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FERC Clarifies and Revises Certain Aspects of its Final Rule Reforming Large Generator Interconnection Procedures and Agreements

Public Utility Transmission Providers are directed to file a single compliance filing that implements the reforms to the pro forma large generator interconnection procedures and agreements. The compliance filings are due no later than 90 days after the issuance of the rehearing order (i.e., May 22, 2019).

On February 21, 2019, the Federal Energy Regulatory Commission (“FERC” or “the Commission”) issued an order (“Order No. 845-A”) granting in part and denying in part requests for rehearing and clarification of its final rule reforming the large generator interconnection procedures (“Order No. 845”).¹ Order No. 845 aimed to “improve certainty for interconnection customers, promote more informed interconnections decisions, and enhance the interconnection process”² by implementing various revisions to the Commission’s *pro forma* Large Generator Interconnection Procedures (“LGIP”) and *pro forma* Large Generator Interconnection Agreements (“LGIA”), including:

- **Option to Build:** Removing the limitation that previously allowed interconnection customers to exercise the option to build transmission provider’s interconnection facilities and stand alone network upgrades only in instances where the transmission provider could not meet the interconnection customer’s preferred construction timeline.
- **Dispute Resolution Procedures:** Directing transmission providers to establish interconnection dispute resolution procedures permitting disputing parties to unilaterally pursue non-binding dispute resolution.
- **Contingent Facilities:** Directing transmission providers to outline and make public a method for determining contingent facilities.
- **Study Processes and Assumptions:** Directing transmission providers to post study processes and assumptions forming the basis of network models used in interconnection studies.
- **“Generating Facility” Definition:** Amending the definition of “Generating Facility” to expressly cover electric storage resources.
- **Study Performance Reporting:** Implementing reporting requirements for aggregate interconnection study performance.
- **Service Below Generating Facility Capacity:** Permitting interconnections customers to request levels

of interconnection service below the generating facility's capacity.

- **Provisional Interconnection Agreements:** Directing transmission providers to allow provisional interconnection agreements providing for limited operation of the generating facility prior to full interconnection.
- **Surplus Interconnection:** Directing transmission providers to allow interconnection customers to use surplus interconnection service at existing points of interconnection.
- **Technology Changes:** Directing transmission providers to establish procedures permitting transmission providers to assess and study the interconnection customer's technology changes without changing the interconnection customer's queued position.

Requests for rehearing or clarification were filed with respect to each of these issues, except for the dispute resolution requirements. The Commission's determinations on rehearing are analyzed below.

INTERCONNECTION CUSTOMER'S OPTION TO BUILD

Various parties argued that expanding the option to build will hinder the ability of transmission providers to earn a return on network upgrades and facilities. Parties also argued that these reforms are inconsistent with the decision of the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in *Ameren Services Co. v. FERC*.³ As a preliminary matter, the Commission found the *Ameren* decision inapplicable in this context, as it related to a variation of the interconnection pricing procedures unique to Midcontinent Independent System Operator, Inc.'s ("MISO") tariff. Moreover, the Commission pointed out that "a transmission provider has the ability to earn a return *of* capital expenditure for network upgrades to the extent that it has reimbursed an interconnection customer with transmission credits. Additionally, when the transmission provider includes in its rate base the cost of a network upgrade, the transmission provider earns a return *on* the costs of this facility."⁴

On the other hand, the Commission granted requests for rehearing regarding stand alone network upgrades and oversight costs. Specifically, the Commission revised the definition of stand alone network upgrades to require

transmission providers to provide, within 15 days, a written technical explanation outlining why it does not consider a network upgrade to be a stand alone network upgrade in the event of a disagreement between the interconnection customer and transmission provider. The Commission also revised the *pro forma* LGIA to require an interconnection customer exercising an option to build to pay the transmission provider a mutually agreed amount in compensation for construction oversight costs.

Additionally, the Commission clarified certain aspects of the option to build. First, the Commission confirmed that the option to build provisions apply to all public utility transmission providers, including those that reimburse the interconnection customer for network upgrades. The Commission noted that Order No. 845 does not interfere with a transmission provider's ability to provide transmission credits to reimburse interconnection customers that pay for network upgrades and then recover the costs of these credits in their transmission rate base. Second, the Commission clarified that the option to build does not apply to stand alone network upgrades on affected systems.⁵

CONTINGENT FACILITIES

Order No. 845 added language to the *pro forma* LGIP requiring the transmission provider to post a method for identifying contingent facilities⁶ and to provide a list of contingent facilities applicable to an interconnection request at the close of the system impact study phase. In Order No. 845-A, the Commission denied as contrary to cost causation principles a request to exempt interconnection customers from financial responsibility for late-identified contingent facilities.

STUDY MODELS AND ASSUMPTIONS

Order No. 845 required transmission providers to post, on either an Open Access Same-Time Information System ("OASIS") site or password-protected site, network model information and underlying assumptions that are representative of the information used in the most recent interconnection study and current system conditions. Under these revisions, a transmission provider can require interconnection customers and site users to sign a confidentiality agreement relating to the release of commercially sensitive information or CEII.

In Order No. 845-A, the Commission denied a request for clarification that a transmission provider may designate as

CEII information it believes should be treated as such, noting that only the Commission can designate information as CEII. However, the Commission pointed out that transmission providers are not precluded from taking necessary steps to protect information within their custody and control to ensure the security of the electric grid. The Commission also clarified that transmission providers may apply reasonable standards for evaluating requests to enter into confidentiality agreements before information is released, and may use the Commission's CEII regulations as a model for doing so. Furthermore, the Commission granted clarification that the phrase "current system conditions" does not require transmission providers to maintain models reflecting current real-time operating conditions, but rather information that reflects system conditions currently used in interconnection studies, acknowledging that there can be differences between current, real-time operations and the base case data used to evaluate interconnection requests.

CONGESTION AND CURTAILMENT INFORMATION

Order No. 845 declined to adopt a proposal to assist interconnection customers in their decision making by requiring transmission providers to post congestion and curtailment information on their OASIS sites. The Commission denied a request for rehearing on this issue, noting that certain congestion and curtailment data is already provided by transmission providers or otherwise publicly available, and reiterating the "limited usefulness, difficulty, and technical infeasibility" of complying with the proposal.

DEFINITION OF GENERATING FACILITY

Order No. 845 revised the definition of "Generating Facility," to allow electric storage resources to interconnect under the large generator interconnection procedures. In Order No. 845-A, the Commission denied a request for rehearing to further clarify the definition to account for the load characteristics of electric storage resources. The Commission disagreed with concerns that declining to refer to load characteristics in the definition would artificially narrow the scope of studies expected to be performed during the interconnection process, create ambiguity with respect to the upgrades that are necessary to accommodate the load characteristics of an electric storage resource, or potentially conflict with the definition of "electric storage resources" established in FERC Order No. 841.⁷ The Commission found concerns relating to the load characteristics of electric storage resources to be beyond

the scope of Order No. 845. The Commission further found that the definition of Generating Facility implemented in Order No. 845 affords transmission providers the ability to interconnect with electric storage resources, and that a transmission provider can enter into a non-conforming LIGA as necessary to the extent it finds the *pro forma* LGIA insufficient to address a particular electric storage resource.

INTERCONNECTION STUDY DEADLINES

In Order No. 845, the Commission required transmission providers to report interconnection study performance data on their OASIS sites or public websites on a quarterly basis, and established a requirement for transmission providers to file information reports with the Commission in the event they exceed interconnection study deadlines for more than 25 percent of any study type for two consecutive calendar quarters (the "Filed Report Requirement"). The Commission denied a request to reconsider the quarterly reporting requirement on the basis that study delays may be due to events outside of a transmission provider's control. The Commission noted that it has accounted for this possibility by opting not to establish an automatic penalty for delays and permitting transmission providers to explain the rationale for delays under the *pro forma* LGIP. The Commission reiterated the benefits of the reporting requirements, such as increasing transparency for interconnection customers and aiding in the identification of process deficiencies. The Commission also denied a request for rehearing regarding the start date for measuring interconnection study performance metrics, which begins when the relevant interconnection study agreement is executed. For both the study metrics reporting requirement and the Filed Report Requirement, the Commission clarified that the reporting requirement will commence in the first calendar quarter of 2020.

SERVICE BELOW GENERATING FACILITY CAPACITY

The Commission denied a request for clarification that transmission providers may propose stronger indemnification provisions in their LGIPs and LGIAs for interconnection service less than a generating facility's generating facility capacity, finding the existing indemnification provisions of the *pro forma* LGIA are sufficient in the event an interconnection customer's failure to operate its generating facility consistently with the LGIA results in overgeneration. Order No. 845-A revised section 3.1 of the *pro forma* LGIP to specify that "[t]he necessary control technologies and protection systems shall be

established in Appendix C of the executed, or requested to be filed unexecuted, LGIA,” and further noted that any additional penalties proposed by the transmission provider pursuant to FPA section 205 should be included in Appendix C. The Commission also noted that an interconnection’s failure to comply with the Appendix C operating requirements may be a breach of the LGIA, potentially resulting in default and termination.

Order No. 845-A also clarified that transmission providers are required to provide detailed explanations of any determination to perform additional studies at the full generating facility capacity to an interconnection customer before performing such studies. The Commission revised section 3.1 of the *pro forma* LGIP to specify that “[i]f after the additional studies are complete, Transmission Provider determines that additional Network Upgrades are necessary, then Transmission Provider must (1) specify which additional Network Upgrade costs are based on which studies; and (2) provide a detailed explanation of why the additional Network Upgrades are necessary.”

The Commission denied a request for clarification permitting interconnection customers the ability to propose control technologies to the transmission provider after the completion of the facilities study. However, the Commission granted rehearing in part to provide that an interconnection customer may propose control technologies before it returns an executed system impact study agreement to the transmission provider, and prior to the return of an executed facilities study agreement.

SURPLUS INTERCONNECTION SERVICE

The Commission denied requests to reconsider Order No. 845’s surplus interconnection service requirement, as well as arguments that the requirement is inconsistent with the provisions of certain transmission providers’ tariffs. The Commission also declined requests for clarification or a technical conference regarding the potential impact of an expedited surplus interconnection service process on queue position and transmission planning.

However, the Commission granted clarification that surplus interconnection service is only required to be made available up to the amount that can be provided without requiring new network upgrades. The Commission also granted a request for rehearing by the New York Independent System Operator, Inc. (“NYISO”), indicating

that it does not intend to limit the ability of independent entities to request independent entity variations from Order No. 845’s requirements regarding surplus interconnection service.

MATERIAL MODIFICATION DEFINITION AND INCORPORATION OF ADVANCED TECHNOLOGY

In Order No. 845-A, the Commission confirmed that it has not changed the definition of “material modification” (which determines whether a proposed change will result in an interconnection customer losing its queue position based on a material impact on the cost or timing of an interconnection request with a later queue position), and explained that Order No. 845 requires transmission providers to develop a definition of permissible technological advancements that do not require a material modification assessment and therefore do not lead to a loss of queue position. Furthermore, the Commission clarified the specific process for the separate requirement for procedures to determine whether a technological change constitutes a material modification.

INTERCONNECTION REQUEST WITHDRAWALS

The Commission dismissed concerns that Order No. 845 fails to deal with speculative interconnection requests that may be subsequently withdrawn. The Commission reiterated that Order No. 845’s revisions are intended to enhance transparency and informed decision making that would overall result in benefits for interconnection customers and transmission providers, including fewer late-stage withdrawals.

WHOLESALE DISTRIBUTION TARIFFS

Finally, the Commission clarified that Order No. 845’s requirements do not apply to wholesale distribution access tariffs, noting that the distinct engineering and jurisdictional issues of an interconnection with a distribution system should be further evaluated before imposing Order No. 845’s requirements in this context.

COMPLIANCE AND EFFECTIVE DATES

The Commission clarified the effective dates and compliance deadlines applicable to the LGIP and LGIA reforms, as follows:

- Effective date of Order No. 845: July 23, 2018 (75 days after publication in the Federal Register)

- Effective date of Order No. 845-A: 75 days after publication in the Federal Register
- Deadline for public utility transmission providers to submit a compliance filing: 90 days within issuance of Order No. 845-A
- Effective date of compliance filing:
 - Non-RTO/ISO with Non-Regional Transmission Organization (“RTO”)/Independent System Operator (“ISO”) transmission providers: the later of (i) effective date of Order No. 845-A (75 days from publication in the Federal Register), or (ii) the compliance deadline (90 days from issuance of Order No. 845-A)
 - For RTOs/ISOs: the date established in the Commission’s order accepting the RTO’s/ISO’s compliance filing (which may not be earlier than the issuance of such order)

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¹ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845-A, 166 FERC ¶ 61,137 (2019).

² *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 2 (2018).

³ In that case, the D.C. Circuit vacated and remanded certain Commission decisions directing MISO to remove an option under its tariff that allowed transmission owners to unilaterally elect to initially fund network upgrades. Under this option, transmission owners could thereafter recover the interconnection customer’s portion of the cost burden through periodic network upgrade charges that included a return on the capital investment (*i.e.*, the “transmission owner initial funding option”). The Commission held that the transmission owner initial funding option was unjust and unreasonable because it could result in higher costs (as compared to an alternative interconnection customer-funded option) while yielding no corresponding increase in interconnection service. On appeal, the D.C. Circuit vacated and remanded the Commission’s decisions, raising concerns that the decisions precluded transmission owners from receiving returns on the construction and operation of network upgrade facilities and directing the Commission to “explain how investors could be expected to underwrite the prospect of potentially large non-profit appendages with no compensatory incremental return.” *See Ameren Services Co. v. FERC*, 880 F.3d 571 (D.C. Cir. 2018).

⁴ Order No. 845-A at P 19 (emphasis in original). MISO and Ameren alternatively requested clarification that a transmission owner may pay interconnection customers for construction costs incurred for the option to build facilities when the interconnection customer transfers them to the transmission provider, and thereafter charge the customer a return under a Facility Service Agreement. The Commission denied this request, indicating that it constitutes a deviation from the Commission’s interconnection pricing policy that should be requested and evaluated as part of MISO’s Order No. 845 compliance filing.

The Commission also denied rehearing with respect to other aspects of the option to build reforms, such as requests for a blanket FPA section 203 authorization for facilities built pursuant to the option to build, concerns regarding the impacts of Order No. 845 on various reliability and indemnification issues, concerns regarding a transmission provider’s ability to conduct cluster studies, and requests that the Commission require interconnection customers electing the option to build to provide cost estimates.

⁵ Affected systems are defined in the *pro forma* LGIP and *pro forma* LGIA as “electric system[s] other than the Transmission Provider’s Transmission System that may be affected by the proposed interconnection.” *Pro forma* LGIP Section 1 (Definitions); *Pro forma* LGIA Art. 1 (Definitions).

⁶ Contingent facilities are defined as “those unbuilt interconnection facilities and network upgrades upon which the interconnection request’s costs, timing, and study findings are dependent, and if delayed or not built, could cause the need for restudies of the interconnection request or a reassessment of the interconnection facilities and/or network upgrades and/or costs and timing.” Order No. 845 at P 218.

⁷ Order No. 841 defines an electric storage resource as “a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.” *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Final Rule, 162 FERC ¶ 61,127 at P 29 (2018).