities, if such a facility is subject to wholesale open access under an OATT at the time the Interconnection Request is made, **and** the interconnection will connect a generator to a facility that would be used to facilitate a wholesale sale, Order No. 2003 applies and the interconnection must be subject to Commission-approved terms and conditions.

There is a two part criteria here wherein both circumstances must exist before the FERC would assert jurisdiction over a pending interconnection. First, as FERC previously indicated in Order 2003, the local distribution system must somehow already have been made subject to wholesale open access provisions, presumably from a prior existing wholesale power transaction. Second, the pending interconnecting generator must intend to participate in a wholesale power transaction. The premise here was perhaps that a second interconnection had the potential to interfere with the prior existing transaction power flows. This paragraph leaves unaddressed what happens if the pending generator interconnection does not intend to participate in a wholesale power transaction.

[19] Order 2003C, para 53.

The term "dual use" facility used by FERC is important. It points out that there are facilities that can be used both for sales subject to FERC jurisdiction and for sales subject to state jurisdiction.

Order 2006

In May of 2005 the FERC issued Order 2006 covering Small Generator interconnections, affecting generating facilities that would be 20 MW or less. The FERC again discussed the applicability of its Rule regarding certain facilities:

> ""Distribution" is a vague term, usually used to refer to non-networked, often lower voltage facilities, that carry power in one direction. Commission-jurisdictional facilities with these characteristics are referred to as "Distribution Systems subject to an OATT" throughout this Final Rule. This Final Rule's use of the term "Distribution System" has nothing to do with whether the facility is under this Commission's jurisdiction; some "distribution" facilities are under our jurisdiction and others are "local distribution facilities" subject to state jurisdiction. This Final Rule does not violate the FPA section 201(b)(1) provision that the Commission does not have jurisdiction over local distribution facilities "except as specifically provided. . ." This is because the Final Rule applies only to interconnections to facilities that are already subject to a jurisdictional OATT at the time the interconnection request is made and that will be used for purposes of jurisdictional wholesale sales. Because of the limited applicability of this Final Rule, and because the majority of small generators interconnect with facilities that are not subject to an OATT, this Final Rule will not apply to most small generator interconnections. Nonetheless, our hope is that states may find this rule helpful in formulating their own interconnection rules."[20]

FERC reemphasized the distinctions of jurisdiction elucidated in Order 2003C, but also stated that they thought this rule would have limited applicability "because the majority of small generators interconnect with facilities that are not subject to an OATT." This brings up the question about exactly which facilities are subject to an OATT.

In this Small Generator Interconnection proceeding the FERC also addressed the following comment made by MISO:

> "In response to Midwest ISO's desire to process all interconnections (whether to Commission-jurisdictional or non-Commission-jurisdictional facilities) under its tariff, we note that the Commission does not have the authority to order states to use Midwest ISO's tariff to process interconnections with state or other non-jurisdictional facilities. However,

[20] Order 2006, para 8.

> we encourage the states and others to use the Commission's interconnection rule or the NARUC Model as a starting point for developing their own interconnection rules."[21]

FERC clearly did not endorse sending all generating interconnection requests to MISO. It recognized the authority of states over interconnections to non jurisdictional facilities. It went even further by encouraging states to assert their jurisdiction over interconnections by creating their own rules and offered the NARUC Model to states as an appropriate starting point.

Order 2006A

Order 2006A was issued in November 2005, provided additional clarification on the FERC position on jurisdictional issues. In response to comments on Order 2006, FERC discusses a comment received on jurisdiction over interconnections:

> "Con Edison asserts that Order No. 2006 impermissibly bases jurisdiction on the "intent" of a generator, rather than its actions. Because jurisdiction can change based on the use of a facility or the generator's intent, the Parties would not know whether Order No. 2006 applies until after the fact. Con Edison poses a hypothetical case where a generator intending to sell at wholesale interconnects with a previously state jurisdictional line under state rules. A second generator interconnecting with the same line, but not seeking to sell power at wholesale, would be obliged to interconnect under the Commission's rules. Thus, Con Edison contends, the generator seeking to sell at wholesale interconnects under state law, while the generator seeking to sell at retail would be forced to interconnect under federal law. Similarly, if the first generator decides not to sell at wholesale, the second generator would have to interconnect under state rules, even if it intends to sell at wholesale."[22]

This comment posed a hypothetical situation that addresses precisely the issues left unanswered in Order 2003C, regarding the interactions between state and FERC jurisdiction. FERC responded to this comment as follows:

> "Con Edison is correct that an Interconnection Customer interconnecting its generator with an electric facility used exclusively to make retail sales, but not currently available for transmission service under an OATT, will do so under state interconnection rules. It does not matter whether the Interconnection Customer intends to sell power at wholesale or retail. However, Con Edison appears to misunderstand what would happen if the Interconnection Customer seeks to interconnect with a facility carrying both energy sold at wholesale and energy sold at retail and plans to sell power only at retail. In that case, because there is no wholesale sale involved, the interconnection would be subject to the state's rules."[23]

[21] Order 2006, para 490.
[22] Order 2006A, para 90.
[23] Order 2006A, para 99.

This statement by FERC distinguishes that even though a line may already carry FERC jurisdictional transactions, an interconnection to that line could and should be done under state rules if the generator intends to sell power at retail (i.e. to the local utility under state tariffs).

FERC Separation of Interconnection from Energy Delivery Issues

One principal test that is often put forward as evidence of transmission impacts is whether power sometimes flows out into the transmission system from the distribution side and therefore "impacts" wholesale power transactions.

FERC distinguished in its rules that an interconnection approval did not grant the right to move the power from the point of interconnection to a customer located somewhere "out there" on the grid.

> "The Commission has also clarified that an Interconnection Customer need not
> enter into an agreement for the delivery component of transmission service to interconnect with a Transmission Providers' Transmission System. At the same time, Interconnection Service or an interconnection by itself does not confer any delivery rights from the Generating facility to any points of delivery."[24]

A separate transmission service request procedure, with its own queue was set up in Order 888 to manage requests to move power across the transmission system. An interconnection request can be made without declaring any intended destination for the power to be generated.

State of Minnesota Existing Assertion of Authority over Interconnections

The state in 2001 created under Minn. Stat. § 216B.1611, a statewide distributed generation interconnection policy for generators in sizes up to 10 MW. The 10 MW limit is a limit the state imposed on itself in statute. The law requires regulated utilities, municipal utilities, and cooperative utilities to develop distributed generation tariffs to provide for the low-cost, safe, and standardized interconnection of these facilities.

The language of the law does not spell out that the required tariff's shall apply to any certain portion of the utility system, such as distribution facilities or transmission facilities, but rather focuses on establish the terms and conditions that govern the interconnection and parallel operation of "on-site distributed generation."

Earlier, in 1981, the state established requirements that apply to all Minnesota electric utilities, including cooperative electric associations and municipal electric utilities to interconnect "qualifying facilities" (QF). This law was created in response to the federal

[24] Order 2003, para 23.

PURPA Laws. The Minnesota Public Utilities Commission established rules, Chapter 7835, to implement the state law.[25] The rules cover rate for energy delivered issues and also contain some requirements regarding interconnections.

7835.2900 INTERCONNECTION PLAN.

The utility may require the qualifying facility to submit an interconnection plan not more than 30 days prior to interconnection in order to facilitate interconnection arrangements. If such a plan is required, it must include no more than:

A. technical specifications of equipment;
B. proposed date of interconnection; and
C. projection of net output or consumption by the qualifying facility when available.

The specific technical standards that these QF's have to meet are left rather ambiguous in the rules.

7835.4800 DENIAL OF INTERCONNECTION APPLICATION.

Except as hereinafter provided, a utility must interconnect with a qualifying facility that offers to make energy or capacity available to the utility. The utility may refuse to interconnect a qualifying facility with its power system until the qualifying facility has properly applied under part 7835.2900 and has received approval from the utility. The utility must withhold approval only for failure to comply with applicable utility rules not prohibited by this chapter or governmental rules or laws. The utility must be permitted to include in its contract reasonable technical connection and operating specifications for the qualifying facility.

There are no upper size limits for QF's specified in Minnesota QF law, but the Federal laws contained an 80 MW upper limit to the definition of "small power production facility." The Minnesota Rules 7835.9910 contains a specific uniform statewide contract that is to be used for facilities under 40 kW size.

There are no references in either Minnesota statute or rule that would limit the applicability of the QF law to any specific portion of the utility owned transmission or distribution system.

A little known and perhaps still unused provision of Minn. Stat. 216B.164, subd. 4(c) is its Wheeling Provisions.

[25] Minn. Rules Chapter 7835 defines "Qualifying facility" as a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, section 292.101 (b) (1), (1981), as applied when interpreted in accordance with the amendments to Code of Federal Regulations, title 18, sections 292.201 to 292.207 adopted through Federal Register, volume 46, pages 33025-33027, (1981).

> "For all qualifying facilities having 30-kilowatt capacity or more, the utility shall, at the qualifying facility's or the utility's request, provide wheeling or exchange agreements wherever practicable to sell the qualifying facility's output to any other Minnesota utility having generation expansion anticipated or planned for the ensuing ten years. The commission shall establish the methods and procedures to insure that except for reasonable wheeling charges and line losses, the qualifying facility receives the full avoided energy and capacity costs of the utility ultimately
> receiving the output."

This statute apparently offers opportunities for intrastate wheeling of power transactions.

MISO Authority Under Other FERC Orders

The MISO was created in response to FERC Order 2000, as a Regional Transmission organization (RTO). FERC encouraged the formation of RTOs to carry out the provisions of its previous Orders 888 and 889 that established open access policies for non utility owned generators to the wholesale interstate power market. Today, most of Minnesota's retail customers are served by utilities that have decided to join the MISO organization.

MISO manages the open access requirements to the transmission system for its members and manages a regional day ahead and real time power market. Part of the MISO activities includes taking over operational control of some of the transmission facilities of the MISO members.

The MISO Charter requires its members to transfer operational control of member owned transmission facilities with voltage levels of 100 kV and above. The actual transfer to MISO of operational control of transmission facilities by Minnesota utilities has been limited to lines with voltages above 100 kV. In Minnesota these are 115 kV, 161 kV, 239 kV, 345 kV, and 500 kV lines. The state utilities have all created itemized lists of the lines that they have given over to MISO operational control. There are no 69 kV or 41.6 kV lines on those lists.

For the transmission facilities under MISO operational control, the MISO becomes the "Transmission Provider" under FERC Interconnection Rules, while the member utilities remain as "transmission owners." Minnesota's utilities become "customers" of MISO when it comes to reserving use of transmission facilities to serve their own native loads. These load serving utilities are considered "network customers" and they have "network service" transmission usage reservations on the MISO operated bulk power system network to serve their retail loads.

UNTANGLING INTERCONNECTION JURISDICTIONAL ISSUES

FERC had to establish boundaries where its rules would be applicable or not in their interconnection proceedings. In the course of making those rules the states were very vocal in reminding FERC that it had no jurisdiction over the distribution system or the

retail provision of electric service. FERC basically claimed the higher voltage "transmission" grid as their jurisdiction, and the local distribution system which is primarily a retail service function, as not in their jurisdiction for interconnections.

Location Issues

The Minnesota legislature requested information regarding interconnections at Locations on the electric grid where a generator interconnection would not be subject to the interconnection rules of the Federal Energy Regulatory Commission. FERC statements in its orders about application of the rules at various locations show that the power system can be discussed in terms of transmission facilities, dual use facilities, and distribution facilities.

Because utilities that are MISO members have transferred facilities of 115 kV and above to MISO as part of their OATT compliance choices, these facilities could be declared to fit the category of transmission facilities used for interstate commerce. However, since FERC declared that QF interconnections remain under state authority, an area of investigation remains regarding how QF connections at or above 115 kV would/should be managed.

In Minnesota, the power system includes lines that can be considered dual use facilities. Examples of these are in the voltage class of 41.6 kV and 69 kV. These lines are primarily used in network configurations but are not under MISO's operational control. FERC has indicated that interconnections to these facilities may or may not be FERC jurisdictional depending on the type of transaction that the interconnecting entity intends to enter into. If the power contract is to be in a wholesale power market, the FERC would assert jurisdiction over the interconnection. If the power is to be sold at retail, the interconnection is non FERC jurisdictional and under state authority.

The state of Minnesota never directed its utilities to send all interconnections on the 69 kV or 41.6 kV lines to MISO or any other RTO. FERC specifically encouraged states in Order 2006 to develop interconnection rules for these retail power sales interconnections.

MISO has put together an interconnection flow process for various types of interconnections. It clearly shows a procedure for interconnections to the distribution system and to the local load serving utility. See a copy of this diagram attached. When there is a potential for transmission impacts from these distribution connections the MISO requires only that the study work be "coordinated" with MISO, not that the interconnection must enter the MISO Queue.

On the local distribution system, the state would appear to have automatic jurisdiction unless the particular facility has some prior existing wholesale power transaction and a new interconnecting entity wants to participate in the wholesale power market.

Power Contracts

FERC also does not regulate power exchanges between retail utilities and their customers located on their assigned service territory distribution system. Evidence of this is in the

PURPA rules where FERC has recognized a state's right to set net energy billing rates above avoided cost values required by federal law.

Our CBED tariffs, that specify front-end loading pricing and 20 year time frames, are a similar transaction between a retail load serving utility and its customers. So when there is an interconnection request for a CBED tariff project that interconnects to the distribution system it would/should not be under FERC's jurisdiction. However, the CBED priority now in statute only grants a priority for the power purchase agreement, not an interconnection priority.

Transmission System Impacts

Load flow changes happen all the time on the transmission system. These variations in power flow on the transmission system take place within the network transmission service arrangements that are in place for load serving purposes. The transmission system effectively cannot distinguish whether the power flow was reduced for a given transmission service reservation because someone turned off a light or supplied power for the light from a local power source. To the extent that power flows from a distribution system sited generator can be considered to take place inside the existing transmission service reservation for the local load serving utility, the system impacts should be minimal.

Additionally FERC distinguished in its Order 2003 that transactions where power flows from a transaction do not enter the interstate power system it is not subject to the FERC Interconnection Rules.[26] If a generator is small enough that it never reduces power flow into the distribution system to zero, it cannot be said to have power enter the interstate power system.

TECHNICAL CONSIDERATIONS

Technical Standards for interconnections are in place at both the state and federal level. State assertion of authority for interconnections would not have to create new reliability standards but rather could simply conform to those already in place.

FEASIBILITY ISSUES

It appears that the state could approve thousands of MW on the customer side of the transmission/distribution substation if the impacts from those interconnections are considered as reducing the flows on the existing transmission service reservations that are in place to serve the local utility's load.

The recently completed West Central CBED Transmission Study developed data regarding the statewide capacity of existing substations to inject power into the 115 kV system from lower voltage facilities.[27] The totals for each transmission planning zone shown below indicate substantial transformer capacity exists for distribution sited generation in Minnesota.

[26] See discussion on p. 4.
[27] See: http://www.capx2020.com/documents.html

West Central Zone	3585 MW
Southwest Zone	1182 MW
Southeast Zone	4000 MW
Northwest Zone	2602 MW
Northeast Zone	2383 MW
Total	13,752 MW

Although it is unlikely that all this injection capability can be utilized if even 20% of this total can be developed on lines below 115 kV there would be 2,750 more MW of generation added to the Minnesota system.

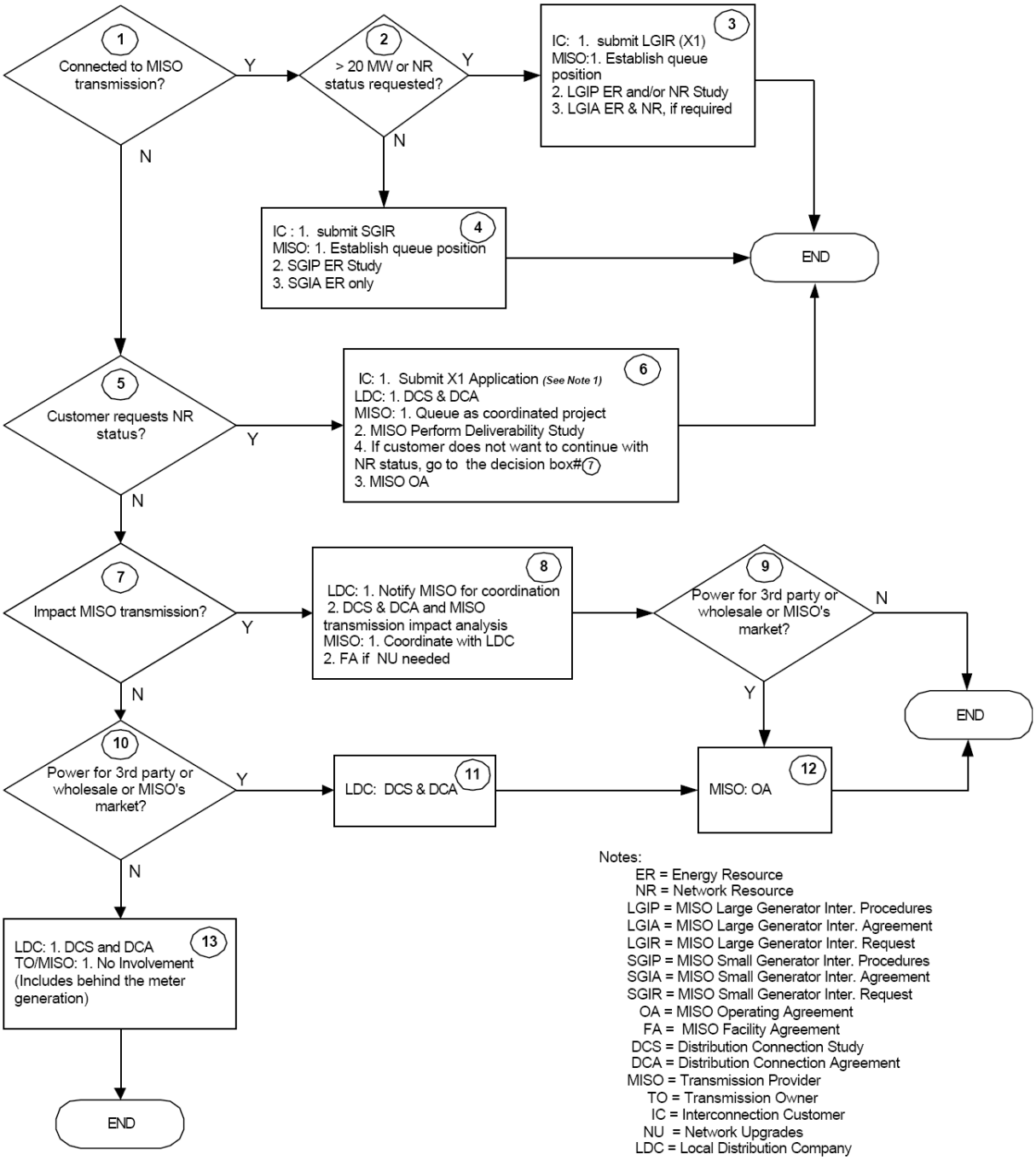
RECOMMENDATIONS

The following observations and recommendations can be made regarding potential for and barriers to state jurisdiction of interconnection procedures.

1) Although the state has standard interconnection procedures in place for onsite generation, the rules do not have sufficient scope to cover the interconnection of dispersed generation resources at MW levels that are possible on “dual use” facilities.
2) CBED contracts, as retail tariffs can be connected under state jurisdiction to dual use facilities. State level interconnection rules should be developed for these and other retail tariff transactions.
3) The state should set up a state level queue system for distribution interconnections that would operate in parallel with the transmission interconnection queue that MISO operates, the state level queue studies would "coordinate" with MISO as necessary.
4) The queue process should be a two tiered process where an initial request would be put in preliminary queue where the feasibility of the interconnection would be analyzed. If an interconnection request passed the feasibility test it would stay in the preliminary queue until such time as it got a power purchase agreement. Then it would move to the final queue where the system impacts would be completely analyzed.
5) Since load serving utilities have in place transmission service reservations to serve load, they should insist that impacts to MISO from the power flow from a CBED generator should be considered to be made under the umbrella of that prior existing approved usage of the transmission system. As a practical matter most always the flows in those load serving reservations would be reduced by the addition of additional local generation. It would be rare that the flow directions would actually zero out or reverse.

This is a complicated legal and regulatory subject. It appears that the state can expedite review of CBED interconnections with its own queue process and also avoid the can of worms of MISO impacts with properly sized generators, connected to the distribution system, and selling to their local utility.

Generator Interconnection Study & Agreement Jurisdiction in MISO footprint



Special Cases:
QF connecting to-- A) Transmission: submit request to MISO B) Distribution: submit request to LDC. LDC coordinates with MISO
Gen connecting to non-MISO facilities (e.g. muni) located within MISO local balancing authority-- submit request to Muni TP. Muni TP to coordinate with MISO

Note 1: MISO tariff does not currently allow for generators connecting to non-MISO facilities (e.g. distribution system) to qualify as an NR under LGIP. However, this option is available for information purposes only.

http://www.midwestmarket.org/publish/Document/3b0cc0_10d1878f98a_-7e1a0a48324a/Visio-MISO%20GI%20Study%20&%20Agreement%20Options_rev2.pdf?action=download&_property=Attachment

Appendix H
Legal Memo on State Jurisdiction

LEONARD STREET AND DEINARD

M E M O R A N D U M

TO: Glen Skarbakka and Donna Stephenson

FROM: Jim Bertrand and Brian Meloy

RE: White Paper on Interconnection Issues and Jurisdiction

DATE: January 31, 2008

We have had an opportunity to review Mike Michuad's White Paper on Untangling FERC and State Jurisdiction Interconnection issues and Opportunities for Dispersed Generation ("White Paper"). As discussed below, Mr. Michuad's analysis with respect to the jurisdictional divide is reasonably accurate and serves to highlight the complexity of the issue.

I. Executive Summary

Mr. Michaud's jurisdictional analysis relies primarily on the Federal Energy Regulatory Commission's ("FERC" or "Commission") statements in Order Nos. 2003[1] and 2006[2] -- the Commission's Orders on the Standardization of Generator Interconnection Agreements and Procedures. Since the issuance of these Orders, FERC has delineated its jurisdiction as follows:

(1). FERC does not have jurisdiction over a generator interconnecting to local distribution facilities that are unavailable for jurisdictional transmission service under a FERC-approved Open Access Transmission Tariff ("OATT") when the interconnection request is made.

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[1] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 *Fed. Reg.* 49,845 (Aug. 19, 2003), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 *Fed. Reg.* 15,932 (Mar. 26, 2004), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 *Fed. Reg.* 265 (Jan. 4, 2005), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 *Fed. Reg.* 37,661 (June 30, 2005), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,190 (2005); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

[2] *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 *Fed. Reg.* 34,190 (June 13, 2005), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,196 (2005); *see also Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking*, 68 *Fed. Reg.* 49,974 (Aug. 19, 2003), *FERC Statutes and Regulations, Proposed Regulations 1999-2003* ¶ 32,572 (2003).

(2). FERC can assert jurisdiction over generator interconnections to local distribution facilities, only when there is a pre-existing interconnection **and** a wholesale transaction over the facilities prior to the new interconnection request being made.

Accordingly, the critical inquiry is whether the local distribution facilities are used exclusively to deliver energy to retail customers at the time of the interconnection request.[3] The application of this standard is heavily fact dependent in at least two respects: (1) it must first be determined that the facilities with which the generator seeks to interconnect constitute local distribution facilities and not FERC-jurisdictional transmission facilities;[4] and (2) if the facilities are local distribution facilities, are they being used exclusively to deliver energy to retail customers at the time of the interconnection request (*i.e.,* not subject to a FERC-approved OATT).

With respect to the first inquiry, the Minnesota Public Utilities Commission has determined that facilities under 50 kV are presumptively distribution. Facilities over 50 kV are presumptively transmission. Within the Midwest Independent Transmission System Operator, Inc. ("MISO") footprint, service over all member transmission facilities – not simply those facilities under its operational control – is covered by the MISO OATT.

Accordingly, a generator seeking to interconnect to facilities below 50 kV can do so under State oversight if the facilities are used exclusively to deliver energy to retail customers at the time of the interconnection request is made – regardless of whether the new interconnection will facilitate a wholesale transaction. Whether a second generator seeking to interconnect to the same facilities may interconnect under State procedures, however, depends on whether the facilities are facilitating a wholesale transaction for the first generator (*i.e.,* whether the facilities are providing "Wholesale Distribution Service" under MISO's OATT). If so, then the second generator must interconnect under MISO's Tariff.

II. Discussion

A. The State/Federal Jurisdictional Divide

Initially, the Supreme Court has affirmed that it is FERC, not state commissions, which must make the factual and legal determinations to define FERC's own jurisdiction, even if those

[3] *See Detroit Edison Co. v. FERC*, 334 F.3d 48, 51 (D.C. Cir. 2003) ("[W]hen a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA § 201(b)(1).") and *DTE Energy Co. v. FERC*, 394 F.3d 954 (D.C. Cir. 2005).

[4] To determine what facilities would be under FERC's jurisdiction and what facilities would remain under the state's jurisdiction for purposes of retail stranded cost adders or other retail regulatory purposes, in Order No. 888 the Commission developed a seven factor test to determine what facilities are transmission and what facilities are local distribution facilities. The seven factors include: (1) local distribution facilities are normally in close proximity to retail customers; (2) Local distribution facilities are primarily radial in character; (3) power flows into local distribution systems; it rarely, if ever, flows out; (4) when power enters a local distribution system, it is not re-consigned or transported on to some other market; (5) power entering a local distribution system is consumed in a comparatively restricted geographical area; (6) meters are based at the transmission/local distribution interface to measure flows into the local distribution system; and (7) local distribution systems will be of reduced voltage.

decisions also delineate the scope of state jurisdiction.[5] Though some ambiguity remains, since the issuance of Order Nos. 2003 and 2006 the Commission has clarified its jurisdiction with respect to generator interconnections in the context of reviewing compliance filings made by Regional Transmission Organizations ("RTOs") and transmission owners ("TOs").

1. MISO's Order No. 2003 Compliance

The Commission explained its limited authority to assert jurisdiction over generators interconnecting to local distribution facilities in reviewing MISO's incorporation of FERC's Large Generator Interconnection Procedures ("LGIP") and Large Generator Interconnection Agreement ("LGIA") into its Tariff:

> Midwest ISO LGIP and LGIA may apply to 'distribution' facilities only when such facilities are subject to the Midwest ISO OATT **and** the Interconnection Customer intends to make a wholesale sale in interstate commerce. This conclusion results in a relatively small amount of distribution facilities that will be subject to the LGIP and LGIA. Furthermore, the expression of the Commission's jurisdiction in Order Nos. 2003 and 2003-A does not extend the applicability of the LGIP and LGIA to 'distribution facilities' that are not subject to a Commission-approved OATT at the time the Interconnection Request is made, even if the Interconnection Customer intends to make a jurisdictional wholesale sale.[6]

Accordingly, the Commission determined that the LGIP and LGIA would not apply to distribution facilities not subject to the MISO OATT at the time the interconnection request is made – regardless of whether there is intent to make a wholesale sale or transmit in interstate commerce.[7] The Commission was careful to point out, however, that MISO's OATT also covers facilities not under MISO's operational control.[8] In particular, the Commission rejected MISO's proposed definition of "Transmission System" that included only facilities that are "controlled or operated by the Transmission Provider and Transmission Owner that are used to provide transmission service or Wholesale Distribution Service under the Tariff." The Commission concluded:

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[5] *FPC v. S. Cal. Edison Co.,* 376 U.S. 205, 210 n.6 (1964) (the determination of the jurisdictional status of facilities "involves a question of fact to be decided by the FPC as an original matter."); *see also, Western Massachusetts Electric Co.,* 61 FERC ¶ 61,182, at p. 61,661 (1992), *aff'd,* 165 F.3d 922, 926 (D.C. Cir. 1999).

[6] *See Midwest Independent Transmission System Operator, Inc.,* 109 FERC ¶ 61,085 at P 46 (2004) ("Order on Rehearing, Clarification, and Compliance Filing.").

[7] *Id.* at P 43.

[8] Mr. Michaud appears to suggest that only those transmission facilities that have been turned over to MISO's operational control are covered by the MISO OATT:

> Because utilities that are MISO members have transferred facilities of 115 kV and above to MISO as part of their OATT compliance choices, these facilities could be declared to fit the category of transmission facilities used for interstate commerce. [White Paper at p. 12.]

> This definition is unduly restrictive because Midwest ISO does not generally operate or control facilities operating at voltages below 100 kV, ***while service over such facilities is provided under the Midwest ISO OATT.*** Rather, the definition of Transmission System should include facilities that are 'controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service or Wholesale Distribution Service under the Tariff.'[9]

In this respect, the MISO Orders confirm that non-transferred transmission facilities as well as those distribution facilities used to provide Wholesale Distribution Service[10] under MISO's Tariff are FERC-jurisdictional and covered by the MISO OATT.[11] A generator seeking to interconnect to such facilities (regardless of voltage) may be required to adhere to the MISO's LGIP.

2. Case Specific Applications in PJM

More recently, the Commission evaluated its jurisdiction with respect to interconnections within the PJM Interconnection LLC ("PJM") footprint. In *PJM Interconnection LLC,*[12] for

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[9] *Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶ 61,027 at P 87 (2004). Emphasis added. In approving the formation of MISO, the Commission specifically declined to determine that all facilities not turned over to MISO (*i.e.,* less than 100 kV) are properly categorized as distribution, explaining:

> We will not classify all facilities that are not subject to the control of the ISO as distribution. While the Ohio Commission is correct that this would obviate the need for application of the seven factor test to identify the T/LD split, we have no basis to conclude that all facilities below 100 kV are performing a distribution function.

See Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231, 62,172 (1998) ("Order Conditionally Authorizing Establishment of Midwest Independent Transmission System Operator and Establishing Hearing Procedures").

[10] MISO's Energy Markets Tariff reflects this distinction in the definition of jurisdictional "Distribution Facilities:"

> Distribution Facilities: The low-voltage transmission facilities owned or controlled or operated by the Transmission Provider, or a Transmission Owner, or both, and used in a sale for resale of, or to transmit, electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission filed Open Access Transmission Tariff (i.e., to provide Wholesale Distribution Service).

See Section 1.75 of MISO's Energy Markets Tariff. Therefore, local distribution facilities providing "Wholesale Distribution Service" under Schedule 11 of MISO's Tariff would appear to constitute facilities subject to the MISO OATT.

[11] As the Commission confirmed in Order No. 2003-B, "[w]e grant rehearing to clarify . . . a facility may be considered dual use only if it serves both state- and Commission-jurisdictional functions at the time the Interconnection Request is submitted. As a result, ***a dual use facility must be subject to an OATT***." Order No. 2003-B at P 14. Emphasis added.

[12] *PJM Interconnection LLC*, 114 FERC ¶ 61,191 (2006), *order denying reh'g,* 116 FERC ¶ 61,102 (2006).

example, the Commission rejected interconnection agreements governing the interconnection of a 53 MW[13] ("West Brooklyn Facility") and a 30 MW wind generating facility ("Sublette Facility") to Commonwealth Edison's ("ComEd") local distribution facilities as beyond the Commission's jurisdiction. The facts are illustrative.

Under the filed agreements, the West Brooklyn Facility would be interconnected to a radial 34 kV line that runs three miles to a ComEd substation, where the output would be transformed to 138 kV and connected to a 138 kV radial distribution line that runs 19 miles to a substation that forms part of the PJM transmission system. The Sublette Facility would be interconnected to a 34 kV line that extended 20 miles in one direction to a substation that forms part of the PJM transmission system and seven miles in the other direction to a ComEd substation, where the Sublette output will be transformed to 138 kV and connect to a 138 kV radial distribution line that runs 19 miles to a substation that forms part of the PJM transmission system.

In evaluating whether the existing local distribution facilities where already facilitating wholesale transactions at the time the interconnection requests were made, the Commission noted that Mendota, a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), was already interconnected to the same 138 kV line as the West Brooklyn and Sublette Facilities. In addition, Zahren Alternative Power Corporation, a waste gas QF, was interconnected to the same 34 kV line to which the Sublette Facility would connect.

In rejecting the interconnection agreements, however, the Commission noted that under Order No. 2003, it may assert jurisdiction over interconnections to local distribution facilities where: "(1) there is a preexisting interconnection; ***and*** (2) there is a wholesale transaction over these local distribution facilities prior to the new interconnection request being made."[14] In considering the impact of the existing QF interconnections, the Commission explained:

> Where a QF sells its entire output to the interconnected utility, the utility is presumed to use the power purchased from a QF to serve retail load. And where the utility-purchaser of the QF output is selling the QF output at retail, no jurisdictional use of the utility-purchaser's distribution line takes place. Here, Mendota sells its entire output to ComEd and ComEd is presumed to use that power to serve retail load. Neither GSG nor the record in this proceeding present any evidence demonstrating that ComEd's distribution line is being used for wholesale transactions. Therefore, because wholesale transactions are not being conducted on ComEd's local distribution facilities pursuant to a Commission-approved OATT, the Commission does not have jurisdiction over GSG's proposed interconnections.[[15]]

[13] It should be noted that the Commission's jurisdiction is neither expanded nor diminished based on the size of the interconnecting generator. In Order No. 2006 (pertaining to generators smaller than 20 MW), the Commission stated that its assertion of jurisdiction is identical to the jurisdiction asserted in Order No. 2003 (pertaining to generators greater than 20 MW). *See* Order No. 2006 at P 481.

[14] *PJM Interconnection LLC*, 114 FERC ¶ 61,191 at P 14, citing Order No. 2003 at P 804. Emphasis added.

[15] *PJM Interconnection LLC*, 116 FERC ¶ 61,102 at P 20.

The Commission contrasted this situation to a case where a utility transmits QF power in interstate commerce to a third party. In such a case, the Commission noted that "more than just an interconnection to accomplish a sale under PURPA is involved. Instead, a Commission jurisdictional transaction takes place, and both the transmission in interstate commerce and the agreements affecting or relating to such service are subject to the Commission's exclusive jurisdiction."[16]

In another case, the Commission rejected interconnection agreements associated with the interconnection of two 0.87 MW landfill gas generators to PECO Energy Company's ("PECO") local distribution system.[17] In order to determine whether FERC had jurisdiction over the interconnections, Commission Staff issued a data request to PJM requesting the following information:

> b) Please describe how PECO's distribution system, to which SECCRA will interconnect, is currently used. For example, ***is there any Commission-jurisdictional delivery service currently being provided over these distribution facilities,*** or are they currently used only for retail service?
>
> c) If these distribution facilities are currently used to provide Commission-jurisdictional service:
>
> > i) Please provide the docket numbers where the Commission approved the transaction.
> >
> > ii) Please provide a one-line diagram of PECO's distribution system, coded to show any Commission-jurisdictional service currently being provided over the distribution facilities to which SECCRA will interconnect.[[18]]

As is apparent, the chief inquiry was whether ***"there [is] any Commission-jurisdictional delivery service currently being provided over these distribution facilities."*** Based upon PJM's response, the Commission found that the distribution facilities to which the generators would interconnect were currently being used exclusively for retail service at the time the request for interconnection service was made, explaining:

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[16] *Id.* at P 21. Therefore, Mr. Michaud correctly concluded "that interconnections of QF facilities where all the power is sold to the local utility remain state jurisdictional interconnections." White Paper at p. 3. *See also,* Order No. 2003 at P 814 ("[T]he Commission has jurisdiction over a QF's interconnection to a Transmission System if the QF's owner sells any of the QF's output to an entity other than the electric utility directly interconnected to the QF.").

[17] *PJM Interconnection, L.L.C.,* 115 FERC ¶ 61,356 (2006).

[18] *See* the Commission's March 31, 2006 Deficiency Order in Docket No. ER06-611-000. Emphasis added.

> In Order No. 2003, the Commission found that it does not have jurisdiction over an interconnection where the interconnection customer seeks to interconnect to a 'local distribution' facility that is unavailable for jurisdictional transmission service under a Commission-approved OATT at the time an interconnection request is made. Thus, under Order No. 2003, in order for the Commission to assert jurisdiction over interconnections to local distribution facilities, there must be a preexisting interconnection and a wholesale transaction over these local distribution facilities prior to the new interconnection request being made. In the absence of these requirements being met, and as discussed below, we find that the Commission lacks jurisdiction under Order No. 2003 over interconnections to these local distribution facilities.[[19]]

In this respect, the *PJM* cases represent a departure from the Commission's statement in Order No. 2006-A that "if the Interconnection Customer seeks to interconnect with a facility carrying both energy sold at wholesale and energy sold at retail and plans to sell power only at retail. In that case, because there is no wholesale sale involved, the interconnection would be subject to the state's rules."[20] Under the subsequently issued *PJM* cases, the critical element in determining jurisdiction was the status of the distribution facility at the time of the interconnection request. According to FERC, it does not have jurisdiction over a generator interconnecting to local distribution facilities that are unavailable for jurisdictional transmission service under a FERC-approved OATT when the interconnection request is made. FERC can assert jurisdiction over generator interconnections to local distribution facilities, only when there is a pre-existing interconnection and a wholesale transaction over the facilities prior to the new interconnection request being made.

3. Minnesota Generally Considers Facilities Below 50 kV to be Distribution Facilities.

The Minnesota Public Utilities Commission has determined that lines over 50 kV located in Minnesota are presumptively transmission, unless demonstrated to be distribution assets after applications of relevant factors, including FERC's seven-factor test.[21] Minnesota utilities' Tariffs generally reflect this distinction with respect to the interconnection of distributed generation resources.[22] As such, while Mr. Michaud notes that the "state of Minnesota never

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[19] *Id.* at P 10.

[20] It should be noted that in reviewing ISO-NE's Order No. 2006 Compliance, the Commission similarly stated "where the distribution facilities have a dual use, that is, the facilities are used for both wholesale sales and retail sales, Order No. 2003 applies to these interconnections only for the purpose of making sales of electric energy for resale in interstate commerce." *ISO New England, Inc.,* 115 FERC ¶ 61,050 at P 14 (2006). Though inconsistent with the *PJM Orders,* this provides support for Mr. Michaud's conclusion that "C-BED contracts, as retail tariffs can be connected under state jurisdiction to dual use facilities." White Paper at p. 14.

[21] *See* ORDER ADOPTING BOUNDARY GUIDELINES FOR DISTINGUISHING TRANSMISSION FROM GENERATION AND DISTRIBUTION ASSETS, Docket E-999/CI-99-1261 (July 26, 2000).

[22] *See e.g.,* Ottertail Power's interconnection requirements at http://www.otpco.com/NewsInformation/GeneratorInterconnectTrans.asp

directed its utilities to send all interconnections on the 69 kV or 41.6 kV lines to MISO or any other RTO",[23] arguably, the presumption is that MISO generally has jurisdiction over the interconnection on facilities above 50 kV, (*i.e.*, 69 kV and above) and may have jurisdiction over facilities at lower voltages that provide Wholesale Distribution Service.[24]

III. Conclusion

As is apparent from the discussion above, while the Commission's recent delineation of its jurisdiction vis-à-vis the state is ostensibly clear, it is difficult to apply these jurisdictional principles in the absence of specific facts. This added complexity erects a barrier for states such as Minnesota that are attempting to develop dispersed interconnection procedures. However, in the face of this complexity, the rule of reason can be applied. As FERC noted, Order Nos. 2003 and 2006 should only apply to generator interconnections to local distribution facilities in very limited circumstance, *i.e.*, where there is a preexisting interconnection and wholesale transaction.[25] In Minnesota, local distribution facilities are presumptively defined as those facilities below 50 kV. For generators seeking to interconnect at facilities above 50 kV, any state standard must be flexible enough to reflect that additional analysis is likely necessary to determine the procedures that should be applied.

[23] White Paper at p. 12.

[24] As the Commission noted in Order No. 2003, the "Final Rule applies to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, ***may be*** used either to transmit electric energy in interstate commerce ***or*** to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT." Order No. 2003 at P 803. Emphasis added.

[25] In MISO, the delivery of purchased power over distribution facilities for resale is Wholesale Distribution Service under Schedule 11 of MISO's OATT.

Appendix I
Additional Comments From Task Force Members

Wolf Wind Development

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Greetings Legislature,

Wolf Wind was pleased to participate in the CBED Task Force. It has always been Wolf Wind's goal to provide maximum benefit to the communities in which wind farms are located. We feel that the focus of the CBED law should be the same.

With a task force of such a large size it was difficult to reach consensus on many concepts. The group as a whole did not adopt several of the ideas we felt were critical for the legislature to consider. Also the work group was unable to analyze a generic performa and discuss the details of what items should be considered "community" return and how much each item should be counted.

We believe that separating the qualities that are direct payments to the community, or not universal to all wind projects, will be a more useful gauge of community return. Perhaps by limiting the list of things that count as community return it will make the calculation simpler and more difficult to manipulate. After decisions have been made regarding what is counted and what isn't, the 51% community return in the statute will have to be revisited to determine if it is appropriate.

Items that Wolf Wind Believes Should Count as Community Return:

Land Leases: Land leases are the most direct form of payment into the community in which the project is located.

Revenue participation: The payments to landowners or project owners that are based on % of gross sales.

Management Fees: Payments made for on site project management. Different than project O&M Duties for example, road maintenance, weed control, site inspection. These fees have in the past been paid to local owners.

Ownership: The % of ownership by "qualified owners". For example if the locals own 1% for the life of the project, that would equate to 1% of gross revenues.

Items that Wolf Wind Believes Should Not Count as Community Return:

Development Fees: The developer should have every incentive to place as much return in the local community as possible. If development fees count towards reaching the bar, the developer and local participants will be in competition for the same money pool.

O&M: The benefits of having local maintenance jobs are undeniable. However these benefits are universal among all wind projects.

Construction Jobs: These jobs do have impact on local comminutes. Cbed projects have a higher impact than Corporate projects, by using more local contractors. However, it may be difficult to quantify the extra benefits of any particular project.

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Interest: Even if local financial institutions are used for debt, because of lending limits only a small portion of the debt is actually being carried by the bank.

A final thing to consider is the 15% ownership cap. All you need is seven people to diversify any project to meet the statute. If a 200 MW project had seven qualifying owners each would have reversionary interest in 28MW. This we would argue is not Cbed. The 15% should be replaced by a formula:

% ownership * Project Size < 6 MW

This would ensure proper diversification. The project size in the formula would have to be the same standards as used for the EQB permitting process to prevent slicing a 200 MW project into smaller pieces.

Thank you,

Ryan M Wolf

Ryan Wolf

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