

139 FERC ¶ 61,051  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 40

[Docket Nos. AD12-14-000 and AD11-11-000]

Open Access and Priority Rights on Interconnection Facilities

(April 19, 2012)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry, the Commission seeks comment on open access and priority rights for capacity on interconnection facilities.

DATES: Comments are due [**Insert Date 45 days after publication in the FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's web site,

<http://www.ferc.gov>. Comments may be submitted by any of the following methods:

- Agency Web Site: Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at <http://www.ferc.gov/docs-filing/efiling.asp>.
- Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand-deliver an original and copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE,

Washington, DC 20426. These requirements can be found on the Commission's web site, see, *e.g.*, the "Quick Reference Guide for Paper Submissions," available at <http://www.ferc.gov/docs-filing/efiling.asp>, or via phone from Online Support at (202) 502-6652 or toll-free at 1-866-208-3676.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Becky Robinson (Technical Information)  
Office of Energy Policy and Innovation  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-8868

Christopher Thomas (Technical Information)  
Office of Energy Market Regulation  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-8412

Olga Kolotushkina (Legal Information)  
Office of the General Counsel  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-6024

SUPPLEMENTARY INFORMATION:

139 FERC ¶ 61,051  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Open Access and Priority Rights on Interconnection Facilities                      Docket Nos. AD12-14-000

Priority Rights to New Participant-Funded Transmission                      AD11-11-000

NOTICE OF INQUIRY

(April 19, 2012)

1. In this Notice of Inquiry (NOI), the Commission seeks to explore whether, and, if so, how the Commission should revise its current policy concerning priority rights and open access with regard to certain interconnection facilities. In a series of cases that have come before the Commission in recent years, the Commission has treated certain interconnection facilities<sup>1</sup> as transmission facilities for purposes of open access policies. However, the Commission has permitted an owner of interconnection facilities to have priority to capacity over its facilities for its existing use at the time of a third-party request for service.<sup>2</sup> In the instance where an owner of interconnection facilities has specific, pre-existing generator expansion plans with milestones for construction of

---

<sup>1</sup> As noted below, the Commission in the past has used the term “generator lead lines” to describe the class of facilities at issue in this proceeding. In this NOI, we will use the term “interconnection facilities,” except when referencing comments on generator lead lines.

<sup>2</sup> See *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (*Milford*); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 49 (2010) (*Terra-Gen I*).

generation facilities and can demonstrate that it has made material progress toward meeting those milestones, the Commission may grant priority rights for the capacity on the interconnection facilities to those future generation projects or expansions as well.<sup>3</sup> Further, an affiliate of the current interconnection facility owner that is developing its own generator projects also may obtain priority rights to the capacity on the interconnection facilities by meeting the “specific plans and milestones” standard with respect to future use, provided that the plans include a future transfer of ownership of the interconnection facilities to such an affiliate.<sup>4</sup> This granting of priority rights preserves the ability of the generation developer to deliver its output to the point of interconnection with the transmission system, so long as it can make the relevant showing to the Commission sufficient to justify priority. The Commission requires that, upon receipt of a request for transmission service from an unaffiliated third party, a *pro forma* Open Access Transmission Tariff (OATT) must be filed by the owner of the facilities considered interconnection facilities under Order No. 2003 within 60 days of the date of the request.<sup>5</sup>

---

<sup>3</sup> *Aero Energy LLC*, 116 FERC ¶ 61,149, at P 28 (2006) (*Aero*); *Milford*, 129 FERC ¶ 61,149 at P 22; and *Alta Wind*, 134 FERC ¶ 61,109, at P 16-17 (2011) (*Alta Wind*). Such plans and initial progress also must pre-date a valid request for service. *Terra-Gen I*, 132 FERC ¶ 61,215 at P 53.

<sup>4</sup> See *Milford*, 129 FERC ¶ 61,149 at P 5.

<sup>5</sup> *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Termoelectrica U.S., LLC*, 105 FERC ¶ 61,087, at P 11 (2003).

2. To date, the Commission has applied this policy on a case-by-case basis. The Commission's current policy is guided by the desire to prevent undue discrimination by ensuring that third parties have open access to available transfer capability that is not being used by the owner of the interconnection facilities. In doing so, the Commission has considered priority access to firm service, and granted waivers of certain provisions in the *pro forma* OATT to reflect the limited service available over interconnection facilities and the limited ability of generation developers to support certain OATT ancillary services and requirements.

3. Through this Notice of Inquiry, the Commission seeks comment on options for addressing priority rights on interconnection facilities given the responses filed to the March 2011 technical conference, which identified a number of concerns with the Commission's current policy. As discussed in the sections that follow, the Commission seeks comments on alternative approaches to govern third-party requests for service and priority rights: continued use of an OATT framework with potential modification and clarification, including the potential introduction of a safe harbor period, and a case-by-case determination on the generation developer's priority rights; and use of a Large Generator Interconnection Agreement (LGIA)/Large Generator Interconnection Procedures (LGIP) framework in which the existing LGIA provisions that govern third-party use of a transmission provider's interconnection facilities would be extended to interconnection customer's interconnection facilities (i.e., allowing parties to mutually agree to the use of and compensation for the facilities). The Commission also seeks

comment on the scope of our inquiry in this proceeding and whether, as a threshold matter, there is a need to reconsider the Commission policy as set forth in the recent series of cases.<sup>6</sup>

4. We note that there are numerous and potentially detailed issues embedded within the broad categories of this NOI. We encourage all interested stakeholders to address the specific questions for which the Commission seeks comment and to include as appropriate any proposed tariff language that should be considered.<sup>7</sup> We also encourage comments on how any individual potential policy change discussed below would affect the viability of other policies (e.g., if the Commission were to adopt a safe harbor period, what are the implications for the current policy of demonstrating specific plans and milestones to secure priority rights)?

#### **I. Background**

5. Interconnection facilities are constructed to enable a generation facility or multiple generation facilities to transmit power from the generation facility to the integrated transmission grid. They are radial in nature, with a single point of interconnection with the network grid, and power flows toward the network grid, with no electrical loads

---

<sup>6</sup> See, e.g., *Aero*, 116 FERC ¶ 61,149; *Milford*, 129 FERC ¶ 61,149; *Terra-Gen I*, 132 FERC ¶ 61,215; and *Alta Wind*, 134 FERC ¶ 61,109.

<sup>7</sup> The Commission distinguishes this proceeding from the North American Electric Reliability Corporation's (NERC) current investigation into the applicability of Reliability Standards to interconnection facilities (Project 2010-07). Comments related to NERC's investigation are not the subject of this Notice of Inquiry and should be directed to NERC.

between the generation facilities and the point of interconnection with the network grid. Interconnection facilities can be relatively short ancillary components to a single generation facility.<sup>8</sup> Alternatively, they may span much longer distances and represent significant transmission capacity, being capable of interconnecting additional generation projects.<sup>9</sup>

6. Ownership and operation of interconnection facilities may take several forms. Under Order No. 2003,<sup>10</sup> generation developers that wish to interconnect their generation facilities to the integrated transmission grid must submit an interconnection request to the relevant transmission provider pursuant to the transmission provider's LGIP and develop an LGIA. Interconnection facilities that are owned, controlled, or operated by the transmission provider, regardless of which party constructed the facilities, are designated as transmission provider's interconnection facilities under the LGIA. Third party use of the transmission provider's interconnection facilities is governed by the provisions of the

---

<sup>8</sup> See, e.g., *Southern Company Serv., Inc.*, Docket No. ER12-554-000 (involving an approximately 2,000 foot interconnection facility).

<sup>9</sup> See, e.g., *Bayonne Energy Center*, 136 FERC ¶ 61,019 (2011) (involving a 345 kV interconnection facility); *Terra-Gen I*, 132 FERC ¶ 61,215 (involving a 212 mile interconnection facility).

<sup>10</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F3d. 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

LGIA.<sup>11</sup> This provision permits the parties to negotiate for a third party to use the interconnection facilities and entitles the original interconnection customer to compensation for capital expenses it incurred to pay for the transmission provider's interconnection facilities and to compensation for the ongoing costs, including operation and maintenance costs, based on a *pro rata* use among the parties.

7. However, where a generation developer has funded and constructed a portion of the interconnection facilities, and does not transfer ownership or operational control of those facilities to the transmission provider after construction, under the *pro forma* LGIA those facilities are classified as interconnection customer's interconnection facilities. That is, interconnection customers' interconnection facilities are located between the generation facility and the point at which either the transmission provider's interconnection facilities begin or the point of interconnection with the transmission provider's transmission system. Section 9.9.2 of the *pro forma* LGIA is inapplicable to third-party requests for use of an interconnection customer's interconnection facilities. These interconnection customer's interconnection facilities are the types of facilities at issue in this proceeding.

---

<sup>11</sup> Section 9.9.2 states "...if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the *pro rata* use of the Interconnection Facilities by the Transmission Provider, all third-party users and the Interconnection Customer...."



March 2011 Technical Conference

8. The Commission held a technical conference in March 2011 to explore, among other things, the application of the Commission's open access policies to generator lead lines<sup>12</sup> in the instance when affiliated or unaffiliated third-party generators also seek to use these facilities.<sup>13</sup> Generally, commenters assert that these policies may be unduly burdensome and ill-suited for generator lead lines, and may have detrimental implications for the future development and financing of generator lead lines and their associated generation projects, especially renewable energy projects.<sup>14</sup> Specifically, commenters<sup>15</sup> argue that the Commission should recognize the commercial, technological, legal, and other differences between transmission lines and these generator lead lines when considering open access principles in the context of radial generator lead lines. Further, commenters raise a number of concerns with the Commission's current practice of imposing an OATT Filing requirement on generator lead line developers.

9. Among the unique attributes of generator lead lines, commenters suggest the following features: (1) generator lead lines are radial lines that serve the limited and sole

---

<sup>12</sup> The technical conference announcements and participants used the term "generator lead lines." While for this NOI we think it is appropriate to hold the discussion in terms of interconnection facilities, in the interest of being true to the comments, we will maintain the use of the term "generator lead lines" in this section.

<sup>13</sup> *Priority Rights to New Participant-Funded Transmission*, March 15, 2011 Technical Conference, AD11-11-000.

<sup>14</sup> The list of entities that filed comments or participated at this conference is in Appendix A of this NOI.

<sup>15</sup> First Wind, Invenergy, Duke, and NextEra.

purpose of connecting generation facilities to the transmission network, i.e., they are not an element of the integrated transmission network; (2) generator lead lines do not provide benefits to the transmission system in terms of capability or reliability, and cannot be relied on for coordinated operation of the transmission system; (3) an outage on the generator lead lines would not affect the entire transmission system; (4) generator lead lines do not provide ancillary services; (5) generator lead lines are often located in remote regions not in close proximity to load; (6) generator lead lines are owned by entities entirely different than those that typically own transmission; and (7) generator lead lines are viewed by their developers and banks providing financing as an integral part of the whole, not as a project or business separate from the generating facility.<sup>16</sup>

10. Among the main concerns raised, commenters<sup>17</sup> identify a “free rider” problem that, in their opinion, produces a disincentive to be the first developer to build a generator lead line, while creating a relative advantage for other generation developers to be second in line.<sup>18</sup> Several commenters<sup>19</sup> argue that being subject to the open access requirements of Order Nos. 888, 889, and 890 (including the obligations to file an OATT within 60 days of a request for service and to administer an OATT, Open Access Same Time Information System, Standards of Conduct, and Uniform System of Accounts) imposes

---

<sup>16</sup> See, e.g., First Wind at 2-4; Invenenergy at 1-2; Duke at 5-6; and NextEra at 12-13.

<sup>17</sup> Invenenergy, CAHW, First Wind, Puget, and MidAmerican.

<sup>18</sup> See, e.g., Puget at 14-15; MidAmerican at 14-15.

<sup>19</sup> SCE, BP, CAHW, Puget, National Grid, MidAmerican, and Wenner.

significant costs and difficulties for independent developers, especially small ones that are not affiliated with large utilities.<sup>20</sup> These developers assert that complying with such responsibilities, in addition to the obligation to commence studies related to a third-party request for service, may require expenditure of a significant portion of their capital, and require additional expertise, hardware, software, and staffing resources.<sup>21</sup>

11. Although these expenses may generally be considered normal costs of operating in a regulated environment, commenters argue that the costs are triggered by a relatively low threshold event – a written request unaccompanied by any deposit.<sup>22</sup> Thus, commenters assert that the minimal commitment required for third-party requests for transmission service on generator lead lines may not sufficiently distinguish serious customers from those who may have merely a speculative interest in taking transmission service, while the generator lead line owner is immediately affected by having to file an

---

<sup>20</sup> See, e.g., Puget at 7-8; AWEA at 10.

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., BP at 8; CAWH at 3; and NextEra at 20-21. Commenters appear to be referring to sections 17.2, 18.2, or 29.2 of the *pro forma* OATT, which set forth information required for a completed application. In addition, where the owner of the facilities does not have an OATT on file, a third-party customer does not need to submit a deposit as part of its application for transmission service to the interconnection facilities. See *Sagebrush, a California Partnership*, 130 FERC ¶ 61,093, at P 57, *order on reh'g*, 132 FERC ¶ 61,234 (2010) (*Sagebrush*). We note that the deposit is required once an OATT is filed. See also *Sagebrush*, 132 FERC ¶ 61,234 at P 44; *Terra-Gen I*, 132 FERC ¶ 61,215 at n.84.

OATT, expend significant staff resources, and incur significant costs to evaluate the feasibility of providing the requested service.<sup>23</sup>

12. Commenters also state that priority rights on their generator lead line are essential for the financing of generation projects because priority rights provide lenders with assurance that developers will still be able to use the line for their planned generation facilities.<sup>24</sup> Commenters assert that lenders are wary of financing generation projects without a guarantee that the generator lead line will have sufficient capacity available to transmit the generation to the grid, for both early and later phases of their generation projects.<sup>25</sup> In addition, commenters<sup>26</sup> argue that generator developers are concerned with the policy of demonstrating “specific plans and milestones,” as it is unclear to them which milestones need to be described and which factors would adequately demonstrate material progress towards those milestones. They note that, although the Commission has found certain evidence sufficient in prior cases,<sup>27</sup> its review was limited largely to privileged and confidential evidence, which could not be described in the Commission orders or otherwise disclosed to the public.<sup>28</sup> Also, commenters argue that, given the uncertainty of generation project development due to financing, permitting, and various

---

<sup>23</sup> See, e.g., BP at 8; NextEra at 20-21.

<sup>24</sup> See, e.g., First Wind at 3-4.

<sup>25</sup> See, e.g., Allete at 2.

<sup>26</sup> Allete, BP and NextEra.

<sup>27</sup> See *Aero*, 118 FERC ¶ 61,210 at P 22; *Milford*, 129 FERC ¶ 61,149 at P 22; and *Alta Wind*, 134 FERC ¶ 61,109 at P 17.

<sup>28</sup> NextEra at 22; BP Wind at 7.

other factors, it may be neither possible for a generator developer to provide the needed detail about phases of generation that will be constructed in the future, nor prudent for developers to prematurely enter into binding contractual commitments merely for purposes of attempting to demonstrate priority rights.<sup>29</sup>

13. Commenters note that certain sections of the *pro forma* OATT may be inapplicable to generator lead lines on a generic basis. For instance, commenters argue that a single circuit generator lead line can only provide firm or non-firm point-to-point service and cannot provide network service,<sup>30</sup> so the *pro forma* OATT's standard terms and conditions for network service are unnecessary.<sup>31</sup> Additionally, several commenters assert that because generator lead line owners do not have the capability to supply many ancillary services to third parties, the ancillary services provisions of the *pro forma* OATT are likewise inapplicable.<sup>32</sup> Further, commenters argue that the planning requirements included in Attachment K of the OATT may be an unnecessary regulatory burden for generator developers of generation lead lines, as they have no native load growth, they do not own network transmission facilities, will not typically expand their

---

<sup>29</sup> See, e.g., NextEra at 24; First Wind at 4.

<sup>30</sup> See, e.g., *Sagebrush*, 130 FERC ¶ 61,093 at P 29 (waiving the *pro forma* OATT's provisions for network service to a single transmission line that does not have a control area or the generation resources necessary to provide network service). See also *Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,027, at P 10-12 (2011) (*Terra-Gen II*).

<sup>31</sup> See, e.g., First Wind at 6-7.

<sup>32</sup> See, e.g., First Wind at 6-7; AWEA at 11; Edison Mission at 25; and NextEra at 13.

lines absent a request for service, and the costs of such facilities are not socialized or based on a regional planning needs analysis.<sup>33</sup>

14. Commenters concede that generator lead line owners are free to propose non-rate terms and conditions that differ from the *pro forma* OATT, where each deviation is supported by a demonstration that it is consistent with or superior to the *pro forma* OATT or does not apply given the particular generator lead line owner's business model.<sup>34</sup> However, rather than the Commission continuing to evaluate such requests on a case-by-case basis, some commenters<sup>35</sup> suggest that the Commission should establish a new *pro forma* OATT to apply generically to all generator lead lines.

15. As an alternative to the current Commission policy, some commenters suggest expanding section 9.9.2 of the LGIA, which addresses third-party access to transmission provider's interconnection facilities, to apply to interconnection customer's interconnection facilities as well, and argue that doing so would render unnecessary the requirement for the original interconnection customer to file an OATT when a third party requests service on their interconnection facilities.<sup>36</sup> They argue that treating a generator requesting access to interconnection facilities as an interconnection request is a pragmatic approach that more accurately characterizes the service being sought, and eliminates the

---

<sup>33</sup> See, e.g., NextEra at 19-20.

<sup>34</sup> See, e.g., *Montana-Alberta Tie, Inc.*, 116 FERC ¶ 61,071, at P 60 (2006) (MATL).

<sup>35</sup> NextEra, AWEA, SCE, CAHW, NU/NSTAR, and First Wind.

<sup>36</sup> Puget at 8; Edison Mission at 17.

unduly burdensome and costly obligations imposed upon generation developers under the Commission's current policies that commenters assert impedes the development of location-constrained renewable generation.<sup>37</sup>

16. Further, commenters express concern that the current policy does not adequately engage the transmission provider in the process of interconnecting a third-party requestor of service on a generator lead line.<sup>38</sup> To reach load and serve customers under current policy, a third party may be required to make separate requests for access to the original interconnection customer's interconnection facilities and the transmission provider's interconnection facilities, as well as a transmission service request on the interconnecting transmission provider's transmission system.<sup>39</sup> Commenters assert that this bifurcated process is inefficient.<sup>40</sup>

17. Transmission providers,<sup>41</sup> however, caution the Commission against discriminating against existing transmission providers *vis-à-vis* independent merchant transmission developers with regard to priority rights or other regulatory requirements. Transmission providers argue that any separate treatment for independent developers is not appropriate, as transmission providers do not want to be disadvantaged or discouraged from constructing generator lead lines. Instead, these commenters favor any

---

<sup>37</sup> Edison Mission at 19.

<sup>38</sup> See, e.g., Puget at 11.

<sup>39</sup> Puget at 9.

<sup>40</sup> See, e.g., *id.* at 10.

<sup>41</sup> SCE at 3; Puget at 7; and MidAmerican at 6.

future policies or clarifications of existing policy to be based on the type of facility being constructed, not on the entity that is proposing to own the facility.<sup>42</sup>

## **II. Discussion**

### **A. Scope of Inquiry**

18. In this NOI, the Commission seeks comment on various options for addressing third-party access to and priority rights on interconnection customer's interconnection facilities. Appendix B to this document provides a schematic and explanation of what the Commission believes to be a typical situation. Much of the discussion and questions in this NOI derive from this understanding. As discussed above, Order No. 2003 addresses third party use of transmission provider interconnection facilities, but not interconnection customer interconnection facilities. With a goal of ensuring that a third party generator (G2) may be able to interconnect to interconnection customer interconnection facilities that in some instances have been 30, 50, or even hundreds of miles long, and up to 345 kV, the Commission has in a series of recent cases treated interconnection customer interconnection facilities as transmission facilities for purposes of open access policies and required that the original developer (G1) file an OATT within 60 days of a request for service on these facilities. In light of comments received, and as discussed in the sections that follow, the Commission seeks comments on two alternative approaches to govern third-party use and priority rights to use: (1) continued use of an OATT framework with potential modification and clarification, including the potential

---

<sup>42</sup> See, e.g., Puget at 3.



introduction of a safe harbor period, and a case-by-case determination on the generation developer's priority rights; or (2) use of a LGIA/LGIP framework in which the existing LGIA provisions that govern third-party use of transmission provider's interconnection facilities would be extended to interconnection customer's interconnection facilities. In addition to the details of each approach, the Commission seeks comment on the relative ability of each to meet customer needs while ensuring that the rates, terms, and conditions of jurisdictional services remain just and reasonable and not unduly discriminatory.

19. At the outset, however, the Commission also seeks comment on the scope of our inquiry in this proceeding and whether, as a threshold matter, there is a need to reconsider existing Commission policies. With the passage of time, concerns raised at the March 2011 technical conference and in subsequent comments may have been addressed as the industry has considered the Commission's existing precedent. If not, additional views on what approach would be most effective in addressing third-party requests for service and/or evaluating priority rights on interconnection facilities would be useful. The Commission encourages commenters to discuss their views of the needs of their business models in the context of the Commission's open access and interconnection policies, which are designed to ensure that transmission service is made available on terms that are just and reasonable and not unduly discriminatory.

20. As noted above, the Commission intends that the focus of this proceeding is on interconnection customers' interconnection facilities as a class of facilities. If commenters disagree that this is the set of facilities at issue, then they should explain

their understanding of the facilities at issue (referencing the drawing in Appendix B) and respond to the questions below in terms of the set of facilities they believe is at issue, and clarify that they are doing so. Similarly, if commenters distinguish application of certain policies based on the size of a facility or other characteristics, then they should respond to the questions below in terms of the relevant characteristics, and clarify that they are doing so.

21. Specifically, the Commission seeks comment on these issues:

- i. To what specific set of facilities are commenters' concerns directed? That is, are commenters' concerns directed toward access to interconnection customer interconnection facilities, or to both interconnection customer interconnection facilities and transmission provider interconnection facilities?
- ii. Is requiring interconnection customer interconnection facilities to provide third-party access under an OATT framework necessary to ensure against undue discrimination and ensure just and reasonable rates, given that developers of remote generation are building interconnection facilities of considerable length and/or size?
- iii. Has the Commission's current policy blurred the pre-existing line between interconnection service and transmission service with respect to providing for third-party access to interconnection facilities in such a way as to create unintended consequences?
- iv. Has industry largely adapted to current Commission policy such that the Commission should continue its current policy? If not, should the Commission respond to concerns expressed at the Technical Conference with (a) potential clarification of and modification to its current policy of treating interconnection facilities under the OATT framework; or (b) adoption of a framework under which it would consider issues of third-party access and priority rights under its interconnection rules and procedures?
- v. Should the Commission consider different treatment for larger versus smaller interconnection facilities, e.g., treating larger interconnection

facilities under the OATT framework and smaller interconnection facilities under the LGIA/LGIP framework? If so, what would be the appropriate threshold for separating large versus small interconnection facilities (e.g., voltage, miles, or potential third party interconnection)? Should any distinctions be made among existing interconnection facilities, planned expansions of existing interconnection facilities, and new interconnection facilities, for any of the options?

- vi. From commenters' perspective, is there a meaningful distinction between the interconnection/operation of facilities proposed to provide independent transmission service (e.g., *Chinook*<sup>43</sup>) and generator interconnection facilities of long length and high voltage (e.g., *Terra Gen I*)?
- vii. Are there circumstances under which it would be feasible and/or desirable to allow the generation developer to choose whether its interconnection facilities would be governed by the OATT framework or the LGIA/LGIP framework, with the attendant rights and responsibilities of either choice?
- viii. For purposes of access policies, should the Commission distinguish between affiliates and nonaffiliates even when parties have otherwise agreed to the terms and conditions of access to the facilities?
- ix. Are there additional approaches that the Commission should consider? Be specific as to details. For example, commenters mention common facilities agreements (CFAs) as a means for parties to agree on access to interconnection customer's interconnection facilities.<sup>44</sup> Commenters also mention a rebuttable *de minimis* exception for small interconnection customer's interconnection facilities.
- x. To the extent that the concerns regarding third-party use and priority rights

---

<sup>43</sup> *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

<sup>44</sup> See, e.g., *BP Wind Energy North America Inc.*, 129 FERC ¶ 61,207 (2009) (for an order accepting a CFA among affiliated parties and granting waiver of the requirements of Order Nos. 888 and 890). See *Sky River, LLC*, 134 FERC ¶ 61,064, at P 13 (2011) (for an order rejecting a CFA between unaffiliated parties and denying waiver of the requirements of Order Nos. 888 and 890). But see *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 at P 10 (2009) (granting waiver of the OATT requirements of Order Nos. 888 and 890 in the context of a Common Facilities Agreement between two unaffiliated parties).

do not exist for transmission provider's interconnection facilities, why would a generation developer that builds its own interconnection facilities choose to retain operational control of them as opposed to turning them over to the transmission provider?

**B. Alternative Approaches for Comment**

**1. Open Access Transmission Tariff Framework**

22. If the Commission were to maintain reliance on the existing OATT framework, should it be modified to recognize the characteristics of interconnection customer's interconnection facilities and needs of generation developers?

**a. Clarification of Specific Plans and Milestones Evaluation**

23. Our current case-by-case policy of determining a generation developer's priority rights to its interconnection facilities provides a degree of flexibility and recognizes that there is not necessarily a standard method for development of generation projects. However, as mentioned above, some commenters voice concerns that the Commission's current case-by-case evaluation of generation developers' requests for priority rights on their interconnection facilities based on the demonstration of specific plans and milestones for construction of their generation projects is not clear. To address this concern, the Commission could be more prescriptive on the "specific plans and milestones" standard to provide direction to generation developers seeking to establish their firm priority rights. Such requirements could include the type of evidence that would be indicative of sufficient "specific plans and milestones," and the factors to be considered in determining whether "material progress has been made."

24. The Commission seeks comment on issues related to the evaluation of specific plans and milestones in requests for priority rights to use capacity on interconnection customer's interconnection facilities. Specifically:

- i. Should the Commission continue its practice of evaluating requests for priority rights for interconnection customer's interconnection facilities on a case-by-case basis? If so, should the existing standards used to evaluate sufficiency of evidence to demonstrate priority be clarified or modified? How?
- ii. Should the Commission require generation developers to meet a given set of uniform criteria to secure priority rights? If so, what are the necessary criteria and what types of evidence are sufficient to demonstrate these criteria? Or, should generation developers have the flexibility to demonstrate the sufficiency of their plans based on various criteria, and what might these criteria be? In this regard, how should the Commission balance needs for regulatory certainty and flexibility?

**b. OATT Filing Trigger**

25. The Commission's current policy to grant waiver of the requirement to file an OATT prior to the receipt of a third-party request for transmission is designed to reduce the regulatory burden on entities that did not intend to be transmission providers.

However, as noted above, several commenters express concern with the existing standard for what constitutes a valid third-party request for service on interconnection customer's interconnection facilities. One panelist suggests that the standard for a third-party request should be at least to match the level of generation development that has been demonstrated by the original interconnection customer,<sup>45</sup> although one commenter argues that this is an impossible standard because a generation developer is limited in how far it

---

<sup>45</sup> Transcript at 128 (citing Kurt Adams of First Wind).

can proceed with its project until it has secured transmission capacity.<sup>46</sup> One commenter also argues that generation developers should be allowed to require that transmission customers satisfy more stringent creditworthiness standards than currently required, because generation developers, in forming their business models and capital structure, do not contemplate taking on significant credit risks of competing generators.<sup>47</sup>

26. Some commenters suggest modifying the rules for when and under what circumstances an OATT would need to be filed. For example, commenters argue that extending the current 60-day requirement to file an OATT is justified because of a possibility that a third party requesting service might withdraw after the generation developer has incurred significant costs in putting an OATT into place, including the internal structure to administer it.<sup>48</sup> One commenter suggests requiring the generation developer to file a notice of a request for service within a certain number of days after receiving a request, and requiring them to file an OATT only after a generation interconnection agreement or a transmission service agreement is executed. They argue that this process would allow the generation developer to focus on performing the necessary studies instead of filing an OATT.<sup>49</sup>

27. The Commission seeks comment on issues related to third-party requests and when to require an OATT to be filed. Specifically:

---

<sup>46</sup> Gradient at 7.

<sup>47</sup> Edison Mission at 24.

<sup>48</sup> BP Wind at 8; NextEra at 20-21.

<sup>49</sup> NextEra at 20-21.

- i. Should the Commission alter the standard for what constitutes a third-party request for service on interconnection customer's interconnection facilities? If so, what should the standard be? What would be the advantages and disadvantages of doing so, compared to current policy?
- ii. Should the standard that is required for a third-party request for service be the same standard that is required for the original interconnection customer (or its affiliate) to request priority rights, i.e., the specific plans and milestones demonstration discussed above? Why or why not? Would this raise confidentiality concerns, and if so, how could those be mitigated or avoided?
- iii. Should the Commission alter the requirement that a third-party request triggers an OATT Filing requirement by the original interconnection customer within 60 days of receipt of a request for service? If so, how?
- iv. If the Commission were to alter the requirement that a third-party request triggers an OATT Filing requirement by the original interconnection customer, should there be different approaches when affiliates gain access to the interconnection facilities as opposed to when nonaffiliates gain access?
- v. Would it enhance regulatory certainty for the Commission to amend the LGIA to include contractual terms apprising the interconnection customer that it will become a transmission provider if a third party requests transmission service over its interconnection customer interconnection facilities?
- vi. Would the creation of a *pro forma* tailored OATT (discussed below) ease the burden on the generation developer to the point that the existing 60-day window for filing an OATT would be sufficient?
- vii. Some commenters argue that under current Commission policy, third parties must make up to four sequential requests for service (for interconnection and transmission services, from both the original interconnection customer and the transmission provider) to deliver their power. These commenters use this as an argument in favor of using the LGIA/LGIP framework. Is there a way under the OATT framework to coordinate the requests that a third party would need to make?

**c. Tailored OATT**

28. Order No. 888 set forth a *pro forma* tariff that provides standardized terms and conditions for the provision of open access transmission service. The unique features of interconnection facilities may warrant tailoring the terms and conditions of the OATT to correspond to these unique features for providing open access transmission service. One option for recognizing these differences and for responding to the concerns laid out above may be to continue to use a *pro forma* OATT framework but, on a generic basis, modify the *pro forma* OATT to establish a tailored set of terms and conditions for service, i.e., a *pro forma* “tailored OATT,” that would apply to a well-defined set of interconnection facilities.

29. The Commission has previously granted waiver of specific provisions of the *pro forma* OATT to accommodate unique situations. For instance, as mentioned above, because interconnection facilities are not networked facilities, the Commission has granted waiver of the *pro forma* OATT requirement to provide network services on interconnection facilities.<sup>50</sup> Also, because the transmission provider to which the interconnection facilities are interconnected is required to have an OATT that provides for ancillary services on a non-discriminatory basis, and because of the physical

---

<sup>50</sup> See *Sagebrush*, 130 FERC ¶ 61,093 at P 29; *Terra-Gen Dixie Valley, LLC*, 135 FERC ¶ 61,134, at P 12 (2011) (*Terra-Gen III*).



limitations of interconnection facilities, the Commission has granted waiver of the *pro forma* OATT requirement to provide ancillary services.<sup>51</sup>

30. Many generation developers argue that the *pro forma* OATT is not well-suited for interconnection facilities and that these facilities should either be substantially or entirely exempt from *pro forma* OATT requirements.<sup>52</sup> Some of those commenters argue that using a tailored OATT could address several of the concerns with existing policy by lessening the time, expense, and other burdens inherent in developing, filing, and administering an OATT. Proponents also argue that this approach would reduce confusion and the risk of inconsistency, which is heightened by employing a case-by-case waiver approach.<sup>53</sup>

31. Several participants in the Technical Conference identify *pro forma* OATT provisions they believe could be eliminated to create a *pro forma* tailored OATT. One commenter submitted a proposed *pro forma* “Radial OATT.”<sup>54</sup> Commenters argue that the network service provisions,<sup>55</sup> the requirement to provide scheduling services,<sup>56</sup> and

---

<sup>51</sup> See *Sagebrush*, 130 FERC ¶ 61,093 at P 29; *Terra-Gen III*, 135 FERC ¶ 61,134 at PP 31-33.

<sup>52</sup> See, e.g., SCE at 4; Edison Mission at 13-14; Puget at 6; NextEra at 6; and First Wind at 7.

<sup>53</sup> NextEra at 2-3.

<sup>54</sup> NextEra at Attachment 1.

<sup>55</sup> CAHW at 23-24; Edison Mission at 22; NextEra at 15-16; and First Wind at 6-7.

<sup>56</sup> AWEA at 11; NextEra at 13.

the requirement to provide ancillary services,<sup>57</sup> all provisions which the Commission has previously waived for interconnection customer's interconnection facilities, should be removed from a tailored OATT framework.

32. Additionally, commenters argue that some other provisions the Commission has not waived are inappropriate for interconnection facilities. Specifically, commenters argue that requiring generation developers to adopt comparable Attachment K transmission planning process procedures makes little sense, and that instead the Commission should direct the generation developer, after receiving a request for service, to participate in the interconnecting transmission provider's Attachment K process.<sup>58</sup> Commenters also suggest that the *pro forma* OATT requirement to calculate Available Transfer Capability may be inapplicable to interconnection facilities.<sup>59</sup> Additionally, one commenter argues that developing rates for point-to-point transmission service for Schedules 7 and 8 may be particularly burdensome for generation developers not experienced with traditional rate regulation and that do not usually follow the Uniform System of Accounts,<sup>60</sup> and also suggests waiver of the Open Access Same-Time Information System and the Standards of Conduct.<sup>61</sup> Another commenter suggests allowing generation developers to use a single set of interconnection procedures and a

---

<sup>57</sup> AWEA at 11; Edison Mission at 25; and NextEra at 11-12.

<sup>58</sup> NextEra at 19-20; AWEA at 12; CAHW at 23; and NU/NSTAR at 7-8.

<sup>59</sup> *See, e.g.*, CAHW at 23; NextEra at 9-11.

<sup>60</sup> CAHW at 23-24.

<sup>61</sup> *Id.* at 24.

single interconnection agreement for all generators, instead of separate procedures and agreements for large and small generators, because there is a limited set of potential customers.<sup>62</sup> Another commenter argues that generation developers should not have an obligation to expand their interconnection facilities if there is insufficient capacity for a third party's intended use.<sup>63</sup>

33. Commenters also identify provisions in the *pro forma* OATT that they think should be modified in a tailored OATT framework. For instance, several commenters argue that, while the *pro forma* OATT requires the use of average line losses, it is appropriate for interconnection facilities to use incremental line losses, because they are discrete facilities and do not form a network.<sup>64</sup> One commenter asserts that allocating average line losses under section 15.7 of the *pro forma* OATT fails to recognize that each successive user increases the losses borne by earlier users because losses increase as the line becomes fully used, and can render the power contracts of earlier users uneconomical or interfere with their ability to supply contracted power.<sup>65</sup>

34. The Commission seeks comments on these issues. Specifically,
- i. Would a *pro forma* tailored OATT accomplish the Commission's goals of ensuring non-discriminatory access? Is a *pro forma* tailored OATT appropriate in these circumstances, or should the Commission continue to

---

<sup>62</sup> Edison Mission at 27. They note the Commission rejected this idea in *Sagebrush*, 130 FERC ¶ 61,093 at P 52, but has allowed the use of a single set of procedures and a single agreement by the Midwest ISO.

<sup>63</sup> Invenergy at 11.

<sup>64</sup> See, e.g., NextEra at 14-15; CAHW at 23; and Invenergy at 9-10.

<sup>65</sup> CAHW at 23.

evaluate requests for waiver of certain *pro forma* OATT provisions on interconnection facilities on a case-by-case basis?

- ii. Does a *pro forma* tailored OATT provide developers clarity beyond that which has already been established by Commission precedent on the applicability of the *pro forma* OATT to interconnection facilities?
- iii. How does a *pro forma* tailored OATT framework compare to the other options presented here in terms of commercial viability?
- iv. What are the relative benefits and drawbacks of the *pro forma* tailored OATT framework as compared to the existing policy? How should the Commission distinguish use of a *pro forma* tailored OATT for interconnection facilities and use of the *pro forma* OATT for public utility transmission providers that have divested their generation and thus may have limited ability to provide all OATT services, e.g., ancillary services? Similarly, should the Commission distinguish interconnection facilities that may use a *pro forma* tailored OATT from transmission facilities that may typically receive waiver of some *pro forma* OATT provisions, such as merchant transmission lines? If so, how?
- v. Identify the *pro forma* OATT provisions that should be excluded from a *pro forma* tailored OATT. Why should these be excluded?
- vi. What, if any, new or modified provisions only applicable to interconnection facilities should be added to a *pro forma* tailored OATT? Why?
- vii. If the Commission were to pursue a *pro forma* tailored OATT, should the Commission adopt the proposed *pro forma* Radial OATT submitted by NextEra?<sup>66</sup> Please explain and be specific as to any changes that would need to be made to that proposal.
- viii. If a *pro forma* tailored OATT did not include a requirement to provide ancillary services, would relying on the public utility transmission provider to provide these services create an undue burden on the public utility transmission provider?
- ix. Should all interconnection customer's interconnection facilities be eligible to provide service under a tailored OATT? If not, which facilities should

---

<sup>66</sup> NextEra at Attachment 1.

be excluded? Is the size of the facilities (for example, length, capacity, voltage) relevant to being eligible for tailored OATT treatment?

**d. Safe Harbor**

35. A variation on the OATT framework is a safe harbor period. Within a safe harbor the generation developer would have a grace period in which the open access rules determined to be relevant for interconnection customer's interconnection facilities would not apply, to allow for the phased development of generation projects over that period. Accordingly, a generation developer would be assumed to have priority rights to capacity on its interconnection facilities during the safe harbor period.

36. The Commission previously rejected a proposal for a safe harbor period of firm priority rights in *Milford*, stating that such a period would be inconsistent with Commission precedent granting waiver of open access requirements unless and until the owner of the line receives a request for transmission service.<sup>67</sup> Nevertheless, many of the commenters<sup>68</sup> suggest this option as a means to protect generation developers' priority rights to use their interconnection facilities for their phased generation project development.

37. The Commission seeks comments on issues related to a safe harbor period. Specifically:

- i. Is a safe harbor period a viable approach? What are the benefits and drawbacks of the safe harbor period approach, as compared with the current

---

<sup>67</sup> *Milford*, 129 FERC ¶ 61,149 at P 23.

<sup>68</sup> AWEA, BP, CAHW, Edison Mission, First Wind, Gradient, Invenergy, NextEra, and Sempra.

case by case demonstration of specific plans and milestones, or the other options presented herein? For instance, to what extent could such a safe harbor period be used as a means to prevent others from accessing the transmission system?

- ii. If the Commission were to institute a safe harbor period, should a generation developer be allowed to provide access to its interconnection facilities to others during the safe harbor period? If so, how should the Commission guard against discriminatory access?
- iii. If the Commission were to institute a safe harbor period, could the Commission adopt for the safe harbor period the requirement, currently applicable where the Commission has granted priority rights, that a generation developer make any currently unused capacity available to third parties until such time as its future generation projects come on line, in a way that is consistent with the objectives of a safe harbor period?
- iv. What would be the appropriate duration for the safe harbor period? Should there be differences in the duration of the safe harbor period based upon different resource types (geothermal, wind, solar, etc.)? If so, how can such distinctions be justified?
- v. Should a safe harbor period be established to begin automatically from some fixed milestone date (e.g., such as the in-service date of the interconnection facilities)? If so, what should that milestone be? Or, should a developer be required to make a demonstration before it qualifies for a safe harbor (e.g., such as plans for phased generation development)? If the latter, what should be required to make such demonstration?
- vi. What types of interconnection facilities should qualify, and how should a generation developer identify itself as one that is pursuing phased generation development? Should there be an upper or lower limit on physical characteristics of the interconnection facilities such as length, voltage, capacity, etc. to qualify for safe harbor treatment?
- vii. Should there be intermediate development requirements to maintain safe harbor status? What would these requirements be? If requirements are not satisfied, what consequences are appropriate?

## 2. LGIA/LGIP

38. An alternative framework for dealing with third-party requests for service and priority rights on interconnection customer's interconnection facilities would be to rely on a modified version of the LGIA/LGIP. Some commenters suggest expanding section 9.9.2 of the *pro forma* LGIA, which addresses third-party access to transmission provider's interconnection facilities, to apply to interconnection customer's interconnection facilities as well, and argue that doing so would render unnecessary the requirement for the generation developer to file an OATT.<sup>69</sup> They argue that this would provide access to interconnection customer's interconnection facilities in the same manner that access to transmission provider's interconnection facilities is now provided.<sup>70</sup> One commenter suggests that the Commission could also revise the definition of Affected System to include interconnection customer's interconnection facilities specifically, which would mean that these facilities would be studied as part of subsequent interconnection studies performed by the transmission provider for other interconnection customers, because an interconnection system impact study is defined in the *pro forma* LGIA as "an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System."<sup>71</sup> Commenters also propose that, under

---

<sup>69</sup> Puget at 8; Edison Mission at 17; Allele at 2; SCE at 3-4; and MidAmerican at 15-16.

<sup>70</sup> Puget at 15.

<sup>71</sup> Edison Mission at 18 (referencing definitions in LGIA section 1).

an LGIA framework, third parties should apply directly to the transmission provider (and not the generation developer) for access to excess capacity on the interconnection customer's interconnection facilities at the same time that they apply for service on the transmission provider's interconnection facilities and transmission system.<sup>72</sup> These commenters argue that this process would be preferable to the Commission's current policy, under which a new interconnection customer could be required to negotiate separately with the generation developer and the transmission provider. Commenters further argue that involving the transmission provider at the onset of the process is more efficient because the transmission provider is critical to assessing system impacts, providing support such as ancillary services, and coordinating reliability issues.<sup>73</sup>

39. Commenters add that section 9.9.2 of the *pro forma* LGIA recognizes an opportunity for interconnection customers and the transmission provider to negotiate a multi-party agreement to determine the amount of compensation owed to an interconnection customer for capital expenses related to the transmission provider's interconnection facilities, as well as the allocation of on-going expenses.<sup>74</sup> Some commenters suggest that the Commission could develop a *pro forma* multi-party agreement to be used by entities in negotiating under section 9.9.2.<sup>75</sup>

---

<sup>72</sup> Puget at 9-10.

<sup>73</sup> *Id.*

<sup>74</sup> *See, e.g.*, Edison Mission at 18.

<sup>75</sup> *Id.*



40. Generally, commenters argue that treating a third-party request for access to interconnection customer's interconnection facilities as an interconnection request is a pragmatic approach that more accurately characterizes the service being sought, and eliminates the unduly burdensome and costly obligations imposed upon generation developers under the Commission's current policies which commenters assert impede the development of location-constrained renewable generation.<sup>76</sup> Commenters characterize expanding section 9.9.2 of the *pro forma* LGIA as an administratively simple and less onerous way to facilitate access to interconnection customer's interconnection facilities.<sup>77</sup>

41. The Commission seeks comment on whether treating third-party use of interconnection facilities as interconnection service is a workable alternative to current Commission policy. Specifically:

- i. If the Commission were to expand section 9.9.2 to govern third party use of interconnection customer's interconnection facilities, what would prevent the original interconnection customer from evading negotiations with the third party (which is likely its competitor), withholding capacity for reasons other than a legitimate planned project, or putting excessive cost responsibilities on the third party?
- ii. Would extending section 9.9.2 as discussed above be sufficient to enable the transmission provider to facilitate granting third parties access to the interconnection customer's interconnection facilities? Or would other arrangements or modifications to the *pro forma* LGIA be needed to give the transmission provider that ability? For example, what commercial arrangements between the transmission provider and the original interconnection customer would be required to enable third-party interconnection to the interconnection customer's interconnection facilities?

---

<sup>76</sup> Edison Mission at 19.

<sup>77</sup> Puget at 8; Edison Mission at 19; and SCE at 3-4.

- iii. What are the benefits and drawbacks of a third party requesting interconnection service from the transmission provider, rather than from the original interconnection customer?
- iv. Should the *pro forma* LGIA be modified to include an obligation to expand the existing capacity of the interconnection customer's interconnection facilities to accommodate a third-party request for interconnection service? If so, should the obligation apply to the original interconnection customer or the transmission provider? Would such a modification be consistent with the roles and responsibilities established in the rest of the *pro forma* LGIA for whichever party the obligation applies to (i.e., either the original interconnection customer or the transmission provider)?
- v. Are there other issues associated with third-party use of the interconnection customer's interconnection facilities that would require other modifications to the *pro forma* LGIA? If so, what are the issues, and what would these modifications be? For example, as the term is defined in the *pro forma* LGIA, interconnection facilities are "sole use" facilities. If the Commission were to rely on the interconnection rules and procedures to govern third party use of interconnection facilities, would we need to eliminate language in the LGIA/LGIP that refers to these as "sole use" facilities? If so, what would be the collateral consequences?
- vi. In addition to the modifications to the *pro forma* LGIA/LGIP identified above, would there be benefit in the Commission developing other *pro forma* agreements to facilitate third-party access to the interconnection customer's interconnection facilities (e.g., *pro forma* multi-party agency agreements, service agreements, cost-sharing agreements, etc.), or should those agreements be developed by the affected entities and reviewed by the Commission on a case-by-case basis?
- vii. How would expanding the *pro forma* LGIA to govern third-party requests for service on the interconnection customer's interconnection facilities otherwise solve the concerns identified above? Are there other concerns with current Commission policy on access to interconnection customer's interconnection facilities that would remain under an LGIA/LGIP framework?
- viii. Should there be a limit (e.g., with respect to voltage, capacity, or length) to the interconnection customer's interconnection facilities that would qualify for treatment under the LGIA/LGIP framework discussed above?

- ix. How would an LGIA/LGIP approach compare to the other options presented here in terms of commercial viability and removing barriers to the development of location-constrained generation?

42. The Commission also seeks comment on how priority rights to interconnection customer's interconnection facilities for phased generation development would work within an LGIA/LGIP framework. In making a valid interconnection request under the *pro forma* LGIP, an interconnection customer must submit (1) a \$10,000 deposit, (2) a completed application with detailed generator data (Appendix 1 of the LGIP), and (3) a demonstration of site control or post an additional deposit of \$10,000.<sup>78</sup> Additionally, the LGIA stipulates various milestones that must be logged with dates for completion in Appendix B of the LGIA. If future generation phases are included in an initial request for interconnection service, then meeting these milestones as a means to demonstrate intended future use of the facilities would arguably be similar in substance to the Commission's current policy of demonstrating plans and milestones to secure priority rights, though relying solely on the interconnection rules and procedures for securing priority rights would nevertheless be a different approach than the Commission's current policy of demonstrating plans and milestones. The LGIP stipulates that a generator with a higher queued interconnection request or an executed LGIA (or unexecuted LGIA that a party has requested be filed with the Commission) is included in the base case for any subsequent Interconnection Feasibility or System Impact Study.<sup>79</sup> So as long as the

---

<sup>78</sup> LGIP section 3.3.1.

<sup>79</sup> See LGIP section 6.2 and 7.3.

initial interconnection request or executed LGIA includes later phases of a generation project, under the interconnection rules and procedures with a modified section 9.9.2 to include interconnection customer interconnection facilities, the generation developer would not risk losing its planned interconnection service simply because a third party also seeks to use the interconnection customer interconnection facilities. Rather, the full capacity of the original interconnection customer's request, including capacity for future phases of generation if those are included in the original LGIA that was developed, is unavailable for use by any third party. This is currently how the transmission provider treats transmission provider interconnection facilities when it studies a new interconnection request. The Commission seeks comment, however, on whether this is a viable and fair approach for demonstrating and securing priority rights to capacity for phased generation projects. Specifically:

- i. For generation projects that are built in phases, is it possible and/or typical to request the interconnection facilities be constructed in such a manner as to accommodate the capacity for future phases in an initial interconnection request and/or LGIA? How have developers been submitting interconnection requests and executing LGIAs for phased projects; i.e., have developers been including the capacity necessary for future generation phases in the initial interconnection request under LGIP?
- ii. How would the LGIA/LGIP approach fit with the current standard of demonstrating plans and milestones on a case-by-case basis to receive priority rights for future phases of a generation project? Does the existing *pro forma* LGIA/LGIP contain a sufficiently clear procedure, e.g., in submitting and maintaining a valid interconnection request and meeting the milestones set forth in Appendix B, such that this procedure might serve a similar purpose as the current standard of demonstrating specific plans and milestones?
- iii. If no separate priority rights request for a generation developer to establish

capacity rights for its interconnection facilities would be necessary, what are the benefits and/or drawbacks of such an approach?

- iv. How would adopting an LGIA/LGIP framework otherwise affect generation developers seeking priority rights on their interconnection customer's interconnection facilities for their phased generation projects? If the generation developer plans to eventually use currently unused capacity on interconnection facilities, should the *pro forma* LGIA be modified to require that capacity on interconnection facilities be made available for third-party use until the generation developer is ready to use that capacity?

### **III. Comment Procedures**

43. The Commission invites interested persons to submit comments on the matters, issues and specific questions identified in this notice. Comments are due 60 days from publication in the Federal Register. Comments must refer to Docket No. AD12-14, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

44. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

45. Commenters unable to file comments electronically must mail or hand deliver an original and copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426.

46. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### **IV. Document Availability**

47. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington DC 20426.

48. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

49. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

List of subjects in 18 C.F.R. Part 40

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix A

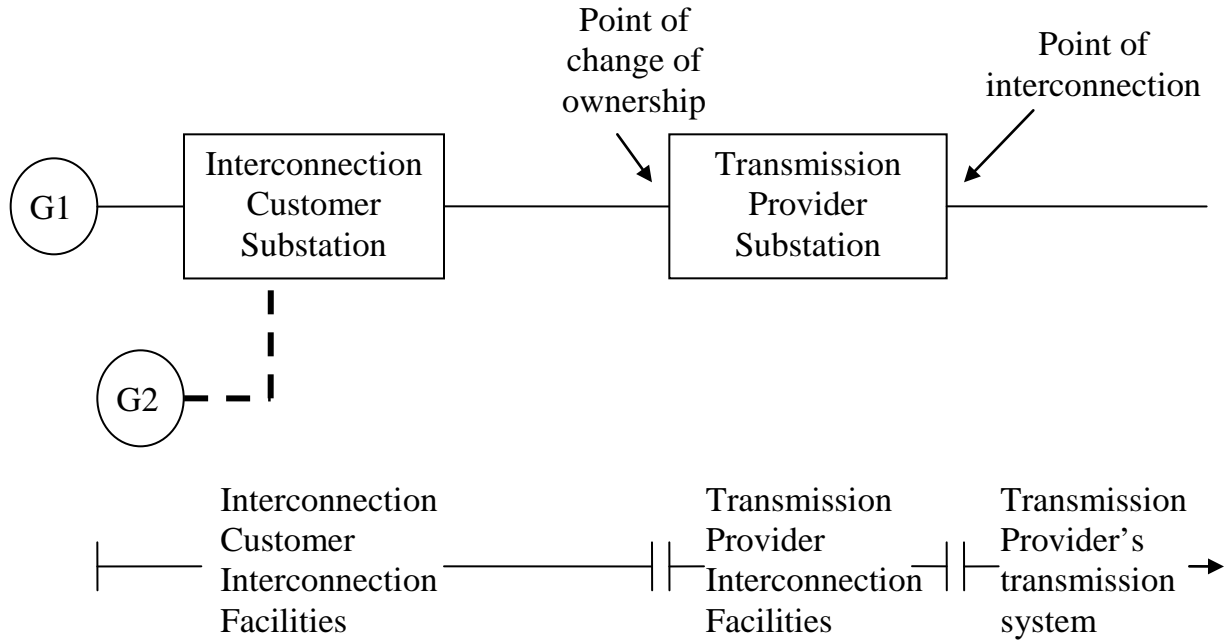
### List of Commenters and Participants in Docket No. AD11-11-000

Adam Wenner\*  
Allete, Inc. d/b/a Minnesota Power  
American Wind Energy Association (AWEA)  
Anbaric Transmission (Anbaric)  
BP Wind Energy North America (BP Wind)  
California High Wind Partners (CAHW)  
Clean Line Energy Partners (Clean Line)  
Duke Energy (Duke)  
Edison Mission Energy (Edison Mission)  
Electric Power Supply Association (EPSA)  
First Wind Holdings (First Wind)  
Gradient Resources (Gradient)  
Grasslands Renewable Energy (Grasslands)  
Horizon Wind Energy LLC (Horizon)  
Invenergy Wind & Invenergy Thermal (Invenergy)  
LS Power Transmission (LS Power)  
MidAmerican Energy Holdings Co. (MidAmerican)  
National Grid USA (National Grid)  
NextEra Energy Resources (NextEra)  
Northeast Utilities (Northeast)  
Northwestern Energy (Northwestern)  
Pattern Transmission (Pattern)  
Puget Sound Energy (Puget)  
San Diego Gas & Electric (SDG&E )  
Sempra Generation (Sempra)  
Shell Wind Energy (Shell)  
Southern California Edison (SCE)  
Southern Co. (Southern)  
Tonbridge Power (Tonbridge)  
Transmission Access Policy Study Group (TAPS)  
Transmission Developers, Inc. (TDI)  
United Illuminating Co. (United)  
Western Independent Transmission Group (WITG)  
Zephyr Power Transmission (Zephyr)

\*Comments filed after due date.



**Appendix B**



Order No. 2003 addresses third party use of Transmission Provider Interconnection Facilities, which are those that are owned, controlled, or operated by the Transmission Provider. Order No. 2003 permits the interconnection customer to build, own, control, and operate interconnection facilities, which are then defined as Interconnection Customer Interconnection Facilities under the LGIP/LGIA, but Order No. 2003 does not address third party use of Interconnection Customer Interconnection Facilities. With a goal of ensuring that a third party generator (G2 in the above schematic) may be able to interconnect to Interconnection Customer Interconnection Facilities that in some instances have been 30, 50, or even hundreds of miles long, the Commission has in a series of recent cases considered these Interconnection Customer Interconnection Facilities to be open access transmission facilities and required that the original developer (G1 in the above schematic) file an OATT within 60 days of a request for service on these facilities. In light of comments received, this NOI seeks feedback on whether the filing of an OATT, modifications to the LGIA/LGIP, or other means are better for addressing third-party access to facilities at issue here.