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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM14-11-000]

Open Access and Priority Rights on Interconnection Customer's  
Interconnection Facilities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations that became effective June 30, 2015, as published in the 2015 edition of the Code of Federal Regulations.

DATES: Effective date: [**Insert date** of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Commission amended 18 CFR 35.28(d), addressing waivers of the Open Access Transmission Tariff requirements for public utilities that own, operate, or control Interconnection Customer's Interconnection Facilities.

As published in the 2015 edition of the Code of Federal Regulations, the final regulations effective June 30, 2015, contained an error; they incorrectly removed certain language from 18 CFR 35.28(d) that should have been retained. The Commission did not intend to remove this language. This correcting amendment reinserts the incorrectly-removed language.

**List of subjects in 18 CFR Part 35**

Electric power rates, Electric utilities, Reporting and recordkeeping requirements. Accordingly, 18 CFR part 35 is corrected by making the following correcting amendment:

**PART 35—FILING OF RATE SCHEDULES AND TARIFFS**

1. The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 35.28 is corrected by revising paragraph (d) to read as follows:

**§ 35.28 Non-discriminatory open access transmission tariff.**

\* \* \* \* \*

(d) *Waivers.* (1) A public utility subject to the requirements of this section and 18 CFR parts 37 (Open Access Same-Time Information System) and 358 (Standards of Conduct for Transmission Providers) may file a request for waiver of all or part of such requirements for good cause shown. Except as provided in paragraph (f) of this section, an application for waiver must be filed no later than 60 days prior to the time the public utility would have to comply with the requirement.

(2) The requirements of this section, 18 CFR parts 37 (Open Access Same-Time Information System) and 358 (Standards of Conduct for Transmission Providers) are waived for any public utility that is or becomes subject to such requirements solely because it owns, controls, or operates Interconnection Customer's Interconnection Facilities, in whole or in part, as that term is defined in the standard generator interconnection procedures and agreements referenced in paragraph (f) of this section, or comparable jurisdictional interconnection facilities that are the subject of interconnection agreements other than the standard generator interconnection procedures and agreements referenced in paragraph (f) of this section, if the entity that owns, operates, or controls such facilities either sells electric energy, or files a statement with the Commission that it commits to comply with and be bound by the obligations and procedures applicable to electric utilities under section 210 of the Federal Power Act.

(i) The waivers referenced in this paragraph (d)(2) shall be deemed to be revoked as of the date the public utility ceases to satisfy the qualifications of this

paragraph (d)(2), and may be revoked by the Commission if the Commission determines that it is in the public interest to do so. After revocation of its waivers, the public utility must comply with the requirements that had been waived within 60 days of revocation.

(ii) Any eligible entity that seeks interconnection or transmission services with respect to the interconnection facilities for which a waiver is in effect pursuant to this paragraph (d)(2) may follow the procedures in sections 210, 211, and 212 of the Federal Power Act, 18 CFR 2.20, and 18 CFR part 36. In any proceeding pursuant to this paragraph (d)(2)(ii):

(A) The Commission will consider it to be in the public interest to grant priority rights to the owner and/or operator of interconnection facilities specified in this paragraph (d)(2) to use capacity thereon when such owner and/or operator can demonstrate that it has specific plans with milestones to use such capacity to interconnect its or its affiliate's future generation projects.

(B) For the first five years after the commercial operation date of the interconnection facilities specified in this paragraph (d)(2), the Commission will apply the rebuttable presumption that the owner and/or operator of such facilities has definitive plans to use the capacity thereon, and it is thus in the public interest to grant priority rights to the owner and/or operator of such facilities to use capacity thereon.

\* \* \* \* \*

Dated: December 7, 2015.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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