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FERC Issues Sweeping, Landmark Reforms to Generator Interconnection Processes

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On July 27, 2023, the Federal Energy Regulatory Commission ("FERC") issued its highly anticipated final rule ("Order No. 2023") to reform generator interconnection processes. In Order No. 2023, FERC found that current procedures, which can slow deployment of new electric generation and energy storage resources and impose dramatic and sometimes unexpected costs on project developers and funders, are unjust and unreasonable.¹ Order No. 2023 will have substantial implications for developers of, and investors in, generation facilities (including energy storage) across the U.S., and have the potential to result in significant improvements to the interconnection process and reduce the lengthy interconnection backlog that exists in many parts of the U.S.

Touted as "landmark regulation" by Acting Chair Willie Phillips, Order No. 2023 reflects the result of several years of FERC proceedings on interconnection policy and substantially revises FERC's *pro forma* Large Generator Interconnection Procedures ("LGIP") and *pro forma* Large Generator Interconnection Agreement ("LGIA") in the following ways:

Interconnection Study Reforms

- **First-Ready, First-Served Cluster Study Process:** Reforms contained in Order No. 2023 implement a mandatory cluster study process, which will require evaluation of groups of similarly timed generating facilities' interconnection requests at one time. Projects will not advance through the process unless they are commercially ready. Other reforms addressed in Order No. 2023, like withdrawal penalties and site-control requirements (addressed below), are aimed at reducing speculative use of queue positions.²

- **Cost Allocation Reform:** Order No. 2023 reforms cost allocation for network upgrade costs ultimately assigned to projects. Transmission providers will be required to allocate all substation network upgrade costs on a per capita basis (i.e., equally to each interconnecting facility in the cluster at the same substation), while system network upgrade costs will be allocated on a proportional impact method. Costs for any necessary interconnection facilities will be directly assigned to projects, and when projects share interconnection facilities, costs are to be allocated among them on a per capita basis, unless they mutually agree to a different allocation. Cost allocation for interconnection studies is also reformed, with flexibility for transmission providers to assign costs either on a per capita basis (number of requests in the cluster) or a pro rata basis (by megawatt).³
- **Deposit Requirements:** Order No. 2023 places new deposit requirements on interconnection customers upon entry into a study cluster.⁴ The size of a project's deposit depends on proposed generating capacity. Order No. 2023 notes that, although this approach does not "perfectly approximate" study costs, such costs will be trued up at the end of the interconnection process, with refunds of any excess deposit amounts.
- **Site Control:** Order No. 2023 requires interconnection customers to provide evidence of 90% site control upon submission of an interconnection request and 100% at the time of execution of a facilities study agreement. Site control can be demonstrated by: (1) ownership of, a leasehold interest in, or a right to develop a site of sufficient size; (2) an option to purchase or acquire a leasehold site of sufficient size; or (3) any other documentation that clearly demonstrates the right to exclusively occupy a site of sufficient size. Site control for co-located facilities must be demonstrated by a contract or other agreement allowing for shared use for all generating facilities that are co-located. Evidence of site control cannot be used across multiple requests, unless the applicable site is large enough to accommodate such multiple facilities.⁵ FERC declined to allow deposits in lieu of site control, except in cases of qualifying regulatory limitations.⁶
- **Withdrawal Penalties:** Order No. 2023 revises the *pro forma* LGIP to require transmission providers to assess penalties against customers that choose to withdraw or otherwise do not reach commercial operations unless: (1) the customer withdraws after receiving the most recent cluster study report, and their assigned costs have increased by 25% compared to the previous cluster study report; or (2) the customer withdraws after receiving the individual facilities study report and assigned costs have increased by more than 100% when compared to the costs identified in the cluster study report.

Reforms for Faster Processing

- **Firm Deadlines with Monetary Penalties:** Order No. 2023 eliminates the prior “reasonable efforts” standard for transmission providers in meeting established interconnection milestones in favor of **firm** study deadlines and associated penalties for transmission providers. Penalties range from \$1,000 to \$2,500 per every business day beyond the tariff-specified deadline for cluster studies, restudies, affected systems and facilities studies. The penalties are designed to incentivize transmission providers to ensure the timely processing of interconnection requests.
- **Standardized Approach to Affected Systems:** Order No. 2023 recognizes that delays by affected system operators (i.e., nearby transmission system owners that are affected by an interconnection request on another system) in conducting their own studies are major drivers for interconnection queue backlogs. Order No. 2023 therefore establishes an affected systems study process within the *pro forma* LGIP to provide greater certainty to interconnection customers and better align the affected system study process with the first-ready, first-served cluster study process. Order No. 2023 also establishes *pro forma* affected systems agreements.⁷

Reforms to Incorporate Better Technology

Certain reforms in Order No. 2023 seek to incorporate technological advances and thereby increase flexibility in the interconnection process, including the following:

- **Co-Located Generating Facilities Share Interconnection Requests:** Transmission providers must allow more than one generating facility (defined in the LGIP and LGIA to include energy storage facilities)⁸ to co-locate behind a single point of interconnection and share an interconnection request. These co-located facilities can be owned by one interconnection customer or by multiple interconnection customers that have a shared land use agreement. To share an interconnection request, the projects must connect at the same voltage. FERC clarified, however, that interconnection customers are not required to share a single interconnection request for multiple generating facilities located on the same site.
- **Modification Process:** Transmission providers may no longer automatically deem a request to add a generating facility to an interconnection request to be a material modification prior to the interconnection customer returning the executed facilities study agreement. If the modified interconnection request has a larger site, the interconnection customer must provide evidence of site control with its modification request. FERC also determined that neither (1) a decrease of up to 60% of electrical output prior to the return of the cluster study agreement, nor (2) an additional 15%

decrease of electrical output that occurred due to a decrease in plant size or interconnection level prior to the return of the executed interconnection facilities study is a material modification.

- **Surplus Interconnection Service:** Transmission providers must allow interconnection customers to access a surplus interconnection service process once a customer has an executed LGIA or requests the filing of an unexecuted LGIA.⁹ Surplus interconnection service is the unused portion of an existing interconnection customer's approved interconnection service that may be used by a new interconnection customer by including an additional generating facility behind a single point of interconnection. Any requests for surplus interconnection service will continue to be processed as received and outside the cluster study process.
- **Operating Assumptions for Energy Storage Resources:** Order No. 2023 requires transmission providers, at the request of an electric storage interconnection customer, to base interconnection-study operating assumptions on the customer's proposed charging behavior. In an initial interconnection request, a customer must note whether the electric storage resource will charge during peak load conditions. Transmission providers must allow interconnection customers to resubmit operating assumptions if the transmission provider finds them to be in conflict with good utility practice, and they may also require interconnection customers to install additional control technologies. Transmission providers must also consider proposed charging behavior of electric storage resources in modification requests and surplus interconnection service requests.
- **Enumerated Alternative Transmission Technologies:** Transmission providers must revise their *pro forma* LGIP and small generator interconnection procedures to evaluate alternative transmission technologies in all cluster studies, including static synchronous compensators, static VAR compensators, advanced power flow control devices, transmission switching, synchronous condensers, voltage source converters, advanced conductors and tower lifting. Transmission providers may also evaluate additional alternative transmission technologies. Transmission providers retain sole discretion to determine whether the alternative transmission technologies or traditional network upgrades are appropriate in a specific request, and must, in the interconnection study report, include an explanation of the results of the evaluation of the required alternative transmission technologies for feasibility, cost and time savings as an alternative to a traditional network upgrade.
- **Modeling and Ride-Through Requirements for Non-Synchronous Facilities:** Order No. 2023 adopts the requirement that interconnection requests for non-synchronous resources must include accurate and validated modeling information. Non-synchronous generating facilities are also required, within any physical limitations of the generating facility, to configure or set their facilities to be able to ride through disturbances and continuing to support system reliability. All new large

generating facilities must provide frequency and voltage ride-through capabilities consistent with standards applied to other facilities within the balancing authority area.

Implementation

Order No. 2023 will be effective 60 days from publication in the Federal Register, and transmission providers, including regional transmission organizations (“RTOs”), independent system operators (“ISOs”) and smaller, FERC-jurisdictional transmission owners, must make compliance filings within 90 days after publication of Order No. 2023. Changes to each transmission provider’s tariff will not become effective until the FERC-approved effective date for the transmission provider’s compliance filing. Transmission providers will begin to transition to the first standard cluster study process once their tariff changes are effective.

FERC requires transmission providers to give customers up to three options to allow their customers to utilize to transition to the cluster-study process: (1) a transitional serial study comprised of a facilities study (i.e., a transitional serial interconnection facilities study); (2) a transitional cluster study comprising a clustered system impact study and individual facilities studies; or (3) withdrawal from the interconnection queue without penalty.¹⁰ The transition processes chosen by any particular transmission provider will be particularly important to developers whose projects are currently in – and potentially delayed by – interconnection queues.

In reviewing compliance filings, FERC will consider variations from the standards set forth in Order No. 2023 based on the “consistent with or superior to” standard for transmission providers that are not RTOs or ISOs and the “independent entity variation” standard for RTOs and ISOs.

Opportunities to Challenge

Affected parties wishing to seek rehearing of Order No. 2023 have until Monday, August 28, 2023.¹¹ Affected parties may also protest transmission providers’ compliance filings (and in particular, any variations from Order No. 2023’s requirements) when they are filed, but provisions that merely implement language contained in Order No. 2023’s LGIP and LGIA reforms cannot be separately challenged in those proceedings. Consequently, interested parties that are concerned about the

impacts of Order No. 2023's requirements should preserve their rights and challenge relevant provisions on rehearing.

Implications

Order No. 2023 will have substantial implications for developers of generation facilities (including energy storage) across the U.S., as well as those who invest in such projects. FERC's reforms have the potential to result in significant improvements to the interconnection process and reduce the lengthy interconnection backlog that exists in many parts of the U.S. However, developers and investors will need to closely monitor compliance proposals submitted by affected RTOs, ISOs and transmission providers to see how these entities implement the new requirements, and whether and where they seek authority to deviate from the prescribed standards.

1. *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054 (2023). FERC initially proposed changes in *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (2022) ("NOPR"). [↩](#)

2. Order No. 2023 at PP 47, 59. [↩](#)

3. *Id.* at P 416. Transmission providers are granted flexibility, provided that between 10% and 50% of study costs are allocated on a per capita basis, with the remainder (between 50% and 90%) allocated pro rata. Transmission providers are permitted to retain their existing cost allocation ratios if they meet these requirements. *Id.* [↩](#)

4. *Id.* at PP 502 - 503. Order No. 2023 adopted a single study deposit rather than the NOPR proposal to collect deposits before each phase of the new first-ready, first-served cluster study process (*i.e.*, cluster study, cluster restudy, facilities study). *Id.* at P 503. [↩](#)

5. *Id.* at P 586. This revision to the *pro forma* LGIP permits shared land use for co-located generating facilities on the same site and behind the same point of interconnection. *Id.* [↩](#)

6. *Id.* at PP 594 - 595, 605 - 607. Order No. 2023 provides for how interconnection customers may demonstrate a regulatory limitation (through an affidavit and appropriate documentation), but leaves it to transmission providers to define regulatory limitation as part of their forthcoming compliance filings. *Id.* at 605 - 606. While Order No. 2023 does not require a uniform definition of regulatory limitations across all transmission providers, it states they are generally a "federal, state, Tribal, or local law that makes it practically infeasible to obtain site control within the time frame detailed in the *pro forma* LGIP." *Id.* at 607. [↩](#)

7. *See id.* at PP 1183, 1192, 1231 (establishing *pro forma* agreements for affected system study and facilities construction). [↔](#)

8. *Id.* at P 1346 (citing *Reform of Generator Interconnection Procs. & Agreements*, Order No. 845, 83 FR 21342 (May 9, 2018), 163 FERC ¶ 61,043, at P 275 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, 84 FR 8156 (Mar. 6, 2019), *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019) (modifying the definition of “Generating Facility” in the *pro forma* LGIP and *pro forma* LGIA to include “and/or storage for later injection”)). [↔](#)

9. *Id.* at P 1436. If the underlying interconnection request is suspended or terminated, however, then the surplus interconnection request is likewise suspended or terminated. *Id.* at P 1440. [↔](#)

10. *Id.* at P 855. The option the transmission provider chooses depends on the phase of the serial study process the interconnection requests are in. *Id.* [↔](#)

11. Saturday, August 26, 2023 is 30 days after FERC issued Order No. 2023. When the last day of a time period occurs on a Saturday, Sunday, a holiday, or a day on which FERC is closed and does not reopen, FERC time computation rules at 18 C.F.R. § 385.2007(a) dictate that the time period does not end until the close of FERC business on the next day that is not a Saturday, Sunday, holiday or day on which FERC closes and does not reopen. Some interested parties may nonetheless wish to file by FERC’s close of business on Friday, August 25, in order to file on the last FERC business day before 30 days runs. [↔](#)

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