

INSIGHTS

Priority Access on Interconnection Lines: FERC's Policy Under Review

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The Federal Energy Regulatory Commission recently issued a Notice of Inquiry seeking comment on whether and/or how FERC should revise its current policy concerning priority rights on interconnection lines that connect generators to the larger transmission grid. Comments are due on June 11, 2012. While FERC's present policy generally treats interconnection lines as transmission lines and therefore subjects those interconnection lines to FERC's open access policies, FERC has permitted certain exceptions to this policy. For example, FERC may allow the owner, or an affiliate of the owner, of a generator interconnection line to retain priority to certain capacity on that line so long as the owner has specific, pre-existing expansion plans with milestones for construction and can demonstrate that it has made material progress towards meeting those milestones. The intent of this exception is to provide some certainty to the generation developer that it will retain the capacity on its interconnection line when that line is sized to accommodate a phased development of generation. However, if a third party requests service on the interconnection line, FERC requires an Open Access Transmission Tariff (OATT) to be filed within 60 days of the request. To date, the Commission has applied this exception on a case-by-case basis in an effort to "prevent undue discrimination by ensuring that third parties have open access available to transfer capability that is not being used by the owner of the interconnection facilities."¹ However, the exception policy has come under fire primarily by generation developers who allege that

1. FERC should recognize a distinction between interconnection lines and transmission lines and therefore apply the open access policies accordingly;
2. FERC's current policy creates a "free-rider"² problem whereby late-coming generation developers can gain transmission capacity on the initial developer's line and preclude the initial developer from completing its phased generation plans due to lack of interconnection capacity;
3. priority rights are essential to securing financing for generation projects; and
4. the OATT may be largely inapplicable to interconnection lines and that if FERC continues the exception policy, then it should develop a modified OATT applicable only to interconnection lines.

In response to these criticisms, which were provided at a March 2011 technical conference,

FERC has now initiated an inquiry on these policies by asking a series of questions. First, FERC seeks comment on what the scope of the inquiry should be and whether FERC should treat the interconnection/transmission facilities in the OATT context or the Large Generator Interconnection Procedures (LGIP) framework. Second, if FERC relies on the existing OATT policies, FERC asks if that framework should be modified to recognize the specific characteristics and needs of generation developers. This question arose in light of several industry complaints that the showing needed to demonstrate "specific, preexisting plans" and milestones is not clear and that FERC should provide guidance on how generation developers should make this demonstration. Third, FERC asked whether it should require a higher threshold, besides a request for transmission capacity, before requiring the interconnection line owner to file an OATT. In addition, if FERC maintains the requirement to file an OATT after a transmission request is made, FERC asked how an OATT would be tailored to an interconnection line. Fourth, FERC asked whether a safe harbor, meaning a grace period during which the open access rules would not apply, would be appropriate, and how long such grace period should last. Finally, because several commenters suggested that the LGIP should be expanded to address third-party access to interconnection facilities, FERC asked how the LGIP should be revised to accommodate priority access and third-party transmission requests. The Notice of Inquiry may be found [here](#).