

## FERC Reexamines Policies on Open Access for Generator Interconnection Facilities

The Federal Energy Regulatory Commission (FERC) has issued a Notice of Inquiry (NOI) requesting public comments on its policies regarding priority rights to the use of facilities used to interconnect generation to the transmission grid. The proceeding could lay the groundwork for significant changes in the regulations that apply to generator interconnection.

### Background

The FERC's model tariff, the "*pro forma*" Open Access Transmission Tariff (OATT), was designed to make transmission facilities generally available to third parties under nondiscriminatory terms of service. FERC's Order No. 888 also required the public utility transmission providers to separate, or "unbundle," their generation and transmission services. Yet the order did not address the rules that would apply to interactions between generation developers and transmission owners when such developers sought to connect their facilities to the transmission grid.

FERC set forth its current large generator interconnection policy in Order No. 2003. In Order No. 2003, FERC continued its policy of distinguishing between "network upgrades," which are upgrades to the transmission grid at or beyond the point at which the generator interconnects to the grid, and "interconnection facilities," which are facilities on the generator's side of the point of interconnection. Interconnection facilities can encompass a wide range of facilities, from relatively minor ancillary facilities to long-distance lines that have the capacity to carry significant amounts of electricity. Order No. 2003 distinguishes the treatment of different categories of interconnection facilities according to which party performs certain roles for the facilities. When the owner of the transmission grid has ownership, control or operation of the interconnection facilities, Order No. 2003 provides that those interconnection facilities will be made available for a third party to use upon agreement between the transmission owner and generator. When the generation developer funds and constructs a portion of the interconnection facilities, and does not transfer ownership, control or operation of them to the transmission owner, the facilities are classified as "interconnection customer's interconnection facilities." In such cases, the Order No. 2003 provisions for third-party use do not apply.

A number of recent proceedings have raised the issue of how FERC's open access principles should apply to developer-owned interconnection facilities in the context of third-party requests to interconnect to existing generator lead-lines. Addressing such matters on a case-by-case basis, FERC has considered such facilities to be open access transmission facilities and required the developer that owns these facilities to file an OATT when a third-party has sought to interconnect through these facilities. However, FERC has allowed the developer of the interconnecting generator that owns the lines to have priority to the capacity necessary to meet the

developer's existing use at the time of a third-party request for service. It has also permitted the developer of the interconnected generator or its affiliates to have priority rights to the capacity for planned generation projects or expansions, if they can demonstrate specific plans and material progress for future projects. On March 15, 2011, FERC held a technical conference addressing the proper treatment of these interconnection facilities when a third-party generation developer seeks to interconnect through these facilities. A number of commenters raised concerns and shortcomings related to a variety of aspects of the current policy.

## Notice of Inquiry

The NOI asks for comments on whether FERC should reconsider its existing policies, and proposes two alternative approaches.

The NOI opens the discussion by asking whether the existing policies require revision at all. Among other issues, FERC asks whether its understanding of the facilities in controversy is correct, whether the current policy has had unintended consequences and whether FERC should distinguish between large and small interconnection facilities.

The NOI then explains its consideration of alternative approaches. Under the first, FERC would continue to rely upon the OATT framework (i.e., the requirement that a generation developer that owns interconnection facilities must file an OATT and make interconnection service available to third parties in some circumstances). FERC asks whether it should provide more detail on the specific plans and progress that must be established to obtain priority rights for future projects. It also asks for comment concerning the events that will trigger the OATT filing requirement. Then FERC asks whether it should modify the standardized terms and conditions of its pro forma OATT for application to interconnection facilities to recognize the differences between those developer-owned interconnection facilities and the transmission networks for which the OATT was designed. Finally, FERC requests comments on whether generation developers should have a "grace period" in which open access rules do not apply, to allow a generator developer to segregate the development of generation projects into phases.

Under the second approach, FERC would address issues concerning customer-owned interconnection facilities through Large Generator Interconnection Procedures (LGIA) and Large Generator Interconnection Agreement (LGIP) processes; it is considering revisions to the LGIA and LGIP that would eliminate the distinction between transmission providers and interconnection customers with respect to third-party use of interconnection facilities. FERC also asks for comments on how priority rights regarding phased generation development would work under the LGIA and LGIP.

Comments on the NOI will be due 45 days after publication in the Federal Register.

## Implications

As noted above, the NOI could mark an early step in a major shift in the Commission's policy towards generator interconnection. It may lead to a proposed rulemaking or other regulatory action to revise the OATT, including FERC's standardized LGIP and LGIA, or it may lead to the issuance of other FERC policies governing these relationships. The impact could be particularly pronounced in the renewable power industry, where generators are often located in remote locations at long distances from transmission systems, and are increasingly being planned and constructed on a modular, phased basis.

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