



Energy ADVISORY ■

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FERC Acts to Reform Generator Interconnection Procedures and Agreements

The Federal Energy Regulatory Commission (FERC) on April 19, 2018, issued Order No. 845, a [Final Rule](#) amending the pro forma Large Generator Interconnection Procedures (LGIP) and the pro forma Large Generator Interconnection Agreement (LGIA), which apply to generators larger than 20 megawatts. The Final Rule adopts 10 proposed changes to the generator interconnection processes first proposed by FERC in a 2016 Notice of Proposed Rulemaking (NOPR). FERC concluded that without these changes, current interconnection processes could prevent new generation development, stifle competition, lead to inaccurate information, or potentially discriminate against new technologies. The new requirements are expected to go into effect later in 2018.

Background

FERC broadly addressed interconnection issues in 2003, when it issued Order No. 2003, which first adopted the pro forma LGIP and pro forma LGIA. At that time, all public utilities were required to incorporate both documents in their open access transmission tariffs (OATTs). In December 2016, FERC proposed changes to its large generator interconnection rules to address significant changes in the electric power industry since 2003. Specific areas of concern addressed in the Final Rule are interconnection customers experiencing delays, late-stage interconnection request withdrawals, and a lack of cost and timing certainty that can prevent interconnection customers from obtaining proper financing.

Improving Certainty for Interconnection Customers

Option to build

Interconnection customers will be able to exercise the option to build, whether or not the transmission provider meets proposed construction deadlines. Generally, the transmission provider is responsible for constructing transmission provider interconnection facilities and network upgrades during the interconnection process. Under current rules, interconnection customers can exercise an “option to build” such facilities only if the transmission provider gave notice that it could not meet the interconnection customer’s proposed dates. But the Final Rule will allow interconnection customers to build transmission provider interconnection facilities and standalone network upgrades regardless of whether a transmission provider can meet the interconnection customer’s proposed dates. FERC found that this change would provide interconnection customers with more control and certainty during the design and construction phases of the interconnection process, and that otherwise limiting an interconnection customer’s ability to build could result

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in higher costs for interconnection customers. In response to concerns raised by utilities regarding interconnection customers' ability to construct standalone network upgrades and potential impacts on reliability, FERC noted that the Final Rule did not change a transmission provider's right to approve design, testing, and construction of its facilities. FERC also indicated that the pro forma LGIA already contains sufficient safeguards to ensure adherence to relevant reliability and good utility practice standards.

Dispute resolution procedures

FERC has also approved additional interconnection dispute resolution procedures. New Section 13.5.5 of the pro forma LGIP will require transmission providers to adopt a nonbinding dispute resolution process that, unlike the current dispute resolution procedures currently contained in the pro forma LGIP, can be invoked unilaterally. This new dispute resolution process will result in a decision from an independent, neutral third party. That decision will be nonbinding but can be cited in subsequent procedures, including complaint procedures before FERC under Section 206 of the Federal Power Act. The new dispute resolution procedures are meant to address the concern that dispute resolution was unavailable when parties previously could not agree to arbitration under the current pro forma LGIP. FERC noted that these new procedures were designed to complement, not trump, the existing dispute resolution procedures. FERC also stated that it would not evaluate the adequacy of existing region-specific dispute resolution procedures until the relevant entities make their compliance filings.

Promoting More Informed Interconnection Decisions

Identification and definition of contingent facilities

The Final Rule addresses "contingent facilities," which FERC defines as unbuilt interconnection facilities and network upgrades upon which the costs, timing, and study findings for an interconnection request are dependent, and if delayed or not built, could cause a need for restudies of the interconnection request or a reassessment of the interconnection facilities and/or network upgrades and/or costs and timing for that request.

Transmission providers will need to publish their method for identifying contingent facilities in their LGIPs. While transmission providers were already required to identify contingencies affecting certain studies and list relevant contingent facilities in interconnection agreements, FERC found that requiring transmission providers to publish in their LGIPs a method for determining contingent facilities will help ensure transparency in the interconnection process.

In addition, transmission providers will need to provide the contingent facility list at the conclusion of the system impact study phase. Transmission providers will also need to provide, on request, estimates on network upgrade costs and the in-service completion time associated with each contingent facility, so long as that information is readily available and not considered to be commercially sensitive.

Transparency regarding study models and assumptions

FERC will require transmission providers to detail all network models and underlying assumptions on either their Open Access Same-Time Information System (OASIS) or a password-protected website. FERC determined that this will increase transparency since access to some information is inconsistent across regions and will allow interconnection customers to make more informed interconnection decisions.

Revised definition of “generating facility”

FERC revised the definition of “generating facility” in both the pro forma LGIP and pro forma LGIA to explicitly include electric storage resources.

Reporting requirements for interconnection study performance

FERC modified the pro forma LGIP to require transmission providers to post quarterly their interconnection study performance metrics either on their OASIS sites or other public website. FERC also adopted the filed report requirement, which will require an informational filing with FERC if a transmission provider exceeds deadlines for a certain percentage of any study type in multiple quarters. FERC further clarified that the start date for each study included in the performance will be the date that the transmission provider receives a fully executed study agreement.

Enhancing Interconnection Processes

Requesting interconnection service that is lower than the generating facility capacity

FERC modified the pro forma LGIP to allow interconnection customers to request interconnection service that is below the full generating capacity of the proposed resource. FERC responded to concerns raised by commenters about the reliability implications of this change by noting that existing provisions of the pro forma LGIP and LGIA provide transmission providers with broad abilities to test and inspect facilities and to propose appropriate system protection facilities, including those that would limit a facility’s injections into the grid.

FERC also revised the pro forma LGIP to permit an interconnection customer to either request interconnection service below the generating facility’s full capacity at the outset or to reduce its requested level of interconnection service at two points after the interconnection process has begun: (1) before the interconnection customer returns an executed system impact study agreement; and (2) before the interconnection customer returns an executed facility study agreement.

Provisional interconnection service

In the Final Rule, FERC adopted provisions that will allow interconnection customers to enter into provisional agreements for limited interconnection service before the full interconnection process is completed. However, transmission providers will be able to determine the frequency for updating relevant provisional interconnection studies, allowing transmission providers to determine a study frequency best suited to their needs. Also, interconnection customers will need to pay for any study performed by the transmission provider to update the available maximum provisional interconnection service.

Requiring transmission providers to create a process for surplus interconnection service

FERC adopted multiple proposals relating to surplus interconnection service. FERC defines “supplemental interconnection service” as any unneeded portion of interconnection service established in an LGIA such that if surplus interconnection service is utilized, the total amount of interconnection service at the point of interconnection would remain the same. New Section 3.3 of the pro forma LGIP will require that the transmission provider establish a process for surplus transmission service use. FERC also added new Section 3.3.1 to the pro forma LGIP, which describes the process for using surplus interconnection service. FERC determined that an expedited process for surplus interconnection service, separate from the interconnection queue, could reduce interconnection customers’ costs.

FERC also clarified that surplus interconnection service is created because some generating facilities may not always operate at full capacity. Order No. 2003 mandated that transmission providers assume that generating facilities operate at their full capacity when studying requests for new interconnections. FERC concluded that, with proper precautions, denying an original interconnection customer the ability to either transfer or use for another resource surplus interconnection service to be unjust and unreasonable. FERC noted, however, that there is substantial regional variation in the availability of surplus service and processes that would facilitate its use and noted that transmission providers that believe they already comply with the reforms can include such explanations in their compliance filings.

Finally, FERC clarified that the use or transfer of surplus interconnection service is not considered “queue jumping” because surplus interconnection service does not compete for the same potential network upgrades that may be at issue in the normal interconnection queue.

Incorporating technological changes

Under the current pro forma LGIP, an interconnection customer can modify its interconnection request but risks losing its place in the queue if the transmission provider determines that the change is a material modification. FERC will require transmission providers to include a technological change procedure in their LGIPs. Transmission providers will be need to assess, and if necessary, study, whether changes in an interconnection customer’s proposed technology can be incorporated without triggering the material modification provisions of the LGIP. Transmission providers will also be required to develop a definition of permissible technological advancement that would not, by definition, constitute material modifications. FERC concluded that without these changes, the definition of “material modification” may create uncertainty as to whether a material modification would include a technological advancement.

Proposed Changes FERC Did Not Adopt

FERC declined to take action on four additional rules that were suggested in the NOPR. These proposals related to:

- Requiring transmission providers that carry out cluster studies to conduct periodic restudies. Clustering allows transmission providers to simultaneously study all interconnection requests received during a specified period.
- Requiring mutual agreement between the customer and transmission owner for the transmission owner to initially fund the cost of network upgrades. FERC has decided to withdraw this proposal in light of a recent decision by the U.S. Court of Appeals for the D.C. Circuit.
- Transmission providers needing to post certain congestion and curtailment information.
- Requirements relating to modeling electric storage resources.

The NOPR also raised two additional issues without proposing related changes. In the Final Rule, FERC has decided not to address these issues, which relate to:

- Cost caps for network upgrades.
- Affected system coordination. FERC staff convened a technical conference in April 2018 to explore issues related to coordinating affected systems issues raised in this proceeding. FERC is considering next steps in light of the technical conference and post-technical conference comments.

The Final Rule will be effective 75 days from the date the rule is published in the *Federal Register*. All public utility transmission providers must submit compliance filings to adopt the requirements of the Final Rule as revisions to the LGIP and LGIA in their OATTs within 90 days of publication of the *Federal Register*.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any member of our [Energy Group](#).

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