

THOUGHT LEADERSHIP

LEGAL UPDATES

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FERC's Generator Interconnection Queue Reform Makes Welcome Improvements, but the Devil Will Be in the Details of the Compliance Filings

On July 28, 2023, the Federal Energy Regulatory Commission (FERC) issued a landmark order that reforms the generator interconnection process in response to a clear need for nation-wide improvements due to rapidly changing resource mix, market forces, and emerging technologies. Order No. 2023, *Improvements to Generator Interconnection Procedures and Agreements*, adopts three main areas of reforms to: (1) implement a first-ready, first-served cluster study process; (2) increase the speed of interconnection queue processing; and (3) incorporate technological advancements into the interconnection process. The reforms are intended to address interconnection queue backlogs, improve cost and timing certainty, and prevent undue discrimination for new technologies.

First-ready, first-served cluster study process

In this category of reforms, the new rule requires transmission providers to comply with the following:

1. Publicly post available information pertaining to generator interconnection;
2. Use cluster studies as the interconnection study method;
3. Allocate cluster study costs on a pro rata and per capita basis;
4. Allocate network upgrade costs based on a proportional impact method;

5. Impose withdrawal penalties on interconnection customers for withdrawing from the interconnection queue, with certain exceptions; and
6. Adopt a transition process to move from the existing serial interconnection process to the new cluster study process.

Regarding allocation of cluster study costs, Order No. 2023 grants transmission providers flexibility to propose a method in their tariff for allocating these interconnection study costs. Regarding allocation of network upgrade costs, Order No. 2023 requires transmission providers to allocate network upgrade costs based on a “proportional impact method,” which is a technical analysis that determines the degree each interconnection customer in a cluster study contributes to the need for the network upgrade. However, the costs of network upgrades located at substations are required to be allocated equally among each generating facility that interconnects to the same substation.

The new rule also requires interconnection customers to comply with the following:

1. Pay study and commercial readiness deposits as part of the cluster study process; and
2. Demonstrate site control at the time of submission of the interconnection request.

Rather than requiring a phased study deposit approach where interconnection customers would be required to pay a deposit at each phase of the cluster study process, Order No. 2023 requires transmission providers to collect a single study deposit upon entry into the cluster. Regarding site control, Order No. 2023 requires interconnection customers to provide evidence of 90% site control at the time of submission of the interconnection request, and 100% site control at the time of the execution of the facilities study agreement and the filing or execution of the Large Generator Interconnection Agreement (LGIA).

Increase the speed of interconnection queue processing

In this category of reforms, the new rule eliminates the “reasonable efforts standard” for transmission providers to conduct interconnection studies. Further, it imposes a financial penalty on transmission providers that fail to meet interconnection study deadlines. While there is a grace period for studies that are delayed by 10 business days or fewer, penalties will be capped at 100% of the study deposit amounts. Furthermore, Order No. 2023 establishes a process for transmission providers to appeal penalties to the commission.

The new rule also speeds processing time by establishing an affected system study process and pro forma affected system agreements. The defined affected system study process eliminates the ad hoc nature of many current processes employed by transmission providers and ensures a uniform and

more predictable path to interconnection. Order No. 2023 also adds a pro forma affected system facilities construction agreement to the pro forma LGIP.

Incorporate technological advancements

In this category of reforms, Order No. 2023 requires transmission providers to comply with the following:

1. Allow more than one generating facility to co-locate on a shared site behind a single point of interconnection and share a single interconnection request;
2. Evaluate the proposed addition of a generating facility at the same point of interconnection prior to deeming such an addition a material modification if the addition does not change the originally requested interconnection service level;
3. Allow interconnection customers to access the surplus interconnection service process once the original interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA;
4. Use operating assumptions in interconnection studies that reflect the proposed charging behavior of an electric storage resource; and
5. Evaluate the list of alternative transmission technologies enumerated in this final rule during the generator interconnection study process.

The new rule also requires interconnection customers with nonsynchronous facilities to comply with the following:

1. Provide the transmission provider with the models needed for accurate interconnection studies; and
2. Have the ability to maintain power production at pre-disturbance levels and provide dynamic reactive power to maintain system voltage during transmission system disturbances and within physical limits.

Additionally, all newly interconnecting large generating facilities are required to provide ride through capability consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis.

What this means to you

Order No. 2023 implements these reforms by revising FERC's pro forma Large Generator Interconnection Procedures (LGIP), pro forma Large Generator Interconnection Agreement (LGIA),

pro forma Small Generator Interconnection Procedures (SGIP), and pro forma Small Generator Interconnection Agreement (SGIA).

Transmission providers, including RTOs and ISOs, are required to submit compliance filings to FERC with revisions to their LGIP, LGIA, SGIP, and SGIA that reflect FERC's directives in Order No. 2023. Transmission providers' compliance filings are due within 90 days of publication of Order No. 2023 in the *Federal Register*. The transition study process of a given transmission provider will begin on the commission-approved effective date of its compliance filing. The first cluster study process will begin after the transition study process concludes.

Additional details are available at: Order No. 2023, 184 FERC ¶ 61,054 (2023), FERC staff's presentation, and FERC staff's fact sheet.

Contact us

For more information about Order No. 2023, including how it affects your business, please contact Linda Walsh, Fred Jauss, Sylvia Bartell, Michael Blackwell, or your Husch Blackwell attorney.