

May 22, 2014

FERC Amends Open-Access Requirements for Interconnection Facilities

New proposals aim to reduce regulatory burden on generation developers.

On May 15, the Federal Energy Regulatory Commission (FERC or the Commission) issued a Notice of Proposed Rulemaking (NOPR)¹ that proposes to relieve some of the existing regulatory burdens on generator-owned interconnection facilities. The relief FERC proposes includes the following:

- Allowing a generation developer to conditionally keep control of certain interconnection-overbuild or excess capacity for a discrete period of time
- Limiting the existing presumptive right of third parties to commandeer access to interconnection facilities
- Eliminating certain related advance filing and approval requirements

The Commission now subjects Interconnection Customer's Interconnection Facilities (ICIF), also known as generator tie lines, to extensive FERC transmission regulation, including compliance with Open Access Transmission Tariff (OATT), Open Access Same Time Information System (OASIS), and Standards of Conduct (SoC) requirements.² Most significantly, FERC presumes in most cases that a third party that desires transmission access may obtain rights to use another entity's ICIF, as ICIF owners must make excess capacity available to third parties upon request unless they can compellingly demonstrate that they must reserve for themselves the currently available excess capacity for future generation development. Although many ICIF owners have been able to seek waiver of open access requirements by demonstrating a need for the full capacity of their ICIF, a formal waiver filing is typically required, and the results before FERC are far from assured. Typically, the ICIF may be the only transmission assets owned by the generator, and third-party requests to use ICIF capacity are rare. The Commission's proposed rule would presume owner-only access for an initial five-year period.

The NOPR also proposes to reform the procedures by which third parties gain access to capacity on currently available ICIF. Currently, an ICIF owner is technically required to file an OATT and provide open access transmission service over its facilities located between the generating facility and the point at which the transmission provider's facilities begin, or request waiver of the OATT requirement. However, numerous generators have not filed OATTs and the Commission only seldom requires filing absent an interconnection or transmission service request from some third party. In the NOPR, the Commission explained that normally ICIF is used for the transmission of electricity in interstate commerce and has historically not been exempt from regulation under the Commission's previous treatment of transmission facilities. ICIF owners have filed numerous one-off petitions to establish rights to reserve particular excess ICIF capacity, and the Commission has issued numerous orders granting waivers of the OATT and other filing requirements in individual cases. However, waiver of the OATT requirement is discretionary at present, and can be revoked as soon as the ICIF owner receives a third-party request for service.

1. View the proposed rule [here](#).

2. Some smaller "Qualifying Facility" alternative power and cogeneration plants hold limited immunities from these requirements under other FERC regulations.

The Commission determined that the current ICIF open-access policy imposes an unnecessary regulatory burden on generators and may limit generation development. As a result, the Commission proposes to grant a conditional blanket ICIF waiver of the OATT, OASIS, and SoC requirements for all eligible, existing, and future ICIF owners that sell wholesale electricity. The Commission proposed this waiver given the limited nature of ICIF, which do not present the same policy concerns over nondiscriminatory conduct as other transmission facilities, and the fact that third-party requests to use ICIF have been rare. The Commission further explained that it would revoke such a waiver, on a case-by-case basis, if it determines that doing so would be in the public interest. If adopted, a generator would not be required to make any initial filing to enjoy the new immunity.

The proposed reforms also introduce a new procedure for third-party requests to use ICIF that are subject to the blanket waiver. The Commission proposes to require that these third-party requests be made under sections 210 and 211 of the Federal Power Act, which describe the process for granting interconnection and transmission service, respectively, in the absence of an OATT. Only after receiving such a request would an ICIF owner be required to demonstrate its plans for future generation development and a need for the full ICIF capacity. The proposed rule would also establish a five-year “safe harbor” period, in which there would be a rebuttable presumption that both (1) the eligible ICIF owner has definitive future plans to use its excess ICIF capacity with no further demonstration or filing and (2) the eligible ICIF owner need not immediately make actual use of the excess ICIF capacity. The Commission explained that the “safe harbor” period would reduce risks for generation developers and place the burden on third-party requesters to demonstrate that the public interest would be better served by granting third-party use of the ICIF capacity.

Comments on the NOPR are due 60 days after publication in the *Federal Register* and should be filed in FERC Docket No. RM14-11.

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