Van Ness Feldman LLP
vnf.com

FERC Moves Forward with First-Ready, First-Served Generator Interconnection Process

MARCH 28, 2024

Patrick Reimherr, *Jill Goatcher Drum* and *Joseph Nelson*

"We required a first-ready, first served cluster study process and made other reforms to speed up the processing of the [generator interconnection] queues . . . Today we act on the requests for rehearing and unanimously—hopefully—issue Order No. 2023-A. We largely uphold the requirements in the final rule but make various clarifications." - ***FERC Chairman Willie Phillips***

On March 21, 2024, the Federal Energy Regulatory Commission (FERC or Commission) issued Order No. 2023-A, affirming the core elements of Order No. 2023, *Improvements to Generator Interconnection Procedures and Agreements*, with limited revisions and clarifications.

Order No. 2023 represented the first significant change to the Commission's standard generator interconnection procedures and agreements in nearly twenty years. The impetus for Order No. 2023 was FERC's determination that the existing generator interconnection procedures were unjust and unreasonable due to observed queue backlogs, long development timelines, and uncertainty regarding the cost and time of interconnection. The Commission aimed to address these problems by adopting a first-ready, first-served cluster study process, readiness standards, and firm study deadlines with associated delay penalties.

In Order No. 2023-A, the Commission acted on thirty-four Requests for Rehearing and/or Clarification. In its order, FERC preserved the core features of Order No. 2023 while revising and clarifying implementation details. The Commission also extended the deadline for compliance filings to 30 days after the publication of Order 2023-A in the *Federal Register*.

Staying the Course

"I am pleased that we are affirming all of the core reforms of Order No. 2023. We are requiring greater stringency on both interconnection customers and transmission providers, an appropriate approach given how pervasive and consequential interconnection backlogs are." ***- Commissioner Allison Clements***

The most notable aspect of Order No. 2023-A is what it did not do—the Commission did not make any wholesale changes to the general framework it adopted in Order No. 2023. The core elements of Order No. 2023 include pre-entry information (i.e., heatmaps), a cluster study process with readiness standards for entry, a defined step for customers to accept cost allocation or withdraw, replacing the reasonable efforts standard with firm study deadlines with delay penalties, integration of affected system impact studies, and consideration of alternative transmission technologies.

Of these elements, the decision to eliminate the reasonable efforts for completion of interconnection studies and require firm deadlines with associated delay penalties was a focal point of the rehearing requests and clarifications. In response, the Commission sustained its elimination of the reasonable efforts standard and its replacement with firm deadlines and delay penalties, stating:

> "[In lieu of reasonable efforts], the Commission has specified standards of performance in the form of deadlines, accompanied by a penalty. This penalty is a self-implementing performance incentive (subject to appropriate safeguards) that also effectively adjusts what transmission providers can charge for interconnection studies that fail to meet those standards."

FERC further explained that transmission providers, as "the entities with the most complete knowledge of the transmission system to which the generator will be interconnecting[,] . . . are responsible for conducting the studies and their actions or inaction in doing so can cause or contribute to such delays."

FERC clarified that penalties for delayed studies are applied on a per-study, per business day basis. FERC also clarified that, for independent system operators (ISOs)/regional transmission operators (RTOs), the party responsible for the study phase is subject to the penalty assessment. To the extent that a transmission owner objects to the imposition of a penalty by a transmission provider (i.e., an RTO/ISO), FERC noted that it can seek relief from the Commission on a case-by-case basis under Section 205 of the Federal Power Act.

FERC also maintained, with clarification, the requirement that transmission providers publicly post "heatmaps," i.e., an interactive visual representation of available interconnection capacity as well as a table of relevant interconnection metrics. The Commission clarified that heatmaps must be based on the power-flow model used within the transmission provider's study process and incorporate in-service network upgrades and upgrades proposed for higher-queued clusters. Further, FERC noted that its *pro forma* procedures "do not preclude" joint or regional heatmaps.

Lastly, FERC maintained the site control requirements of Order No. 2023. In doing so, FERC reiterated that site control must be established for the term of expected operation of the generation facility while separately clarifying that site control requirements apply only to the generation facility and *not* interconnection facilities.

Effective Date for New or Modified Interconnection Procedures Adopted within Complaint Filings

Within Order No. 2023-A, the Commission responded to a series of clarifications and scenarios for the effective date of a transmission provider's revised procedures. The Commission explained that the effective date of a reformed interconnection process is presumed to be the effective date of the FERC order on the compliance filing. Any request by a transmission provider to use a pre-order effective date for some, or all, portions of its revised interconnection process will be reviewed on a case-by-case basis. Further, a transmission provider may choose to align the effective date of its revised interconnection process with its existing queue processing dates with FERC review and approval.

The Interconnection Process

As part of its order, the Commission clarified implementation of the *pro forma* interconnection procedures. Among the elements subject to clarification were the use of feasibility studies, cure periods for deficient interconnection requests, acceptable forms of security deposits, how existing or transitioning cluster study processes are supposed to comply with readiness requirements, and timelines and process for affected systems studies:

- Transmission providers may perform feasibility studies provided that they can explain that doing so meets the "consistent with or superior to" standard or merits an independent entity variation in the context of RTOs/ISOs.
- Notices of interconnection request deficiencies must provide for a 10-business day cure period, provided that the end of such cure period falls prior to the last day of the 45-

day cluster study request window. Deficiencies identified within 10 days of the closing of the cluster study request window will be subject to a shortened response period.

- Acceptable forms of security for an interconnection customer have been revised to include surety bonds or other financial guarantees that are reasonably acceptable to the transmission provider.
- A "transition" study is not necessary if a transmission provider already uses a cluster study or has initiated a cluster study transition. However, such processes must comply with Order No. 2023 and Order No. 2023-A and variations will be evaluated under the appropriate standard (i.e., consistent with or superior to standard and independent entity variation). For these ongoing or initiated cluster study processes, the new readiness requirements (e.g., study deposits, readiness requirements, and site control) are presumed to apply 60-calendar days after the approved effective date of the Commission order on a transmission provider's compliance filing.
- When a cluster study identifies a potential affected system impact, the transmission provider must notify the affected system operator within 10 business days of the completion of the cluster study. Thereafter, the affected system transmission provider must provide notice within 20 business days to the interconnection customers as to whether it intends to initiate an affected systems study. A similar notification process applies to cluster restudies.

Clarification of Option to Build and Cost Allocation of Network Upgrades

Order No. 2023-A provides other important clarifications related to network upgrades and cost allocation:

- The Commission revised its *pro forma* large generator interconnection agreement (LGIA) to clarify the scope of upgrades for which an interconnection option to build can be exercised. Specifically, the option to build applies to both stand-alone network upgrades and a network upgrade shared by multiple interconnection customers.

- Order 2023 provided for an allocation of network upgrade costs (other than substation network upgrade costs) using a "proportional impact method." This method focuses on the degree to which a generator within the cluster study contributes to the need for the upgraded facility. Generally, the proportional impact is measured by the share of energy that flows from the generator through the upgraded facility. Upon rehearing, FERC upheld the use of the proportional impact method, while declining to establish minimum impact thresholds for the allocation of costs to generators. Further, FERC explained that it would apply a rule of reason in reviewing whether the details of an individual transmission provider's proportional impact methodology must be included within its filed tariff or could be documented through business procedures.

- Under Order No. 2023, substation network upgrades are allocated on a per capita basis (i.e., a percentage allocation). On rehearing, FERC clarified that allocation of cost should be based on interconnection facilities, recognizing that multiple generators may use a single interconnection facility. Further, FERC recognized that allocation of costs for substation network upgrades needs to distinguish between voltage levels of interconnection facilities. Therefore, to accomplish these goals, FERC amended its *pro forma* large generator interconnection procedures (LGIP) to provide that substation network upgrades "shall be allocated first per capita to Interconnection Facilities interconnecting to the substation at the same voltage level, and then per capita to each Generating Facility sharing the Interconnection Facility."

Alternative Transmission Technologies

In Order No. 2023, FERC required transmission providers to evaluate eight alternative transmission technologies during the cluster study process, and, *in their sole discretion*, determine whether a particular technology should be used. On rehearing, FERC required

Van Ness Feldman LLP
vnf.com

transmission providers to explain why their determinations as to use/non-use of a particular technology is consistent with good utility practice, applicable reliability standards, and applicable laws and regulations. Furthermore, for one category of alternative technology—advanced conductors—the Commission explained that its intended scope of "advanced conductors" encompassed "present and future transmission line technologies whose power flow capacities exceed the power flow capacities of conventional transmission line technologies."

Lastly, the Commission clarified its ride-through procedures for operation of non-synchronous generators during abnormal frequency or voltage conditions. Under Order No. 2023, non-synchronous generators must ensure that, within the physical limitations of the facility, control and protection settings are configured or set to maintain pre-disturbance levels of power production during disturbance and post-disturbance periods. With respect to this requirement, in Order No. 2023-A, the Commission recognized an exception for periods when such a generator has its reactive power mode enabled. This is a similar exception to the ride-through standard when the non-synchronous generator is providing primary frequency response or fast frequency response.

Next Steps

In light of its rehearing decision, the Commission has extended the deadline to 30 days after the publication of Order 2023-A in the Federal Register, although transmission providers may submit compliance filings before the deadline.

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-A, or would like to discuss its implications, please contact Joe Nelson, Gary Bachman, Mosby Perrow, or any member of the firm's Electric practice.

Incoming first year Associate, Mekkah Husamadeen, also contributed to this alert.

Follow us on Twitter @VanNessFeldman