

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Reform of Generator Interconnection) Docket No. RM178-000
Procedures and Agreements)

COMMENT OF THE STAFF OF THE FEDERAL TRADE COMMISSION

April 10, 2017

I. Introduction

The Federal Energy Regulatory Commission (FERC) has issued a Notice of Proposed Rulemaking (NOPR) concerning “Reform of Generator Interconnection Procedures and Agreements.”¹ The Federal Trade Commission

parts of the industry previously deemed "off limits" to competition led to or facilitated many competitive developments in formerly monopolized electricity markets

FERC's consideration of reforms to its generator interconnection rules is a logical next step in this procompetitive process because FERC and industry participants are concerned that some transmission owners still can discriminate against generation entrants under the current rules. Where it arises, such discrimination can result in anticompetitive delays and/or increased costs for generation entrants that need to obtain essential interconnections with the transmission grid.⁴

FTC staff supports FERC's proposals to reform its interconnection rules to facilitate the construction of generation interconnections to the grid. The reform of generation interconnection rules is particularly timely in light of changes in technology and in relative fuel prices that have resulted, and likely will continue to result, in substantial shifts in the sources of electricity generation.⁵ In addition to alleviating potential transmission interconnection discrimination, the proposed changes to FERC's rules may provide generation entrants with opportunities to innovate in ways that will reduce costs and lessen delays in the interconnection process. FERC also proposes steps to increase the efficiency of the interconnection process, which also should facilitate increased competition that will benefit electricity consumers.

⁴ FERC has been working for more than 20 years to alleviate undue discrimination in transmission services as a means to remove barriers to entry and increase competition in electric generation. Notable examples include the development of independent transmission system operators (both Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs)) and the removal of legal barriers to merchant transmission firms that (if approved in the transmission planning process) can build transmission lines to areas where new generators prefer to locate. The FTC staff commented to FERC as far back as 1995 on independent transmission system operators. Comment of the Staff of the Bureau of Economic Analysis, Federal Trade Commission, Promoting Wholesale Competition through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Dkt. Nos. RM98-000 and RM97-001 (Aug. 7, 1995) https://www.ftc.gov/sites/default/files/documents/advocacy_documents/staffcomment-federal-energy-regulatory-commission-matter-promoting-wholesale-competition/v950008.pdf FERC previously addressed interconnection issues in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 8.

⁵ NOPR at PP 245. For example, the Energy Information Administration (EIA) forecasts that natural gas and renewable resources will continue to expand their shares of the generation mix at least through 2050. EIA, Annual Energy Outlook 2017, <http://www.eia.gov/outlooks/aeo/data/browser/#/?id=AEO2017®ion=0-0&cases=ref2017&start=2020&end=2050&f=Q&linechart=&ctype=linechart&sourcekey=0>

II.

when there is an ongoing “dramatic transformation of the electric generation system”¹⁴ kinds of discrimination identified by AWEA and delay a generator’s entry and/or raise its costs during the interconnection process.¹⁵ FERC reached the same conclusion in Order No. 2003.¹⁶ According to its petition, AWEA’s members have continued to face anticompetitive discrimination, which may have taken different forms since FERC issued Order No. 2003.¹⁷

The incentives to discriminate stem from the fact that many transmission owners also own power generation facilities that would compete against generation entrants. The transmission owners’ generating assets yield higher profits if they can delay or increase the costs of new generation entrants. Coupled with these incentives is an incumbent transmission owner’s ability to delay and raise the costs of power generation entrants by virtue of its control over the timing and costs of a generation entrant’s connection to the transmission system. A transmission owner can raise entry barriers using tactics to delay and/or raise rivals’ costs, reducing the competition and consumer benefits that would otherwise flow from generator entry. Some concerns about anticompetitive interconnection delays and increased costs stem from what may be biased interpretations of interconnection rules by transmission owners and from disputes of dubious validity raised by transmission owners.¹⁸

In addition to concerns about anticompetitive behavior by transmission owners, the transmission owners have expressed concerns about their ability to manage effectively the interconnection process for power generation and energy storage entrants because many applicants subsequently withdraw their requests for interconnections to the grid. When an application in the interconnection queue is withdrawn, prepatterns of power flows and transmission congestion will change. As a result, transmission owners must often restudy interconnection requests remaining in the queue. The resulting costs and delays are exacerbated when additional interconnection applicants in the queue withdraw their applications. Thus, a power generation applicant remaining in the queue could be subject to multiple interconnection restudies. These additional studies can impose increased direct costs and delays on potential power generation entrants independent of concerns about anticompetitive increases in the cost or frequency of interconnection restudies in extreme circumstances. The added costs and delays

of allowing the generator to sell electricity during times of peak demand, when prices are highest. The availability of this option could alleviate any anticompetitive effects of forcing a generation entrant to purchase more interconnection service than it needs

- x Second, FERC proposes to authorize each power generation entrant, in its own discretion, to build the facilities necessary to interconnect with the transmission system (The transmission owner would continue to own the facilities.) This option to build the interconnection facilities is currently available to generation entrants only if the transmission owner formally acknowledges that it is unable to construct the interconnection facilities in a reasonable time.²⁴ At the technical conference, multiple parties explained that “they are often able to build more rapidly and at lower cost than transmission owners.”²⁵ Allowing such building by generation entrants that can more easily absorb the cost and burden of constructing interconnection facilities could reduce opportunities for anticompetitive delays or the imposition of excessive costs by transmission owners.

- x Third, ACEC acknowledges, in its comments, that the current process for interconnection is not efficient and that it is necessary to improve the process. ACEC suggests that the transmission owner should be required to provide a written acknowledgment of its inability to construct the interconnection facilities in a reasonable time. ACEC also suggests that the transmission owner should be required to provide a written acknowledgment of its inability to construct the interconnection facilities in a reasonable time. ACEC also suggests that the transmission owner should be required to provide a written acknowledgment of its inability to construct the interconnection facilities in a reasonable time.

presumably would avoid incurring these higher costs when interconnecting its own generation facilities.³⁰) A transmission owner's ability to increase transmission interconnection costs for the generation entrant— including by engaging in ineffective

V. Improving Transmission Congestion Information to Promote Efficient Power Generation Entry

FERC also proposes another set of reforms to enhance interconnection processes by transferring underutilized transmission capacity from exiting generators to entering generators. Where feasible, using underutilized interconnection capacity helps avoid additional costs or delays from connection studies without additional risk to other generators or to the reliability of the power system. As stated before, a period of changes in the generation mix will likely entail both more entries and more exits by generators. Decisions on how to reassign freed generation capacity can play a significant role in providing transmission capacity for use by generation entrants quickly and at low cost.

VI. Facilitating Efficient Power Generation Entry by Reducing Potential Bias in

More broadly, we note that the original rationale for RTOs and ISOs to eliminate discrimination in the provision of transmission services in order to promote effective competition in wholesale electricity markets.⁴⁷ Bias toward incumbent transmission owners by RTOs and ISOs in resolving interconnection disputes could represent a significant departure from the independence of RTOs and ISOs – the first minimum characteristic required of RTOs and ISOs under Order No. 2000. We encourage FERC to monitor the situation to ensure that RTOs and ISOs have not been subject to regulatory capture. Evidence that RTOs and ISOs systematically enable incumbent transmission owners to bias the resolution of transmission interconnection disputes – and thereby delay or raise the costs of power generation entrants – could be a sign of regulatory capture.

VII. Conclusion

The FTC staff appreciates the opportunity to comment on this NOPR. Please address any questions concerning this comment to John H. Seesel, Office of the General Counsel, at jseesel@ftc.gov (202) 326-2702.

⁴⁷ Id. at P 84; FERC Order No. 2000, FERC Dkt. No. RM99-00, at 23 (Dec. 20, 1999), <https://www.ferc.gov/legal/major-reg/landdocs/RM992A.pdf> (“[T]he Commission reviewed evidence that traditional management of the transmission grid by vertically integrated electric utilities was inadequate to support the efficient and reliable operation that is needed for the continued development of competitive electricity markets, and that continued discrimination in the provision of transmission services by vertically integrated utilities may also be a sign of regulatory capture.”)