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State of Electric Interconnection and Transmission Regulation: Staying Alert to Imminent Developments and Getting Involved

By [Bill DeGrandis](#), [Donna Bobbish](#), [Gregory D. Jones](#) & [Alexander Kaplen](#)

Update: Order No. 2023-A was published in the Federal Register on April 16, 2024. Compliance filings to Order Nos. 2023 and 2023-A are due on May 16, 2023. The Commission will convene a special on May 13, 2024 to announce its final Transmission Rule.

The electric industry is in the midst of a period of significant growth and change. Last year, the Federal Energy Regulatory Commission (FERC or Commission) issued its landmark Order No. 2023 that enacted sweeping reforms to its generator interconnection rules that will dramatically impact the renewable energy industry. Within the next few weeks, FERC is scheduled to issue a final rule on regional transmission planning and cost allocation requirements, an issue that is as important as generator interconnection for electric power development, especially renewable energy resources. Taken together, the reforms from these two rulemakings will shape the electric industry for decades to come.

Below is a brief synopsis of what the industry can expect this year on these two critical topics, including some practical pointers on how to participate.

TRANSMISSION

As FERC has noted, interconnection and transmission go hand in hand. Once you interconnect your resource to the grid, if there is insufficient transmission capacity to deliver your output to customers or markets, you will not be able to sell your output.

FERC had actually issued its proposed rules on transmission planning and cost allocation ("Transmission Rules")¹ before it had issued its proposed rules on interconnection. However, the new interconnection rules embodied in Order Nos. 2023 and 2023-A were finalized before FERC has finalized its Transmission Rules.

That will change, as FERC Chairman Phillips has noted that FERC intends to issue the final Transmission Rule during a special meeting to be held on May 13, 2024.

We published a detailed analysis of some of the key features of the proposed Transmission Rule, which can be accessed through the link immediately below:

[FERC NOPR on Transmission Planning, Cost Allocation, and Certain Generation Interconnection Issues](#)

What should generators and other interested parties be looking for?

Once FERC issues an order on the Transmission Rules, interested parties will want to follow the same process as they did in reviewing Order No. 2023. Specifically, interested parties will want to review the actual FERC rules and prepare rehearing or clarification requests, as appropriate, and be prepared to support your objections or clarifications with information and evidence in the record.

FERC will then issue its rehearing order(s) (with clarifications if those were sought), and the parties can determine if they want to seek judicial review of the final Transmission Rules. Similar to the Order No. 2023 process, parties will then want to review the compliance filings made by ISOs and non-ISO FERC-jurisdictional utilities, assessing their impact and discerning whether the compliance filings propose modifications to the Commission's rulings in the Final Transmission Rule.

INTERCONNECTION

On July 28, 2023, FERC issued its final rule to revamp its *pro forma* generator interconnection procedures and agreements, which serve as a model for the interconnection rules of FERC-jurisdictional public utility transmission providers. That effort was the first major overhaul of FERC's interconnection requirements since Order No. 2003 was issued over twenty years ago. Appropriately dubbed Order No. 2023, the Commission's new rule is facilitating the shift from a "first-come, first-served" model to a "first-ready, first-served" model.² Order No. 2023 addresses nearly every facet of the generator interconnection process, from new rules requiring cluster study processes to controversial study delay penalties and long-awaited revisions to FERC's rules governing affected system impacts.

At that time, public utility transmission providers were required to submit compliance filings by April 3, 2024, which would contain revisions to their Open Access Transmission Tariffs (OATT) and *pro forma* generator interconnection agreements to comply with the directives in Order No. 2023. We published a detailed analysis of some of the key features of Order No. 2023, which can be accessed through the link immediately below:

[Federal Energy Regulatory Commission Issues Final Rule Overhauling Interconnection Procedures](#)

On March 21, 2024, FERC issued a rehearing order (Order No. 2023-A) in which FERC upheld its sweeping reforms as set forth in Order No. 2023, but offered significant clarifications and modifications to its prior ruling. FERC received 32 requests for rehearing and/or clarification that, collectively, touched upon nearly every single reform addressed in Order No. 2023. FERC responded in detail to the arguments on rehearing and, particularly in the case of its more controversial reforms, such as eliminating the reasonable efforts standard, and provided a robust and citation-heavy defense of its decision making. This sets up the legal arguments FERC is likely to advance during the appellate process before the federal courts.³

Procedurally, FERC further extended the deadline for transmission providers to submit revisions to their tariffs in compliance with Order No. 2023. The new due date for compliance filings is the effective date of Order No. 2023-A, which is May 16, 2024.⁴ FERC clarified that transmission provider's compliance filings must also conform to the revisions set forth in Order No. 2023-A.⁵

Substantively, FERC in Order No. 2023-A changed or clarified its new interconnection rules in several ways, but upheld a number of controversial reforms, including its decision to eliminate the "Reasonable Efforts" standard and its adoption of study deadlines and a study delay penalty and appeal structure.

Below we lay out a few of the highlights from Order No. 2023-A:

- FERC confirmed that all transmission providers have a compliance obligation to review their *pro forma* LGIPs and LGIAs and modify them as appropriate to conform to the directives in Order No. 2023, even early adopters that already have existing cluster study processes.⁶ Such early adopters need not implement the Order No. 2023 transition process but are not precluded from adopting it.⁷
- FERC created a 60-day grace period for interconnection customers in a queue that is currently conducting a cluster study process (and that will not implement the Order No. 2023 transition process). Under the newly clarified rule, interconnection customers may withdraw within 60 calendar days of the FERC-approved effective date of the transmission provider's Order No. 2023 compliance filing without paying the Order No. 2023 withdrawal penalties.⁸ FERC added a new section 5.1.2 to the *pro forma* LGIP to reflect this new rule.
- FERC rejected requests for reconsideration on its finding that transmission providers must post heatmaps, but FERC clarified that heatmaps must be made available by transmission providers that do not conduct transition processes by 360 calendar days after the Commission-approved effective date of the transmission provider's Order No. 2023 compliance filing.⁹
- FERC offered helpful clarifications regarding the ability of interconnection customers to cure their interconnection requests during the 45-day cluster request window, but noted that their requests must be deemed valid by the close of that window or those requests will be deemed withdrawn.¹⁰ FERC refined several sections of the *pro forma* LGIP to implement these and other related modifications.
- FERC was persuaded by requests to revise its rule to allow for surety bonds or other forms of financial security that are reasonably acceptable to the transmission provider for the commercial readiness deposit and all study deposits.¹¹
- FERC clarified that, if a new regulatory limitation requires a change to the point of interconnection that cannot be accommodated and results in an interconnection request being withdrawn, then the interconnection customer must be refunded any deposits submitted in lieu of site control. But in that case, the interconnection customer may be subject to a withdrawal penalty.¹²
- FERC offered several clarifications regarding withdrawal penalties, including the following clarifications: 1) that withdrawal penalties cannot exceed the dollar amount collected from customers, 2) that withdrawal penalties will not be assessed if the withdrawal does not materially impact other requests within the same cluster, 3) that using withdrawal penalties to offset financial security payments by the remaining customers will not reduce the network upgrade costs that can be placed into rate base, and 4) to clarify the timeframes for the specific withdrawal penalty application process steps, among others.¹³
- FERC granted clarification and made several modifications regarding affected system coordination, including clarifying that an affected system transmission provider must respond within 20 business days following notification from the initial host transmission

provider if it intends to conduct an affected system study¹⁴ and that affected system transmission providers may pause studies if the host transmission provider conducts a cluster restudy.¹⁵ FERC also added or modified sections of the *pro forma* LGIP to tighten the rules when an affected system transmission providers learns that the host transmission provider is conducting a cluster restudy.

What should generators and other interested parties be looking for?

Interconnection is key for new generation, whether from renewable or non-renewable sources. Generators cannot deliver power to the grid and sell facility output unless it is interconnected to the grid. Generators and other interested parties will want to review the compliance filings made by the jurisdictional utilities and ISOs/RTOs to ensure that the filing utility has proposed changes consistent with Order Nos. 2023 and 2023-A. Persons with an interest in a particular compliance filing may file comments on and/or protest proposed tariff changes which do not comply with FERC's new interconnection requirements. Such comments or protests will generally be due within 21 days after the compliance filing was made.

We highlight a few key points to keep in mind. First, the compliance filing stage is not a new opportunity to seek changes that are not part of what FERC accepted in Order Nos. 2023 or 2023-A. In other words, it is not a "jump ball" where a commenter can seek changes to Order Nos. 2023 or 2023-A.

Second, interested parties will want to review the compliance filings closely to determine if the filing utility is proposing deviations from the final *pro forma* tariff and interconnection agreement language set forth in Order Nos. 2023 and 2023-A. FERC will determine if any such deviations are "consistent with or superior to" its new interconnection requirements. Those types of deviations should be clearly flagged in the Transmittal Letters used to submit the compliance filings with FERC. If the filing utility is an ISO or RTO, then FERC applies the more permissive "independent entity variation" standard to afford more regional flexibility. That said, FERC made clear that it will not pre-judge any public utility transmission provider's compliance filings, and ISOs and RTOs must still demonstrate that any queue reform efforts made to date, for example, comply with directives of Order Nos. 2023 and 2023-A.

Finally, once FERC has reviewed a compliance filing and the comments and protests filed in response to the compliance filing, FERC will accept the compliance filing, accept it subject to conditions, or reject the compliance filing.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington D.C. lawyers:

Bill DeGrandis
1.202.551.1720
billdegrandis@paulhastings.com

Gregory D. Jones
1.202.551.1941
gregoryjones@paulhastings.com

Donna Bobbish
1.202.551.1790
donnabobbish@paulhastings.com

Alexander Kaplen
1.202.551.1939
alexanderkaplen@paulhastings.com

¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (2022).

² *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (2023); *order on reh'g*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024).

³ *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024).

⁴ Order No. 2023-A was published in the Federal Register on April 16, 2024. See *Improvements to Generator Interconnection Procedures and Agreements*, 89 Fed. Reg. 27,006 (Apr. 16, 2024).

⁵ *Id.* at P 667.

⁶ *Id.* at P 73.

⁷ *Id.* at P 74.

⁸ *Id.* at P 75.

⁹ *Id.* at P 102.

¹⁰ *Id.* at PP 159-160.

¹¹ *Id.* at P 185.

¹² *Id.* at P 200.

¹³ *Id.* at P 231-241.

¹⁴ *Id.* at P 492.

¹⁵ *Id.* at P 497.

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