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FERC Reforms Generator Interconnection Procedures

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*"This new rule will enable America's vast power generation resources to connect to the grid in a reliable, efficient, transparent, and timely manner, and in doing so, help provide more reliable, resilient, and affordable electricity for all consumers." - **FERC Chairman Willie Phillips***

On July 28, 2023, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued a final rule reforming its *pro forma* interconnection requirements ("Order No. 2023"). The final rule implements many changes first proposed in a July 5, 2022, Notice of Proposed Rulemaking ("NOPR"). While some of the reforms adopted build on practices already in place in certain parts of the country, Order No. 2023 represents a major shift in interconnection policies and the first significant changes to the Commission's standard interconnection procedures and agreements in nearly twenty years. Chief among these changes is the adoption of the first-ready, first-served cluster study process wherein interconnection requests meeting certain readiness standards, including demonstrated site control and required deposits, will be studied as a group instead of on an individual basis. These cluster studies are intended to be conducted on an annual basis with withdrawal penalties for interconnection customers and study delay penalties for transmission providers to support timely processing.

Compliance filings by transmission providers subject to Commission jurisdiction will be due 90 days after publication of Order No. 2023 in the *Federal Register*. Requests for rehearing of Order No. 2023 must be filed by August 28, 2023.

Background

In issuing Order No. 2023, the Commission is acting upon a finding that the existing *pro forma* generator interconnection procedures and agreements are "insufficient to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner," and that, "[a]bsent reform, the current interconnection process will continue to cause interconnection queue backlogs, longer development timelines, and increased uncertainty regarding the cost and timing of interconnecting to the transmission system." The Commission expressed concern that these problems hinder timely development of new generation, which ultimately stifles competition in wholesale electricity markets.

In its final rule, the Commission observed that since the issuance of the NOPR in July 2022, the interconnection queue backlogs have only worsened. There were over 10,000 active interconnection requests in the transmission provider queues at the end of 2022, representing over 2,000 GW of potential generation and storage capacity. Study delays are also commonplace.

*"Striking the appropriate balance–one that is in the public interest–is a challenge. I believe this final rule–unlike the NOPR –does strike the right balance." - **Commissioner Mark Christie***

Key Reforms

Order No. 2023 addresses three general areas of reform: (i) transition from serial to first-ready, first served cluster studies; (ii) measures to increase the speed of the interconnection study process; and (iii) incorporation of additional procedures intended to ensure the consideration of grid-enhancing technologies in the identification of system upgrades.

Key reforms include:

- ***First-Ready, First Served Cluster Study Process:*** Order No. 2023 eliminates the serial first-come, first-served study process and replaces it with a first-ready, first-served process. Cluster studies are increasingly common among independent system operators, regional transmission operators, and certain large, multi-state transmission providers. In adopting this first-ready, first-served cluster study approach, FERC is recognizing the necessary transformation to a process that can effectively manage the increased number of interconnection requests.

  The annual cluster study process will have three distinct phases. During the 45-day cluster request window, interconnection customers submit requests which, if accepted, will be given equal queue priority. Following the request window is a 60-day customer engagement window during which a transmission provider will hold scoping meetings with interconnection customers with accepted interconnection requests and produce study cost estimates. The cluster study must be completed within 150 days of the closing of the engagement window. Finally, the process includes triggers for restudy of the cluster group after completion of the initial cluster study report. Re-studies, if required, must be completed within 150 days of initiation.

> *"[W]hile I continue to harbor misgivings about the Commission's power to implement far-reaching, uniform policies based on our authority under FPA section 206, I am satisfied on this record that existing interconnection procedures in both RTO and non-RTO regions have been shown to be unjust and unreasonable, and that we take today's action consistent with the standards articulated in precedent."* ***- Commissioner James Danly***

- ***Site Control*:** A key feature of the first-ready framework is the requirement that an interconnection customer have sufficient legal control of the site to allow for its planned development, construction, and operation of the generating facility. Order No. 2023 requires that interconnection customers have 90% site control for initiation of the study process and 100% control prior to executing the implementing interconnection agreement. The only allowed exception to the site control requirement is a demonstration of regulatory limitations or delay, which then requires provision of additional financial assurances.

- ***Deposits, Study Costs and Deposits, and Withdrawal Penalties*:** Customers will pay deposits at the beginning of each study process (i.e., initial cluster study process, cluster re-study, and facilities study). Customers will pay a single study deposit upon entry into the cluster based on the proposed size of the generation facility. Actual cluster study costs are allocated among the class of customers on a per capita basis and pro rata MW basis provided that between 10% and 50% of study costs are allocated on a per capita basis, and the remainder (between 50% and 90%) are allocated on a pro rata MW basis. Order No. 2023 also establishes a cluster study withdrawal penalty structure in which penalties increase as interconnection customers proceed through the progressive study phases.

- ***Allocation of Network Upgrade Costs*:** Under Order No. 2023, network upgrade costs emerging from the cluster study process will be allocated using a proportional impact method, with each generator being allocated network upgrade costs based on its contribution to the need for the upgrade. A number of grid operators and utilities—CAISO, MISO, SPP, NYISO, Public Service Commission of Colorado, Dominion Energy, Duke Energy, and Tri-State Generation & Transmission—already have adopted a proportional impact method for allocating network upgrade costs. While establishing this overarching approach, FERC declined to define a specific methodology to measure proportional impacts—allowing each transmission provider to identify its system-specific proportional impact approach subject to FERC review.

- ***Elimination of the Reasonable Efforts Standard and Adoption of Study Delay Penalties*:** Order No. 2023 eliminates the "reasonable efforts standard" for timely completion of studies by transmission providers. As a replacement, the Commission has adopted hard deadlines and penalties to be imposed upon transmission providers that range from $1,000 to $2,500 per business day depending on the specific study being undertaken. These penalties will become effective after the third cluster study process (*i.e.*, in about three years). Transmission providers may appeal the application of penalties to a specific study delay through a filing with FERC.

> *The Final Rule is "a great start for grid-enhancing technologies, or as the rule calls them, alternative transmission technologies… I encourage utilities and grid operators to embrace the opportunity this rule provides, learn more about how to grow your consideration and deployment of these grid-enhancing technologies, and share your learning with your neighbors. And fellow regulators, I encourage you to pay close attention as we go." -* ***Commissioner Allison Clements***

- ***Operating Assumptions for Storage Resources in Interconnection Studies*:** FERC has directed transmission providers to accommodate an interconnection customer's planned operating assumptions for proposed charging of electric storage resources (whether standalone, co-located, or part of a hybrid generating facility). An exception for this general treatment is allowed where the transmission provider finds the customer's proposed operating assumptions conflict with good utility practice or applicable reliability standards. The transmission provider can include the customer's requested study assumptions as an operating condition within the resource's interconnection agreement.

- ***Co-Located Generation and Surplus Interconnection Service*:** The rule supports the use of surplus interconnection service as well as co-location of multiple generation facilities behind a single point of interconnection. Surplus interconnection service allows an existing generator to add new generation resources at its site, behind the metered interconnection point, subject to the limitation that the amount of energy injected into the grid does not exceed the maximum interconnection capacity agreed to. Co-location of resources and surplus interconnection service have been a priority for renewable resources whose base operating facilities do not always operate up to their existing maximum interconnection capacity on a 24/7 basis and can achieve further generation efficiencies by adding a co-located resource (e.g., co-locating storage with solar resources).

- ***Affected Systems*:** Order No. 2023 reforms the affected system study process for assessing generator interconnection impacts on neighboring control areas. These new requirements include a structure for notification, meetings, reporting, and penalties. The affected system transmission provider is required to complete a clustered affected systems study, which shall consist of a power flow, stability, and short circuit analyses, within 150 days of initiation. There is no discussion about how to enforce these requirements upon non-jurisdictional affected systems.

- ***Ride Through Requirements:*** The Commission adopted standard procedures for transmission providers to apply ride through requirements for abnormal frequency conditions and voltage conditions within the "no trip zone" as defined by NERC Reliability Standard PRC-024-3. Specifically, these reforms focus on the treatment of non-synchronous generating facilities within a "no trip zone." Order No. 2023 requires that the non-synchronous generating facility ensure that, within any physical limitations of the generating facility, its control and protection settings are configured consistent with ride-through standards in PRC-024-3.

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Transition and Timeline

Transmission providers must submit compliance filings incorporating the new interconnection procedures into their large and small generator interconnection procedures and agreements within 90 days of the publication of Order No. 2023 in the Federal Register.

Order No. 2023 contains transition provisions for interconnection customers with projects currently in the interconnection queue. There are two parallel transition elements. First, interconnection customers that have completed a serial system impact study and been provided an Interconnection Facilities Study Agreement may opt to complete an Interconnection Facilities Study, which the transmission provider must perform within one hundred fifty 150 days of the Commission-approved effective date of its interconnection procedures. Second, an interconnection customer with an assigned queue position as of 30 calendar days after the filing date of the transmission provider's compliance filing may participate in a Transitional Cluster Study. Interim and final Transitional Cluster Study Reports must be issued within 300 days and 360 days, respectively, of the Commission-approved effective date of a transmission provider's revised interconnection procedures.

Summer Associate, Angie Lai, contributed to this alert.

For More Information

Van Ness Feldman's nationally recognized electric and permitting practices provide counsel on regulatory and policy matters to a broad range of clients in the power sector. If you are interested in additional information regarding Order No. 2023, or would like to discuss its implications, please contact Joe Nelson, Gary Bachman, Mosby Perrow, or any member of the firm's Electric Practice.

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