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Troutman Pepper Summary of FERC Order No. 2023-A on Generator Interconnections

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Executive Summary

On March 21, the Federal Energy Regulatory Commission (FERC or the Commission) issued Order No. 2023-A (Final Rule), which reaffirmed aspects of Order No. 2023 — the Commission's landmark order updating its generator interconnection procedures. As detailed further in this summary, the Commission largely upheld Order No. 2023, including some of the more controversial aspects of the order, such as penalties and the transmission capacity "heat map," and provided further clarity on other aspects.

Compliance Filings must include Order No. 2023-A reforms and are now due within 30 days of the Final Rule's publication in the *Federal Register*. Transmission providers proposing deviations from the Final Rule in their compliance filings must demonstrate that their deviations are "consistent with or superior to" standard (for non-RTO/ISO providers) or satisfy the "independent entity variation" standard (for RTOs/ISOs).

Summary of Key Aspects of Order No. 2023-A (see full summary for more discussion):

A. Conflicts With Ongoing Queue Reform Efforts

- All transmission providers — including those with existing cluster study processes — must demonstrate compliance with Order No. 2023;[1] no "presumption" of compliance.[2]
- Such early-adopter transmission providers may, but are not required to, impose a transition process.[3]
- Unless FERC grants a variance, transmission providers not undertaking a transition process must impose the Final Rule's heightened readiness, and site control, requirements starting 60 calendar days after the Commission-approved effective date.[4]
- FERC will require "item-by-item justification" for every requested variance — *i.e.*, general statements that variances comply with Order No. 2023 are insufficient.[5]

B. Reforms to Implement a First-Ready, First-Served Cluster Study Process

- **Public Interconnection Information:**
  - FERC clarified that heatmaps must utilize assumptions for NRIS and may include ERIS.[6]
  - Because heatmaps must be based on the power flow models and assumptions used in the recent cluster study or restudy, they must include in-service and higher-queued network upgrades.[7]
  - If a transmission provider does not conduct a transition process, it is not required to make its heatmaps available until 360-days after the Large Generator Interconnection Procedures (LGIP) becomes effective.[8]
  - FERC reiterated that transmission providers (not interconnection customers) must cover heatmap development-related costs, with recovery permitted to the extent costs are "consistent with Commission accounting and ratemaking policy."[9]
- **Cluster Study Process:**
  - FERC revised the LGIP definitions to permit multiple interconnection customers to agree to exercise the Option to Build stand-alone network upgrades.[10]
  - FERC clarified that Order No. 2023 did not modify the process for studying provisional interconnection service requests as-received.[11]
  - FERC clarified that transmission providers must issue successive deficiency notices as time allows in the cluster request window.[12]
  - FERC clarified that the customer's cure period ends at the close of the cluster request window, but noted that "minor errors" or "incompletions in technical data" can be corrected throughout the process.[13]
  - FERC revised the LGIP to require Facilities Study Agreement tendering within five business days after notification that no restudies are required.[14]
- **Allocating Cluster Network Upgrade Costs:**
  - FERC reiterated that transmission providers are not required to use, nor are prohibited from using, minimum impact thresholds in their proportional impact analyses.[15]
  - FERC modified the LGIP to clarify that substation network upgrades are at distinct voltage levels.[16]
- **Shared Network Upgrades:**
  - FERC reiterated that transmission providers with existing shared network upgrade schemes are not required to eliminate, change, or re-justify such schemes.[17]
  - FERC stated generally that "Transmission Providers need only seek approval to maintain previously

approved variations from the *pro forma* LGIP and *pro forma* LGIA if such variations are impacted by the requirements of Order No. 2023."[18]

- **Increased Financial Commitments and Commercial Readiness Requirements:**
  - *Financial Security*: FERC modified the LGIP to allow surety bonds or other reasonably acceptable forms of financial security (in addition to cash and irrevocable letters of credit) to serve as the commercial readiness deposit and study deposits.[19]
  - *Study Deposits*: FERC modified the LGIP to (1) reflect that the first study deposit tier would also apply to small generating facilities requesting NRIS;[20] (2) clarify that the $5,000 application fee is nonrefundable; and (3) remove language that implied collection of separate study deposit collections.[21]
  - *Demonstration of Site Control*: FERC clarified that if a regulatory limitation required a change to a project's point of interconnection (POI), any deposit submitted by the interconnection customer in lieu of site control must be nonrefundable, though the customer could be subject to a withdrawal penalty.[22]
  - *Commercial Readiness*: FERC reiterated that it did not adopt nonfinancial commercial readiness requirements, but that it would not prejudge compliance filings that propose such readiness requirements.[23]
  - *Withdrawal Penalties*: FERC (1) clarified that withdrawal penalties cannot exceed the dollar amount collected from withdrawing customers; (2) revised the LGIP to clarify that no withdrawal penalties will be assessed if the withdrawal does not have a material impact on any co-clustered request; (3) clarified that using withdrawal penalties to offset other customer-provided financial security will not reduce the total network upgrade cost that can be put into ratebase; (4) modified the LGIP to clarify withdrawal process steps; (5) clarified that withdrawal penalties can cover costs for cluster restudies and facilities studies; (6) clarified the withdrawal penalty process when the withdrawal does and does not cause shared network upgrade cost increases; (7) modified the LGIP to distinguish transition- and non-transition-process-related withdrawal penalties; (8) clarified that "study costs", for transitional withdrawal penalty purposes, also include all study costs incurred prior to the effective date of the reforms.[24]
- **Transition Process:**
  - FERC largely denied all transition-related rehearing and clarification requests, but did revise the LGIP to add "Transitional Cluster Study Agreement" and "Transitional Serial Interconnection Facilities Study Agreement" as definitions.[25]

C. Reforms to Increase the Speed of Interconnection Queue Processing

- **Elimination of the Reasonable Efforts Standard in Favor of Penalties for Delayed Studies:**
  - FERC generally rejected all requests for rehearing challenging the decision in Order No. 2023 to remove the Reasonable Efforts standard for certain studies and impose a penalty and appeal scheme.[26]

- FERC clarified that: (1) no interest will be owed on any penalty funds;[27] (2) penalties would be incurred on a per-study basis (not per-customer basis) and per business day that the study is delayed;[28] (3) RTOs and ISOs have several options for collecting delay penalties, which they can propose on compliance;[29] (4) transmission providers are not required to collect or earmark late study penalties prior to concluding any appeal process under the LGIP;[30] and (5) Order No. 2023 did not limit the type of evidence that transmission providers may present on appeal.[31]

- **Coordination With Affected Systems:**

  - FERC clarified, and in some cases required various LGIP modifications to effectuate, that: (1) there are deadlines on affected system transmission providers; (2) affected system transmission providers may pause affected system studies if the host transmission provider decides to conduct a restudy and also delay the commencement of an affected system study until after the host completes its restudy;[32] (3) that "completion of" a cluster study is when the study, or restudy, report is issued; and (4) previous acceptances of affected system agreements without affected system network upgrade reimbursement provisions were in error.[33]

D. Reforms to Incorporate Technological Advancements Into the Interconnection Process

- **Increasing Flexibility in the Generator Interconnection Process:**

  - FERC largely denied clarification and rehearing requests, and reaffirmed its earlier reforms, regarding: (1) allowing co-located generating facilities behind a single POI;[34] (2) requiring transmission providers to evaluate requests to add generating capacity to an interconnection request without automatically deeming it a material modification provided the interconnection service level remains the same;[35] (3) requiring transmission providers to evaluate the proposed charging behavior of storage resources (if such analysis is done in the transmission provider's interconnection process);[36] and (4) availability of surplus service.

  - FERC clarified that transmission providers must allow customers to apply for surplus service once the underlying Large Generator Interconnection Agreement (LGIA) is executed (or filed unexecuted), not that surplus service must commence at that point.[37]

- **Incorporating Alternative Transmission Technologies Into the Process:**

  - FERC largely denied clarification and rehearing requests, and reaffirmed its earlier reforms, regarding requiring transmission providers to evaluate certain enumerated alternative transmission technologies in the interconnection study process — a list that excluded dynamic line ratings.[38]

  - FERC revised the Small Generator Interconnection Procedures (SGIP) and LGIP to mirror the LGIP-related reforms in the applicable SGIP provisions and clarify aspects of the reform in the LGIP.[39]

  - FERC clarified that the term "advanced conductors" includes present and future conductors that are more advanced relative to conventional conductors.[40]

- **Modeling and Ride-Through Requirements for Nonsynchronous Generating Facilities:**
  - FERC largely denied clarification and rehearing requests, and reaffirmed its earlier reforms, regarding modeling and ride-through requirements for nonsynchronous generating facilities.[41]
  - FERC clarified that a generating facility's inability to prioritize reactive power without a reduction in active power would qualify as a "physical limitation of the generating facility" under revised LGIA Article 9.7.3 and SGIA Article 1.5.7.[42]

Compliance Procedures:

- Compliance filings are due within 30 calendar days of the Final Order's publication in the *Federal Register*.
- Transmission providers proposing deviations from the Final Rule will be held to the "consistent with or superior to" standard (for non-RTO/ISO providers) and "independent entity variation" standard for RTOs/ISOs.
- Transmission providers may propose — and FERC will consider on a case-by-case basis — a requested effective date for their revised LGIPs and SGIPs, *e.g.*, to align with their existing queue processing dates.[43]

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To read the full summary, please click here.

For a copy of FERC's Order No. 2023-A, please click here.

For a copy of FERC's Order No. 2023, please click here.

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[1] *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023-A, 186 FERC ¶ 61,199 at P 73 (2024).

[2] *Id.* P 78.

[3] *Id.* P 74.

[4] *Id.* PP 75-76.

[5] *Id.* P 79.

[6] *Id.* P 95.

[7] *Id.* P 101.

[8] *Id.* P 102.

[9] *Id.* P 106.

[10] *Id.* PP 141-43.

[11] *See id.* P 150.

[12] *Id.* P 157.

[13] *Id.* P 159.

[14] *Id.* P 163.

[15] *Id.* P 175.

[16] *Id.* P 178.

[17] *Id.* P 181.

[18] *Id.*; *see also id.* P 165 (making similar statement regarding previously-approved generator replacement schemes).

[19] *Id.* P 185.

[20] *Id.* P 188 (modifying LGIP Section 3.1.1.1 accordingly because "interconnection customers developing small generating facilities requesting NRIS submit their interconnection requests under the relevant transmission providers' LGIP") (citing *Small Generator Interconnection Agreements & Procs.*, Order No. 792, 145 FERC ¶ 61,159, at PP 232, 235 (2013)).

[21] Order No. 2023-A, 186 FERC ¶ 61,199 at P 188-89.

[22] *Id.* P 200.

[23] *Id.* P 205.

[24] *Id.* PP 231, 233-35, 237-38, 240-41.

[25] *Id.* P 263.

[26] *Id.* PP 264-465.

[27] *Id.* P 452.

[28] *Id.* P 454.

[29] *Id.* P 455.

[30] *Id.* P 461.

[31] *Id.* P 462.

[32] *Id.* P 497.

[33] *Id.* P 529.

[34] *Id.* PP 545-47.

[35] *Id.* PP 554-56.

[36] *Id.* PP 575-87.

[37] *Id.* P 562.

[38] *Id.* PP 615-40.

[39] *Id.* PP 623-27.

[40] *Id.* P 631.

[41] *Id.* PP 650-55, 659-62.

[42] *Id.* PP 660-62.

[43] *Id.* P 669.

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