

Morgan Lewis

FERC Order No. 697-C: New Reporting Requirements for Generating Site Development



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Welcome to FERC Order No. 697-C: New Reporting Requirements for Generating Site Development

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Summary of Presentation

- **Reporting obligations prior to Order No. 697-C**
- **New reporting obligations imposed by Order No. 697-C**
 - Quarterly reports
 - Annual reports
- **Upcoming filing deadlines**
- **Reporting strategies**
- **Q&A**

Change-in-Status Reporting Obligations

- **Public utilities with market-based rate authority have existing reporting obligations under 18 CFR § 35.42(a)**
 - Report changes relevant to horizontal and vertical market power
 - Horizontal: Ownership, control, or affiliation with generation capacity of 100 MW or more
 - Vertical: Ownership, control, or affiliation with inputs to electric power production
- **Prior to Order No. 697-C, obligation was to report on sites for generation capacity in development within 30 days of acquisition**

Order No. 697-B and Request for Rehearing

- **Per Order No. 697, public utilities required to report changes in status regarding “inputs to electric power generation”**
- **Per Order No. 697-B, “inputs to electric power generation” included sites for generation capacity in development**
 - Obligation was to report ownership of all land that potentially could be used for generation, not just sites for which permits for new generation were obtained or construction was under way
- **AWEA requested rehearing of Order No. 697-B**
 - Reporting requirement potentially burdensome because wind developers acquire large quantities of land for wind farms under multiple leases or other agreements
 - Concerns with confidentiality and commercial sensitivity of information about generation development sites
 - Sought obligation to report only on sites in load pockets where potential for vertical market power may exist or reporting only when site control required to be demonstrated for interconnection purposes

- **FERC denied AWEA's request to limit reporting obligation to sites for new generation in load pockets where potential for vertical market power may exist**
 - FERC held such a revision would be too narrow
- **FERC found merit in AWEA's request to limit reporting to only when site control is required to be demonstrated for interconnection purposes, but did not adopt AWEA's proposal in full**
- **FERC granted rehearing and revised its vertical market power reporting requirements under 18 CFR § 35.42 applicable to public utilities with market-based rate authority**
- **Order No. 697-C effective date: July 29, 2009**

Order No. 697-C: Quarterly Reporting Obligation

- **On a quarterly basis, every market-based rate public utility must report to FERC acquisition of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process**
 - Obligation is triggered with acquisition of a site or sites upon which it is “reasonably commercially feasible” to develop 100 MW or more of new generation capacity
 - Definition of “site control” is from FERC-standard Large Generator Interconnection Procedures (see below)
 - Site control is established if the public utility gives the interconnection provider a monetary deposit to establish site control for interconnection purposes

Order No. 697-C: Quarterly Reporting Obligation (continued)

- **“Site control” under the LGIP is established by “documentation reasonably demonstrating”:**
 - Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing a generating facility;
 - Option to purchase or acquire a leasehold site for the purpose of constructing a generating facility; or
 - Exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease, or grant the Interconnection Customer the right to possess or occupy a site the purpose of constructing a generating facility
- **Under the LGIP, an Interconnection Customer may defer the demonstration of site control by posting an additional deposit of \$10,000 at the initiation of the interconnection request**
 - Such payment triggers the reporting requirement if the size trigger is met

Order No. 697-C: Quarterly Reporting Obligation (continued)

- **Contents of site acquisition quarterly report:**
 - Number of sites acquired
 - Relevant geographic market in which sites are located
 - Geographic markets are as defined in Order No. 697 (Northeast, Southeast, Central, SPP, Southwest, Northwest)
 - Maximum potential number of MWs of generating capacity that are “reasonably commercially feasible” on the sites, which must be justified
 - “Justification” for maximum potential number of MWs must be based on capacity that could be produced on the sites with the technology for which the sites were acquired
 - Sellers “must be forthright” in estimating and reporting the maximum potential number of MWs
 - Maximum potential number of MWs of generating capacity may be reported on an aggregate basis for each relevant geographic market in which sites are located
 - No obligation to report specific locations of sites

Order No. 697-C: Quarterly Reporting Obligation (continued)

- **Timing of quarterly report: Within 30 days of the close of the quarter in which the triggering site acquisitions occur**
- **Order No. 697-C became effective during 3Q2009 (July 29, 2009), so first quarterly report is due October 30, 2009, the date 30 days following the close of the quarter**
- **Order No. 697-C does not change the timing of other required change-in-status reports (e.g., acquisition of 100 MW of generating capacity)**
 - Such changes in status must still be filed within 30 days of the event

Order No. 697-C: Annual Reporting Obligation

- **On an annual basis, every market-based rate public utility must report to FERC the following:**
 - Land the seller has acquired, taken a leasehold in, obtained an option to purchase or lease, or entered into an exclusivity or other arrangement for the purpose of developing a generation site but for which site control has not yet been demonstrated for interconnection purposes
 - Triggering Event for annual report:
 - Land has been acquired during prior three years but site control has not yet been demonstrated
 - Potential number of megawatts that are reasonably commercially feasible on the land for new generation capacity development is 100 MW or more
- **Timing of annual report: January 1 of year in which the triggering event occurred**

Order No. 697-C: Annual Reporting Obligation (continued)

- **Contents of annual report of triggering events**
 - Same as for quarterly reports:
 - Number of sites acquired
 - Relevant geographic market in which sites are located
 - Maximum potential number of MWs of generating capacity that are “reasonably commercially feasible” on the sites, which must be justified
 - Maximum potential number of MWs of generating capacity may be reported on an aggregate basis for each relevant geographic market in which sites are located
- **Example from Order No. 697-C**
 - Seller acquires land in January 2009 and additional land in 2009 and has not demonstrated site control by January 2012 and March 2012
 - Seller must file report on January 1, 2013

January 1, 2010, Reporting Obligation

- **Order No. 697-C requires report on January 1, 2010, by all market-based rate public utilities**
 - Land acquired, leased, or optioned but lacking site control that has been held for three years or longer prior to effective date of Order No. 697-C (July 29, 2009)
 - Obligation does not apply to market-based rate public utilities that previously have reported the information to FERC

Summary of Upcoming Filing Due Dates

- **October 30, 2009**
 - Report of acquisition of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process during the 3rd quarter of 2009
- **January 1, 2010**
 - Land acquired, leased, or optioned but lacking site control that has been held for three years or longer prior to July 29, 2009

Reporting Strategies

- **To protect sensitive commercial information, aggregate site information by region (Northeast, Southeast, Central, SPP, Southwest, Northwest)**
- **Justify maximum potential number of MWs of generating capacity that are “reasonably commercially feasible” on the sites by reference to the technology for which the sites were acquired**
 - If seller has not yet made decisions about technology, use a reasonable proxy

Requests for Rehearing of Order No. 697-C

- **EEI**
 - Clarify meaning of “reasonably commercially feasible”
 - Move annual reporting deadline to January 30th from January 1st
- **AWEA**
 - Eliminate duplicative reporting requirements so sellers need not report in quarterly reports land acquisitions previously reported in annual reports
 - Clarify scope of initial quarterly report
 - Move annual reporting deadline to January 30th from January 1st

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