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EDITOR'S NOTE: THE SUMMER READING ISSUE

Victoria Prussen Spears

**FOREIGN CORRUPT PRACTICES ACT
ENFORCEMENT IN THE ENERGY SECTOR**

Kimberly A. Parker, Lillian Howard Potter,
Keun Young Bae, and Ari D. Evans

**NEW EXECUTIVE ORDERS AIM TO REDUCE
FEDERAL AND STATE PERMITTING OBSTACLES
FOR PIPELINE AND ENERGY PROJECTS**

Cynthia L. Taub, Joshua Runyan,
Monique Watson, Jody A. Cummings,
and David H. Coburn

**EPA'S E&P NEW OWNER AUDIT PROGRAM:
KIND OF INTERESTING—PERHAPS; KIND OF
PRACTICAL—PERHAPS NOT**

Gerald J. Pels and Andrew Davitt

**FERC REAFFIRMS ITS FINAL RULE ON RATE
CHANGES RELATING TO FEDERAL INCOME
TAX RATES FOR NATURAL GAS PIPELINES**

Mark R. Haskell, Brett A. Snyder,
George D. Billinson, Lamiya N. Rahman,
and Jane Thomas

**FERC ISSUES REHEARING ORDER ON REFORM
OF LARGE GENERATOR INTERCONNECTION
PROCEDURES AND AGREEMENTS**

Sean A. Atkins, Kenneth G. Jaffe,
Michael N. Kunselman, Andrea Wolfman,
and Michael E. Kellermann

**COMMISSION INITIATES BROAD INQUIRIES
ON ROE DETERMINATIONS AND ELECTRIC
TRANSMISSION INCENTIVES**

A. Hunter Hodges, David B. Raskin,
Richard L. Roberts, and Marc L. Spitzer

**FERC SIMPLIFIES DIRECTOR/OFFICER
REQUIREMENTS**

Mark C. Williams, J. Daniel Skees,
and Heather L. Feingold

**FEDERAL CIRCUIT RULES BROAD
DISCRETION FOR COMMERCE IN COUNTRY
OF ORIGIN OF AD/CVD IMPORTS**

William R. Isasi

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Editor's Note: The Summer Reading Issue

Victoria Prussen Spears 213

Foreign Corrupt Practices Act Enforcement in the Energy Sector

Kimberly A. Parker, Lillian Howard Potter, Keun Young Bae, and Ari D. Evans 216

New Executive Orders Aim to Reduce Federal and State Permitting Obstacles for Pipeline and Energy Projects

Cynthia L. Taub, Joshua Runyan, Monique Watson, Jody A. Cummings, and David H. Coburn 221

EPA's E&P New Owner Audit Program: Kind of Interesting—Perhaps; Kind of Practical—Perhaps Not

Gerald J. Pels and Andrew Davitt 228

FERC Reaffirms Its Final Rule on Rate Changes Relating to Federal Income Tax Rates for Natural Gas Pipelines

Mark R. Haskell, Brett A. Snyder, George D. Billinson, Lamiya N. Rahman, and Jane Thomas 233

FERC Issues Rehearing Order on Reform of Large Generator Interconnection Procedures and Agreements

Sean A. Atkins, Kenneth G. Jaffe, Michael N. Kunselman, Andrea Wolfman, and Michael E. Kellermann 239

Commission Initiates Broad Inquiries on ROE Determinations and Electric Transmission Incentives

A. Hunter Hodges, David B. Raskin, Richard L. Roberts, and Marc L. Spitzer 243

FERC Simplifies Director/Officer Requirements

Mark C. Williams, J. Daniel Skees, and Heather L. Feingold 248

Federal Circuit Rules Broad Discretion for Commerce in Country of Origin of AD/CVD Imports

William R. Isasi 251

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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
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FERC Issues Rehearing Order on Reform of Large Generator Interconnection Procedures and Agreements

*By Sean A. Atkins, Kenneth G. Jaffe, Michael N. Kunselman, Andrea Wolfman, and Michael E. Kellermann**

This article examines the Federal Energy Regulatory Commission's Order No. 845-A and what it means for the large generator interconnection industry.

The Federal Energy Regulatory Commission (“FERC”) has issued Order No. 845-A,¹ an order on rehearing and clarification of Order No. 845. Order No. 845 amended the pro forma Large Generator Interconnection Procedures (“LGIP”) and the pro forma Large Generator Interconnection Agreement (“LGIA”) with the goals of improving new generation development, increasing competition, providing accurate information, and promoting new technologies. Order No. 845-A preserved most of the modifications adopted in Order No. 845, though FERC granted rehearing and clarification on certain aspects of Order No. 845. Order No. 845-A went into effect on May 20, 2019.

BACKGROUND

FERC broadly addressed interconnection issues 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”). More recently, FERC focused on interconnection processes when it issued Order No. 845 in April 2018, adopting revisions to the pro forma LGIP and pro forma LGIA. Order No. 845 approved 10 proposed changes to the generator interconnection processes. These modifications are intended to improve certainty for interconnection customers, promote more informed interconnection decisions, and enhance the interconnection process. Subsequently, FERC received a number of requests for rehearing and/or clarification of that order.

* Sean A. Atkins (sean.atkins@alston.com), Kenneth G. Jaffe (kenneth.jaffe@alston.com), and Michael N. Kunselman (michael.kunselman@alston.com) are partners at Alston & Bird LLP. Andrea Wolfman (andrea.wolfman@alston.com) is senior counsel and Michael E. Kellermann (michael.kellermann@alston.com) is a senior associate at the firm.

¹ <https://www.ferc.gov/whats-new/comm-meet/2019/022119/E-1.pdf?csrt=17971005050472928080>.

IMPROVING CERTAINTY FOR INTERCONNECTION CUSTOMERS

Option to Build: Preserved Order No. 845's Expansion of the Option to Build, But Granted Requests for Rehearing and Clarification on Its Implementation

Order No. 845-A granted two requests for rehearing relating to the interconnection customer's "option to build." To provide context, Order No. 845 permitted interconnection customers to build transmission provider interconnection facilities and "stand alone" network upgrades regardless of whether a transmission provider could meet a customer's proposed dates. First, FERC granted rehearing and found that if a transmission provider determines a specific network upgrade is not a standalone network upgrade, the transmission provider must provide the interconnection customer with a written explanation for that determination. Disagreements may arise about whether a network upgrade qualifies as a standalone upgrade, due to the mutual agreement requirement in the definition of standalone network upgrade. A transmission provider will therefore need to clarify, within 15 days of its decision, the technical reasons why the upgrade does not qualify as a standalone upgrade (i.e., why the customer building the upgrade would affect the transmission system's day-to-day operations).

In addition, FERC granted rehearing to permit transmission providers to recover oversight costs associated with exercising the option to build. Previously, in Order No. 2003, transmission providers were prevented from collecting such costs because FERC had determined that a transmission provider could avoid them by agreeing to meet the customer's milestones. In Order No. 845-A, FERC stated that this line of reasoning no longer applies because Order No. 845 permits interconnection customers to exercise the option to build regardless of whether a transmission provider can meet a customer's schedule. Transmission providers, therefore, cannot necessarily avoid option-to-build oversight costs by keeping to a customer's dates. FERC provided new language that will be included in the pro forma LGIA to permit the recovery of oversight costs.

Order No. 845-A also clarified two aspects of the option-to-build provisions in Order No. 845. First, it clarified that the option-to-build provisions apply to all public utility providers, including those public utilities that reimburse customers for network upgrades. FERC explained that Order No. 845 made no modifications to its general crediting policy, pursuant to which transmission providers can recover the costs of such reimbursement credits in their transmission rate base after providing the credits to customers.

In addition, FERC clarified that the option to build does not apply to stand alone network upgrades on affected systems. "Affected systems," under the pro

forma LGIP and pro forma LGIA, are defined as “electric system[s] other than the Transmission Provider’s Transmission System that may be affected by the proposed interconnection.” To make its intention clear, FERC revised the relevant definitions of “stand alone network upgrades” in both the pro forma LGIP and pro forma LGIA to underscore that the option to build does not apply in these circumstances.

Finally, although FERC denied requests for rehearing and clarification on the implications of the D.C. Circuit’s *Ameren* decision regarding MISO’s crediting policy, it did potentially leave the door open in one respect. In response to requests for clarification that a transmission owner may pay a customer for its option-to-build construction costs when the customer transfers the facility to the transmission owner, then earn a return pursuant to an ongoing facilities charge to the customer, FERC denied these requests because they were essentially requests to deviate from the requirements of Order No. 845. However, FERC indicated that MISO could make such a request when it submitted its Order No. 845 compliance filing, and FERC would consider it then.

PROMOTING MORE INFORMED INTERCONNECTION DECISIONS

Transparency Regarding Study Models and Assumptions: Provided Clarifications

Order No. 845-A offered two clarifications relating to study model and assumption transparency. First, transmission providers will be permitted to use FERC’s critical energy/electric infrastructure information (“CEII”) regulations as a model for evaluating entities that request network model information and assumptions. This only applies to entities before they have signed a relevant nondisclosure agreement. In addition, the phrase “current system conditions” will not require transmission providers to maintain models that reflect real-time operating conditions of their system. Rather, network model information should reflect system conditions that are currently used in interconnection studies.

Reporting Requirements for Interconnection Study Performance: Provided Clarification

FERC further explained that the date for relevant reporting requirements and measuring study performance metrics will begin in the first calendar quarter of 2020. This clarification was issued in response to a commenter’s concerns about the timing of reporting interconnection study metrics. Posting 2017 metrics will not be required.

ENHANCING INTERCONNECTION PROCESSES

Surplus Interconnection Processes: Granted Request for Rehearing

Order No. 845-A granted rehearing in response to a concern that Order No. 845 could limit the ability of independent system operators (“ISOs”) and regional transmission organizations (“RTOs”) to implement alternate rules for surplus interconnection service. Responding to one ISO’s contention that its regional rules are incompatible with the surplus interconnection requirements, FERC noted it did not intend to prevent ISOs and RTOs from requesting individual variations.

Requesting Interconnection Service That Is Lower Than the Generating Facility: Granted Request for Rehearing in Part and Provided Clarification

Interconnection customers will be permitted to propose control technologies at any time they are permitted to request interconnection service below facility capacity. Order No. 845 allows an interconnection customer to either request interconnection service below generating facility 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. Because Order No. 845 permits the interconnection customer to reduce its interconnection service below generating facility capacity at these points during the interconnection process, an interconnection customer may also propose control technologies at these times.

FERC also clarified that a transmission provider will need to provide a detailed explanation of its determination to perform additional studies at the full generating facility capacity to an interconnection customer before performing additional studies. This explanation will permit the interconnection customer to better understand the transmission provider’s reasoning behind requiring additional studies before those studies are performed. Order No. 845-A became effective on May 20, 2019. Consistent with this order, every public utility transmission provider had to submit a single compliance filing by May 22, 2019.