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Standardization of Generator Interconnection Agreements and Procedures; Order on Rehearing; Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–001; Order No. 2003–A]

Standardization of Generator Interconnection Agreements and Procedures

Issued March 5, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) reaffirms its determinations in Order No. 2003 and clarifies certain provisions. Order No. 2003 requires all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs containing standard generator interconnection procedures and a standard agreement that the Commission adopted in that order and to provide interconnection service under them to electric generating facilities having a capacity of more than 20 megawatts. Any non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting these revised procedures and agreement.

EFFECTIVE DATE: April 26, 2004.

FOR FURTHER INFORMATION CONTACT:

Patrick Rooney (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6205.

Roland Wentworth (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8262.

Bruce Poole (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8468.

Abraham Silverman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE.,Washington, DC 20426, (202) 502–6444.

Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE.,Washington, DC 20426, (202) 502–8532.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Pat Wood, III, Chairman, Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

I. Introduction and Summary

1. On July 24, 2003, the Commission issued a Final Rule (Order No. 2003)[1] requiring all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for interconnecting generating facilities capable of producing more than 20 megawatts of power (Large Generators) to their transmission facilities.[2] Order No. 2003 requires that all public utilities subject to it modify their open access transmission tariffs(OATTs) to incorporate the Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA).[3]

2. Interconnection plays a crucial role in bringing much-needed generation into national energy markets to meet the growing needs of electricity customers. Currently, the interconnection process is fraught with delays and lack of standardization that discourage merchant generators from entering into the energy marketplace, in turn stifling the growth of competitive energy markets. The delays and lack of standardization inherent in the current system undermine the ability of generators to compete in the market and provide an unfair advantage to utilities that own both transmission and generation facilities. As a result, the Commission concluded in Order No. 2003 that there is a pressing need for a single, uniformly applicable set of procedures and agreements to govern the process of interconnecting Large Generators to a Transmission Provider's Transmission System.[4]

3. We reaffirm here the legal and policy conclusions on which Order No. 2003 is based. Adoption of the LGIP and LGIA will prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the number and variety of generation resources competing in wholesale electricity markets while ensuring that the reliability of the Transmission System is protected. At its core, Order No. 2003 ensures that generators independent of Transmission Providers and generators affiliated with Transmission Providers are offered Interconnection Service on comparable terms.

4. We recognize that issues will arise that are not covered by the LGIP and LGIA. When that happens, we expect the Parties to follow the spirit of Order No. 2003 and to deal with one another in good faith. Transmission Providers should not use the fact that the LGIP and LGIA do not explicitly cover a particular situation to delay or deny Interconnection Service. While we expect that the vast majority of Interconnection Requests will be efficiently processed under Order 2003, the Commission will continue to step in where necessary and resolve any disputes on a case-by-case basis.

A. Summary of Order Nos. 2003 and 2003-A

1. Jurisdiction

5. Order No. 2003 requires that each public utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce to amend its OATT to include interconnection procedures and an interconnection agreement for electric generating facilities having a capacity of more than 20 megawatts.

6. We reaffirm our jurisdictional holding that Order No. 2003 does not expand the Commission's jurisdiction beyond that asserted in Order No. 888 and upheld in court.[5] The Final Rule applies only to interconnection to transmission facilities that are already subject to an OATT. Order No. 2003 applies to an interconnection to a public utility's Transmission System that, at the time the interconnection is requested, is used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce under a Commission-filed OATT. Additionally, we continue to assert that dual use

[1] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003).

[2] Capitalized terms used in this Order on Rehearing have the meanings specified in Section 1 of the Final Rule Large Generator Interconnection Procedures (LGIP) and Article 1 of the Final Rule Large Generator Interconnection Agreement (LGIA), as amended herein, or the open access transmission tariff (OATT). Generating Facility means the device for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is the Interconnection Customer. The entity (or entities) with which the Generating Facility is interconnecting is the Transmission Provider. A Large Generator is any energy resource having a capacity of more than 20 megawatts, or the owner of such a resource.

[3] Provisions of the LGIP are referred to as ''Sections'' whereas provisions of the LGIA are referred to as ''Articles.''

[4] In another rulemaking, the Commission proposed a separate set of procedures and an agreement applicable to Small Generators (defined as any energy resource having a capacity of no larger than 20 MW, or the owner of such a resource) that seek to interconnect to facilities of jurisdictional Transmission Providers that are already subject to an OATT. *See* Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 60 FR 49974 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 32,572 (2003).

[5] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002) (*TAPS* v. *FERC).*

facilities (those used both for wholesale and retail transactions) are subject to Order No. 2003 if the facilities are subject to an OATT on file with the Commission when the Interconnection Request is submitted.

2. Pricing and Cost Recovery Provisions

7. In general, we reaffirm the pricing policy adopted in Order No. 2003 for the recovery of the costs of Network Upgrades associated with an interconnection.[6] That is, the Commission's existing pricing policy continues to apply to non-independent Transmission Providers, and an independent Transmission Provider may propose a customized pricing policy to fit its circumstances. We also reaffirm that all Distribution Upgrades (upgrades to the Transmission Provider's ''distribution'' or lower voltage facilities that are subject to an OATT) are to be paid for by the Interconnection Customer (direct assignment).

8. In this Order on Rehearing, we clarify that, consistent with the Commission's ''higher of'' ratemaking policy, a non-independent Transmission Provider continues to have the option to charge the Interconnection Customer the ''higher of'' an average embedded cost (rolled-in) rate or an incremental cost rate for the Network Upgrades needed for either Energy Resource Interconnection Service and Network Resource Integration Service. Incremental pricing is not the same as direct assignment.

9. We reaffirm the Order No. 2003 requirement that, unless the Transmission Provider and the Interconnection Customer agree otherwise, the Interconnection Customer must initially fund the cost of any Network Upgrades associated with the interconnection of its Generating Facility to a non-independent Transmission Provider's transmission system and that the Transmission Provider must reimburse the funded amount on a dollar-for-dollar basis with interest. This reimbursement is in the form of credits against the rates the Interconnection Customer pays for the delivery component of transmission service. However, we are granting rehearing on two aspects of the Order No. 2003 crediting policy. First, we are requiring the Transmission Provider to provide credits to the Interconnection Customer only against transmission delivery service taken with respect to the interconnecting Generating Facility. The Transmission Provider need not provide credits against other Transmission Services. Second, we are giving the Transmission Provider two options regarding the payment of credits. At the end of five years from the Commercial Operation Date of the Generating Facility, the Transmission Provider may either: (1) reimburse the Interconnection Customer for the remaining balance of the upfront payment, plus accrued interest, or (2) continue to provide credits to the Interconnection Customer until the total of all credits equals the Interconnection Customer's upfront payment, plus accrued interest.

10. In addition, we are eliminating the requirement that any Affected System Operator refund an Interconnection Customer's upfront payments for Network Upgrades built on the Affected System as a consequence of the interconnection of the Generating Facility. We instead are requiring the Affected System to provide credits toward the Interconnection Customer's upfront payment only when transmission service is taken by the Interconnection Customer on the Affected System.

11. These modifications ensure that the Transmission Provider can recover the ''higher of'' the incremental cost rate of the Network Upgrades or the embedded cost transmission rate, which in turn ensures that the native load and other Transmission Customers of the Transmission Provider and the Affected System will not subsidize Network Upgrades required to interconnect merchant generation.

3. Interconnection Products and Services

12. We reaffirm the decision in Order No. 2003 to have the Transmission Provider offer both Energy Resource Interconnection Service and Network Resource Interconnection Service. We more fully explain these services, clarifying two elements. First, neither Energy Resource Interconnection Service nor Network Resource Interconnection Service guarantees delivery service. Although these services both provide the Interconnection Customer with the capability to deliver the output of the Generating Facility into the Transmission System at the Point of Interconnection, neither service provides the Interconnection Customer with the right to withdraw power at any particular Point of Delivery. However, when an Interconnection Customer wants to deliver the output of the Generating Facility to a particular load (or set of loads) regardless of whether it has chosen Energy Resource Interconnection Service or Network Resource Integration Service, it may simultaneously request Network Interconnection Transmission Service or Point to Point Transmission Service under the OATT. Second, Network Resource Interconnection Service is not the same as, or a substitute for Network Integration Transmission Service under the OATT.

13. Also, this Order on Rehearing clarifies certain study requirements for Network Resource Interconnection Service.

4. Summary of Substantive Clarifications or Grants of Rehearing for the Large Generator Interconnection Procedures

14. Section numbers refer to the LGIP, which appears in Appendix B, attached.

15. Section 2.3—Base Case Data—We reiterate the importance of keeping energy infrastructure information secure and clarify that we expect all Parties to comply with the recommendations of the National Infrastructure Protection Center, as well as any best practice recommendations or requirements that may be issued by the North American Electric Reliability Council (NERC) or other electric reliability authorities. We also clarify section 2.3 to emphasize that the Transmission Provider is permitted to require that the Interconnection Customer sign a confidentiality agreement before the release of commercially sensitive information or Critical Energy Infrastructure Information in the Base Case data.

16. Section 3.1—Interconnection Requests—General—We clarify that the Interconnection Customer may select multiple Points of Interconnection to be evaluated in the Interconnection Feasibility Study. After receiving the results, the Interconnection Customer must select its Point of Interconnection. Before completing the Interconnection Facilities Study, the Interconnection Customer may request changes in the engineering details of the proposed interconnection (per LGIP sections 8.3 and 8.4), but may not alter the location of the Point of Interconnection (unless it submits a new Interconnection Request).

17. Section 3.3.4—Scoping Meeting—We clarify issues relating to the sharing of information between the Transmission Provider and its Affiliates.

18. Section 4.1—Queue Position—General—We clarify that the Transmission Provider may allocate the cost of the common upgrades for clustered Interconnection Requests without regard to Queue Position.

[6] Network Upgrades are facilities on the Transmission Provider's side of the Point of Interconnection with the Transmission Provider's Transmission System.

19. Section—4.4—Queue Position—Modifications ''We clarify that Queue Position will not be lost when a change in the requested Point of Interconnection is acceptable under any provision of the LGIP that expressly allows a minor change in the Point of Interconnection.

20. Section 6—Interconnection Feasibility Study—The Transmission Provider and the Interconnection Customer may agree to skip the Interconnection Feasibility Study. We also clarify that a lower queued Interconnection Request is not to be included in the Interconnection Feasibility Study, unless the study is for a cluster.

21. Section 11.1—LGIA—Tender—We modify this section to allow an additional 30 days after the Interconnection Customer submits comments to the Transmission Provider for the Transmission Provider to complete the draft appendices. We give the Interconnection Customer an additional 30 days to execute and return the draft appendices.

22. Section 13.6—Local Furnishing Bonds—This new provision is applicable only to a Transmission Provider that has financed facilities for the local furnishing of electric energy with tax-exempt bonds. Such a Transmission Provider is not required to provide Interconnection Service to an Interconnection Customer if the provision of such Transmission Service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance Transmission Provider's facilities that would be used in providing such Interconnection Service.

23. Appendix 1—We make some ministerial changes to the Interconnection Request and revise Item 3 to state more clearly that the Interconnection Customer must request either Energy Resource Interconnection Service or Network Resource Interconnection Service. In addition, if it requests the latter, we permit it to request that the Generating Facility be also studied for the former.

5. Summary of Substantive Clarifications or Grants of Rehearing for the Large Generator Interconnection Agreement

24. Article numbers refer to the LGIA, which appears in Appendix B, attached.

25. Article 2.3.1—Written Notice—We revise this article to state that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider 90 Calendar Days advance written notice, or by the Transmission Provider notifying the Commission after the Generating Facility permanently ceases Commercial Operation.

26. Article 4.3—Generator Balancing Service Arrangements—We delete this article because we now recognize that this requirement is more closely related to delivery service than to Interconnection Service. Because delivery service requirements are addressed elsewhere in the OATT, the balancing service requirement, and requirements related to Ancillary Services generally, should not appear in the LGIA.

27. Article 5.2—General Conditions Applicable to Option to Build—We modify this article to state that the Interconnection Customer cannot retain ownership of the Transmission Provider's Interconnection Facilities or Stand Alone Network Upgrades unless the Transmission Provider agrees.

28. Article 5.3—Liquidated Damages—We reiterate that the Transmission Provider is not required to agree to liquidated damages and further explain the process for selecting construction milestones and the possible inclusion of a liquidated damages provision. We also explain that if liquidated damages are selected, they are the Interconnection Customer's exclusive remedy for the Transmission Provider's failure to meet its schedule.

29. Article 5.4—Power System Stabilizers & Article 5.10.3—ICIF Construction—We revise these articles to state that the Interconnection Customer is exempt from these provisions if the Generating Facility is a wind generator.

30. Article 5.13—Lands of Other Property Owners—We clarify that the Transmission Provider must assist the Interconnection Customer in siting Interconnection Facilities and Network Upgrades in a manner comparable to that it provides to itself and its Affiliates.

31. Article 5.16—Suspension—We clarify that the period during which work may be suspended will begin on the date for which the suspension is requested in the written notice to the Transmission Provider, or on the date of the notice if no date is specified. We also clarify that the Interconnection Customer may not suspend work for a cumulative period of more than three years for each project.

32. Article 5.17—Taxes—We clarify the Parties' indemnification and security obligations to better reflect the specific risks that the Transmission Provider faces with respect to taxation.

33. Article 6.4—Right to Inspect—We make the confidentiality requirement reciprocal.

34. Article 9.6.1—Power Factor Design Criteria—We exempt wind generators from the requirements of this article.

35. Article 9.6.3—Payment for Reactive Power—If the Transmission Provider pays its generators or those of an Affiliate for reactive power service within the established range, it must also pay the Interconnection Customer.

36. Article 18.3—Insurance—We modify this article to require that self-insuring entities obtain minimum insurance coverage. Furthermore, we clarify that additional insurance to cover the interconnection is not required if the Transmission Provider's existing insurance satisfies Article 18.3.6 and that each Party to the interconnection agreement complies with the notification requirements contained in Article 18.3.9. The notification requirement in Article 18.3.9 is also expanded to require notification if a Party self-insures or intends to rely on existing insurance.

37. Article 19.1—Assignment—We amend Article 19.1 to provide that any financing arrangement entered into by the Interconnection Customer shall provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider of the date and particulars of any such exercise of assignment rights, including providing the Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3. We also clarify that the Interconnection Customer, not the assignee, must inform the Transmission Provider of any assignment for purposes of providing collateral.

38. Article 22—Confidentiality—We are amending this article to give state regulatory bodies conducting an investigation greater access to information that would otherwise be considered Confidential Information.

39. Appendix G—Requirements of Generators Relying on Newer Technologies—We include an appendix which may be used to provide requirements for generators relying on newer technologies, such as wind generators.

B. Compliance Issues and Variations From the Pro Forma LGIP & LGIA

40. Order No. 2003 said that it would become effective 60 days after publication in the **Federal Register**. However, the Commission later delayed

the effective date until January 20, 2004.[7]

41. On January 8, 2004, the Commission issued a notice clarifying the compliance process.[8] The OATTs of all non-independent Transmission Providers were deemed to include the *pro forma* LGIA and LGIP as of January 20, 2004. Every independent Transmission Provider was required to make a compliance filing on or before January 20, 2004 by filing either (1) a notice that it intended to adopt the *pro forma* LGIP and LGIA, or (2) new standard interconnection procedures and agreement developed according to Order No. 2003's ''independent entity variation'' standard.[9]

42. Order 2003–A takes effect 30 days after its publication in the **Federal Register**.

1. Non-Independent Transmission Provider Compliance With This Order and Requests for Variations

43. As with the January 20, 2004 compliance process, the Commission will deem the OATT of a non-independent Transmission Provider to be revised to adopt the Order No. 2003–A *pro forma* LGIA and LGIP on its effective date. All Transmission Providers are directed to make ministerial filings reflecting the revisions in this order upon their next filing(s) with the Commission.[10]

44. Several *pro forma* LGIP and LGIA provisions specifically allow the Transmission Provider to follow ''Good Utility Practice'' or otherwise adopt region-specific practices or standards. Moreover, Order No. 2003 allows the Transmission Provider to justify variations to any provision based on regional reliability requirements.[11] However, the Commission will accept a regional variation from the *pro forma* LGIP and LGIA only if it is an existing and established regional reliability standard.[12]

45. A non-independent Transmission Provider seeking variations from Order No. 2003–A's *pro forma* LGIA and LGIP based on existing regional reliability standards must file them with the Commission on or before the effective date of this order.[13] Regional variation filings must specify the proposed changes and explain why such changes are necessary. The Commission will solicit comments on these filings before acting on them. Non-independent Transmission Providers need not re-file regional reliability variations they filed on or before the January 20, 2004 effective date of Order No. 2003.

46. A non-independent Transmission Provider also continues to have the right to file proposed changes to its LGIP and LGIA under section 205 of the FPA using the ''consistent with or superior to'' standard.

47. Pending Commission approval of any variations, the *pro forma* LGIP and LGIA will remain in effect.

2. Independent Transmission Provider Compliance With This Order and Requests for Variations

48. Under Order No. 2003, an independent Transmission Provider has greater flexibility to tailor the LGIP and LGIA than does a non-independent Transmission Provider. Under the ''independent entity variation'' standard, an independent Transmission Provider may propose customized interconnection procedures and a customized interconnection agreement that fit the needs of its region instead of the *pro forma* LGIP and LGIA.

49. An independent Transmission Provider that on January 20, 2004 elected to adopt Order No. 2003's *pro forma* LGIP and LGIA must file on or before the effective date of this Order on Rehearing either (1) a notice that it intends to adopt the Order No. 2003–A *pro forma* LGIP and LGIA, or (2) new standard interconnection procedures and agreements developed according to Order No. 2003's ''independent entity variation'' standard.

50. An independent Transmission Provider that filed its own tailored interconnection agreement and procedures under Order No. 2003's independent entity variation on or before January 20, 2004 is not required to re-file its interconnection agreement and procedures with the Commission unless a change is needed to reflect this Order on Rehearing.

51. In either event, the independent Transmission Provider's currently effective OATT will remain in effect pending any necessary Commission action. After submitting its compliance filing, an independent Transmission Provider will continue to have the right to propose changes to its LGIP and LGIA using the ''independent entity variation'' standard.

3. Other Compliance and Variation Issues

52. We clarify that for a non-independent Transmission Owner belonging to an RTO or ISO, the RTO's or ISO's Commission-approved standards and procedures shall govern all interconnections with facilities under the operational control of the RTO or ISO.[14]

53. A non-independent Transmission Provider that belongs to an RTO or ISO, but also retains operational control over portions of the Transmission System, must follow the compliance procedures for a non-independent Transmission Provider.[15] Such entities will have two sets of interconnection agreements and procedures: One governing interconnections to the portions of the Transmission System under the control of the RTO or ISO, and a *pro forma* LGIA and LGIP governing interconnections to the portion of the Transmission System over which it retains operational control.

54. In regards to the portion of the Transmission System over which it retains operational control, the Transmission Provider is responsible for meeting all of the requirements of Order No. 2003 to the same extent as a Transmission Provider who does not happen to belong to an RTO or ISO. A non-independent Transmission Provider does not receive special consideration simply because a portion of its Transmission System is independently operated.

55. A non-independent Transmission Provider that belongs to an RTO or ISO and has turned over control of all of its Transmission System to the RTO or ISO may request that the Commission waive Order No. 2003's requirement that it adopt the LGIA and LGIP. If waiver is granted, then the non-independent entity would be free to request (under FPA Section 205) amendments to its OATT that would harmonize its interconnection procedures with the RTO's or ISO's interconnection procedures.

56. If an RTO or ISO adopts the *pro forma* LGIA and LGIP, it must also enter into a contractual agreement with its Transmission Owners allocating responsibility for the interconnection process between the Transmission Owner and the Transmission Provider. In addition, both the Transmission

[7] A September 26, 2003 order (unpublished) extended the effective date of the Final Rule until January 20, 2004 for independent Transmission Providers. The October 7, 2003 order (105 FERC ¶ 61,043) granted the same extension to non-independent Transmission Providers.

[8] Notice Clarifying Compliance Procedures, 69 FR 2,135 (Jan. 14, 2004) (Compliance Notice).

[9] Order No. 2003 at P 827.

[10] All Order No. 2003 compliance filings should be made under the ''ER04–'' docket heading. The ministerial filing must include the entire *pro forma* LGIP and LGIA and be included in the entity's first filing (of any type) with the Commission after the effective date of this order.

[11] *See* Order No. 2003 at P 824.

[12] *See* Order No. 2003 at P 823.

[13] Requests for regional variations will be treated as compliance filings under the Commission's Regulations.

[14] *See* Compliance Notice.

[15] *Id.*

Provider and the Transmission Owner must sign the LGIA.[16] In such situations, the Interconnection Customer should file its Interconnection Request with the independent Transmission Provider. The independent Transmission Provider must then work with the Transmission Owner to fulfill the Interconnection Customer's Interconnection Request.

57. A non-public utility with a ''safe harbor'' OATT must adopt the *pro forma* LGIA and LGIP if it wishes to retain its safe harbor status.[17] Doing so will require all public utility Transmission Providers to offer the non-public utility open access to the public utility's Transmission System.

C. Procedural Discussion

58. The Commission received 47 timely requests for rehearing or for clarification of Order No. 2003.

59. Under Section 313(a) of the Federal Power Act (FPA),[18] requests for rehearing of a Commission order were due within thirty days after issuance of Order No. 2003, *i.e.,* no later than August 25, 2003. Because the 30-day rehearing deadline is statutorily based, it cannot be extended. Therefore, the Commission rejects all requests for rehearing or clarification filed after August 25, 2003 as a matter of law.[19] However, the Commission will consider these late filed requests for rehearing as requests for reconsideration.

60. The South Carolina PSC filed a motion to intervene out-of-time. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. We find, however, that in this instance the burden of allowing the intervention is minimal and find good cause to allow it.

II. Discussion

A. Definitions Used in the LGIP and LGIA

61. The LGIP and LGIA adopted in Order No. 2003 use a common set of definitions, several of which are addressed by petitioners.

62. Commercial Operation Date—The LGIP and LGIA define Commercial Operation Date to mean the date on which the Interconnection Customer begins Commercial Operation of the Generating Facility after Trial Operation of such unit has been completed. The Interconnection Customer notifies the Transmission Provider of this event using a form provided in the LGIA.

Rehearing Request

63. Central Maine[20] notes that ''commercial operation'' is itself undefined. It proposes that Commercial Operation Date should be defined as the date on which dispatch of the Generating Facility is turned over to the Control Area.

Commission Conclusion

64. We reject Central Maine's proposed definition because the Interconnection Customer will not always turn over the Generating Facility to the Control Area for dispatch.

65. Since the definition of Commercial Operation Date includes the term ''commercial operation,'' it is necessary to define the latter. Therefore, we are adding ''Commercial Operation'' to the list of LGIP and LGIA definitions and are defining it as follows: ''Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.''

66. Control Area—The LGIP and LGIA define Control Area to mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. Order No. 2003 states that the Control Area is to be certified by the North American Electric Reliability Council (NERC).

Rehearing Request

67. Duke Energy notes that the Applicable Reliability Council certifies a Control Area, not NERC, and asks that the definition be so revised.

Commission Conclusion

68. We agree with Duke Energy and revise the definition of Control Area.

69. Network Resource—The LGIP and LGIA define Network Resource to mean that portion of a Generating Facility that is (1) integrated with the Transmission Provider's Transmission System, (2) designated as a Network Resource under the terms of the OATT, and (3) subject to redispatch directives as ordered by the Transmission Provider under the OATT.

Rehearing Request

70. APS states that the term Network Resource is already defined in the OATT and that the term should have a consistent definition in the LGIP, LGIA, and OATT.

Commission Conclusion

71. We agree with APS and adopt the OATT's definition of Network Resource in the LGIP and LGIA.

72. Network Upgrades—The LGIP and LGIA define Network Upgrades to mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System.

Rehearing Requests

73. Reliant argues that the Commission should clarify that the Transmission Provider can own transmission facilities on the generator's side of the Point of Interconnection. According to Reliant, this is important because some Transmission Providers may attempt to confuse the Commission's definitions of Network Upgrades and Transmission Provider's Interconnection Facilities.

74. EEI seeks clarification that ''Network Upgrades occur at or beyond the Point of Interconnection, that is, where the Interconnection Facilities (including the Transmission Provider's Interconnection Facilities) connect to the Transmission System—not where the Interconnection Customer interconnects to the Transmission System.''

75. NRECA–APPA asks the Commission to clarify that improvements to radial lines that serve Network Load, whether through Transmission Service or Interconnection Service, are Network Upgrades.

Commission Conclusion

76. We agree that using the phrase ''at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System'' in the definition of Network Upgrades could cause confusion. Therefore, we are revising this part of the definition to be ''at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System.'' We also note that the Transmission Provider's

[16] *See* Order No. 2003 at P 909.

[17] Non-jurisdictional entities should make their filings under the ''NJ04–'' docket heading.

[18] 16 U.S.C. 8251(a) (2003).

[19] Consumers Energy Company's request for clarification was filed on September 23, 2003 and Hydro One Networks, Inc. filed its request for rehearing on September 7, 2003. NARUC filed its second request for rehearing on October 1, 2003 and Reliant filed its on October 3, 2003.

[20] Petitioner acronyms are defined in Appendix A.

Interconnection Facilities are direct assignment facilities owned by the Transmission Provider on the Interconnection Customer's side of the Point of Interconnection whereas the Transmission Provider's Transmission System consists of facilities at or beyond the Point of Interconnection. These changes resolve the concerns raised by Reliant and EEI.[21]

77. NRECA–APPA has not provided any rationale for treating improvements to radial lines that serve Network Load as Network Upgrades in this rulemaking proceeding. Accordingly, we deny its request.

78. Point of Receipt—Point of receipt is used in LGIA Article 4.3 in the context of the Generator Balancing Service Agreement that requires the Interconnection Customer to identify the Generating Facility as the point of receipt for any delivery service. The LGIP and LGIA do not define point of receipt.

Rehearing Request

79. APS claims that LGIA Article 4.3 capitalizes the term ''point of receipt,'' implying that it is defined, when in fact it is not. APS seeks clarification that the OATT definition for this term is the intended definition.

Commission Conclusion

80. Since the term is used only once in the LGIA, in Article 4.3, and we are deleting that article (see discussion in section II.D.2 (Interconnection Pricing Policy), the issue is moot.

81. Reasonable Efforts—The LGIP and LGIA define Reasonable Efforts (with respect to an action required to be attempted or taken by a Party under the interconnection agreement) as efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Rehearing Requests

82. NYTO and National Grid argue that the ''substantially equivalent'' standard does not recognize that the Transmission Provider's fiduciary responsibility is to its shareholders and customers, and that it cannot be expected to apply the same standard to another Party's interests. National Grid asks that the definition incorporate ''due diligence'' rather than ''substantially equivalent efforts.''

Commission Conclusion

83. We affirm our decision in Order No. 2003 that ''substantially equivalent'' is the correct standard since it ensures comparable treatment for all.[22] It is a fundamental requirement of FPA Sections 205 and 206 that a public utility provide comparable service to non-Affiliates, and we do indeed expect it to provide this service.

84. Transmission Provider and Transmission Owner—The LGIP and LGIA define Transmission Provider to mean the public utility (or its designated agent) that owns, controls, or operates facilities used for the transmission of electricity in interstate commerce and provides Transmission Service under the OATT. The term includes the Transmission Owner when it is distinct from the Transmission Provider. The LGIP and LGIA define Transmission Owner to mean the entity that owns, leases, or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection.

Rehearing Requests

85. EEI seeks clarification as to whether both the Transmission Provider and the Transmission Owner must make a compliance filing when the former is an RTO or ISO. It argues that there may be instances when the interests of the Transmission Owner and Transmission Provider diverge.

86. MSAT argues that the Commission's definitions of Transmission Owner and Transmission Provider will cause uncertainty as to which Party has the duty to fulfill the contractual obligations in the interconnection agreement. This could lead to disputes during the construction of Interconnection Facilities. MSAT asserts that in the context of an RTO or ISO, every use of the term ''Transmission Provider'' in the LGIP and LGIA requires a determination as to whether the provision applies to the RTO or ISO, the Transmission Owner, or to both. It also argues that even LGIP and LGIA provisions that use both terms are confusing. It is not clear how the provision is to be applied to each entity because the Commission has not clearly distinguished the rights and responsibilities of the Transmission Provider and Transmission Owner. MSAT urges the Commission to adopt an LGIP and LGIA tailored specifically for RTOs and ISOs or, at a minimum, to clearly distinguish the rights and responsibilities of the Transmission Provider and Transmission Owner in the context of an RTO or ISO. It argues for the former because the latter would require that the term ''Transmission Owner'' not be subsumed within the definition of the term ''Transmission Provider,'' necessitating numerous revisions to the LGIP and LGIA.

Commission Conclusion

87. With respect to concerns raised about the rights and responsibilities of the Transmission Provider and Transmission Owner not being spelled out in the LGIA, the independent entity variation gives RTOs and ISOs broad discretion in the final design of their LGIP and LGIA, and we encourage each RTO or ISO to spell out such rights and responsibilities in its compliance filing.

88. We are addressing in section I.B (Compliance Issues and Variations From the *Pro Forma* LGIP and LGIA) the issue of whether both the Transmission Provider and the Transmission Owner must submit a compliance filing when the two entities are separate and their interests diverge.

B. Issues Related to the Standard Large Generator Interconnection Procedures (LGIP)

89. Section 2.3—Base Case Data—LGIP section 2.3 provides that the Transmission Provider shall make available (1) base power flow, (2) short circuit and stability databases (including all underlying assumptions), and (3) a listing of contingency operations used in the Interconnection Studies upon request (subject to confidentiality provisions). Such databases and lists, referred to as Base Cases, include all generation projects and transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.

Rehearing Requests

90. Cinergy, MSAT, National Grid, and NYTO state that Base Case information may include Critical Energy Infrastructure Information. Notwithstanding the LGIP and LGIA provisions for the handling of Confidential Information, they argue that the scope of the data to be provided to the Interconnection Customer is overbroad, exposes the Transmission Provider to an inordinate risk of liability, and is inconsistent with its responsibilities under various Commission rules, including Order Nos. 889 and 630. They argue that the requirement to disclose Base Case data

[21] The revised definition reads as follows: ''Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.''

[22] Order No. 2003 at P 68.

is inconsistent with LGIP section 13.1 and LGIA Article 22, both of which require that significant amounts of data concerning individual Interconnection Customers remain confidential and not be disclosed to other Interconnection Customers.

91. National Grid states that the data used in Interconnection Studies typically is made up of commercially sensitive information and that project developers have legitimate commercial reasons to avoid revealing specific operating characteristics of their equipment. The Commission itself has made clear recently that certain power flow data (the same data underlying short circuit calculations) routinely provided in Form 715 is Critical Energy Infrastructure Information and must be redacted from public versions of Form 715. National Grid argues that the confidentiality provisions in the LGIP and LGIA may not provide adequate protection for such sensitive data.

Commission Conclusion

92. As the Commission noted in Order No. 2003 [23] and we emphasize here, the security of energy infrastructure information is essential. We expect all Transmission Providers, market participants, and Interconnection Customers to comply with the recommendations of the National Infrastructure Protection Center, as well as any best practice recommendations or requirements that may be issued by NERC or any other electric reliability authority. In particular, the Transmission Provider is expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices. If the Transmission Provider considers it necessary to protect commercially sensitive information or the energy infrastructure, it may require that the Interconnection Customer sign a confidentiality agreement before the release of commercially sensitive or Critical Energy Infrastructure Information contained in the Base Case data. However, all Transmission Providers are put on notice that they are not to abuse this privilege in an effort to withhold information that lacks legitimate commercial sensitivity or Critical Energy Infrastructure Information status.

93. Section 3.1—Interconnection Requests—General—LGIP section 3.1 allows the Transmission Provider and the Interconnection Customer to identify an alternative Point of Interconnection at the Scoping Meeting. It further states that the Interconnection Customer will select the Interconnection Point(s) to be studied no later than the time of execution of the Interconnection Feasibility Study Agreement.

Rehearing Requests

94. AEP argues that the Transmission Provider, who has ultimate responsibility for its Transmission System, must have the final say as to the details and configuration of the interconnection (*e.g.,* location of the Point of Interconnection).

95. Old Dominion argues that the LGIP gives the Interconnection Customer too much discretion in terms of where and how to interconnect with the Transmission Provider's Transmission System. The Commission should require RTOs to conduct forward-looking Transmission System planning studies to formulate strong regional Transmission System expansion plans, which would influence the Interconnection Customer's decisions as to where and how to interconnect.

Commission Conclusion

96. We provide the following clarification. The Interconnection Customer will select alternative Points of Interconnection to be evaluated in the Interconnection Feasibility Study. Based upon the results of that study, the Interconnection Customer, in consultation with the Transmission Provider, shall select the Point of Interconnection. In the process of conducting the Interconnection System Impact Study and the Interconnection Facilities Study, the Transmission Provider will develop the engineering design and electrical configuration of the interconnection. Before completing the Interconnection Facilities Study, the Interconnection Customer may request changes in the engineering design details of the interconnection (per LGIP sections 8.3 and 8.4), but not the location of the Point of Interconnection. No change to the LGIP is needed to reflect this clarification.

97. Regarding Old Dominion's argument, we note that the Commission encourages RTOs to conduct forward-looking Transmission System planning studies to formulate strong regional Transmission System growth plans that will inform the Interconnection Customer's decision as to where and how to interconnect. However, we will not take away any options available to the Interconnection Customer under the LGIP to select the Interconnection Points to be studied in the Interconnection Feasibility Study.

98. Section 3.3.1—Initiating an Interconnection Request—LGIP section 3.3.1 provides that the date the Interconnection Request is received by the Transmission Provider may precede the Generating Facility's In-Service Date by up to ten years, or longer where the Parties agree, such agreement not to be unreasonably withheld.

Rehearing Request

99. NYTO states that the ten year provision is unreasonably long. It argues that most new generators can be built in three to four years. It proposes that section 3.3.1 be amended to impose a limit of five years with an additional extension of up to two years for project delays.

Commission Conclusion

100. We decline to adopt NYTO's proposal. We recognize that the use of a ten year limit is a matter of judgment and that no specific number can be objectively verified as the best. However, the ten year provision was originally developed by negotiation during the Advance Notice of Proposed Rulemaking (ANOPR) process by representatives of the Interconnection Customer and Transmission Provider communities. Order No. 2003 noted that proponents of large coal fired generators and wind powered generators have argued that this period should be longer than ten years, not shorter.[24] We continue to believe that the choice of ten years fairly balances the advantages for some plant types of a longer period and the advantages for the Transmission Provider's limiting the time for completing an interconnection. Finally, NYTO has not demonstrated objectively that five years is a more appropriate time period or that ten years creates a problem for the Transmission Provider.

101. Section 3.3.4—Scoping Meeting—LGIP section 3.3.4 requires the Transmission Provider and the Interconnection Customer to hold a Scoping Meeting within 30 Calendar Days from receipt of the Interconnection Request to discuss the proposed interconnection, including (1) general facility loadings, (2) general instability issues, (3) general short circuit issues, (4) general voltage issues, (5) general reliability issues and (6) alternate Points of Interconnection.

Rehearing Request

102. Entergy asks that the Commission clarify whether the Transmission Provider would violate the Commission's Standards of Conduct or Code of Conduct if it shares technical

[23] Order No. 2003 at P 84.

[24] Order No. 2003 at P 99.

information concerning its Transmission System with an Interconnection Customer which is an Affiliate.

Commission Conclusion

103. Both the Commission's Standards of Conduct and Code of Conduct prohibit the preferential sharing of information between the Transmission Provider and its Affiliate. The Standards of Conduct were enacted in 1996 [25] and revised in 2003.[26] The Standards of Conduct require that if the Transmission Provider discloses transmission or market information to its wholesale merchant function or power marketing Affiliate, it must also disclose such information simultaneously to the public.[27]

104. In contrast, the Code of Conduct is imposed on a case-by-case basis when the Commission grants market-based rate authorization. Generally, the Code of Conduct contains a provision that all market information shared between the public utility (*i.e.,* Transmission Provider) and the Affiliate is to be disclosed simultaneously to the public.[28]

105. In Order No. 2004, the Commission granted an exception to the information-sharing prohibitions of Section 358.5(b)(1) of the Commission's Regulations, which implements the Standards of Conduct. Section 358.5(b)(5) allows the Transmission Provider to share information with its Affiliate relating to its Transmission System without contemporaneously releasing that information to the public as long as the information relates solely to a specific request for Transmission Service.[29] Order No. 2004 defines Transmission Service to include Interconnection Service.[30] This addresses Entergy's concern about violating the Standards of Conduct when it holds a Scoping Meeting with an Affiliate.

106. With respect to Entergy's request for clarification concerning the Commission's Code of Conduct requirements, the Code of Conduct requires that all market information shared between the Transmission Provider and the Affiliate be disclosed simultaneously to the public. This includes any communication concerning the Transmission Provider's power or transmission business, present or future, positive or negative, concrete or potential.

107. To balance the need to treat affiliated and non-affiliated Interconnection Customers alike, adhere to the intent of the Code of Conduct and Standards of Conduct, and ensure that Critical Energy Infrastructure Information is not released to the public, we are adopting an approach here that is similar to the one taken in Order No. 2004. We will allow the Transmission Provider to share technical information related to its Transmission System with an Affiliate without having to simultaneously release the information to the public as long as the information relates solely to a valid request for Interconnection Service.[31] In addition, we will require the following additional safeguards: The Transmission Provider must (1) post an advance notice to the public on its OASIS of its intent to conduct a Scoping Meeting with its Affiliate, (2) transcribe the meeting in its entirety, and (3) retain the transcript for three years. When a request from a member of the public is made for the release of the transcript, the Transmission Provider shall release the transcript in its entirety to the requester if the Transmission Provider determines that it contains no Critical Energy Infrastructure Information or commercially sensitive information of the Affiliate that would competitively disadvantage the Affiliate. However, if the Transmission Provider believes that the transcript contains such information, the Transmission Provider must release a redacted copy of the transcript to the requester along with an explanation for the redactions (such as Critical Energy Infrastructure Information). If the requester believes that the Transmission Provider has withheld information inappropriately, it may file a complaint with the Commission, along with a notice to the Transmission Provider. Upon receipt of the notice, the Transmission Provider will file both unredacted and redacted copies of the transcript with the Commission, including a written justification to explain the redactions. The redacted copy will be available to the public; the unredacted copy will remain confidential unless and until the Commission decides otherwise. The Commission will decide the appropriateness of the redactions and, once a decision is made, direct the Transmission Provider to take any necessary action.

108. Section 3.5—Coordination with Affected Systems—LGIP section 3.5 requires the Transmission Provider to coordinate Interconnection Studies and planning meetings with Affected Systems.

Rehearing Requests

109. National Grid seeks clarification that the Transmission Provider does not have to proceed with an interconnection if an Affected System does not cooperate in performing the Interconnection Studies in a timely manner, or if the Transmission Provider believes that proceeding with the interconnection could lead to reliability or other problems. Similarly, NYTO asks that the Commission give the Transmission Provider extra time to complete Interconnection Studies when it is necessary to evaluate the proposed interconnection's effect on Affected Systems.

110. NYTO also asks that section 3.5 be amended to include the following sentence from P 121of Order No. 2003: ''Neither the LGIP nor the LGIA is intended to expose the Transmission Provider to liability as a result of delays by the Affected System.'' Similarly, PacifiCorp points out that the Transmission Provider may not be able to obtain sufficient cooperation from non-FERC jurisdictional entities to conduct Interconnection Studies in a timely manner. Since obtaining such cooperation may take time, the Transmission Provider should be held harmless for any resulting delays in the Interconnection Study process. PacifiCorp also asks that the Commission clarify that the Transmission Provider is required only to make a good faith effort to coordinate its Interconnection Studies with Affected Systems.

111. According to PacifiCorp, the Commission should specify that the Transmission Provider is not responsible for any Breach of confidentiality by an Affected System or its representatives and that the Transmission Provider's obligation should be limited to informing the Affected System of the Commission's confidentiality procedures.

[25] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g,* 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied,* 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,253 (Nov. 25, 1997).

[26] Standards of Conduct for Transmission Providers, Order No. 2004, 68 FR 69134 (Dec. 11, 2003), FERC Stats. & Regs. Vol. III, Regulations Preambles ¶ 31,155 (Nov. 25, 2003), *reh'g pending.*

[27] *See* 18 CFR 37.4(3) and (4) 2003 and section 358.5 (not yet codified).

[28] *See* Northeast Utilities Service Company, 87 FERC ¶ 61,063 at 61,276 (1999).

[29] Order No. 2004 at P 143.

[30] 18 CFR 358.3—Definitions.

[31] We will deem the Code of Conduct amended to include this exception.

112. APS asks the Commission to clarify that any study of the effect of the proposed interconnection on an Affected System conducted by the Transmission Provider be included in the results of the Interconnection Studies. Section 3.5 currently provides that such results will be provided ''if possible.'' [32]

Commission Conclusion

113. In response to reliability concerns, we reiterate that Interconnection Service is separate from the delivery component of Transmission Service and that the mere interconnection of the Generating Facility is unlikely to harm reliability on Affected Systems.[33] Also, the Transmission Provider must take the same steps to integrate the Interconnection Customer's Generating Facility into its Transmission System—including coordinating the interconnection with Affected Systems—that it would take for its own affiliated generation.

114. With regard to concerns over timing, we clarify that delays by an Affected System in performing Interconnection Studies or providing information for such studies is not an acceptable reason to deviate from the timetables established in Order No. 2003 unless the interconnection itself (as distinct from any future delivery service) will endanger reliability. The Transmission Provider may not use third party actions or inactions as an excuse for not proceeding with the design, procurement, and construction of Interconnection Facilities and any necessary upgrades. We clarify, however, that the Transmission Provider must act under Applicable Reliability Standards even if such standards require that it keep a circuit to an interconnecting Generating Facility open.[34]

115. In response to APS, we are revising section 3.5 to require that the results of any study of the effect of the interconnection on any Affected System be included in the Interconnection Study ''if available.'' The ''if available'' phrase is appropriate because it recognizes that studies of the Affected System may not be completed within the time specified in the LGIP. This language allows the interconnection process to proceed, even in the face of delays or non-response by the Affected System.

116. We deny NYTO's request that the text it quotes from Order No. 2003 be added to section 3.5. However, we clarify that the sentence refers to the possibility of liquidated damages being imposed on the Transmission Provider because of delays caused by third parties. It should not be interpreted as shielding the Transmission Provider from any non-liquidated damages liability that may result from the interconnection. This is in accord with the liquidated damages provisions of the LGIA.

117. Regarding the confidentiality concerns raised by PacifiCorp, we reiterate that the confidentiality provisions in LGIA Article 22 and LGIP Section 13 lay out the standards that the Transmission Provider must employ when sharing Confidential Information with third parties, including Affected Systems.

118. Section 4.1—Queue Position—General—LGIP section 4.1 states that Queue Position determines the order of performing the Interconnection Studies and hence will determine cost responsibility for the facilities necessary to accommodate the Interconnection Request.

Rehearing Request

119. APS seeks guidance on upgrade cost allocation among Interconnection Customers and whether Queue Position must always be the determining factor for cost allocation among clustered requests. If the Transmission Provider uses clustering for studying Interconnection Requests, it can study the joint effect of several generators interconnecting to the Transmission System. APS believes that such a study also will indicate the effect of each Generating Facility separately on the Transmission System. Therefore, the Transmission Provider will have many factors to consider for cost allocation among the generating facilities, including unit size and contribution to the faults on the existing transmission facilities.

Commission Conclusion

120. We agree with APS and clarify that these additional factors may be considered in the allocation of costs to multiple Interconnection Customers when studied in a cluster. We also reiterate that we strongly encourage the use of clustering. The principal benefit of studying Interconnection Requests in clusters is that it allows the Transmission Provider to better coordinate Interconnection Requests with its overall transmission planning process, and, as a result, achieve greater efficiency in both the design of needed Network Upgrades and in the use of its planning resources. Sometimes, one generating facility interconnecting alone would not require a substantial upgrade to the Transmission System, but when clustered with others, a costly upgrade may be required. We clarify that the Transmission Provider may allocate the cost of the common upgrades for clustered Interconnection Requests and that Queue Position has no bearing on cost allocation for clustered Interconnection Requests.

121. Section 4.3—Transferability of Queue Position—LGIP section 4.3 provides that the Interconnection Customer may transfer its Queue Position to another entity only if the latter acquires the specific Generating Facility identified in the Interconnection Request and there is no change in the proposed Point of Interconnection.

Rehearing Requests

122. NYTO and National Grid ask the Commission to amend Section 4.3 to allow the Transmission Provider to use mitigation measures to offset the credit risk that can occur when a Queue Position is transferred from one Interconnection Customer to another. They argue that the acquiring Interconnection Customer must meet the same letters of credit requirements as the original Interconnection Customer.

Commission Conclusion

123. NYTO and National Grid are not correct that a transfer in Queue Position will result in a greater credit risk for the Transmission Provider. There are no provisions in the LGIP which require the Interconnection Customer to provide the Transmission Provider with letters of credit or other financial guarantees. Construction of Network Upgrades, Interconnection Facilities, and Distribution Upgrades does not commence until the Parties sign the LGIA, which does require letters of credit or other financial guarantees. The LGIP requires the Transmission Provider to bill the Interconnection Customer monthly for the cost of the Interconnection Facilities Study, thus minimizing the risk that the Transmission Provider will be unable to recoup its costs from a non-creditworthy entity.

124. Section 4.4—Queue Position—Modifications—LGIP section 4.4.1 allows the Interconnection Customer to

[32] NRECA–APPA, NYTO, and PacifiCorp request rehearing on the Commission's pricing policy for Network Upgrades on Affected Systems. These requests are addressed in section II.D.2 (Interconnection Pricing Policy).

[33] *See* Tennessee Power Company, 90 FERC ¶ 61,238 at 61,761–62 and n.5, *order denying reh'g*, 91 FERC ¶ 61,271 (2000); *accord*, Arizona Public Service Company, 96 FERC ¶ 61,055 at 61,165 (2001).

[34] *See* Tampa Electric Co., 103 FERC ¶ 61,047 (2003).

make the following modifications to its Interconnection Request without losing its Queue Position, provided that it makes them before returning the executed Interconnection System Impact Study Agreement to the Transmission Provider: (1) A reduction of up to 60 percent in the megawatt output of the proposed project, (2) modification of the technical parameters associated with the Generating Facility technology or the step-up transformer impedance characteristics, and (3) modification of the interconnection configuration.

125. Section 4.4.2 allows the Interconnection Customer to make the following modifications to its Interconnection Request provided that it makes them before it returns the executed Interconnection Facility Study Agreement to the Transmission Provider: (1) An additional 15 percent decrease in the megawatt output of the Generating Facility as evaluated in the Interconnection System Impact Study, and (2) Generating Facility technical parameters associated with modifications to Generating Facility technology and transformer impedances. However, the incremental costs to the Transmission Provider associated with those modifications are the responsibility of the Interconnection Customer.

126. Section 4.4.3 provides that any change to the Point of Interconnection is a Material Modification. A Material Modification is a change that increases the cost of or delays the schedule of a lower queued Interconnection Customer.

127. Section 4.4.5 provides that extensions of less than three cumulative years in the Commercial Operation Date of the Generating Facility are not material and should be handled through construction sequencing.

Rehearing Requests

128. Entergy and Southern argue that the modifications permitted under sections 4.4.1 and 4.4.2 could cause significant additional costs and delays for other Interconnection Customers. These provisions give the Interconnection Customer the ability to hold hostage the remainder of the interconnection queue by continually making modifications. Southern asserts that when the modifications are studied for a particular project, the lower queued Interconnection Requests will have to be restudied to identify any effects that the modification may have on them.

129. AEP seeks clarification that any incremental costs associated with any ''actual'' change in plant size, not just those associated with the proposed changes, should also be directly assigned to the Interconnection Customer. For example, if the Interconnection Customer projects a 15 percent reduction in plant size, thus enabling it to maintain its position in the queue, but actually builds a much smaller plant, the InterconnectionCustomer should bear all of the costs associated with building Network Upgrades that turn out to be unnecessary as a result of the smaller-than-projected plant size.

130. Duke Energy seeks clarification that, notwithstanding the sentence in section 4.4.3 stating that a change in Point of Interconnection shall constitute a Material Modification, a change in the Point of Interconnection acceptable under sections 4.4.1, 6.1, 7.2 or any other provision of the LGIP that expressly allows for some minor change in the Point of Interconnection will not result in the loss of Queue Position.

131. NYTO and Southern argue that the Commission should classify an extension of the Commercial Operation Date of the Generating Facility for three years as a Material Modification. They state that the Commission did not take into account the difficulties that may be encountered in the planning process. They argue that a generator should not be able to maintain its place in the interconnection process to the detriment of other generators for such an extended period of time.

Commission Conclusion

132. We deny Entergy's and Southern's requests because many of the modifications permitted under section 4.4.1 take place before the Interconnection Customer submits an Interconnection System Impact Study Agreement, which is early in the study process, and many Interconnection Customers drop out after the Interconnection Feasibility Study. The need for restudies for lower queued generators would not be determined until the Interconnection System Impact Study is completed. Also, the cost of restudies should discourage the Interconnection Customer from making frivolous or excessive requests for modifications. Moreover, modifications permitted under section 4.4.2 are much smaller than those under section 4.4.1.

133. Regarding AEP's concerns, if the Interconnection Customer states that it will construct a significantly smaller facility than initially proposed, the size change is a Material Modification. The Interconnection Facilities Study would then have to be redone before construction and all cost effects, including the cost incurred for facilities that have become unnecessary due to the size reduction, will be the responsibility of the Interconnection Customer.

134. With regard to NYTO's and Southern's concern about section 4.4.5, we realize that permitting extensions for a cumulative period of three years places a burden on the Transmission Provider's expansion planning process, but as the Commission stated in Order No. 2003, these extensions in most cases are well within the scope of other unforeseen changes that affect the planning process.[35] A planning process inevitably is affected by a variety of changes in circumstances. NYTO and Southern have not provided any new arguments to convince us to change our position.

135. We are adopting Duke Energy's proposal and are amending section 4.4.3 to clarify that, notwithstanding the wording elsewhere in that sentence, a change in the Point of Interconnection acceptable under sections 4.4.1, 6.1, 7.2 or any other provision of the LGIP that expressly allows for a change in the Point of Interconnection does not result in the loss of Queue Position.

136. Section 5.1.1—Queue Position for Pending Requests—LGIP section 5.1.1.2 gives an Interconnection Customer with an executed Interconnection Study agreement as of the effective date of Order No. 2003 the option of either completing further studies under the Transmission Provider's old procedures or switching to the LGIP for these studies. Section 5.1.1.3 provides that if an interconnection agreement has been submitted to the Commission for approval before the effective date of Order No. 2003, it is grandfathered.

Rehearing Requests

137. Old Dominion requests clarification that existing, executed interconnection agreements must be honored (grandfathered).

138. PacifiCorp states that the transition to the LGIP process should take place only after all Interconnection Studies are completed. If the Interconnection Customer elects to complete any Interconnection Studies under grandfathered procedures, then all the remaining studies should also be completed using grandfathered procedures.

Commission Conclusion

139. We agree with Old Dominion's interpretation. LGIP section 5.1.1.3 states that an interconnection agreement is grandfathered if it has been submitted

[35] Order No. 2003 at P 177.

to the Commission before the effective date of the LGIP.

140. We are denying PacifiCorp's request for rehearing. The only Interconnection Study completed during the transition period using the old interconnection procedures may be the Interconnection Feasibility Study. Forcing the Interconnection Customer to complete the remaining Interconnection System Impact Study and Interconnection Facilities Study under the old interconnection procedures could subject it to undue discrimination and discourage expeditious development of new generation (*e.g.*, the Interconnection Customer under the old procedures would not have the more favorable opportunities that are provided by the *pro forma* LGIP).

141. Section 5.2—Prior Interconnection Requests—New Transmission Provider—LGIP section 5.2 governs what happens if a Transmission Provider transfers control of its Transmission System to a successor Transmission Provider while an Interconnection Request is pending. The new Transmission Provider and the old Transmission Provider must coordinate their efforts to ensure completion of the interconnection in a timely manner. If the change of control takes place after the old Transmission Provider has tendered an unexecuted LGIA to the Interconnection Customer, the Interconnection Customer may complete negotiations with either the original Transmission Provider or the successor Transmission Provider.

Rehearing Request

142. NYTO argues that once control transfers, the successor Transmission Provider is the only Party with whom the Interconnection Customer should negotiate an interconnection agreement.

Commission Conclusion

143. We agree with NYTO and will grant rehearing on this issue. Allowing the Interconnection Customer to finalize negotiations with an entity that no longer has a stake in the negotiations would be unfair to the successor Transmission Provider. Once control passes to the successor Transmission Provider, any unexecuted interconnection agreements must be negotiated with it. Therefore, we modify the last sentence of section 5.2 to read: ''If the Transmission Provider has tendered a draft LGIA to the Interconnection Customer, but the Interconnection Customer has not either executed the LGIA or requested the filing of an unexecuted LGIA with the Commission, any further negotiations must be conducted with the successor Transmission Provider.''

144. We shall also require the two Transmission Providers to work together to ensure a smooth transition for pending Interconnection Requests by modifying the third sentence of section 5.2 to read: ''The original Transmission Provider shall coordinate with the successor Transmission Provider to complete any Interconnection Request (including Interconnection Studies), as appropriate, that the original Transmission Provider has begun but has not completed.''

145. Section 6—Interconnection Feasibility Study, Section 7—Interconnection System Impact Study, Section 8—Interconnection Facilities Study, and Section 10—Optional Interconnection Study—LGIP sections 6, 7, and 8 describe (1) the analyses to be conducted for each of the Interconnection Feasibility, Interconnection System Impact, and Interconnection Facilities Studies, (2) the Interconnection Customer's responsibility for the actual cost of each study and of any restudies that may be required, and (3) the right of the Interconnection Customer to maintain its Queue Position and substitute a Point of Interconnection, identified by either the Transmission Provider or the Interconnection Customer, if the Interconnection Studies yield a result that the Interconnection Customer and Transmission Provider did not contemplate during the Scoping Meeting. Section 10 provides that the Interconnection Customer may ask the Transmission Provider to perform a reasonable number of Optional Interconnection Studies. An Optional Interconnection Study is a sensitivity analysis based on assumptions provided by the Interconnection Customer. The purpose of the Optional Interconnection Study is to identify the Interconnection Facilities, Network Upgrades, and the costs that may be required to provide Transmission Service or Interconnection Service. Finally, although the Interconnection Customer pays the Transmission Provider various deposits prior to the latter performing the Interconnection Feasibility, System Impact, and Facilities Studies, the Interconnection Customer is responsible only for the actual cost of performing the studies.[36]

[36] *See* Article 6.0 of the *pro forma* Interconnection Feasibility Study Agreement, Article 6.0 of the Interconnection System Impact Study Agreement, and Article 5.0 of the Interconnection Facilities Study Agreement, all attached to the LGIP.

Rehearing Requests—General

146. National Grid, NYTO, PacifiCorp, and Southern assert that the timelines prescribed in Order No. 2003 to conduct the Interconnection Studies will lead to poor quality studies and will require more personnel to perform the studies in a timely manner. PacifiCorp recommends that the Commission let the Transmission Provider adopt a longer timeline when the number of Interconnection Requests received exceeds what it can process using normal staffing levels. NYTO and Southern assert that the requirement for restudies is unrealistic because any restudy can either invalidate other Interconnection Studies or prompt lower queued Interconnection Customers to seek restudies of their projects.

147. PacifiCorp notes that the capitalized and defined term ''Generating Facilities'' rather than the generic term ''generating facilities'' is used in LGIP sections 6.2 and 7.3. It asserts that the term as used in the Interconnection Feasibility Study and Interconnection System Impact Study refers broadly to all the generating facilities with higher Queue Positions and not the narrowly defined ''Interconnection Customer's Generating Facility.'' The term ''generating facilities'' is more appropriate as applied in LGIP sections 6.2 and 7.3.

148. PacifiCorp seeks clarification as to whether the cost estimate provided in the Interconnection Study report includes the cost of Network Upgrades on Affected Systems.

149. Central Maine claims that to perform the Interconnection Feasibility Study and the Interconnection System Impact Study adequately, the Transmission Provider will require the following from the Interconnection Customer: a one line relay diagram of the proposed Interconnection Facilities, a three line relay or AC elementary diagram of the proposed Interconnection Facilities, a DC elementary and control diagram for the proposed Interconnection Facilities, technical data on all circuit interrupting devices proposed for the Interconnection Facilities, technical data and winding connections for all instrument transformers proposed for the Interconnection Facilities, and proposed types and settings of all protective relays to be installed within the Interconnection Facilities.

Commission Conclusion—General

150. We reaffirm that the timelines for the completion of the Interconnection Studies are reasonable. The LGIP

recognizes that the Transmission Provider may not be able to complete each study within the specified time.[37] In such cases, the Interconnection Customer and the Transmission Provider will come to an acceptable accommodation. This gives the Transmission Provider flexibility when it needs it.

151. We concur with PacifiCorp regarding the use of the term ''generating facilities'' and are amending sections 6.2 and 7.3 to reflect the change.

152. With regard to PacifiCorp's request for clarification, we conclude that it is unreasonable to expect the Transmission Provider to develop a cost estimate for Network Upgrades on an Affected System because the information required to develop the estimate is not readily available to the Transmission Provider. Accordingly, we deny PacifiCorp's request.

153. Finally, we deny Central Maine's request to revise the LGIP to require the Interconnection Customer to provide, at the time of initial application for interconnection, relay and control diagrams, technical data on interrupting devices, data on instrument transformers, and types and settings of protective relays. This information relates mostly to System Protection Facilities, with requirements set forth in LGIA Articles 9.7.4 and 9.7.5. The specifications for System Protection Facilities are not established solely by the Interconnection Customer, but are determined during the Interconnection Studies, and would not necessarily be available at the time of application. For example, Article 9.7.4.2 states: ''Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.''

Rehearing Requests—Interconnection Feasibility Study

154. FPL Energy, PacifiCorp, and Southern ask that the Commission make the Interconnection Feasibility Study optional at the sole discretion of the Transmission Provider. FPL Energy asserts that in many cases the Transmission Provider already knows without additional study whether a particular project is feasible. Mandating this study in all circumstances increases costs both to the Transmission Provider and to the Interconnection Customer.

155. APS seeks clarification whether an Interconnection Feasibility Study is always required. It notes that while the LGIP states at several places that the study is mandatory, the *pro forma* Interconnection System Impact Study Agreement includes a footnote that indicates that the Interconnection Customer can choose to forego the study.

156. EEI seeks clarification whether it is possible to integrate the Interconnection Feasibility Study with the Interconnection System Impact Study because it believes that the two studies are similar.

157. PacifiCorp asserts that Order No. 2003 is misleading where it states that the studies will include both higher and lower queued Interconnection Requests.[38] It argues that inclusion of lower queued projects is neither contemplated by LGIP sections 6.2 and 7.3, nor is it logical, unless the study is a cluster study.

158. Ameren argues that the Interconnection Feasibility Study should include only those projects for which either an interconnection agreement or Engineering and Procurement Agreement has been signed. Otherwise, the studies will be meaningless and there will have to be a restudy every time a project drops out of the queue. Ameren claims that only 16 projects out of 130 it studied actually interconnected with its Transmission System.

Commission Conclusion—Interconnection Feasibility Study

159. Because skipping the Interconnection Feasibility Study may expedite the interconnection process and lower costs for all Parties, we will make the study optional, provided that the Interconnection Customer and the Transmission Provider agree. In response to APS, we are revising the footnote on the Interconnection System Impact Study Agreement to state: ''This recital to be omitted if Transmission Provider does not require the Interconnection Feasibility Study.'' This also addresses EEI's concern about integrating the Interconnection Feasibility and Interconnection System Impact Studies. As to EEI's comment about the differences between the two studies, we note that the Interconnection System Impact Study is much more comprehensive than the Interconnection Feasibility Study. For example, the former includes stability analysis, whereas the latter does not.

160. We clarify that lower queued generating projects are not to be included in the Interconnection Feasibility Study. However, if the Transmission Provider clusters the Interconnection Requests and an Interconnection System Impact Study is performed for the cluster, the study should include lower queued generating projects that are in the same cluster.

161. We deny Ameren's request that the Interconnection Feasibility Study include only those generating projects for which either an interconnection agreement or an Engineering and Procurement Agreement has been signed. It would not be fair to require the Interconnection Customer to sign an interconnection agreement before the Interconnection Studies identify its requirements for Interconnection Facilities and Network Upgrades. We recognize that including all the higher queued projects will require a restudy when a higher queued projects drops out, but it is essential to include each higher queued project in the study because the Interconnection Studies will be meaningless if higher queued projects are not included.

162. Ameren overstates the number of restudies required. Because many of the proposed projects drop out early in the process, *e.g.*, after the Interconnection Feasibility Study, the number of restudies would be substantially less than Ameren suggests. Furthermore, since projects may be proposed in different geographical areas, the Network Upgrades associated with some projects may not be required for others, thus reducing the number of projects to be restudied.

Rehearing Requests—Interconnection System Impact Study

163. NYTO asserts that the $50,000 and $100,000 deposits for the Interconnection System Impact Study and the Interconnection Facilities Study, respectively, are inadequate and that such low deposit amounts expose the Transmission Provider to the risk of non-payment by the Interconnection Customer. It claims that the Commission failed to take into account the fact that the studies may cost more than the deposit and that the Transmission Provider should be paid for assuming the risk of non-payment. It recommends that the Interconnection Customer pay an estimated monthly amount toward the cost of these studies and that the Transmission Provider hold such deposits until settlement of the final invoice. Finally, NYTO argues that non-payment for the Interconnection System Impact Study should lead to loss of Queue Position.

164. National Grid asks the Commission to modify LGIP section 7.2 to permit the Transmission Provider to require the Interconnection Customer to

[37] *See* LGIP section 6.3 (Interconnection Feasibility Study Procedures), Section 7.4 (Interconnection System Impact Study Procedures), section 8.3 (Interconnection Facilities Study Procedures).

[38] Order No. 2003 at P 223.

deposit, on a monthly basis, the estimated cost of the Interconnection System Impact Study for the following month, with a true-up at the end of the study process. Failure to make monthly deposits would relieve the Transmission Provider of its obligation to continue with the study and the Interconnection Customer would lose its Queue Position.

Commission Conclusion—Interconnection System Impact Study

165. With respect to NYTO's argument that the Interconnection Customer should deposit an estimated monthly cost so that the Transmission Provider can avoid any risk of non-payment, we note that LGIP Section 8.1.1 already provides for monthly payments of invoiced amounts for the Interconnection Facilities Study. We are not persuaded that a similar deposit is also warranted for the Interconnection System Impact Study because the deposit of $50,000 will cover its costs in most instances, and because the Interconnection Customer pays the actual final study cost when it is known, getting a refund of a portion of its deposit or paying the extra cost of the actual study. Furthermore, if the Transmission Provider uses clustering to perform the Interconnection System Impact Study, the cost of the study will be much lower, because the Transmission Provider will perform essentially one study for all Interconnection Requests that fall within the queue cluster window.

166. With regard to National Grid's proposal that non-payment by the Interconnection Customer should relieve the Transmission Provider of its obligation to continue with the study, we note that LGIP section 13.3 already so provides.

167. Finally, in response to NYTO and National Grid, we note that LGIP section 3.6 already provides that failure to pay the study cost results in the loss of Queue Position.

Rehearing Requests—Interconnection Facilities Study

168. APS seeks clarification that the monthly invoice referred to in section 8.1.1 is for the estimated cost of the study, and that a true-up would be performed using the actual expenses to prevent any overpayment by the Interconnection Customer or underrecovery by the Transmission Provider.

169. National Grid urges the Commission to modify section 8.3 to prohibit any comments or questions from the Interconnection Customer when the study is in progress, since they would delay completion of the study and prejudice others in the interconnection queue.

170. National Grid asks the Commission to delete from LGIP section 8.3 the accuracy margins of +/-20 percent (for the 90 day Interconnection Facilities Study) and +/-10 percent (for the 180 day Interconnection Facilities Study) for cost estimates because of the multitude of factors that are outside the Transmission Provider's control. For example, the Transmission Provider does not have control over an equipment manufacturer. National Grid also argues that the Interconnection Customer cannot fairly assume that the costs will remain within the margin. Finally, National Grid argues that the accuracy margins serve no useful purpose and will cause disputes.

Commission Conclusion—Interconnection Facilities Study

171. We clarify that the monthly invoice addressed in section 8.1.1 is an estimate that would be trued-up against the final invoice.

172. We decline to adopt National Grid's proposal that the Interconnection Customer be prohibited from posing questions and comments while the study is in progress. We expect the Parties to act reasonably and cooperatively while the study is in progress.

173. Finally, we are not removing the accuracy margins for cost estimates. Margins are helpful because they give the Interconnection Customer some level of certainty with respect to its cost exposure. However, if factors outside the control of the Transmission Provider cause an estimate to change, and the Interconnection Customer disputes the change, the Parties may invoke Dispute Resolution.

Rehearing Requests—Optional Interconnection Study

174. Entergy and Southern assert that multiple Optional Interconnection Studies will delay the interconnection process by tying up the Transmission Provider's resources. Southern argues that the Interconnection Customer can get Optional Interconnection Studies performed by its own contractor. At a minimum, the Transmission Provider should be allowed to charge market rates to price the studies so as to discourage the Interconnection Customer from using the Transmission Provider as a low-cost consultant.

Commission Conclusion—Optional Interconnection Study

175. We will not limit the number of Optional Interconnection Studies because they may provide information useful to the Interconnection Customer. If performing Optional Interconnection Studies places too great a burden on the Transmission Provider, Order No. 2003 permits the use of a contractor at the Interconnection Customer's expense.[39]

176. Section 11.1—Tender—LGIP section 11.1 provides that when the Transmission Provider issues the draft Interconnection Facilities Study report, it shall tender to the Interconnection Customer a draft interconnection agreement and draft appendices completed to the extent practicable. Within 30 Calendar Days after the issuance of the draft Interconnection Facilities Study report, the Transmission Provider shall tender the completed draft appendices.

Rehearing Requests

177. Several petitioners argue that these deadlines are too onerous. MSAT, National Grid, and NYTO argue that LGIP section 8.3 (Interconnection Facilities Study Procedures) permits the Interconnection Customer to submit comments on the draft Interconnection Facilities Study report up to 30 days after receiving it and contemplates that additional studies and time may be required before a final Interconnection Facilities Study is issued. They argue that this results in the deadline for comments on the draft Facilities Study being the same day that the completed draft appendices are to be tendered. NYTO and National Grid request that the 30 day deadline be amended to reflect the possible delays associated with additional work prompted by comments from the Interconnection Customer. MSAT recommends that the Commission (1) retain the existing 30 day period for the Interconnection Customer to comment on the draft Interconnection Facilities Study report, (2) provide the Transmission Provider with another 30 day period after comments are submitted to tender completed draft appendices, and (3) give the Interconnection Customer an additional 30 days in which to execute and return the appendices.

Commission Conclusion

178. We agree that the comments on the draft Interconnection Facilities Study report should not be due on the same day that completed draft appendices are tendered. We, therefore, retain the existing 30 day period for the Interconnection Customer to comment on the draft Interconnection Facilities Study report and grant an additional 30 days after comments are submitted to

[39] Order No. 2003 at P 225.

tender the completed draft appendices. We will also give the Interconnection Customer an additional 30 days to execute and return the completed draft appendices.

179. Section 12.2.3—Advancing Construction of Network Upgrades that are Part of an Expansion Plan of the Transmission Provider—LGIP section 12.2.3 permits the Interconnection Customer to ask the Transmission Provider to advance construction of Network Upgrades supporting other Interconnection Customers that were assumed to be completed in time to support the Interconnection Customer's Generating Facility's In-Service Date. The Interconnection Customer must pay for reasonable expediting costs, but is entitled to transmission credits for any such payments. The issues raised concerning LGIP section 12.2.3 are discussed in section II.D.2 (Interconnection Pricing Policy).

180. Section 13.1—Confidentiality—The issues raised concerning LGIP section 13.1 are discussed under LGIA Article 22 (Confidentiality), below.

181. Appendix 1—Interconnection Request—LGIP Appendix 1 is the application form for making an Interconnection Request by the Interconnection Customer. Attachment A to the Interconnection Request provides technical information pertaining to the Generating Facility and generator step-up transformer.

Rehearing Requests

182. AEP states that page 4 of Appendix 1 of the Interconnection Request specifies that the Interconnection Customer must submit a completed General Electric Company Power Systems Load Flow data sheet with the Interconnection Request. It asks whether other formats are acceptable, since some Transmission Providers may not use the specified format.

183. Central Maine and NYTO state that the Interconnection Request requires information about two-winding generator step-up transformers. They note that a generator step-up transformer may consist of more than two windings and request that the form be revised accordingly.

184. PacifiCorp proposes various revisions to the Interconnection Request to help ensure that the Interconnection Customer does not mistakenly use this form for a generator that is not larger than 20 MW.

185. PacifiCorp states that Item 3 of the Interconnection Request appears to offer the Interconnection Customer the opportunity to select either Energy Resource Interconnection Service or Network Resource Interconnection Service, or both. It argues that offering the Interconnection Customer the opportunity to select both services is a mistake.

Commission Conclusion

186. We agree with AEP and are revising the Interconnection Request to state that the information may be submitted in other compatible formats, such as IEEE and PTI Power Flow formats.

187. We also agree with Central Maine and NYTO that a generator step-up transformer may consist of more than two windings and that information pertaining to all windings should be provided. We are revising the Interconnection Request to reflect this.

188. We are adopting the change proposed by PacifiCorp to clarify that the Interconnection Request is for a Large Generating Facility only.

189. Finally, we are revising Item 3 to state more clearly that the Interconnection Customer must request either Energy Resource Interconnection Service or Network Resource Interconnection Service, but not both. We are also revising Item 4 to make clear that the Interconnection Customer has an additional option. Specifically, if the Interconnection Customer requests Network Resource Interconnection Service, it may request that the Generating Facility also be studied for Energy Resource Interconnection Service.

C. Issues Related to the Standard Large Generator Interconnection Agreement (LGIA)

190. Article 2.2—Term of Agreement—LGIA Article 2.2 provides that the interconnection agreement will be in effect for ten years, or longer by request, and will be automatically renewed for each successive one year period thereafter, until either Party terminates it.

Rehearing Request

191. NYTO asserts that this provision does not recognize the potential for substantial changes in the regulatory and business environments over such an indefinite period. These provisions unreasonably require the Transmission Owner to have an unlimited obligation to provide Interconnection Service for a term that could be terminated by the Interconnection Customer upon 90 Calendar Days notice, or extended *ad infinitum*. Article 2.2 should provide that the interconnection agreement is limited to ten years, or longer only if the Parties mutually agree to such an extended term.

Commission Conclusion

192. Order No. 2003 addresses this issue. NYTO raises no new arguments on rehearing and we reaffirm the decision for the same reasons.[40]

193. Article 2.3.1—Written Notice—LGIA Article 2.3.1 provides that the Interconnection Customer may terminate the interconnection agreement after giving the Transmission Provider 90 Calendar Days advance written notice.

Rehearing Requests

194. Cinergy objects to the fact that the Transmission Provider has no way to terminate unless the Interconnection Customer Defaults. Allowing the Interconnection Customer to terminate on only 90 days notice allows the interconnection agreement to continue in perpetuity, even following permanent closure of the Generating Facility, unless the Transmission Provider can create some sort of Default by the Interconnection Customer. This leaves the Transmission Provider with unnecessary reporting and other requirements. To provide closure to the interconnection agreement, the Transmission Provider should be permitted to file a notice of termination with the Commission if the Generating Facility permanently ceases Commercial Operation.

195. APS states that Article 2.3.1 does not offer comparable treatment to the Transmission Provider and the Interconnection Customer. It contends that the Commission provided no justification for the inequitable treatment except to vaguely assert that such treatment is necessary to limit the Transmission Provider's market power.

196. APS further states that while the Commission justified the ten year term for the interconnection agreement as being necessary to make the agreement consistent with Internal Revenue Service (IRS) policy, Article 2.3.1 allows the Interconnection Customer to terminate the interconnection agreement after giving the Transmission Provider 90 Calendar Days advance written notice. It notes that the IRS safe harbor provisions (IRS Notices 88–129 and 2001–82) require that the interconnection agreement term be no less than ten years. The 90 day termination clause may violate the long-term agreement requirements set forth in the IRS Notices and is inconsistent with the term of agreement justification for Article 2.2, which refers to the IRS policy. Thus, the provision makes the IRS safe harbor ineffective protection.

[40] Order No. 2003 at PP 302–304.

Commission Conclusion

197. We agree with Cinergy and APS that the Interconnection Customer and the Transmission Provider should have comparable treatment for terminating the interconnection agreement after the Generating Facility permanently ceases operation. We find that allowing the Transmission Provider to terminate the interconnection agreement upon permanent closure of the Generating Facility is reasonable because it prevents the interconnection agreement from continuing in perpetuity. We are revising Article 2.3.1 accordingly.

198. We disagree with APS that the 90 day termination clause may violate the long-term agreement requirement of the IRS Notices. This issue is addressed in Order No. 2003,[41] and since no new arguments are raised on rehearing, we will not change our decision.

199. Article 2.3.2—Default—LGIA Article 2.3.2 provides that either Party may terminate the interconnection agreement under LGIA Article 17.

Rehearing Requests

200. APS seeks clarification that no notice of termination needs to be filed when the interconnection agreement has not been filed with the Commission because it was treated as a conforming agreement.

Commission Conclusion

201. Under Order No. 2001,[42] if a conforming LGIA is executed by the Parties, it need not be filed with the Commission if the public utility has a standard form of agreement on file and submits an Electronic Quarterly Report. Order No. 2001 also eliminated the requirement that parties to a conforming agreement that expires by its own terms file a notice of cancellation or a cancelled tariff sheet. In such cases, the public utility may simply remove the agreement from its Electric Quarterly Report in the quarter following the expiration of the LGIA. However any other modification to a conforming agreement (including terminations caused by something other than expiration of the agreement) must be submitted to the Commission unless the Interconnection Customer agrees to the modification.[43]

202. Article 2.4—Termination Costs—LGIA Article 2.4 requires that a Party terminating the interconnection agreement pay for all costs incurred by the other Party (including costs of canceling orders or contracts for Interconnection Facilities and equipment).

Rehearing Requests

203. Central Maine and NYTO seek clarification that, if the Transmission Owner or Transmission Provider terminates an interconnection agreement because the Interconnection Customer is in Default, all costs associated with such termination are the responsibility of the Interconnection Customer. They state that while Order No. 2003 specifies the Interconnection Customer's responsibility for termination costs when it terminates the interconnection agreement, the cost responsibility for situations in which a Transmission Owner or Transmission Provider terminates the agreement due to the Interconnection Customer's Default is not clearly specified.

204. AEP contends that while Article 2.4.1 allows the Interconnection Customer, in the case of termination, to assume payment obligations under the Transmission Provider's contracts for materials and equipment, it does not take into account the possible commercial interests of the vendor. For example, AEP states that the vendor may have pricing policies applicable to the Transmission Provider for which the Interconnection Customer is not eligible. Similarly, the terms and conditions of the vendor's contract may not permit reassignment. AEP requests that Article 2.4.1 be revised to require such rights of assumption to be subject to mutual agreement between the Parties.

Commission Conclusion

205. With respect to Central Maine's and NYTO's request for clarification, we note that LGIA Article 17.1.2 gives the non-defaulting Party the right to terminate the interconnection agreement and recover all amounts due if the Default cannot be cured. We agree that if the Transmission Owner or the Transmission Provider terminates the interconnection agreement due to the Interconnection Customer defaulting, the Interconnection Customer is responsible for any outstanding costs as if the Interconnection Customer were the terminating Party under LGIA Article 2.4. To do otherwise rewards the Interconnection Customer for choosing Default over termination. We are amending Article 17.1.2 to make this clear.

206. We are not adopting AEP's proposal that we require that the rights of assumption be subject to mutual agreement by the Parties. If, as AEP argues, the vendor contract restricts the Transmission Provider from passing on some pricing discounts it receives under the interconnection agreement or prohibits reassignment, the Transmission Provider can take ownership of the materials and equipment and deliver them to the Interconnection Customer. Alternatively, the Transmission Provider can negotiate with the vendor to eliminate the restrictive provisions. If negotiation reaches an impasse, the Transmission Provider may find a replacement.

207. Article 2.5—Disconnection—LGIA Article 2.5 provides that all costs of disconnecting the Generating Facility from the Transmission System will be borne by the terminating Party, unless the termination is the result of the non-terminating Party's Default.

Rehearing Request

208. Central Maine seeks clarification that disconnection costs include the cost of site restoration.

Commission Conclusion

209. Because Central Maine does not offer any rationale for this change, we will deny their request for rehearing. We are not convinced that site restoration should be included in disconnection costs.

210. Article 3—Regulatory Filings—LGIA Article 3 requires that the Transmission Provider file the interconnection agreement with the appropriate Governmental Authorities.

Rehearing Requests

211. NYTO and Central Maine seek confirmation that Article 3.1 is subject to the same confidentiality provisions set forth in more detail in Article 22.

212. Central Maine requests that the Commission specify that the Transmission Owner, not the Transmission Provider, is required to make the filing. Central Maine cites to *Atlantic City Elec. Co., et al.* v. *FERC*, 295 F.3d 1 (DC. Cir. 2002) (*Atlantic City*) as support for its position that the Commission cannot prevent the Transmission Owner from making a filing under section 205 of the FPA.

Commission Conclusion

213. We grant rehearing of Article 3.1 in response to NYTO's and Central Maine's concerns over confidentiality. Our intent is for the confidentiality provisions of Article 22 to govern. The discussion of confidentiality in Article 3.1 is abbreviated and only confuses the issue. Therefore, we are removing the discussion of confidentiality from Article 3.1.

[41] Order No. 2003 at P 426.

[42] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31044 (Jul. 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002).

[43] *Id.* at P 249 (''All proposals to change the terms of an agreement without the consent of the customer must be filed with the Commission.'').

214. Central Maine's concern about FPA section 205 filing rights is based on a misunderstanding of Order No. 2003. We have defined the term Transmission Provider to include the Transmission Owner when the Transmission Provider is separate from the Transmission Owner. Therefore, when Article 3.1 states that the Transmission Provider may make filings with the Commission, it applies to the Transmission Owner as well. Therefore, Order No. 2003 does not restrict the rights of either the Transmission Owner or the Transmission Provider to file with the Commission. When the Transmission Provider and the Transmission Owner are different entities, they will work together and enter into a contractual relationship governing the rights and responsibilities of each entity, including which entity is responsible for filing with the appropriate Governmental Authority.

215. Article 4.3—Generator Balancing Service Arrangements—We address requests for rehearing on Article 4.3 in section II.D.2 (Interconnection Pricing Policy).

216. Article 5.1.3—Option to Build—LGIA Article 5.1.3 provides that the Interconnection Customer may assume responsibility for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if the Transmission Provider notifies the Interconnection Customer that it cannot meet the construction completion dates.

Rehearing Requests

217. SoCal Edison argues that the Interconnection Customer should bear the cost of construction oversight if the latter chooses to build. It asserts that costs associated with overseeing construction can be substantial. SoCal Edison cites construction oversight costs of $243,000 in one case and $303,000 in another. In both cases, the SoCal Edison states that it provided oversight throughout the design, procurement, and construction process to ensure that the facilities constructed complied with its standards and specifications. SoCal Edison further claims that both projects required several iterations of design review because it uncovered non-compliance with its standards and specifications.

Commission Conclusion

218. We will not require that the Transmission Provider be reimbursed for construction oversight costs. If the Transmission Provider is concerned about non-recovery of oversight costs, it can itself construct the Transmission Provider's Interconnection Facilities and the Stand Alone Network Upgrades under three of the four options outlined in Article 5.1. The Interconnection Customer may exercise its right under the ''option to build'' only as a last resort if the Transmission Provider is unable to meet the milestones established by the Interconnection Customer.

219. We expect the Interconnection Customer to comply with the Transmission Provider's standards and specifications for the construction of facilities. The Transmission Provider may engage in oversight activities to satisfy itself that the Interconnection Customer is, in fact, abiding by such standards and specifications. The expenses associated with such activities are part of the cost of doing business, and the Transmission Provider can avoid the expense by meeting the milestones itself.

220. Article 5.2—General Conditions Applicable to Option to Build—LGIA Article 5.2 provides that if the Interconnection Customer elects to construct the facilities under the option to build, it shall transfer control of these facilities to the Transmission Provider. However, it may continue to own the facilities.

Rehearing Requests

221. Several Transmission Owners [44] oppose allowing the Interconnection Customer to own Interconnection Facilities and Stand Alone Network Upgrades. Georgia Transmission states that to protect reliability, the Transmission Provider must own these facilities. Ownership gives the right and the responsibility to upgrade and maintain such facilities, and ownership by the Interconnection Customer (which is not subject to any reliability rules and is driven purely by profit motives) could cause reliability problems on the Transmission System.

222. MSAT argues that the Interconnection Customer should not retain ownership of these facilities because it might refuse to make alterations to such facilities to accommodate other Interconnection Requests, forcing the Transmission Provider to construct redundant or less efficient facilities, and owning such facilities could make the Interconnection Customer a utility under state law.

223. National Grid seeks clarification that this provision does not imply that the Interconnection Customer has a right to own Interconnection Facilities and Network Upgrades that are constructed by the Transmission Provider.

224. NYTO argues that the Commission should reverse itself on this issue because the ownership of transmission facilities is a matter of state, not federal law. It asserts that Transmission Owners have eminent domain authority under state law to condemn property to expand their systems and that they hold state certificates of public convenience and necessity which oblige them to maintain their facilities so that they operate in a safe and reliable manner. NYTO also argues that the August 2003 blackout underscores the importance of preserving the Transmission Owners' right to own the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

225. NYTO also asserts that the Commission did not explain its departure from legal precedent and that the case relied upon [45] does not support the Commission's finding. NYTO notes that in *Arizona,* the company initially voluntarily allowed the Interconnection Customer to own the facilities, only later changing its position, and that the Commission simply held the company to its original position.

226. Finally, NYTO argues that this policy will frustrate the ability of Transmission Owners to design and maintain integrated Transmission Systems and cannot be reconciled with the Transmission Owners' right to withdraw from an ISO under certain circumstances, as held in *Atlantic City.*

227. SoCal Edison argues that allowing the Interconnection Customer to own facilities that are on the Transmission Provider's private property is a ''taking'' in violation of the Fifth Amendment of the Constitution. This policy will decrease the reliability and safety of the Transmission System and will create confusion about liabilities and responsibilities of the Parties.

228. TDU Systems argues that the Commission erred in requiring the Interconnection Customer to transfer control of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to a non-independent Transmission Provider. An Interconnection Customer with experience in operating similar transmission facilities should be able to operate what it builds and owns, particularly when such facilities are connected to its Transmission System, unless there is a showing of harm to reliability. Moreover, the requirement to

[44] *E.g.,* Ameren, Georgia Transmission, MSAT, National Grid, NYTO, and SoCal Edison.

[45] Arizona Public Service Company, 102 FERC ¶ 61,303 (2003) (*Arizona*).

transfer operational control of the facilities to the Transmission Provider will unduly tilt the Parties' bargaining positions in favor of the Transmission Provider.

229. SoCal Edison states that Article 5.11 correctly requires the Transmission Provider to provide to the Interconnection Customer ''as-built'' drawings, relay diagrams, and other information related to the Transmission Provider's Interconnection Facilities. It asks that the Commission include a parallel provision in Article 5.2 requiring the Interconnection Customer to provide similar information to the Transmission Provider when the Interconnection Customer chooses to build.

Commission Conclusion

230. We agree with NYTO that requiring the Transmission Provider to cede ownership of Stand-Alone Network Upgrades and the Transmission Provider's Interconnection Facilities to the Interconnection Customer is inconsistent with existing Commission precedent. Accordingly, we grant partial rehearing on this issue. However, consistent with *Arizona,*[46] the Parties may agree that the Interconnection Customer may own these facilities.

231. Reliability concerns dictate that the Transmission Provider retain operational control over these facilities, regardless of who owns them.[47]

232. Concerns over who builds the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades are misplaced. Order No. 2003 provides that the Transmission Provider sets the specifications governing construction (Article 5.2.1), approves the Interconnection Provider's construction plans (Article 5.2.3), has an unlimited right of inspection (Article 5.2.5), and has the right to require the Interconnection Customer to remedy any deficiencies (Article 5.2.6). These safeguards are sufficient to guarantee the reliability of these facilities. Also, the Parties must agree about which facilities are Stand Alone Network Upgrades and identify them in Appendix A to the interconnection agreement before the Interconnection Customer begins construction.

233. We clarify that the Interconnection Customer's[48] ownership or operation of any type of Network Upgrade typically makes it a public utility,[49] subject to all the requirements of the FPA[50] including the obligation to expand the facilities if necessary to provide service to other customers and the obligation to provide Interconnection Service to others.[51]

234. The *Atlantic City* case, which NYTO cites, held that a Transmission Owner in an RTO or ISO may file under section 205 of the FPA. NYTO does not explain how this case answers the question of who owns Stand Alone Network Upgrades or the Transmission Provider's Interconnection Facilities. Order No. 2003 does not limit the rights of a Transmission Provider or Transmission Owner to make a section 205 filing. However, NYTO's concern is resolved by the Commission's decision not to require that the Interconnection Customer be allowed to own facilities. The Transmission Provider is able to negotiate with the Interconnection Customer to protect its interests and its Transmission System.

235. MSAT's concern about the Interconnection Customer that owns transmission facilities refusing to make needed changes to the facilities is moot since we do not now require the Transmission Owner to grant ownership of such facilities to the Interconnection Customer.

236. We disagree with TDU Systems' concern that a Transmission Provider having operational control over the facilities unduly tilts the bargaining power in favor of the Transmission Provider. The Transmission Provider has the right to build, own, and control the facilities itself if it chooses to. The Interconnection Customer has the ''option to build'' only if the Transmission Provider declines to meet the construction milestones established by the Interconnection Customer. In response to TDU Systems' request that the Interconnection Customer be allowed to operate and maintain any facilities it may own, such a regime would fragment the Transmission System, thereby undermining reliability.

237. Finally, in response to SoCal Edison's proposal, we are amending Article 5.2 to require the Interconnection Customer to provide ''as-built'' drawings and other information to the Transmission Provider when the Interconnection Customer builds the facilities itself. Since we are granting partial rehearing on this matter, the Fifth Amendment takings argument advanced by several petitioners is moot.

238. Article 5.3—Liquidated Damages—Order No. 2003 provides for liquidated damages in situations where the Transmission Provider agrees to certain milestones for completion of various stages of the interconnection and then fails to meet them.

239. Liquidated damages come into play only if the Interconnection Customer selects LGIA Article 5.1.2 (Alternate Option) instead of Article 5.1.1 (Standard Option). Under the Alternate Option, the Interconnection Customer proposes enforceable milestones that the Transmission Provider is free to accept or reject. If the Transmission Provider accepts the proposed milestones, it faces liquidated damages if it fails to meet the milestones. If the Transmission Provider rejects the proposed milestones, the Interconnection Customer can then either build the facilities itself under Article 5.1.3 (Option to Build), or negotiate with the Transmission Provider to develop milestones agreeable to the Parties under Article 5.1.4 (Negotiated Option). Under the Negotiated Option, the Parties may include, but are not required to include, a liquidated damages provision. If the Parties, after negotiating in good faith, are unable to reach a negotiated agreement under Article 5.1.4, the Transmission Provider assumes responsibility for establishing the milestones and the interconnection proceeds under Article 5.1.1 (Standard Option).

240. Liquidated damages are limited to 0.5 percent per Calendar Day of the actual aggregate costs of the Interconnection Facilities and Network Upgrades for which the Transmission Provider remains responsible, and are not to exceed 20 percent of the Transmission Provider's actual costs. Damages are not recoverable under certain circumstances, such as when the Interconnection Customer is not ready to begin using the facilities by the date specified (unless the Interconnection Customer was not ready due to delay on the part of the Transmission Provider) or when the delay is due to a cause beyond the reasonable control of the Transmission Provider, such as a Force Majeure event.

1. How the Liquidated Damages Provision Should Work Rehearing Requests

241. NYTO explains that liquidated damages provisions are designed to establish damages for breach of contract where those damages would be difficult or impossible to quantify under

[46] *Id.*

[47] *See, e.g., Arizona* at P 12.

[48] Providing that the Interconnection Customer is not excluded by virtue of section 201(f) of the FPA (*e.g.*, municipalities and power marketing administrations).

[49] *But see* section 201(f) of the FPA.

[50] *See* section 201(e) of the FPA (''The term 'public utility' * * * means any person who owns or operates facilities subject to the jurisdiction of the Commission. * * *'').

[51] *See* section 15.4 of the OATT.

traditional contract law principles. NYTO asserts that there is no basis to assume either that an Interconnection Customer will suffer any damages when a Transmission Provider misses a milestone, or that if the Interconnection Customer does suffer damages, those damages will be difficult to calculate. NYTO suggests requiring the Interconnection Customer to demonstrate that it was materially and adversely affected by the delay in construction before allowing liquidated damages.

242. Central Maine argues that the LGIA does not clearly allow the Transmission Owner to choose not to be exposed to liquidated damages. Moreover, Central Maine states that it is unclear from Article 5.1 which Party chooses whether to proceed under the Standard Option or the Alternate Option. This could delay interconnecting new generation as the Parties argue.

243. Several petitioners [52] argue that requiring the Transmission Provider to relinquish construction responsibility to the Interconnection Customer in order to avoid the liquidated damages provision may cause further fragmentation of the transmission grid and may harm reliability. According to the petitioners, this approach will likely discourage cooperation between the Transmission Provider and the Interconnection Customer, slow the interconnection process, and increase costs.

244. MSAT argues that the provision favors the Interconnection Customer and suggests that the liquidated damages provision should be made bilateral so that the Transmission Provider has comparable protection from damages resulting from the actions or inactions of the Interconnection Customer.

245. NYTO asserts that assessing liquidated damages against the Transmission Provider for failing to meet the milestones established by the Interconnection Customer gives the Interconnection Customer an incentive to propose unreasonable milestones.

246. National Grid and NYTO argue that liquidated damages should begin accruing no earlier than 15 months from the date on which all conditions triggering such damages are present. This would delay the imposition of liquidated damages until 15 months from the date of equipment procurement and construction begins, and after all regulatory approvals and real property rights have been secured. Petitioners also argue that this 15 month period should be allowed to be increased to accommodate regional or local practices.

247. National Grid and NYTO argue that, while P 885 of Order No. 2003 states that liquidated damages are the exclusive remedy for the Transmission Provider's failure to meet its schedule, no provisions appear in either the LGIP or LGIA to implement this limitation.

248. Finally, National Grid requests that the Commission adopt more reasonable construction schedules based on actual industry practice and permit the Interconnection Customer and the Transmission Provider to negotiate more aggressive schedules, but with symmetrical performance incentives.

Commission Conclusion

249. Order No. 2003 does not require liquidated damages. Rather, it offers liquidated damages only when the Parties agree.[53]

250. While we expect that the liquidated damages provision will play an important role in the Parties' negotiations, they need not agree to liquidated damages, even if the Interconnection Customer chooses to proceed under Article 5.1.2 (Alternate Option). The Transmission Provider must either agree to the liquidated damages or allow the Interconnection Customer to build the Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades.

251. We agree with NYTO and National Grid and are including in the LGIA a provision explaining that, in keeping with P 885 of Order No. 2003, liquidated damages, when the Parties agree to them, are the exclusive remedy for the Transmission Provider's failure to meet its schedule.

252. We reject NYTO's request that the Interconnection Customer be required to demonstrate that it was materially and adversely affected by the delay in construction. The whole point of liquidated damages is that they simplify matters when it is difficult to quantify the extent of actual damages.[54] Construction delays can jeopardize the funding of an interconnection project and may make it more difficult for an Interconnection Customer to enter into long-term energy contracts. In addition, delays affecting the Generating Facility's In-Service Date would prevent the Interconnection Customer from making sales of electric energy. The types of damages the Interconnection Customer might suffer are varied and complex. Since damages are speculative and difficult to quantify, liquidated damages are appropriate in this circumstance, when the Parties agree to use them as a remedy.

253. We disagree with Central Maine's characterization of Article 5.1 as unclear. Article 5.1 explains that the Interconnection Customer may choose either the Standard or Alternate Option. The description of liquidated damages that appears in Article 5.3 refers only to its possible inclusion in Article 5.1.2 (Alternate Option) or Article 5.1.4 (Negotiated Option). However, we do agree that Article 5.1.3 (Option to Build) should state that the ''dates designated by the Interconnection Customer'' are those designated as part of the Alternate Option.

254. While petitioners are correct that the Transmission Provider is required to give the Interconnection Customer the opportunity to build any Stand-Alone Network Upgrades and Transmission Provider's Interconnection Facilities if the Transmission Provider rejects the Interconnection Customer's milestones proposed under the Alternate Option, we do not agree that this endangers reliability. There are safeguards built into the LGIA to ensure that any Stand-Alone Network Upgrades or Transmission Provider's Interconnection Facilities constructed by the Interconnection Customer will be reliable.[55]

255. We reject the suggestion that the Interconnection Customer should be liable for liquidated damages if it misses its construction milestones.[56] The Transmission Provider is already protected by Article 5.17 against long delays by the Interconnection Customer. Moreover, the financial effect on the Transmission Provider of a delay by the Interconnection Customer is much less than the effect on the Interconnection Customer of delay by the Transmission Provider. (Additionally, if the Interconnection Customer's delay is long enough, the Transmission Provider can terminate the LGIA.) Therefore, no further provisions are needed to protect the Transmission Provider, including the 15 month delay recommended by National Grid and NYTO.[57]

256. Regarding NYTO's concern about the selection of unrealistic construction completion dates by an Interconnection Customer, the LGIA allows the Transmission Provider to avoid unrealistic construction completion dates by notifying the Interconnection Customer that it is unable to meet the

[52] *E.g.,* Central Maine, National Grid, and NYTO.

[53] Order No. 2003 P 858.

[54] 22 Am. Jur. 2d *Damages* section 683 (1988).

[55] *See* discussion of LGIA Article 5.2, *supra. See also* Order 2003 at P 356.

[56] Order No. 2003 at P 885.

[57] *See* Order No. 2003 at P 360 (rejecting a request for a similar 15 month delay made by NYTO).

dates proposed by the Interconnection Customer under the Alternate Option.[58] In addition, LGIP Section 12.1 requires that the Parties negotiate in good faith to develop schedules for the construction of Network Upgrades and Interconnection Facilities.

257. Finally, we correct a misstatement in P 858 of Order No. 2003 that the Parties may immediately negotiate terms and conditions (the Negotiated Option) if the Transmission Provider rejects the schedule proposed by the Interconnection Customer under Article 5.1.2 (Alternate Option). Instead, if the Transmission Provider and the Interconnection Customer are unable to agree on a schedule under the Alternate Option, the Interconnection Customer has the right to proceed under the Option to Build before the Parties reach the Negotiated Option.

2. Legal Arguments Against a Liquidated Damages Clause Rehearing Requests

258. NYTO argues that the Commission lacks statutory authority to impose a liquidated damages provision since they violate the filed rate doctrine by altering rates after service is rendered.[59] NYTO asserts that the Commission's remedial authority under section 206 of the FPA is expressly limited and does not allow the imposition of liquidated damages.[60]

259. Moreover, according to NYTO, the Commission may not mandate that the Transmission Owner pay damages to the Interconnection Customer without a finding that the Transmission Owner acted unreasonably and that those actions caused the Interconnection Customer economic harm unless the Commission authorizes those costs to be included in rates.

Commission Conclusion

260. Order No. 2003 does not require liquidated damages. Rather, it offers liquidated damages as one of several construction options that each Party must agree to in order to make the liquidated damages provision enforceable.[61] As Order No. 2003 explains, the liquidated damages provision is within the Commission's statutory authority because the Commission under Section 205 of the FPA exercises jurisdiction over agreements under which damages may arise.[62]

261. We also disagree with the contention that the liquidated damages provision violates the filed rate doctrine. The filed rate doctrine forbids a regulated entity from charging rates for its services other than those properly filed with the Commission. Accordingly, neither the utility nor the Commission has the power to alter a rate retroactively.[63] The Commission-approved OATT, however, is a filed rate. If liquidated damages are owed, they are payable as a term of that Commission-approved OATT; they are thus part of the filed rate. Thus, there would be no retroactive rate adjustment or violation of the filed rate doctrine. The filed rate doctrine cases cited by NYTO are inapposite because they do not address the liquidated damages issue before us.

3. Calculation of Liquidated Damages and Miscellaneous IssuesRehearing Requests

262. NYTO argues that liquidated damages should not be calculated based on the cost of all of the facilities and upgrades for which the Transmission Provider has responsibility. They should be limited to the particular facilities that are not completed by the applicable milestone and that are related to the harm to the Interconnection Customer.

263. National Grid and NYTO argue that the LGIA should provide that if the Transmission Provider is unable to recover from its Transmission Customers any costs associated with the Interconnection Facilities, including any liquidated damages, the Interconnection Customer must pay those costs. Otherwise, the Transmission Provider would have no means to recover liquidated damage expenses.

264. NYTO notes that in ERCOT, where interconnection costs benefit all customers in Texas, the Transmission Owner does not incur any liability (including liquidated damages) that cannot be passed on to customers. If state regulators determine that the interconnection costs do not benefit all customers, these costs are borne entirely by the Interconnection Customer, including any liquidated damages that would have otherwise been imposed. Because the Interconnection Customer controls the site selection, the timing of the Interconnection Request, and in large part the timing of the execution of an interconnection agreement and the payment of up-front facilities costs or deposits, it is unreasonable to require other Transmission Customers, Transmission Owners, or Transmission Providers to bear the economic consequences of failing to meet an In-Service Date selected unilaterally by the Interconnection Customer. The better approach would be to provide that the In-Service Date, including any related incentives or penalties, is agreed to by the Interconnection Customer and Transmission Owner. Where the Parties cannot agree, the Transmission Owner should be required simply to make good faith Reasonable Efforts, consistent with Good Utility Practice, to meet the date selected by the Interconnection Customer.

Commission Conclusion

265. We disagree with NYTO and conclude that the full cost of facilities and upgrades should be the basis for calculating liquidated damages. Allowing Transmission Providers to pay liquidated damages on only the portion of the facilities and upgrades that are not complete could lead to situations where the liquidated damages are too low to act as an effective deterrent to delay by the Transmission Provider. Since an Interconnection Customer is unlikely to be able to sell energy until all upgrades and facilities are completed, it would not be equitable to base liquidated damages on only the portion of the facilities and upgrades that had not been completed. In addition, because liquidated damages are capped at 20 percent of the total cost of upgrades and facilities, the Transmission Provider is already protected against unlimited financial risk should it miss a construction milestone and become subject to liquidated damages.

266. NYTO and National Grid propose that if the Transmission Provider cannot recover from its Transmission Customers the cost of any liquidated damages, the Interconnection Customer shall remain liable for the balance. To reiterate what the Commission stated in P 844 of Order No. 2003, because liquidated damages liability is only incurred when the Transmission Provider is at fault, such damages will not be recoverable in transmission rates since they are not prudent expenditures. NYTO and National Grid have offered no arguments that convince us to change that position. In addition, the Transmission Provider is protected against unfair imposition of liquidated damages by Article 16.1, which allows

[58] *See* Order No. 2003 at P 355 (rejecting a similar request from NYTO).

[59] NYTO cites *Southern California Edison Co.* v. *FERC,* 805 F.2d 1068, 1070 n.2 (DC. Cir. 1986) and *City of Piqua, Ohio* v. F*ERC,* 610 F.2d 950, 955 (DC Cir. 1979), which discuss the filed rate doctrine.

[60] Order No. 2003 at P 857.

[61] Order No. 2003 at P 858.

[62] Order No. 2003 at P 857.

[63] *See, e.g., Associated Gas Distributors* v. *FERC,* 893 F.2d 349 (DC Cir. 1989) (finding that a Commission policy of allocating current take-or-pay expenses based on a customer's past purchasing patterns violated the filed rate doctrine).

it to declare a Force Majeure event if circumstances beyond its reasonable control prevents it from meeting the agreed upon milestones.

4. Public Power Entities and Liquidated Damages Rehearing Requests

267. Georgia Transmission and NRECA-APPA seek rehearing on the payment of liquidated damages by cooperatives and public power providers, arguing that customer-owned entities should be exempted from the liquidated damages provisions of the LGIA. Because these entities have no outside shareholders to bear the costs of liquidated damages, any liquidated damages payments made by them would ultimately be borne by their retail member-customers.

268. Georgia Transmission and NRECA–APPA argue that holding customer-owned Transmission Providers responsible for liquidated damages is inconsistent with the Commission's statement in Order No. 2003 that ''because liquidated damages liability will not have to be paid unless the Transmission Provider is at fault, we conclude that these damages will not be * * * recoverable in transmission rates.''[64] If a customer-owned entity is required to pay liquidated damages, Order No. 2003 does not explain where the money is to come from.

Commission Conclusion

269. The LGIA provides for liquidated damages only if the Transmission Provider so agrees. A Transmission Provider subject to the Alternate Option will have to decide whether to accept liquidated damages liability. Given the flexibility already built into the LGIA, we conclude that it is unnecessary to create a special accommodation for public power entities on this issue. If a non-public utility voluntarily adopts the Commission's OATT in order to ensure open access across the Transmission Systems of public utilities, the non-public utility may still decline to accept a construction schedule that includes liquidated damages.

5. Subcontractors and Third Party Exemption

270. Order No. 2003 says that subcontractor delays are not circumstances beyond the control of the Transmission Provider that prevent liquidated damages liability.

Rehearing Requests

271. Georgia Transmission and NRECA–APPA argue that the Transmission Provider should not be held accountable for the failure of third party suppliers, since it generally does not have control over their performance. The large manufacturers that supply transmission equipment typically do not pay liquidated damages if they can't meet delivery schedules. Under the LGIA, this would expose the Transmission Provider to risk even though it is not at fault.

272. National Grid argues that the Transmission Provider should not have to pay liquidated damages if delay is the result of the action or inaction of the Interconnection Customer or any Affected System or other person with whom either the LGIA or the Interconnection Customer requires the Transmission Provider to coordinate. National Grid states that it is not reasonable to hold the Transmission Provider liable for delays caused by entities that are outside its control. Similarly, NYTO argues that liquidated damages should not be due when the Transmission Owner fails to meet a milestone as a result of the action or inaction of the Interconnection Customer or any other Interconnection Customer. The Transmission Owner should not be exposed to liability to one Interconnection Customer as the result of the actions of another over which it has no control.

273. MSAT notes that Article 5.3 lists four instances in which the Transmission Provider may avoid liquidated damages and argues that the article should provide an exhaustive list of such instances. (MSAT does not say what should be included on the list.) Otherwise, the provision is too favorable to the Interconnection Customer because it does not adequately consider mitigating circumstances.

Commission Conclusion

274. We agree with Georgia Transmission and NRECA–APPA that third party suppliers are not generally subcontractors of the Transmission Provider for purposes of determining liability for liquidated damages. Ordinarily, the acts of suppliers would not cause the Transmission Provider to incur liquidated damages if the suppliers' actions are beyond the Transmission Provider's ''reasonable control.'' [65]

275. In response to National Grid, delays due to Affected Systems generally would also be considered circumstances beyond the Transmission Provider's reasonable control.

276. NYTO asks the Commission to state clearly that the Transmission Provider will not be liable where the problem is caused by the Transmission Owner. Because the definition of ''Transmission Provider'' already includes ''Transmission Owner'' when the two entities are separate, the exception for actions or inactions of another Transmission Provider already applies to the Transmission Owner.

277. Finally, we reject MSAT's suggestion that the Commission provide an exhaustive list of mitigating circumstances. The exemptions contained in Order No. 2003 (mutual agreement, two exemptions related to the responsibilities of the Interconnection Customer, and one exempting acts or inactions of third parties) are sufficiently detailed to allow the Parties to assess whether liability has been incurred.

278. Article 5.4—Power System Stabilizers & Article 5.10.3—ICIF Construction—LGIA Article 5.4 provides that the Interconnection Customer shall install, maintain, and operate power system stabilizers under the guidelines and procedures established by the Applicable Reliability Council, and if the power system stabilizers are removed from service, the Interconnection Customer shall immediately notify the Transmission Provider. Article 5.10.3 provides that the Interconnection Customer shall provide the Transmission Provider with, among other things, specifications for the Generating Facility's excitation system and automatic voltage regulator.

Rehearing Request

279. FPL Energy states that although these standards are appropriate for synchronous generators, wind generators should be exempt because power system stabilizers, excitation systems, and automatic voltage regulators do not exist for wind turbines—or at least have not yet been tried. It seeks clarification that the Commission did not mean to apply these standards to non-synchronous equipment such as wind generators.

Commission Conclusion

280. We agree with FPL Energy that power system stabilizers, excitation systems, and automatic voltage regulators may not be appropriate for non-synchronous technologies such as wind generators, and are amending Articles 5.4 and 5.10.3 to state that the requirements of these provisions do not apply to wind generators.

281. Article 5.10—Interconnection Customer's Interconnection Facilities—LGIA Article 5.10.1 (Large Generating Facility Specifications) requires the Interconnection Customer to submit initial specifications for the

[64] Order no. 2003 at P 884.

[65] *See* LGIA Article 5.3.

Interconnection Customer's Interconnection Facilities (ICIF), including System Protection Facilities, to the Transmission Provider before the Initial Synchronization Date so that the Transmission Provider can review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Provider. The specifications provided to the Transmission Provider are confidential. Article 5.10.2 (Transmission Provider's Review) requires the Interconnection Customer to make changes to the ICIF that the Transmission Provider requires, under Good Utility Practice, to ensure that the ICIF are compatible with the telemetry, communications, and safety requirements of the Transmission Provider.

Rehearing Requests

282. Cinergy argues that the title of Article 5.10.1 is misleading because it addresses the Interconnection Customer's Interconnection Facilities rather than the Generating Facility's. Cinergy also asks that the Commission delete the confidentiality provision because this type of information is required for transmission modeling purposes.

283. Southern argues that Article 5.10.1 requires ICIF specifications to be compatible with the technical specifications, operational control, and safety requirements of the Transmission Provider, whereas Article 5.10.2 requires the Transmission Provider to ensure that the ICIF specifications are compatible with its telemetry, communications, and safety requirements. Southern asks that the Commission amend Article 5.10.2 to make it compatible with Article 5.10.1 because telemetry and communications are merely a subset of overall technical specifications and operational control.

Commission Conclusion

284. We are revising the title of Article 5.10.1 to be Interconnection Customer Interconnection Facility Specifications, as requested by Cinergy. However, we are denying its request to delete the confidentiality provision because it has not explained why the Transmission Provider cannot conduct transmission modeling while keeping this information confidential. Finally, we agree with Southern's position concerning the compatibility of Articles 5.10.1 and 5.10.2 and are revising Article 5.10.2 accordingly.

285. Article 5.12—Access Rights—LGIA Article 5.12 guarantees reasonable right of access by a Party to the property and lands of the other Party, or the agents of the other Party, to construct, operate, maintain, repair, test, inspect, replace, or remove facilities and equipment in connection with the interconnection process.

Rehearing Requests

286. NYTO and Central Maine contend that Article 5.12 grants the access-seeking Party the right to enter onto lands not only owned by the access-granting party, but by the agents of the access-granting Party as well. Both question the Commission's legal authority to require their agents to grant the Interconnection Customer access to the lands of the agent.

287. NYTO requests that the Commission require the Interconnection Customer to pay for any administrative or legal expenses incurred by the Transmission Provider in arranging for access to its property. It argues that any such visit would be for the purpose of Interconnection Service and that the costs of the visit therefore should be paid by the Interconnection Customer.

288. Central Maine asks the Commission to clarify that the statement ''at no cost to the other Party'' does not include any legal and administrative costs associated with providing access rights.

289. AEP requests that the Commission clarify that the Transmission Provider is not required to provide free land rights that it owns in the vicinity of an interconnection project that may be necessary for the Interconnection Customer to construct, operate, and maintain its own facilities.

Commission Conclusion

290. NYTO's and Central Maine's concerns about the agency relationship are misplaced. If an agency relationship exists, then by definition the agent must act as directed by the principal, if those directions are within the scope of the agency.[66] It would be unreasonable to require the Interconnection Customer to enter into one agreement with the Transmission Provider and separate agreements with each Affiliate or agent of the Transmission Provider. This could result in undue discrimination and gaming of the process by the Transmission Provider. However, because state law varies, we are revising Article 5.12 to read: ''* * * with respect to land owned or controlled by the granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the access Party to obtain ingress and egress * * *.'' The parenthetical clause responds to NYTO's and Central Maine's concerns that ordering an agent to open its lands exceeds the scope of the agency. Furthermore, adding ''Affiliates'' to the list clarifies that both the Transmission Provider and all entities over which it exercises control must cooperate in the interconnection process.

291. The phrase ''at no cost to the other Party'' is clear. The administrative and legal costs of complying with Article 5.12 are *de minimis* and are a general cost of doing business. Neither NYTO nor Central Maine has provided any cost estimates or other arguments that persuade us to allow for the recovery of administrative and legal expenses.

292. In response to AEP's concern, Article 5.12 does not require the transfer of ownership of lands, nor does it give either Party *carte blanche* to use the lands of the other Party as its own. Instead, Article 5.12 allows Parties reasonable access onto the lands of the other Parties for the purpose of facilitating the interconnection process.

293. Article 5.13—Lands of Other Property Owners—LGIA Article 5.13 requires that if any part of the Transmission Provider's Interconnection Facilities or Network Upgrades is to be installed on property owned by a third party, the Transmission Provider shall assist the Interconnection Customer in securing rights to use that land. Specifically, the Transmission Provider is required to use similar efforts to those that it typically undertakes on its own behalf to site its own generating facilities. This includes any eminent domain authority the Transmission Provider has.

Rehearing Requests

294. NYTO states that since the FPA does not give the Commission eminent domain authority, the Commission cannot do indirectly what it cannot do directly. It says that one entity cannot be required to seize property for the benefit of another. It also expresses concern that it could be required to use its eminent domain authority to interconnect the Interconnection Customer's Generating Facility, only to have the Interconnection Customer choose another Control Area. Southern makes a similar argument, stating that because eminent domain issues are governed exclusively by state law, the Commission is without jurisdiction to

[66] *See* 3 Am. Jur. 2D *Agency* section 1 (2002). *See also* Am. Jur. 2D *Agency* section 213 (2002) (''An agent has a duty to obey all reasonable instructions and directions with regard to the manner of performing a service that he or she has contracted to perform and to adhere faithfully to them in all cases where they ought properly to be applied and in which they can be obeyed * * *.'').

impose requirements on the Transmission Provider with regard to how it must use its eminent domain authority.

295. Cinergy states that the Commission erred in requiring the Transmission Provider to provide assistance to the Interconnection Customer in siting the Generating Facility. Instead, Cinergy proposes that any required siting assistance should be limited to the Transmission Provider's or Transmission Owner's Interconnection Facilities or Network Upgrades and should not require the Transmission Provider to assist the Interconnection Customer in siting the Generating Facility. MSAT, National Grid, and NYTO likewise request that the Commission clarify that such ''comparable assistance'' applies only to transmission-related property and not generation-related property.

296. National Grid states that the comparable efforts language in P 391 of Order No. 2003[67] overstates what is actually in Article 5.13. The Commission should clarify that the language found in the former does not supersede the language of Article 5.13. The ''comparable efforts'' language improperly purports to set standards for the Transmission Provider's use of its eminent domain authority and exceeds the Commission's statutory authority. National Grid also expresses concern that certain uses of eminent domain authority may not be valid under state law.

297. If the Commission declines to remove the eminent domain provision entirely, National Grid requests that Article 5.13 be altered to forbid the Transmission Provider from using its eminent domain authority in a discriminatory manner.

Commission Conclusion

298. Since the Interconnection Customer is required to demonstrate site control when it first files its Interconnection Request, the Transmission Provider would not be asked to use its eminent domain authority to assist in siting the Generating Facility. However, to avoid confusion, we will delete the last sentence of LGIA Article 5.13 which could be read as requiring a Transmission Provider to obtain land on which the Interconnection Customer could site the Generating Facility.[68] To retain the Affiliate concept in the deleted text, we modify the first sentence of Article 5.12 to read: ''* * * shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf, or on behalf of its Affiliates, including use of its eminent domain authority * * *.'' Additionally, the Scoping Meeting provisions within the LGIP already require the Transmission Provider to assist the Interconnection Customer in planning and siting issues. Since the Scoping Meeting is one of the first steps in the Interconnection Process, these issues should be resolved long before the LGIA is signed.

299. NYTO's concern that an Interconnection Customer may choose to dynamically schedule its energy deliveries with another Control Area ignores the fact that the Interconnection Customer must still pay the Transmission Provider in whose Control Area the Generating Facility is physically located for Transmission Service. The Transmission Provider also benefits from having additional sources of VAR support in its Control Area, even if the Interconnection Customer dynamically schedules elsewhere. In addition, the Interconnection Customer is still required to initially fund the costs of the Network Upgrades associated with the interconnection of the Generating Facility to the Transmission System and the Transmission Provider will be free to recover the costs of the Network Upgrades once it has refunded the monies with interest back to the Interconnection Customer and filed for a change in rates with the appropriate regulatory Commission.

300. NYTO, National Grid, and Southern all argue that state law may not allow the Transmission Provider to seize land for the benefit of another party or may otherwise be limited by state law. The Commission modified LGIA Article 5.13 in response to similar comments to the NOPR's proposal, and now requires that (a) any use of eminent domain power must be in accordance with state law, and (b) the Transmission Provider is required to use eminent domain only to the extent it uses eminent domain to site Interconnection Facilities or Network Upgrades for its own, or affiliated, generation.

301. Article 5.14—Permits—LGIA Article 5.14 requires the Transmission Provider to assist the Interconnection Customer in obtaining all permits and licenses required to complete the interconnection. Article 5.14 requires the Transmission Provider to provide such assistance to the Interconnection Customer comparable to that provided to the Transmission Provider's own, or an Affiliate's generation.

Rehearing Request

302. Cinergy requests that Article 5.14 merely require the Transmission Provider to help the Interconnection Customer obtain permits and licenses for the Transmission Provider's Interconnection Facilities and Network Upgrades, and not for the Interconnection Customer's Generating Facility and Interconnection Facilities.

Commission Conclusion

303. We deny rehearing. Article 5.14 requires the Transmission Provider and Transmission Owner to cooperate with the Interconnection Customer, in good faith, to obtain any necessary permits, licenses and authorizations. This includes cooperating with the Interconnection Customer to obtain permits and licenses for Network Upgrades, the Transmission Provider's Interconnection Facilities, as well as the Interconnection Customer's Interconnection Facilities and Generating Facility. Specifically, the Transmission Provider is required to help the Interconnection Customer to the same extent that it assists its own generation or that of its Affiliates in obtaining all permits and authorizations. If it is disputed whether the assistance is of this sort, the Parties may invoke Dispute Resolution.

304. Article 5.16—Suspension—LGIA Article 5.16 allows the Interconnection Customer, upon written notice to the Transmission Provider, to suspend at any time all work on Interconnection Facilities or Network Upgrades, if the Transmission System is left in a safe and reliable condition under Good Utility Practice and the Transmission Provider's safety and reliability criteria. The interconnection agreement is deemed to be terminated if the Interconnection Customer has not asked the Transmission Provider to recommence work within three years from the date of the suspension request.

Rehearing Requests

305. Ameren asserts that this provision could undermine the safety and reliability of the Transmission System by postponing the construction of transmission facilities that have been planned for the Transmission System. It argues that once the interconnection agreement is executed, the

[67] ''The Final Rule requires that a Transmission Provider or Transmission Owner use efforts similar to those it typically undertakes on its own behalf (or on behalf of an Affiliate) to secure land rights for the Interconnection Customer.''

[68] The deleted sentence reads: ''Upon receipt of a reasonable siting request, Transmission Provider shall provide siting assistance to the Interconnection Customer comparable to that provided to the Transmission Provider's own, or an Affiliate's generation.''

Interconnection Customer is bound by its terms and conditions and must continue with facility construction, unless it can show that it will be significantly harmed if the construction were to continue.

306. NYTO and Entergy assert that the three year suspension of facility construction is unreasonable. NYTO contends that the three year period should begin on the date specified in the written notice submitted to the Transmission Provider, or the date of the notice if no date is specified, not ''following commencement of such suspension,'' as provided, because the language is ambiguous and could lead to unnecessary disputes between the Parties. NYTO further states that suspension could harm other projects in the queue and that the Transmission Provider should be indemnified for any third party claims resulting from the suspension.

307. Entergy states that LGIP section 3.3.1 allows the Generating Facility's In-Service Date to be established ten years in advance of the initial request for interconnection. Thus, if the Interconnection Customer suspends construction for three years, available short circuit and stability upgrade capacity may be unused for up to 13 years. Entergy further states that the Interconnection Customer gains a property right to existing capacity on short circuit and stability-related facilities necessary for that customer's interconnection to the Transmission System. Even if capacity is physically available, a subsequent Interconnection Customer may unnecessarily be forced to construct entirely new facilities because a previous Interconnection Customer has suspended, and ultimately may cancel, the construction of the Generating Facility. Entergy argues that the three year period may force other Interconnection Customers to finance additional and unnecessary upgrades. Entergy requests that the Commission reduce the suspension period to 18 months.

308. Southern and SoCal Edison note that Article 5.16 does not set a limit on the number of times the Interconnection Customer can suspend work. Southern believes that the Interconnection Customer could request Interconnection Service to preserve its place in the queue, execute an interconnection agreement, and immediately suspend its project for an extended period of time, tying up its Queue Position without making any commitment. Accordingly, Article 5.16 should allow only a one-time right for the Interconnection Customer to suspend the project for a period of up to one year.

309. SoCal Edison requests clarification that the total amount of time that the Interconnection Customer may suspend the construction schedule (even though it is entitled to multiple suspension requests) is three years. It is unclear whether the Commission meant to provide that (1) the Interconnection Customer has the right to ask for suspension of work an unlimited number of times for three years each time, or (2) the Interconnection Customer may ask for more than one suspension period, but the total of all of the suspension periods may not be more than three years. It claims that the latter interpretation is reasonable, because the former would obviate the three year rule and allow the Interconnection Customer to game the system.

310. TDU Systems claims that assigning all of the associated Network Upgrade costs to the entity that happened to request a particular service at a particular time results in a ''tag, you're it'' approach to transmission facility funding. The Interconnection Customer may have to pay for substantial transmission upgrades that benefit many others. TDU Systems asks the Commission to modify Order No. 2003 to prevent a lower queued Interconnection Customer from being stuck with the Network Upgrade costs of a higher queued Interconnection Customer that suspends its project or drops out of the queue entirely.

311. Cinergy argues that the Interconnection Customer should be responsible for Network Upgrades attributable to it as a result of suspension, changes, or cancellations by higher queued Interconnection Customers. It claims that P 409 of Order No. 2003 conflicts with other aspects of the Commission's interconnection pricing policies. For example, in various parts of Order No. 2003 the Commission states that the Interconnection Customer must pay up front for the cost of Network Upgrades attributable to it, subject to refunds through transmission credits after the Generating Facility achieves Commercial Operation. An Interconnection Customer that wants construction accelerated is required to pay for early construction of the other customer's Network Upgrades until the other customer needs them.

312. Cinergy also notes that the Interconnection Customer has the flexibility to cancel its project and terminate the interconnection agreement on 90 days' notice. However, Cinergy interprets P 409 of Order No. 2003 to mean that the Interconnection Customer may not be required to pay for Network Upgrades attributable to it and to interconnect the Generating Facility to the Transmission System, as the result of suspensions or cancellations by higher queued Interconnection Customers.

313. Cinergy contends that P 399 of Order No. 2003 leaves unclear what would occur if suspension, changes, or cancellations by a higher queued Interconnection Customer affects the Network Upgrades needed for the Interconnection Customer that would affect Network Upgrades as a result of suspension.

314. Cinergy also asks: (1) What happens if the Interconnection Customer refuses to agree to the changes, (2) does the Commission intend for the Transmission Provider to interconnect the Generating Facility to the Transmission System without the necessary Network Upgrades in place, even though reliability would be harmed, or is the Transmission Provider not required to interconnect the Generating Facility until such Network Upgrades are completed, (3) if the Interconnection Customer does not pay the costs of the Network Upgrade, is it considered in Default, even though it has executed the interconnection agreement, and (4) who will pay for the needed Network Upgrades if the responsible Interconnection Customer refuses to accept the changes to the interconnection agreement? Cinergy requests that the Commission adopt a blanket contingency provision requiring, if necessary, the reevaluation of the needed Network Upgrades for the Interconnection Customer when there is a suspension, change or cancellation by a higher queued Interconnection Customer, and the resulting changes are made through an amendment to the interconnection agreement that could be protested as to the scope and cost of changes. In the event of a protest, Cinergy states that the Commission could resolve any disagreement over the scope and cost of the revised Network Upgrades. The needed upgrades would not be constructed until the Interconnection Customer agrees to pay for them. Cinergy argues that the LGIA should also provide that if the Interconnection Customer is unwilling to pay for the Network Upgrades attributable to it, the Interconnection Customer may terminate the interconnection agreement under Article 2.3.

315. AEP requests clarification that suspension costs will not be repaid through credits.

316. APS asks the Commission to clarify what happens if the Interconnection Customer elects to suspend construction or installation. It is not clear how the Parties should

proceed, and what the respective rights and obligations are to resume service under the interconnection agreement.

Commission Conclusion

317. We disagree with Ameren that Article 5.16 endangers the safety and reliability of the Transmission System. That article clearly provides that if the construction and installation of the Transmission Provider's Interconnection Facilities or Network Upgrades required under the LGIA are suspended on behalf of the Interconnection Customer, the Transmission Provider's Transmission System shall be left in a safe and reliable condition pursuant to Good Utility Practice and the regional Transmission Provider's safety and reliability criteria. This article also provides that if there is a suspension, the Interconnection Customer is responsible for all reasonable and necessary costs the Transmission Provider has incurred to ensure the safety of persons and property and the integrity of the Transmission System during the suspension.

318. We deny Entergy's request to reduce the total allowed suspension period from three years to 18 months. Entergy has not supported its claim that network capacity reserved for the Interconnection Customer may be unused for up to 13 years if the suspension period is raised from 18 months to three years. Network Upgrades should not be constructed until they are needed. If another Interconnection Customer is ready to proceed with its project, it should be allowed to use the capacity that has been earmarked for a higher queued Interconnection Customer that has suspended its project.[69] The Network Upgrades can be built when the latter customer is ready to proceed. We do, however, grant NYTO's request to begin the three year period on the date for which the suspension is requested, or the date of the written notice to the Transmission Provider, if no effective date of the suspension is specified. Since it is reasonable to have an effective date for suspensions, we are revising Article 5.16 accordingly.

319. We clarify that the Interconnection Customer has the right to ask for several suspensions of work up to a cumulative period of three years for each Interconnection Request. For example, the Interconnection Customer can make a single request for a three year suspension or can make several requests for suspensions, if the sum of the suspensions does not exceed three years. This should not allow gaming of the queue. Moreover, if a higher queued Interconnection Customer tries to tie up a Queue Position without making a commitment, other Interconnection Customers may assert a claim under LGIA Article 27 (Disputes).

320. In response to Cinergy and TDU Systems, we clarify that the Interconnection Customer is responsible (and later may receive credits) for funding the cost of (1) All Network Upgrades (other than those already in the Transmission Provider's current expansion plan) that must be constructed to support that Interconnection Customer's In-Service Date, (2) all Network Upgrades that are the ultimate responsibility of higher queued Interconnection Customers, the construction of which must be accelerated to meet the Interconnection Customer's In-Service Date, and (3) Network Upgrades that originally were the responsibility of a higher queued Interconnection Customer that then dropped out of the queue, if these Network Upgrades are necessary to support the interconnection of the Interconnection Customer's Generating Facility.[70] We therefore deny TDU Systems' request to modify Order No. 2003. We recognize that this third category creates uncertainty for the Interconnection Customer, since it may cause the Interconnection Customer's initial funding requirements to increase above initial estimates. Nevertheless, with the withdrawal of the higher queued Interconnection Customer, such costs become a legitimate component of the Interconnection Customer's initial funding requirement. This is simply a business risk that Interconnection Customers must face; the Commission cannot protect them from all uncertainty. To help the Interconnection Customer manage this uncertainty, we are directing the Transmission Provider to provide an estimate of the Interconnection Customer's maximum possible funding exposure, if higher queued generating facilities drop out when the Transmission Provider tenders the draft LGIA. The Transmission Provider shall provide an estimate of the costs of any Network Upgrades that were assumed in the Interconnection Studies for the Interconnection Customer that are an obligation of an entity other than the Interconnection Customer and that have not yet been constructed.

321. With respect to AEP's request for clarification that suspension costs should not be eligible for credits, we so clarify. However, these costs, which must be properly documented, must be incurred only to ensure the reliability and safety of the Transmission Provider's Transmission System, and must not include costs incurred before the effective date of the suspension.

322. With respect to APS's request for clarification as to how the Parties should proceed after the suspension period, we will not attempt to codify this since the circumstances underlying each request will be different. However, the Interconnection Customer's written notice must include an estimated duration for the suspension and other information related to the request. The Parties must coordinate milestones or other factors related to the suspension, including any activities and costs needed to ensure the safety and reliability of the Transmission Provider's Transmission System during the suspension period.

323. Finally, we note that the term ''Transmission Provider'' is used instead of ''Transmission System'' in the first sentence of LGIA Article 5.16. We are correcting Article 5.16 accordingly.

324. Article 5.17—Taxes—LGIA Article 5.17 addresses responsibilities related to the income tax treatment of payments the Interconnection Customer makes for the Transmission Provider's Interconnection Facilities and Network Upgrades. It treats these two types of payments the same way. IRS policy, as expressed in IRS Notice 2001–82 and IRS Notice 88–129, explains when the Interconnection Customer's payments to build these facilities do not create a current tax liability for the Transmission Provider (safe harbor provision). This ''safe harbor'' provision generally provides that the transaction is not a taxable transfer. To protect the Transmission Provider in case either (1) the IRS changes its policy, or (2) the transaction ceases to qualify for safe harbor protection (due, for example, to a ''subsequent taxable event'') and a current tax liability results, Article 5.17 states that the Interconnection Customer must indemnify (hold harmless) the Transmission Provider for any such tax liability.

325. Article 5.17.3—Indemnification for the Cost Consequences of Current Tax Liability Imposed upon the Transmission Provider—LGIA Article 5.17.3 requires that the Interconnection Customer indemnify the Transmission Provider from any income taxes that are imposed, as described above. The Transmission Provider may not charge the Interconnection Customer a tax

[69] *See* Virginia Electric and Power Company, 104 FERC ¶ 61,249 (2003) at p. 61,828.

[70] The Interconnection Customer is not responsible for the higher queued Interconnection Customer's termination costs.

gross-up [71] for income taxes unless either (1) it has made a good faith determination that the payment is subject to taxation, or (2) any Governmental Authority directs it to treat the payment or transfers as subject to taxation. Where the Transmission Provider has made a good faith determination that a payment should be reported as income subject to taxation and requires the Interconnection Customer to provide a gross-up, the Interconnection Customer may receive security from the Transmission Provider for the Interconnection Customer's gross-up payment.

326. Under Article 5.17.3, when a Transmission Provider in good faith makes a determination that a payment is not income subject to taxation, the Transmission Provider may require the Interconnection Customer to provide security in a form reasonably acceptable to the Transmission Provider and in an amount equal to the Interconnection Customer's indemnification payment. This security is intended to protect the Transmission Provider if there is a subsequent taxable event that (1) makes taxable those payments that a utility had concluded were not taxable and (2) creates a current tax liability for the Transmission Provider. In such an event, the security would cover the cost consequence of any current tax liability.

Rehearing Requests

327. APS argues that requiring the Transmission Provider to refund tax gross-up amounts as transmission credits, as required in LGIA Article 11.4.1, may result in the Transmission Provider bearing the entire incremental present value cost of including the Network Upgrades in taxable income, if the payments are deemed taxable income. It asserts that the intent of Article 5.17.3 is to make the Transmission Provider whole if it is compelled to include the Interconnection Customer's payments for Network Upgrades in taxable income (thereby achieving the same financial result as if the Network Upgrades were not taxable). The LGIA should be amended to provide that any credits paid by the Transmission Provider to the Interconnection Customer under Article 11.4.1 will exclude any income tax gross-up properly collected under Article 5.17.3. Southern likewise argues that the Interconnection Customer should not receive transmission credits for tax payments because this would require that all Transmission Customers bear tax liabilities created by the Interconnection Customer.

328. APS also argues that the Transmission Provider must be indemnified for all taxes that the Transmission Provider has to pay as a result of the Interconnection Customer's payments for Network Upgrades, not just income taxes.

329. SoCal Edison argues that it is illogical to require the Transmission Provider, under Article 5.17.5, to reduce the level of security provided by Article 5.17.3 if there is a favorable private letter ruling from the IRS. The security is intended to protect the Transmission Provider against the risk that the Interconnection Customer will not be able to meet its indemnification obligation if there is a subsequent taxable event. A private letter ruling stating that a payment is not presently income subject to taxation does nothing to mitigate the Transmission Provider's risk that a subsequent taxable event will occur and the Interconnection Customer will not meet its indemnification obligation.

330. Entergy objects to requiring the Transmission Provider to provide security to the Interconnection Customer for a tax gross-up amount that may be refunded later to the Interconnection Customer. Security is expensive, and this requirement is unreasonably burdensome on the Transmission Provider in light of the low risk that it will be unable to pass on a tax refund it receives to the Interconnection Customer. If the Commission does not eliminate this security, it should only require a parental guaranty as security, since that is less expensive. NYTO and SoCal Edison also argue that the provision requiring security from the Transmission Provider should be deleted. SoCal Edison asserts that it is inconsistent with the Commission's treatment of other costs subject to possible refund, such as Network Upgrades.

331. SoCal Edison argues that the Commission should provide the Transmission Provider and the Transmission Owner with a regulatory backstop so that if the Interconnection Customer does not meet its indemnification obligation, there would still be guaranteed recovery of these income taxes in transmission rates. It offers two ways for the Commission to ensure the Transmission Provider's cost recovery: (1) Allow it to retain complete security until the tax liability has expired, whether or not a private letter ruling is issued, or (2) allow it to retain a reduced level of security (or even an unsecured promise-to-pay from the Interconnection Customer) and provide a regulatory backstop for the Transmission Provider. This would reduce the burden on the Interconnection Customer while protecting other Transmission Customers. NYTO likewise argues that the Transmission Provider should be allowed to recover any outstanding federal tax liability balances from other Transmission Customers.

332. Southern argues that Article 5.17.3 improperly limits the indemnification obligation of the Interconnection Customer because a taxable event could occur after ten years but still fall within the statute of limitations.[72] For instance, taxes may be imposed more than ten years after the Generating Facility is placed in service if there is a ''disqualification event'' or the LGIA is terminated. Because the Transmission Provider faces the risk that taxes may be imposed more than ten years after the Generating Facility is placed in service, the Commission should allow the Transmission Provider to require security. Article 5.17.3 should be amended to terminate the Interconnection Customer's indemnification obligation only when the statute of limitations is over or the Interconnection Customer pays its tax obligations (because of a ''subsequent taxable event,'' described in Article 5.17.6). This would ensure that the Transmission Provider is made whole while at the same time ensuring that the Interconnection Customer is not subject to an indefinite security obligation.

333. NYTO argues that transmission credits will jeopardize the Interconnection Customer's efforts to treat up-front funding of interconnection costs as a non-taxable event.

334. On the other hand, Calpine objects to allowing the Transmission Provider to require security in an amount up to the Transmission Provider's maximum theoretical tax liability. First, Calpine argues that the possibility of a triggering taxable event occurring is remote and does not justify a burdensome security obligation. Even if a disqualifying event occurs, the Interconnection Customer would be obligated under the LGIA to indemnify the Transmission Provider. And since the interconnection agreement is

[71] A tax gross-up for income taxes is a dollar amount calculated to determine the Interconnection Customer's payment needed to indemnify the Transmission Owner for any current tax liability associated with payments the Interconnection Customer makes for Transmission Provider's Interconnection Facilities and Network Upgrades.

[72] Southern explains that, contrary to Article 5.17.3, IRS Notice 88–129 does not limit the Transmission Provider's income tax liability to a ten year testing period. Notice 88–129 simply requires that a power purchase contract be for at least ten years in order for the safe harbor to apply.

essential to the value of a generating asset, the Interconnection Customer (or its creditors if it is bankrupt) would honor the LGIA's indemnity provisions.

335. Second, Calpine argues that unless there is a private letter ruling from the IRS finding that the payments are taxable income, allowing the Transmission Provider to require security to be posted for up to ten years is excessive. Calpine draws a distinction between payments the Interconnection Customer makes to the Transmission Provider for Network Upgrades and payments an Interconnection Customer makes for directly assignable facilities. Payments the Interconnection Customer makes for Network Upgrades must be returned to the Interconnection Customer through transmission credits. Advance payments for Network Upgrades are really loans, not taxable, irrevocable contributions. Since the Transmission Provider faces no possible tax liability for these payments, it is not just and reasonable to allow the Transmission Provider to impose a security requirement. At a minimum, the level of security required by the Transmission Provider should be reduced pro rata by the amount of the ''loan'' repaid through transmission credits.

336. Calpine also proposes that the Commission limit the security obligation to a percentage of the potential tax liability, and cites a settlement order that set the security obligation at 20 percent of potential liability. *See* Southern California Edison Co., Final Report of Settlement Judge, 104 FERC ¶ 63,025 (2003).

Commission Conclusion

337. On reconsideration, we conclude that Article 5.17.3 should better reflect the specific risks that the Transmission Provider faces with respect to taxation

338. Under Article 5.17.3, the Transmission Provider may require the Interconnection Customer to pay a tax gross-up only if the Transmission Provider makes a ''good faith'' determination that the payments or property transfers at issue should be reported as income subject to taxation. Order No. 2003 does not distinguish payments the Interconnection Customer makes to the Transmission Provider for Network Upgrades cost from the payments made for Interconnection Facilities. We are revising Article 5.17.3 to make clear that (1) the Transmission Provider is indemnified from the cost consequences associated with a taxable determination for Interconnection Facilities, and (2) with respect to the security option, the security amount will only cover the Transmission Provider's exposure to the cost consequence of any current tax liability as of January 1 of each year for Interconnection Facilities.

339. The indemnification requirement and related payment under Article 5.17.3 are not intended to reimburse the Transmission Provider for any current income tax liability that might be associated with payments the Interconnection Customer makes for the Transmission Provider's Interconnection Facilities and Network Upgrades. It is instead payment for the present value of the costs the Transmission Provider will incur (such as interest expense) to fund that current income tax payment, if required, until it is recouped by the Transmission Provider through lower tax payments in future years by virtue of tax depreciation of the Interconnection Facilities and Network Upgrades.

340. When Interconnection Facilities (which are directly assignable to the Interconnection Customer) are involved, the indemnification payment reimburses the Transmission Provider for costs it incurs related to the current tax liability. In other words, it is intended to provide for cost recovery. Should the Interconnection Customer be unable to make the indemnification payment, the Transmission Provider would be exposed to a loss since cost responsibility for Interconnection Facilities is directly assigned to the Interconnection Customer and the Transmission Provider could not recover these costs from other customers. Accordingly, a security requirement that covers the cost consequence of any current tax liability is appropriate for the indemnification payment associated with Interconnection Facilities.

341. However, when Network Upgrades are involved, the indemnification payment is an additional amount of funding that must be provided by the Interconnection Customer related to the Network Upgrades. It is not reimbursement for costs incurred by the Transmission Provider related to Network Upgrades. In other words, it is not intended to provide for recovery of these costs. If treated as an embedded (versus incremental) cost, the cost of Network Upgrades is ultimately recovered from all Transmission Customers through transmission rates; it is included in the rate base and depreciated. Any determination that a payment for Network Upgrades is subject to current income tax would give rise to a deferred tax asset, which under Commission rate policies, would be added to the rate base. If treated as an incremental cost, the cost of all Network Upgrades is ultimately recovered from the Interconnection Customer as part of the incremental transmission rate. Therefore, the Transmission Provider's transmission rates provide for recovery of, and return on, all costs associated with Network Upgrades. Should the Interconnection Customer be unable to make the indemnification payment, the Transmission Provider would obtain the required funding for any current tax liability related to Network Upgrades from another source (such as banks or the equity capital markets, among others). The Transmission Provider, however, would be fully reimbursed for all its costs, including the cost of funding any related current tax liability, through its rates. In short, the Transmission Provider will remain whole. Under these circumstances, where Network Upgrades are involved, there is no reason to require the Interconnection Customer to maintain security for any potential indemnification payment.

342. We disagree with APS that the indemnification should apply to taxes other than income taxes. Because APS has offered no justification for why indemnification should be applied to non-income taxes, or described why non-income taxes otherwise would be unrecoverable from the Interconnection Customer, we will not expand Article 5.17.3 to apply to non-income taxes.

343. We agree with Calpine's argument that it is unreasonable to allow the Transmission Provider to require security for up to the maximum amount of the Transmission Provider's potential tax liability. Again, as discussed above, where Network Upgrades are involved, there is no reason to require the Interconnection Customer to maintain security for any potential indemnification payment. In addition, we are also clarifying Article 5.17.3 so that the security requirement for non-network, directly assigned Interconnection Facilities reflects only the Transmission Provider's exposure to the cost consequence of any current tax liability as of January 1 of each year. Our intent is for the security requirement to track the cost consequence of any current tax liability over time.

344. The security provided in Article 5.17.3 protects the Transmission Provider against the possibility that the IRS will change its policy in a manner that makes the payments taxable or that there will be a subsequent taxable event. SoCal Edison makes a valid argument regarding the inconsistency between Articles 5.17.3 and 5.17.5. We conclude that it would be inappropriate to reduce

the security amount based upon a private letter ruling from the IRS because the private letter ruling does not reduce the risk to the Transmission Provider that the IRS will change its policy in a manner that makes the payments taxable or that a subsequent taxable event will occur, which is what the security is intended to address. We therefore delete from Article 5.17.5 the requirement that a security amount be reduced as a result of a private letter ruling determining that payments are a non-taxable event. This change obviates the need to address SoCal Edison's request for a regulatory backstop.

345. Entergy, NYTO, and SoCal Edison all object to the Commission giving the Interconnection Customer the option of requiring security if the Transmission Provider requires a gross-up. Upon reconsideration, we conclude that because the gross-up will be refunded, the Interconnection Customer requires no further protection from the risk that the Transmission Provider will become insolvent. Accordingly, we will not allow the Interconnection Customer to require this security.

346. Regarding Southern's concerns about tax liability extending beyond the indemnification obligation in Article 5.17.3, we disagree. The article provides indemnification protection until the applicable IRS statute of limitations has expired. Southern's proposal is not necessary because this provision limits the indemnification obligation so that it ends when there is no further risk of new tax liability.[73] Since Southern has not convinced us that liability would extend beyond the applicable IRS statute of limitations (as extended), we reject its request.

347. In response to NYTO, whether credits indeed endanger the non-taxable treatment of these payments is a matter for the IRS to decide. Article 5.17.3 addresses the possibility that the IRS would change its policy.

348. Finally, we reject Calpine's request that we make the ten year limit on indemnification applicable to all existing interconnection agreements. Order No. 2003 does not require retroactive changes to individual interconnection agreements filed with the Commission before Order No. 2003's effective date and Calpine has provided no reason for why this particular provision should be imposed retroactively.[74]

[73] We agree with Southern that it is inappropriate to refer to IRS Notice 88–129 because that notice does not address the ten year testing period referred to in Article 5.17.3. We are deleting the reference to IRS Notice 88–129 in Article 5.17.3.

[74] Order No. 2003 at P 911.

349. Article 5.17.4—Tax Gross-Up Amount—Article 5.17.4 describes how the Parties calculate the tax gross-up amount, which is intended to reflect the cost consequence of the current tax liability on a fully grossed up basis for the interconnection related payments from the Interconnection Customer to the Transmission Provider.

Rehearing Requests

350. FP&L argues that a tax gross-up provision will cause losses to the Transmission Provider, particularly when combined with the requirement to refund the tax payments, plus interest, to the Interconnection Customer. FP&L requests that the Commission make clear how the Transmission Provider is to be made whole if the IRS decides that Network Upgrade payments are taxable.

Commission Conclusion

351. We note that the gross-up will be collectible only if the Transmission Provider makes a good faith determination that it will have to pay income taxes on the money it receives from the Interconnection Customer. Accordingly, the gross-up amount should be payable to the taxing authorities. As explained in the discussion of Article 5.17.3 above, the time value cost of Network Upgrade-related tax payments under embedded cost treatment is paid by all Transmission Customers (rolled into transmission rates) because the Transmission Provider records a deferred tax asset at the time the tax payment is made and that deferred tax asset is added to the rate base under the Commission's ratemaking policies. Under the incremental rate treatment, the time value costs would be recovered from the Interconnection Customer as part of the incremental transmission rate. The Transmission Provider is thus made whole for all prudently incurred costs related to Network Upgrades. On the other hand, we will not require the Transmission Provider to refund that portion of the tax gross-up amount intended to cover the costs related to directly assignable Interconnection Facilities because the Transmission Provider has no way of recovering these costs from other users. By excluding these costs from the tax gross-up amounts the Transmission Provider must refund to the Interconnection Customer, time value costs that otherwise may have arisen are eliminated. The exclusion of these amounts (that portion of the tax gross-up amount intended to cover the costs related to directly assigned Interconnection Facilities) is incorporated into Article 11.4.1.

352. Article 5.17.5—Private Letter Ruling or Change or Clarification of Law—LGIA Article 5.17.5 requires the Transmission Provider to ask the IRS, at the Interconnection Customer's request and expense, for a private letter ruling as to whether any property transferred or sums paid by the Interconnection Customer under the interconnection agreement are subject to federal income taxation. The point of obtaining such a ruling is to get a definitive answer regarding whether taxes will be due. If the private letter ruling concludes that such sums are not taxable, refunds would be payable in accordance with Article 5.17.8.

Rehearing Requests

353. Calpine argues that there should be no security obligation when a private letter ruling finds that these payments are not taxable. Upon the issuance of the private letter ruling, the Transmission Provider should have 30 days to release any security for the potential tax liability that the Transmission Provider required. Even if a private letter ruling contains covenants or conditions, release of security should be required. Otherwise, the purpose of securing a private letter ruling would be undermined.

354. NYTO and National Grid argue that the Commission should allow the Transmission Provider to require security even when a private letter ruling has determined that the payments are nontaxable, because changed circumstances could render the indemnity worthless.

355. Article 5.17.5 requires that the Transmission Provider execute either a privacy act waiver or a limited power of attorney authorizing the Interconnection Customer to participate in all discussions with the IRS regarding a private letter ruling request. Entergy first argues that this provision departs from Commission precedent [75] without a reasoned explanation.[76] Second, Entergy argues that there cannot be efficient communication between the Transmission Provider and the IRS if the Interconnection Customer has to be involved in every such communication. Third, a limited power of attorney would provide the Interconnection Customer the broad right to represent the Transmission Provider in a private letter ruling proceeding. Consequently, all representations by the Interconnection Customer to the IRS would be binding on the Transmission

[75] *Citing* Cambridge Electric Light Co., 96 FERC ¶61,205 at 61,875 (2001) (*Cambridge*).

[76] *Citing Greater Boston Television Corp.* v. *FCC,* 444 F.2d 841, 852 (DC Cir. 1970).

Provider. Entergy claims that the Transmission Provider does not need third parties to act as its representatives before the IRS. Alternatively, the provision should apply only after the Transmission Provider has received notice from the IRS that it is entitled to a ''conference of right'' with the IRS because the IRS may object to the Transmission Provider's position. This revision would prevent unnecessary inefficiency and reduce the risk that the Interconnection Customer will misrepresent the facts, or the Transmission Provider's positions, without the latter's knowledge.

356. Salt River Project urges the Commission to give non-public utilities flexibility so that they do not risk losing access to tax-exempt financing. It asserts that Article 5.17.5 should not apply to a Transmission Provider that is not a public utility because the sums paid or collected in its rates are not prescribed by Order No. 2003.

Commission Conclusion

357. We disagree with Calpine that the security obligation should be extinguished when a private letter ruling states that the Transmission Provider will not have to pay income taxes. We agree with NYTO and National Grid that security is allowed even when a private letter ruling has determined that the payments are not income subject to taxation because the private letter ruling does not protect against the risks of a subsequent taxable event or a change in IRS policy occurring.

358. In response to Salt River Project, we clarify that the tax provisions in the LGIA are rate-related matters. Accordingly, a non-public utility with a safe harbor reciprocity OATT need not make Article 5.17.5 available to Interconnection Customers as long as any analogous rate provisions are comparable to those that the Transmission Provider charges itself.[77] We also reiterate that we will consider the legal and regulatory restrictions on non-public utilities' contractual rights and tax-exempt status when we evaluate any safe harbor reciprocity OATT filings.[78]

359. We do not agree with NYTO regarding the requirement that the Interconnection Customer be allowed to participate in discussions with the IRS. In *Cambridge,* the Commission denied the Interconnection Customer's request that the Transmission Provider include the Interconnection Customer in discussions with the IRS. 96 FERC ¶ 61,205 at 61,875 (2001). However, in that case the Interconnection Customer was not obligated to pay for the costs associated with a private letter ruling. Given the Interconnection Customer's potential liability and its obligation to pay for the private letter ruling, we conclude that the Interconnection Customer's interests are significant enough to warrant its participation in any IRS discussions and its inclusion in all communications with the IRS with respect to the private letter ruling request.

360. Finally, we disagree with the objection regarding the power of attorney. The power of attorney may be written to prevent the harm that Entergy fears. If the power of attorney is unsatisfactory, the Parties may sign a privacy act waiver. In either case, the Parties should be able to draft a document that allows the Interconnection Customer to participate in discussions with the IRS without affording the Interconnection Customer unnecessarily broad rights. Accordingly, we reject Entergy's request for rehearing.

361. We also reject Calpine's request that we make the required reduction in security applicable to all existing interconnection agreements. Order No. 2003 does not require retroactive changes to individual interconnection agreements filed with the Commission before the rule's effective date and Calpine has not shown that this particular provision should be imposed retroactively.[79]

362. Article 5.17.6—Subsequent Taxable Events—LGIA Article 5.17.6 explains the Parties'' obligations if a ''subsequent taxable event'' occurs that makes the facilities payments taxable and creates a current tax liability for the Transmission Provider.

Rehearing Requests

363. NYTO argues that the Commission's reliance on cooperation among the Parties is insufficient and that the Commission should adopt Article 5.16.5 of the consensus LGIA submitted during the ANOPR process. That provision would ensure that the Transmission Owner is made whole when a contribution from the Interconnection Customer is non-taxable when made, but the IRS later imposes tax liability.

364. Article 5.17.2 contains several covenants that the Interconnection Customer must meet in order to conform to the IRS requirements for non-taxable treatment and maintain safe harbor protection. Southern argues that Article 5.17.6 should require the Interconnection Customer to pay a tax gross-up for the taxes imposed upon the Transmission Provider if the Interconnection Customer breaches any of the covenants in Article 5.17.2, not just that in Article 5.17.2(i). Because taxes may be imposed upon the Transmission Provider if the Interconnection Customer breaches Article 5.17.2(ii) and (iii) as well, Southern contends that Article 5.17.6 should be amended to refer to Article 5.17.2 in its entirety.

Commission Conclusion

365. In Order No. 2003, the Commission rejected provisions proposed by NYTO because NYTO's concerns were fully addressed in Article 5.17.[80] Moreover, Article 5.17.6 protects the Transmission Provider. Also, Article 5.17.3 requires the Interconnection Customer to indemnify the Transmission Provider from the cost consequences of any current income tax liability until the statute of limitations expires.

366. We agree with Southern that Article 5.17.6 inappropriately limits the availability of a gross-up for subsequent taxable events. Accordingly, we are amending it to refer to the ''covenants contained in Article 5.17.2.''

367. Article 5.17.7—Contests—LGIA Article 5.17.7 describes the obligations that apply if any Governmental Authority determines that the Transmission Provider's receipt of payments or property is income subject to taxation. At the Interconnection Customer's expense, the Transmission Provider shall appeal or oppose such a determination. Article 5.17.7 also describes the procedures for settling a contested ruling.

Rehearing Requests

368. Entergy notes that the right to appeal exists regardless of whether the IRS has already considered that particular transaction's tax treatment during an audit. The requirement elevates the Transmission Provider's contractual obligations under the interconnection agreement above its responsibilities to the taxing authorities to file accurate returns. For example, if a taxing authority determines that the corporate officer who filed an amended return did not believe it was accurate, that officer may be prosecuted for perjury. Thus, the relevant provisions in Article 5.17.7 should be removed or revised so that the Transmission Provider is not required to submit a refund claim when the Transmission Provider does not believe, in good faith,

[77] Order No. 2003 at P 843.

[78] *Id.* at P 844.

[79] Order No. 2003 at P 911.

[80] Order No. 2003 at P 422.

that such claim is true, accurate, and complete.

369. Entergy argues that Article 5.17.7 is unnecessary and unreasonably grants the Interconnection Customer the right to participate in the Transmission Provider's appeals of tax audits and other tax-related litigation. This will limit the Transmission Provider's ability to negotiate with the taxing authorities. Moreover, because Article 5.17.5 already grants the Interconnection Customer the right to require the Transmission Provider to resolve issues through the private letter ruling process, the additional rights granted in Article 5.17.7 are not needed. The private letter ruling process is better because it allows resolution of tax issues early in the interconnection process, according to Entergy.

370. NYTO argues that the Commission should oblige a Transmission Owner to contest a tax determination only if the Interconnection Customer provides an opinion by its counsel that there is a reasonable likelihood of success. The Transmission Owner should not be required to commit money and resources to contesting tax determinations if there is little chance of success.

371. If the Transmission Provider pursues a settlement to resolve the contest with a Governmental Authority, Article 5.17.7 provides that the Interconnection Customer's settlement obligation shall be the settlement amount consented to by the Interconnection Customer, or any higher settlement that is supported by written advice from a nationally-recognized tax counsel. Southern explains that the Commission in Order No. 2003 refused to require the Interconnection Customer's obligation to indemnify the Transmission Provider for a settlement to be determined on a grossed-up basis. Article 5.17.7 limits the Interconnection Customer's obligation to the settlement amount agreed to between the Transmission Provider and the Governmental Authority. Moreover, the reimbursement of the settlement by the Interconnection Customer will be considered income to the Transmission Provider in the year of payment. Under Article 5.17.7, the Interconnection Customer has no obligation to pay a tax gross-up on the amount included in the Transmission Provider's income. The Transmission Provider could include tax gross-up in the settlement calculation; however, this would simply increase the reimbursement obligation of the Interconnection Customer and the additional taxes the Transmission Provider would owe as a result of the reimbursement. Southern submits that requiring the Interconnection Customer's settlement obligation amount to be calculated on a fully grossed-up basis would ensure that the Transmission Provider is made whole.

Commission Conclusion

372. We agree with Entergy that it is appropriate to give the Transmission Provider discretion over how best to contest a Governmental Authority's determination. We are modifying Article 5.17.7 to clarify that the Transmission Provider has discretion as to whether to appeal, protest, seek abatement of, file a claim for refund, or oppose a determination. Article 5.17.7 states that the ''Transmission Provider reserves the right to make all decisions with regard to prosecution of such appeal.'' These decisions include how best to contest the determination in a manner that does not harm the Transmission Provider's interests.

373. Also in response to Entergy, we conclude that Article 5.17.7 is necessary because it allows the Interconnection Customer to participate in contest proceedings. As with the private letter ruling discussion above, the significant financial interest of the Interconnection Customer warrants its presence at contest proceedings. Contest rights to the private letter ruling right are appropriate because the Interconnection Customer should be entitled to one appeal, if it believes such appeal is necessary and it is willing to pay for the costs.

374. We agree with Southern that in order to make the Transmission Provider whole with respect to settlement amounts, the Interconnection Customer must pay the settlement amount as calculated on a fully grossed-up basis to cover any related cost consequence of a current tax liability.

375. The Commission considered and rejected NYTO's argument in Order No. 2003 and NYTO raises no new arguments here.[81]

376. Article 5.17.8—Refund—LGIA Article 5.17.8 describes the conditions under which the Transmission Provider must pay a refund to the Interconnection Customer for any payments the Interconnection Customer made related to income tax liability. It also sets forth the formula for calculating the refund.

Rehearing Request

377. Cinergy wants to ensure that the Transmission Provider does not have to refund tax-related payments to the Interconnection Customer if the Transmission Provider has already provided transmission credits for the same items. It notes that Article 5.17.3 permits the Transmission Provider to charge a gross-up for income taxes if the Transmission Provider determines, in good faith, that the payments or property transfers made by the Interconnection Customer should be treated as income subject to taxation. Cinergy states that Article 11.4.1 requires the Transmission Provider to refund to the Interconnection Customer, through transmission credits, the total amount paid to the Transmission Provider for Network Upgrades, including tax-related payments ''not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise.'' Article 5.17.8 directs the Transmission Provider to return to the Interconnection Customer any refund received from a taxing authority for overpayment without limiting such refunds if transmission credits already have been provided to the Interconnection Customer for such payments. Cinergy requests that, to avoid overpayment, the Commission should clarify that Article 5.17.8 does not require the Transmission Provider to refund tax payments to the Interconnection Customer if credits already have been provided for such payments.

Commission Conclusion

378. We agree with Cinergy. We clarify here that Article 5.17.8 does not require the Transmission Provider to refund tax payments to the Interconnection Customer if credits already have been provided for such payments under Article 11.4.1.

379. Article 5.17.9—Taxes Other Than Income Taxes—LGIA Article 5.17.9 describes the Parties' obligations if taxes other than income taxes are imposed. The Interconnection Customer may be required to reimburse the Transmission Provider under the LGIA. The article requires the Transmission Provider, at the Interconnection Customer's expense, to appeal, protest or contest a non-income tax assessment against the Transmission Provider until a final, non-appealable order by a court or agency is issued. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, the Interconnection Customer is not required to pay the Transmission Provider until the issue is resolved on a final basis.

Rehearing Requests

380. Southern argues that although the Interconnection Customer must reimburse the Transmission Provider for the cost of the contest, the contest may

[81] Order No. 2003 at P 475.

still place an undue burden on the Transmission Provider if the contest is appealed through several levels of review. A lengthy appeal will require the Transmission Provider to devote administrative, accounting, and legal resources to a matter that may take years to resolve. Moreover, it is unclear under Article 5.17.9 to what extent these costs will be reimbursed by the Interconnection Customer. For these reasons, Article 5.17.9 should be amended to allow, but not require, the Transmission Provider to appeal or seek further reviews of tax assessments beyond one level of judicial review.

Commission Conclusion

381. We conclude that the prospect of paying all the costs of securing a final, non-appealable ruling is a sufficient incentive for the Interconnection Customer not to pursue a frivolous appeal. While Southern claims that it is unclear that all costs will be reimbursed, Article 5.17.9 states that the process will be undertaken at the Interconnection Customer's ''sole expense.'' All reasonable costs of pursuing the appeal are recoverable. To provide greater clarity, however, we are adding to this article language that appears in Article 5.17.7 that establishes the standard for recoverable costs and arrangements for their payment.

382. Article 5.17.10—Transmission Owners Who Are Not Transmission Providers—Article 5.17.10 requires that if the Transmission Provider and Transmission Owner are not the same, (1) all references to Transmission Provider in Article 5.17 shall be deemed to include the Transmission Owner, and (2) the interconnection agreement shall not become effective until the Transmission Owner has agreed in writing to assume all duties and obligations of the Transmission Provider under Article 5.17.

Rehearing Requests

383. EEI argues that the bilateral or tripartite nature of the LGIP and LGIA raises issues. It states that while ''Transmission Provider'' is generally intended to include ''Transmission Owner,'' the Commission should clarify why, under LGIA Article 5.17.10, the Transmission Owner has to explicitly assume the obligations of Article 5.16, but not under other provisions in which the Transmission Owner is separately identified, such as Articles 11.2 and 11.3.

Commission Conclusion

384. We conclude that the written statement in Article 5.17.10 (ii) is unnecessary, since the Transmission Owner will sign the interconnection agreement and will be liable, when appropriate. Accordingly, we are deleting this text from Article 5.17.10. And since the definition of ''Transmission Provider'' already includes the Transmission Owner if the two entities are distinct, Article 5.17.10(i) is not needed. Article 5.17.10 is therefore deleted in its entirety.

385. Article 5.18—Tax Status—LGIA Article 5.18 provides that the Parties shall cooperate with one another to maintain the Parties' tax status. It also explains that for a Transmission Provider with tax exempt status, the LGIA is not intended to endanger that status with respect to the issuance of bonds.

Rehearing Requests

386. NYTO argues that Article 5.18 should use the same language regarding compliance with local furnishing bond limitations for tax free financing that are in the OATT.

387. Order No. 2003 states that the Commission will act to ensure the continued tax-exempt status of bond funding by non-jurisdictional and jurisdictional entities.[82] NRECA–APPA asks that the Commission also act to ensure the continued tax-exempt status of cooperatives.

Commission Conclusion

388. OATT section 5 allows the Transmission Provider to deny Transmission Service if doing so would jeopardize the tax-exempt status of any local furnishing bonds used to finance the Transmission Provider's facilities that would be used for such service. We conclude that in an agreement to be signed by the Parties, it is more appropriate to include a provision that requires each of them to cooperate to maintain the other Party's tax status. To fail to cooperate is to risk Breach, which would have the same result as denying service. The OATT section 5 rights are more appropriate for a set of procedures, since the Transmission Provider's right to reject the Interconnection Customer's request for interconnection should be established (and acted upon) before the Parties sign the interconnection agreement. And since no similar rights are described in the LGIP, we will include a comparable provision there—section 13.6 (Furnishing Bonds).

389. Article 6.4—Right to Inspect—LGIA Article 6.4 provides each Party with the right to inspect the other Party's facilities and states that any information that the Transmission Provider obtains shall be confidential.

Rehearing Request

390. NYTO argues that any information either Party obtains under the article should be confidential.

Commission Conclusion

391. We agree with NYTO and are revising the provision accordingly.

392. Article 7—Metering—LGIA Article 7 requires each Party to comply with the Applicable Reliability Council requirements regarding metering. Article 7.4 specifies standards for the testing of metering equipment.

Rehearing Request

393. SoCal Edison states that Article 7 conflicts with the California ISO Tariff and Meter Service Agreements. For example, it points out that Article 7.4 has different rules from the California ISO Tariff and Metering Protocol about meter testing. SoCal Edison seeks confirmation that, given the Commission's statements on flexibility for ISOs, its interconnection agreements can simply refer to the California ISO Tariff and Meter Service Protocol.

Commission Conclusion

394. SoCal Edison asks the Commission to rule on whether (and in what manner) it may rely on the California ISO Tariff and Metering Protocol as a justification for a regional variation for LGIA Article 7. This is a compliance issue and the Commission will, accordingly, address this issue when the compliance filing is considered.

395. Article 9.1—Operations—General—LGIA Article 9.1 requires the Interconnection Customer and the Transmission Provider to comply with the Applicable Reliability Council operations requirements. It requires each Party to provide to the other Party all information that may reasonably be required to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

Rehearing Request

396. California Parties states that the Applicable Reliability Council requirements do not provide enough detail to ensure system protection and safety. It claims that the Western Electricity Coordinating Council (WECC) guidelines do not specify the types of protective relays and their tripping schemes and installation; such details are generally found in the Transmission Owner's interconnection handbook or similar documents that exist at the regional or sub-regional level. Moreover, the WECC guidelines allow the individual utility to impose additional requirements. California

[82] Order No. 2003 at P 489.

Parties argues that in most cases the Transmission Provider's planning guidelines are more voluminous and restrictive than the WECC guidelines. It therefore seeks clarification as to whether the Transmission Provider's interconnection requirements related to system protection and safety that are not covered in the WECC guidelines can be incorporated into the interconnection agreement by reference if it imposes such requirements on itself and all other Interconnection Customers, including its Affiliates.

397. California Parties also argues that the Commission mistakenly omitted Appendix G from the LGIA, which was in the ANOPR, and is a blank page entitled ''Interconnection Guidelines.'' It asserts that the page was intentionally left blank during the ANOPR consensus process so that the Transmission Provider could include its own interconnection requirements. California Parties states that the Transmission Provider must be allowed to include additional interconnection requirements to maintain the safety and reliability of the Transmission System.

398. Finally, California Parties seeks clarification that the provisions of the California ISO's approved Tariff governing technical standards for interconnections will remain in effect.

Commission Conclusion

399. We agree that the Transmission Provider should be able to impose supplemental interconnection requirements not specifically delineated in the Applicable Reliability Council requirements, particularly those related to system protection and safety. However, the Applicable Reliability Council requirements must specifically provide for the inclusion of such additional requirements and the Transmission Provider must impose such requirements on itself and all other Interconnection Customers, including its Affiliates.[83] LGIA Appendix G was omitted because most of the operational requirements are contained or referenced in the Applicable Reliability Council requirements. Nevertheless, if the Transmission Provider wishes to impose additional operational requirements, such as those related to system protection and safety that are not contained or referenced in the Applicable Reliability Council requirements, it may propose and justify such requirements in its compliance filing in the form of a separate Appendix.

400. We clarify that the California ISO's approved Tariff provisions governing technical standards for interconnections may remain in effect until the Commission acts on its compliance filing.[84]

401. Article 9.3—Transmission Provider Obligations—LGIA Article 9.3 requires that the Transmission Provider operate, maintain, and control the Transmission System and the Transmission Provider's Interconnection Facilities in a safe and reliable manner.

Rehearing Request

402. Southern asserts that it is inappropriate to impose broad obligations on the Transmission Provider's Transmission System in the interconnection agreement. It cites *Commonwealth Edison Company,* 92 FERC ¶ 61,175, p. 61,621 (2000), which held that the Transmission Provider should not be required to indemnify the Interconnection Customer for liability arising from the operation of the entire Transmission System and that the only facilities governed by an interconnection agreement are the facilities necessary for the interconnection (including Interconnection Facilities and Network Upgrades). Southern contends that the LGIA should govern only interconnection and the Interconnection Facilities necessary to achieve the interconnection, not the entire Transmission System.

Commission Conclusion

403. We deny Southern's request for rehearing because the LGIA already does what Southern wants. The LGIA's indemnification provision already limits the liability of the Transmission Provider to actions it takes on behalf of the Interconnection Customer. Indemnification is designed to protect a Party when it acts on behalf of the other Party under the LGIA. As explained in the discussion of Article 18.1, indemnification is not limited by geography or to specific types of facilities. This is consistent with the *Commonwealth Edison Company* precedent cited by Southern, which states that ''the indemnification provisions of the [interconnection agreement] deal only with the interconnection components of Transmission Service.''

404. Article 9.3 requires the Transmission Provider to maintain and operate its Transmission System in a safe and reliable manner and in accordance with the LGIA. This is designed to protect the Transmission Provider if it is required by the LGIP or LGIA to take an action that could endanger the safety or reliability of its Transmission System. The Transmission Provider's obligation to maintain its Transmission System trumps its obligation to perform under the LGIP and LGIA.

405. Article 9.6.1—Power Factor Design Criteria—LGIA Article 9.6.1 requires the Interconnection Customer to design the Generating Facility to maintain a power factor at the Point of Interconnection within the range of 0.95 leading to 0.95 lagging, unless the Transmission Provider establishes different requirements that apply to all generators in its Control Area on a comparable basis.

Rehearing Request

406. FPL Energy argues that wind generators for the most part cannot maintain the required power factor, simply because the necessary technology does not exist for wind generators. It states that most Transmission Providers realize this limitation and permit wind generators to maintain a power factor of unity. In fact, studies show that maintaining a power factor of 0.95 lagging at the Point of Interconnection would result in an over voltage condition that would trip the wind generator.

Commission Conclusion

407. We agree with FPL Energy and are revising Article 9.6.1 to state that the requirements of this provision shall not apply to wind generators.[85]

408. Article 9.6.3—Payment for Reactive Power—LGIA Article 9.6.3 requires the Transmission Provider to pay the Interconnection Customer for reactive power the Interconnection Customer provides or absorbs only when the Transmission Provider requests the Interconnection Customer

[83] California Parties notes that the WECC guidelines refer to additional requirements that the Transmission Provider can impose upon the Interconnection Customer.

[84] *See* Notice Clarifying Compliance Procedures (Issued Jan. 8, 2004).

[85] We recognize that the LGIA and LGIP are designed around the needs of large synchronous generators and that many generators relying on newer technologies may find that either a specific requirement is inapplicable or that it calls for a slightly different approach. We are granting clarifications regarding wind generators in our LGIA Article 5.4 (Power System Stabilizers), LGIA Article 5.10.3 (ICIF Construction), and LGIA Article 9.6.1 (Power Factor Design Criteria). We realize that there may be other areas of the LGIP and LGIA that may call for a slightly different approach for a generator relying on newer technology because it may have unique electrical characteristics. Accordingly, we are adding a new Appendix G (Requirements of Generators Relying on Newer Technologies) to the LGIA as a placeholder for inclusion of requirements specific to newer technologies.

to operate the Generating Facility outside a specified power factor range. Payments by the Transmission Provider are to be under the Interconnection Customer's rate schedule unless service is under a Commission-approved RTO or ISO rate schedule. If no rate schedule is in effect, the Interconnection Customer is to file one within 60 days of when reactive power service begins. The TransmissionProvider must pay the Interconnection Customer the amount that would have been due if the rate schedule had been in effect when service began.

Rehearing Requests

409. TDU Systems seeks clarification as to whether a non-jurisdictional generation and transmission (G&T) cooperative is required to file a rate schedule with the Commission in order to be paid for providing reactive power to the Transmission Provider.

410. Calpine asks the Commission to clarify the following statement from P 544 of Order No. 2003: ''[T]he Interconnection Customer should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation.'' Calpine interprets this statement to mean that the Transmission Provider may require the Interconnection Customer to run the Generating Facility solely for the purpose of providing reactive power and to operate it within the prescribed power factor range so that the Transmission Provider will not have to pay the Interconnection Customer for the service. It seeks clarification that absent a capacity purchase or a true emergency, the Interconnection Customer need not bring the Generating Facility on line to provide reactive power simply because it has an interconnection agreement with the Transmission Provider.

411. Calpine also argues that comparability requires that the Interconnection Customer be paid for providing reactive power even within the established range if the Transmission Provider pays its own or affiliated generators for such service. It explains that a Transmission Provider may be paid for providing reactive power within the established range when it includes such costs in its revenue requirement.

412. Similarly, Duke Energy and Reliant state that the LGIA should provide for compensation to the Interconnection Customer for reactive power provided within the established power factor range. It argues that the compensation for reactive power within the established power factor range should be decided (along with the compensation for reactive power provided outside the power factor range) when the Interconnection Customer submits its rate schedule for reactive power service.

413. Reliant argues that Order No. 2003 conflicts with the approach for generator compensation for reactive power service adopted by PJM, and if not overturned on rehearing will lead to numerous disputes in PJM and elsewhere.

Commission Conclusion

414. In response to TDU systems, we clarify that we are not requiring a non-public utility to file a rate schedule in order to be compensated for reactive power.

415. With respect to Calpine's request for clarification, there is nothing in Article 9.6.3 requiring the Interconnection Customer to run the Generating Facility solely to provide reactive power to the Transmission Provider simply because it has an interconnection agreement with the Transmission Provider.

416. We agree with Calpine that if the Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the Interconnection Customer. This also addresses Duke Energy's and Reliant's concerns. We are revising Article 9.6.3 accordingly.

417. Article 9.7.1.2—Outage Schedules—LGIA Article 9.7.1.2 requires the Transmission Provider to post transmission facility outages on its Open Access Same-Time Information System (OASIS) and requires the Interconnection Customer to schedule its maintenance on a rolling 24 month basis. The Transmission Provider may ask the Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System, but that adequacy of generation supply shall not be a criterion in determining Transmission System reliability. The Transmission Provider must pay the Interconnection Customer for any direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance.

Rehearing Requests

418. Central Maine asserts that RTOs and ISOs should be allowed to request rescheduling of certain outages for any reliability reasons, including the adequacy of supply.

419. NYTO observes that there does not appear to be a reciprocal requirement for the Interconnection Customer to pay the Transmission Provider for modifications to the Transmission Provider's maintenance schedule. Since the ISO is responsible for reliability it, not the Transmission Owner, should be required to pay the Interconnection Customer for any costs of rescheduling maintenance that is required for reliability. Payments under this provision should be made according to the ISO's Tariff.

Commission Conclusion

420. We agree with Central Maine that an RTO or ISO may have greater flexibility in rescheduling certain outages. Order No. 2003 states that an independent RTO or ISO may adopt provisions different from those in the LGIP and LGIA because they are much less likely to engage in undue discrimination. An RTO or ISO may file to reschedule outages for reliability reasons in its compliance filing and the Commission will consider the proposal at that time. The Commission will also consider proposals from an RTO or ISO as to who should compensate the Interconnection Customer for rescheduling maintenance. However, we deny NYTO's request for reciprocal compensation because we are not persuaded that it is warranted.

421. Article 10.5—Operating and Maintenance Expenses—LGIA Article 10.5 provides that, except for operation and maintenance expenses associated with modifications made to provide interconnection or Transmission Service to a third party, the Interconnection Customer shall be responsible for all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing the Interconnection Customer's Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Transmission Provider's Interconnection Facilities.

Rehearing Requests

422. Southern argues that the Interconnection Customer should also be responsible for expenses related to Network Upgrades that are required solely to accommodate the interconnection. Otherwise, the Transmission Provider and its Transmission Customers would subsidize the cost of facilities that may provide them no benefit.

423. Central Maine states that in regions where Interconnection Customers do not pay for Transmission Service, such as New York and New England, not requiring them to pay expenses associated with Network Upgrades allows them to use the entire Transmission System without making

any contribution towards its associated costs. Central Maine emphasizes that it is not suggesting that the Interconnection Customer pay expenses for the entire Transmission System, just those associated with the specific Network Upgrades necessitated by its interconnection.

Commission Conclusion

424. We deny Central Maine's and Southern's requests for rehearing. Since Network Upgrades provide a system-wide benefit, expenses associated with owning, maintaining, repairing, and replacing them shall be recovered from all Transmission Customers rather than being directly assigned to the Interconnection Customer.[86] However, the Commission will entertain proposals of the type described by Central Maine and Southern from an RTO or ISO.

425. Article 11.5—Provision of Security—LGIA Article 11.5 requires that at least 30 days before the start of procurement, installation, or construction of a discrete portion of the Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, the Interconnection Customer must provide the Transmission Provider with (at the Interconnection Customer's option) a guarantee, a surety bond, a letter of credit, or another form of security, sufficient to cover the costs of the procurement, installation, or construction of that facility. The security required is then reduced on a dollar-for-dollar basis as the Interconnection Customer pays off its bill. Articles 11.5.1–11.5.3 govern the nature of the security and requires that the security provided be reasonably acceptable to the Transmission Provider.

Rehearing Requests

426. NYTO states that it is unreasonable to allow the Interconnection Customer to dictate the terms and conditions of the security instrument and that the Transmission Owner should have the right to request a specific type of security.

427. NYTO also argues that the Commission should require the Interconnection Customer's security deposit to cover the full cost of the Network Upgrades.

428. Southern asserts that requiring the amount of security to be reduced on a dollar-for-dollar basis as the Interconnection Customer makes payments to the Transmission Provider ignores the risks imposed upon the Transmission Provider under bankruptcy and fraudulent conveyance law. For example, payments made by the Interconnection Customer could be set aside or required to be refunded in a bankruptcy or insolvency action. If the security has been reduced by the amount of such payments, the Transmission Provider would have no reasonable prospect of being repaid for any payments required to be returned or set aside. Southern argues that the security should not be reduced until the expiration of any possible bankruptcy preference periods, during which time the Interconnection Customer's payments may be subject to being set aside.

429. Southern also states that the credit support for Network Upgrades for the Transmission Provider's Interconnection Facilities should not be reduced by payments the Interconnection Customer makes to the Transmission Provider that are unrelated to such upgrades or the construction, procurement, and installation of the Transmission Provider's Interconnection Facilities.

Commission Conclusion

430. In response to NYTO, we note that Article 11.5 already adequately protects the Transmission Provider. Article 11.5.1 requires that any guarantee meet the Transmission Provider's credit worthiness standards; Article 11.5.2 requires that any letter of credit be issued by a financial institution reasonable acceptable to the Transmission Provider; and Article 11.5.3 requires that any surety bond be issued by an insurer reasonable acceptable to the Transmission Provider.

431. In response to Southern's concerns that the bankruptcy of the Interconnection Customer might create a financial hardship for the Transmission Provider, we recognize that reducing the security as the Interconnection Customer pays its bills may cause a small increase in exposure to the Transmission Provider. However, the chilling effect of requiring the Interconnection Customer to maintain the full security during the length of the interconnection process would seriously discourage new generation.

432. We agree with Southern that the reduction in security as the Interconnection Provider pays its bills applies only to payments associated with the upgrade, construction, procurement, and installation of the Transmission Provider's Interconnection Facilities for which the security was provided. We are amending Article 11.5 accordingly.

433. Article 12.3—Invoice—Payment—LGIA Article12.3 provides that payment of invoices by the Interconnection Customer is not a waiver of any rights or claims it may have under the interconnection agreement.

Rehearing Requests

434. Central Maine and NYTO assert that this article should be made reciprocal so that payment of an invoice by either Party will not waive any rights or claims such Party may have under the interconnection agreement.

Commission Conclusion

435. We agree and are revising Article 12.3 accordingly.

436. Article 13.1—Emergencies—Definition—LGIA Article 13.1 defines Emergency Condition as a situation that (1) in the judgment of the Party making the claim, is imminently likely to endanger life or property, or (2) in the case of the Transmission Provider making the claim, is imminently likely (as determined in a non-discriminatory manner) to damage or cause a material adverse effect on the security of the Transmission System, the Transmission Provider's Interconnection Facilities, or the Transmission Systems of others to which the Transmission Provider is directly connected, or (3) in the case of the Interconnection Customer making the claim, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or its Interconnection Facilities.

Rehearing Requests

437. Calpine states that the LGIA should provide that any situation caused by a lack of sufficient generating capacity to meet load requirements that results solely from economic conditions shall not, on its own, be an Emergency Condition. Otherwise, the Transmission Provider will be able to lean on others in the Control Area to meet load requirements instead of building new capacity to meet these needs. Alternatively, the Commission should provide for a capacity payment to the Interconnection Customer for making its generating capacity available to the Transmission Provider during Emergency Conditions.

Commission Conclusion

438. In Order No. 2003, the Commission was concerned about the harm to the Transmission System if the Transmission Provider does not have the flexibility to respond during Emergency Conditions. We are not

[86] Order No. 2003 at P 694.

adopting Calpine's proposal because it would take away the tools needed by the Transmission Provider in an Emergency Condition when the safety and reliability of the Transmission System are at risk.

439. With respect to Calpine's alternative request that the Interconnection Customer should receive a capacity payment for making its generating capacity available during an Emergency Condition, Article 11.6.1 already provides that the Transmission Provider shall pay the Interconnection Customer for providing real power or other services during an Emergency Condition. Payment is to be made under the Interconnection Customer's rate schedule. Calpine may propose a charge for the real power and other services provided during an Emergency Condition when it files its rate schedule for such services.

440. Article 13.6—Emergencies—Interconnection Customer Authority—LGIA Article 13.6 discusses Interconnection Customer authority during Emergency Conditions to take actions consistent with Good Utility Practice.

Rehearing Requests

441. Central Maine and NYTO claim that it appears that the Commission intended to delete the following two sentences from the NOPR Article 13.6: ''Interconnection Customer shall not be obligated to follow Transmission Provider's instructions to the extent the instruction would have a material adverse impact on the safe and reliable operation of Interconnection Customer's Generating Facility. Upon request, Interconnection Customer shall provide Transmission Provider with documentation of any such alleged material adverse impact.'' They argue that the Transmission Provider must have the exclusive authority to provide directives and to ensure enforcement thereof in an Emergency Condition.

Commission Conclusion

442. Article 13.6 provides that the ''* * * Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to * * * (ii) preserve the reliability of the Large Generating Facility or Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage * * *.'' NERC proposed this language in its comments and the Commission adopted it in Order No. 2003. The Commission also intended to delete the two sentences that Central Maine and NYTO want removed, and we do so now on rehearing.

443. Article 14.1—Regulatory Requirements—LGIA Article 14.1 provides that a Party's obligation to perform under the LGIA begins only after any necessary governmental licenses or approvals are obtained. It also states that nothing in the interconnection agreement shall require the Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, special status or exemptions under the FPA or the Public Utility Holding Company Act (PUHCA) of 1935, as amended.

Rehearing Request

444. NYTO asks that the Commission amend Article 14.1 to state that if the Interconnection Customer's non-compliance with the interconnection agreement has a material and adverse effect on the Transmission Provider, they are to negotiate in good faith on an appropriate amendment to the interconnection agreement.

Commission Conclusion

445. NYTO gives no examples of the type of problem it envisions. If there is a serious problem caused by the Interconnection Customer's special status under PUHCA or the FPA and corresponding inability to abide by the interconnection agreement, the Parties are free to come to the Commission, explain the problem, and provide alternative language that would be consistent with or superior to the present Tariff language.

446. Finally, we note that the Commission inadvertently excluded the Public Utility Regulatory Policies Act of 1978 (PURPA) [87] from the referenced laws. We are revising Article 14.1 to reference PURPA.

447. Article 16—Force Majeure—LGIA Article 16 sets forth the conditions and procedures for declaring a Force Majeure event which excuses the Party declaring the Force Majeure event from performing its obligations under the LGIP and LGIA during the event. Economic hardship is not a Force Majeure.

Rehearing Request

448. NYTO states that Order No. 2003 allows an act of negligence or intentional wrongdoing committed by an entity other than the Party claiming Force Majeure to qualify as a Force Majeure event. It asks the Commission to incorporate this determination into Article 16, as well as the definitions in the LGIP and LGIA.

[87] *See* 16 U.S.C. 2601 *et seq.* (2000).

Commission Conclusion

449. We agree and are correcting the definition of ''Force Majeure;'' however, no change is needed in Article 16.1.

450. Article 17.1—Default—LGIA Article 17 allows a defaulting Party 30 days in which to cure (or to begin to cure) the Default after being notified by the non-defaulting Party that there is a problem. Article 17.1.1 also states that no Default shall exist where the Breach is caused by Force Majeure or an act or omission of the non-defaulting party. If the Default is not cured within the time allowed under Article 17.1.1, Article 17.1.2 sets forth the rights of the non-defaulting party, including, if it desires, termination of the interconnection agreement.

Rehearing Requests

451. Central Maine and NYTO point out that the term ''Default'' in Article 17 is inconsistent with the definitions of ''Default'' and ''Breach'' in Article 1. They request clarification that the sequence of events giving rise to termination under Article 17 is a ''Breach,'' which, if uncured, results in a ''Default,'' which may allow termination of the interconnection agreement.

Commission Conclusion

452. We agree and are amending Article 17.1 accordingly.

453. Article 18.2—Consequential Damages—LGIA Article 18.2 states that neither Party will be liable to the other for special, indirect, incidental, consequential, or punitive damages as a result of the interconnection agreement. It does, however, contain an exception for liquidated damages, which is discussed in section II.C—Article 5.3 (Liquidated Damages).

Rehearing Request

454. Central Maine requests that the Commission prohibit consequential damages from being paid as part of an indemnity claim. Central Maine suggests removing the portion of Article 18.2 that exempts indemnity payments from the general rule that no consequential damages are allowed under the LGIA.

Commission Conclusion

455. We reject Central Maine's request for rehearing. The indemnification of one Party by another must be comprehensive and must include any liability the indemnified Party faces as a result of the indemnifying Party's misdeeds. While Article 18.2 prevents one Party from seeking consequential damages against another Party, the purpose of the indemnification

provision is different; it protects the Party not at fault from liability to third parties (those who are not Parties to the interconnection agreement). Requiring the indemnifying Party to reimburse the indemnified Party only for, say, compensatory damages and not for punitive damages that may be assessed against the indemnified Party would weaken the LGIA's protections and shield the indemnifying Party from full liability.

456. Article 18.3—Insurance—LGIA Article 18.3 requires that each Party, at its own expense, maintain minimum insurance coverage as spelled out in Articles 18.3.1'18.3.9, or may self-insure subject to certain creditworthiness requirements.

Rehearing Requests

457. Southern argues that all Parties, even those that self-insure, should have to comply with the minimum insurance requirements in Articles 18.3.1–18.3.9.

458. NRECA–APPA requests that the Commission eliminate the requirement that the Transmission Provider maintain insurance coverage similar to that of the Interconnection Customer. It points out that many Transmission Providers already have coverage that exceeds the requirements of Article 18. In the alternative, the Commission should clarify that the Transmission Provider need not acquire additional insurance just to apply to the interconnection arrangement if it already has adequate coverage.

459. Avista requests that Parties to the interconnection agreement be permitted to negotiate alternative self-insurance arrangements and that the Commission remove the creditworthiness requirements for self-insurers. It notes that even in bankruptcy, a utility still can seek rate increases to cover its self-insurance obligations. Furthermore, mandating that the Interconnection Customer be entitled to ''named additional insured'' status on the utility's general liability policy could increase the cost of insurance. According to Avista, the number of Interconnection Customers potentially involved makes this requirement cumbersome and expensive. Avista also comments that it is not clear if the Commission intends that the other Party be entitled to ''additional insured'' status or ''named additional insured'' status. This may impose different standards under state law, particularly with respect to notice of cancellation. Avista finally notes that workers' compensation requirements vary significantly by state; the Commission should not attempt to federally preempt these long-standing practices. Some states require third party insurance and have systems and carriers for that statutory framework. In other states, such as Washington, self-insurance is the primary program, with varying requirements for administration. According to Avista, the interconnection agreement should simply require compliance by each Party with the applicable state workers compensation laws.

Commission Conclusion

460. We concur with Southern that self-insuring entities should be required to maintain the minimum insurance levels specified in Article 18, and we are modifying Article 18 accordingly. Additionally, we clarify that self-insuring Parties must follow the notification requirements of Article 18.3.9.

461. In response to NRECA-APPA's comment, we clarify that the Transmission Provider is not required to get additional insurance to cover the interconnection if its existing policies satisfy the requirements of Article 18.3.6 and if it complies with the notification requirements in Article 18.3.9.

462. We agree with Avista that the relevant state law should govern the amount of worker's compensation coverage the Parties are required to maintain. Therefore, we will modify Article 18.3.1 to remove the minimum insurance amounts.

463. Regarding whether the Transmission Provider is required to list the other Parties as an ''additional insured'' or as a ''named additional insured,'' we clarify that the other Party must be at least an ''additional insured.'' This will limit the administrative burden on the Parties while still adequately protecting them.

464. Finally, we reject Avista's request that self-insurance (except where otherwise allowed by stated law in Article 18.3.1) be allowed without meeting credit rating requirements. Many public utilities sell power under state, not federal, oversight, and there is no guarantee that a rate increase to cover increased insurance costs would be approved by a state commission in a timely manner. We conclude that the credit requirements are a reasonable safeguard that protects all Parties.

465. Article 19.1 ''Assignment '' LGIA Article 19.1 provides that the written consent of the non-assigning Party is ordinarily required to assign the interconnection agreement. However, the consent of the non-assigning Party is not required if the assignee is an Affiliate of the assignor and meets certain qualifications, such as a higher credit rating. No consent is required if the Interconnection Customer assigns the interconnection agreement for collateral security purposes to seek financing.

Rehearing Requests

466. Southern is concerned that an assignee of the Interconnection Customer would receive preferential treatment under Article 19.1. The Interconnection Customer's assignee may not be equipped to follow through on the LGIA. The LGIA should ensure that the assignee agrees to pay and perform all obligations of the Interconnection Customer under the LGIA, including providing letters of credit or other guarantees sufficient to protect the Transmission Provider to the same extent as the Interconnection Customer.

467. Additionally, Southern believes that the Interconnection Customer should not be allowed to assign the interconnection agreement to any person, including an Affiliate, without the consent of the Transmission Provider. This subjects the Transmission Provider to unnecessary risk. Among other things, assignment may undermine the Transmission Provider's billing and collection procedures and the ability of the Transmission Provider to collect under any outstanding guarantee or letter of credit. Southern also argues that the Interconnection Customer should not be able to assign the interconnection agreement for securitization purposes. It argues that this prevents the Transmission Provider from exercising any control over the assignment. Therefore, Southern requests that the Commission revise Article 19.1 to provide that the Interconnection Customer may not assign the interconnection agreement to any third party, including an Affiliate, for any purpose, including as collateral, without the written consent of the Transmission Provider.

468. Southern also states that the Interconnection Customer, not the assignee, should notify the Transmission Provider of the assignment. The ''secured party, trustee or mortgagee'' is not in contractual privity with the Transmission Provider, cannot be required to notify the Transmission Provider of the assignment, and may not be subject to Commission jurisdiction.

469. Additionally, Southern argues that it is unreasonable to allow the Interconnection Customer to assign the LGIA as collateral, subject only to very limited notice requirements, while not allowing the Transmission Provider to do the same.

Commission Conclusion

470. We agree with Southern that an entity exercising its assignment rights should be subject to the same security and insurance requirements as the original Interconnection Customer. While Article 19.1 already suggests that by requiring the entity exercising its right of assignment to ''step into the shoes'' of the assigning party, we are granting rehearing and modifying Article 19.1 to make this clear. The revised provision now requires that an assignee exercising its right of assignment notify the Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing the Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3.

471. We also agree with Southern that the Interconnection Customer, not the assignee, should inform the Transmission Provider of any assignment for collateral purposes and are amending Article 19.1 accordingly.

472. However, Southern's concern that an assignee may not be equipped to proceed with the interconnection is misplaced. Article 19.1 already requires that the assigned party have the ''legal authority and operational ability to satisfy the obligations of the assigning Party.'' Additionally, Article 19.1 specifies that assignment does not expand or relieve the obligations of either Party, which protects the Parties from potential abuse.

473. We disagree with Southern's assertion that the Interconnection Customer should be required to receive the written consent of the Transmission Provider before assigning the interconnection agreement to an Affiliate. The Transmission Provider is protected by the requirement that the Affiliate have a higher credit rating and the legal authority and operational abilities to meet its obligations under the agreement. If the Transmission Provider is concerned about the Affiliate's ability to meet these criteria, it may invoke Dispute Resolution.

474. We also deny Southern's request that the Interconnection Customer be required to receive the Transmission Provider's permission before it assigns the interconnection agreement for financing purposes. In many instances, the Interconnection Customer's rights under the interconnection agreement are one of its most valuable assets and it is appropriate to allow it to pledge that asset in order to secure funds without first seeking the approval of a non-independent Transmission Provider.

475. We also deny Southern's request that Transmission Providers also be given the right to collaterally assign the interconnection agreement without permission of the other Party. While the Interconnection Customer's ability to build a new Generating Facility is often dependent on its being able to raise substantial amounts of capital and to obtain outside financing, the Transmission Provider is not subject to similar constraints. Therefore, we are unwilling to make an exception in this instance from the general rule that a Party must seek permission of the other Party before assigning its rights under the LGIA.

476. Finally, we will not require an entity, exercising its right to assignment, to be responsible for debts of the assigning Party as Southern requests. The Transmission Provider already is protected against an Interconnection Customer's default by the security provisions of Article 11.5. Additionally, a Transmission Provider is not harmed by allowing the interconnection process to go forward with a new entity; either way, the new entity is responsible for any new debts, while the original Interconnection Customer is responsible for debts up until the right of assignment is exercised.

477. Article 21—Comparability—LGIA Article 21 requires that the Parties comply with all applicable comparability requirements and code of conduct laws, rules and regulations, as amended from time to time.

Rehearing Requests

478. Avista asserts that this provision is too broad and does not specify which jurisdiction's rules and regulation the Parties are required to follow. It states that ''code of conduct'' and ''comparability'' are not capitalized, but appear to be intended as a reference to a Commission requirement. Avista requests that this article refer to specific codes and rules. It further states that Parties should be given an opportunity to comment on the specific codes and rules proposed to be referenced.

Commission Conclusion

479. Article 21 simply requires that the Parties comply with all applicable laws, rules and regulations relating to comparability and code of conduct.

480. Article 22—Confidentiality—Article 22 describes what constitutes Confidential Information and the protection to be given such information when shared between the Parties. It sets forth procedures for the release of Confidential Information and guidelines about how Confidential Information should be treated when it is subject to a request from the Commission as part of an investigation. The information of the Parties is protected by this article provided the information is identified as Confidential Information.

Rehearing Requests

481. Avista asks that Article 22.1.10 allow either Party to provide information to state regulatory staffs without providing notice to the other Party. The utility should not have to obtain a legal opinion as to whether state regulatory staff has the right to receive the same information that Commission staff may obtain to provide the information under other confidentiality provisions of the LGIA.

482. Central Maine and NYTO request clarification that all information asserted or deemed to be confidential under the LGIA will be treated under Article 22. They also seek clarification that the Commission intends to treat the Parties' Confidential Information the same rather than to give more protection to the Interconnection Customer's Confidential Information.

483. Central Maine is also concerned about Article 6.4, which states that ''[a]ny information a Transmission Provider obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be confidential hereunder.'' Given that Article 22 governs confidentiality, Central Maine maintains that information ''asserted by the Interconnection Customer'' to be confidential, under various sections of the LGIA, should instead be deemed ''Confidential Information'' per Article 22. Furthermore, to prevent disparate treatment, any Transmission Owner or Transmission Provider information obtained through the exercise of a right under the LGIA must be treated as ''Confidential Information'' under Article 22.

484. NYTO and Southern argue that Articles 22.1.11 and 22.1.12 are redundant and should be deleted to avoid confusion, since most of the terms are covered elsewhere in Article 22.

485. Southern states that Section 22.1.3 should allow the Transmission Provider to disclose information to an Affiliate and subcontractors, employees, and consultants on a need-to-know basis, if they agree to be bound by confidentiality requirements. These entities are essential to interconnection work.

Commission Conclusion

486. In response to Avista's request, we clarify that, if state regulators have the authority to request Confidential Information, the exception in Article 22.1.11 permits disclosure. But Article 22.1.11, unlike Article 22.1.10, requires either Party to notify the other once it

receives a request for Confidential Information. If a state is conducting an investigation, it should be able to request information from one Party without that Party notifying the other. We are revising Articles 22.1.10 and Article 22.1.11 accordingly. We also agree with Central Maine that all information asserted to be Confidential Information should be treated per Article 22. To this end, we are also removing the discussion of confidentiality from Article 3.1.

487. We likewise are revising Article 6.4, as Central Maine requests, to clarify that the information obtained by exercising the rights under Article 6.4 is Confidential Information under Article 22. We are not amending the provision to expressly include ''Transmission Owners,'' since the definition of Transmission Provider includes the Transmission Owner.

488. Article 22.1.11, while it contains some provisions that are repeated elsewhere within Article 22, also provides a list of exceptions to the confidentiality rules that do not appear elsewhere in Article 22. For this reason, Article 22.1.11 shall remain in the LGIA. As for Article 22.1.12, we agree with NYTO that it is redundant because Article 22.1.2 covers the same exception and are therefore deleting Article 22.1.12.

489. We are also making conforming changes to Section 13.1 of the LGIP.

490. Finally, we are granting Southern's request and are revising Article 22.1.3 to allow the Transmission Provider to share Confidential Information with an Affiliate and subcontractors, employees, and consultants under Article 22.1.3 on a need-to-know basis. We are also clarifying that this extension of rights to Affiliates is limited by the Standards of Conduct to information necessary to effect the interconnection.

491. Article 25.3 ''Audit Rights '' LGIA Article 25 provides that each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under the interconnection agreement.

Rehearing Requests

492. NYTO and Central Maine argue that the auditing Party should be responsible for the costs incurred to supervise and cooperate with the audit.

493. NYTO and Central Maine also request that certain limitations, such as the number of audits allowed per year and the duration of each audit, be added to the provision. Central Maine proposes that the following new provision be added as Article 25.4.3:

> Audit Parameters—The Party seeking to audit pursuant to section 25.4 (the ''Auditing Party'') shall provide the other Party fifteen (15) days prior written notice of a request to audit. Any data collection for such audit shall be performed continuously until complete and the Auditing Party shall utilize commercially reasonable efforts to complete the data collection for such audit within thirty (30) days, however, in no event shall any data collection for such audit continue for more that sixty (60) days. Each Party reserves the right to assess a reasonable fee to compensate for the use of its personnel in assisting any inspection or audit of its books, records or accounts by the Auditing Party.

Commission Conclusion

494. We deny Central Maine's and NYTO's requests. Article 25.3 clearly states that the Party requesting the audit is responsible for the audit costs. Given that the Party requesting the audit has to pay for it, we are not convinced that audit limitations are necessary.

495. Article 29—Joint Operating Committee—LGIA Article 29 requires the Transmission Provider to establish a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service for all of its Interconnection Customers. It also requires that any decisions or agreements made by the Joint Operating Committee shall be in writing.

Rehearing Request

496. California Parties states that the duties of the Joint Operating Committee are unclear. P 523 of Order No. 2003 states that the Parties are expected to comply with the procedures established by the Joint Operating Committee. But, the list of prescribed duties in Articles 29.1.1—29.1.6 does not include the adoption of detailed technical and operational requirements. California Parties is concerned that the Joint Operating Committee, rather than the Transmission Provider, may be establishing the interconnection requirements.

Commission Conclusion

497. California Parties misunderstands the purpose of the Joint Operating Committee, which is to provide an opportunity for Interconnection Customers to discuss practical difficulties faced by them in implementing the technical and operational requirements of the Transmission Provider and to seek resolution of those matters. The duties of the Joint Operating Committee are clearly laid out in Articles 29.1.1—29.1.6. They do not include the adoption of detailed technical and operational requirements for interconnection.

D. Other Significant Policy Issues

1. Interconnection Products and Scope of Service

498. The LGIA provides for two Interconnection Service products from which the Interconnection Customer may choose: Energy Resource Interconnection Service, which is a basic or minimal Interconnection Service, and Network Resource Interconnection Service, which is a more flexible and comprehensive Interconnection Service. Neither is for the delivery component of Transmission Service, and neither requires the Interconnection Customer to identify a specific buyer (or sink) until it seeks to obtain delivery service under the Transmission Provider's OATT. LGIA Article 4 (Scope of Service) defines these products and sets forth specific Interconnection Study requirements for each. This article also describes the relationship between delivery service and Interconnection Services, as well as the rights and responsibilities that each Interconnection Service entails. In addition, LGIP Section 3.2 sets forth the procedure that the Interconnection Customer must use to select an Interconnection Service. In particular, the Interconnection Customer requesting Network Resource Interconnection Service may also request that it be concurrently studied for Energy Resource Interconnection Service, up to the point when an Interconnection Facility Study Agreement is executed. The Interconnection Customer may then elect to proceed with Network Resource Interconnection Service or with a lower level of Interconnection Service (under which only certain upgrades will be completed).

499. Energy Resource Interconnection Service allows the Interconnection Customer to connect the Generating Facility to the Transmission System and be eligible to deliver its output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. In an area with a bid-based energy market, Energy Resource Interconnection Service allows the Interconnection Customer to place a bid to sell into the market where the Generating Facility would be dispatched if the bid is accepted. No customer specific transmission delivery service is assured, but the Interconnection Customer may obtain point to point Transmission Service or gain access to secondary network Transmission

Service, under the Transmission Provider's OATT. Firm Point to Point Transmission Service may require the construction of additional upgrades. The Interconnection Studies to be performed for Energy Resource Interconnection Service must identify the Interconnection Facilities required as well as the Network Upgrades needed to allow the Generating Facility to operate at full output. In addition, the Interconnection Studies must identify the maximum allowed output of the Generating Facility without Network Upgrades.

500. In contrast, Network Resource Interconnection Service is much broader. It requires the Transmission Provider to undertake the Interconnection Studies and Network Upgrades needed to integrate the Generating Facility into the Transmission System in a manner comparable to that in which the Transmission Provider integrates its own generating facilities to serve native load customers. If the Transmission Provider is an RTO or ISO with market-based congestion management, it must integrate the Generating Facility as if it were a Network Resource. The Transmission Provider must study the Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with the Transmission Provider's reliability criteria and procedures. Under this approach, the Transmission Provider must assume that some portion of the capacity of existing Network Resources is displaced by the output of the new Generating Facility. However, Network Resource Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Generating Facility to any particular load without incurring congestion costs. Nor does Network Resource Interconnection Service convey a right to deliver the output of the Generating Facility to any particular customer.[88]

501. Under Network Resource Interconnection Service, the Transmission Provider builds all the Network Upgrades needed to allow the Interconnection Customer to designate the Generating Facility as a Network Resource and obtain Network Integration Transmission Service. Thus, once the Interconnection Customer has obtained Network Resource Interconnection Service, requests for Network Integration Transmission Service from the Generating Facility to points inside the Transmission Provider's Transmission System will not require additional Interconnection Studies or additional upgrades.

502. Under Network Resource Interconnection Service, requests for long-term Transmission Service for delivery service to points outside the Transmission Provider's Transmission System may require additional studies and upgrades. Also, requests for delivery service inside the Transmission Provider's Transmission System may require additional studies and upgrades if the latter are necessary to reduce congestion to acceptable levels. Network Resource Interconnection Service allows the Generating Facility to provide Ancillary Services. However, if the Generating Facility has not been designated as a Network Resource by any load, it is not required to provide Ancillary Services under this rule (although it may be by other requirements) unless all generating facilities that are similarly situated are required to provide them. Also, should the Transmission System become congested, the Generating Facility is subject to non-discriminatory congestion management procedures.

503. LGIA Article 4.3 provides for generator balancing service arrangements. We address requests for rehearing on this article in section II.D.2.k (Interconnection Pricing Policy—Generator Balancing Service Arrangements).

Rehearing Requests

a. Requests To Clarify or Eliminate Network Resource Interconnection Service

504. A number of petitioners state that Network Resource Interconnection Service is confusing and that the Commission should either clarify the nature of this service or eliminate it altogether.[89] The Georgia PSC contends that the Commission should clearly identify the rights that the Interconnection Customer receives with Network Resource Interconnection Service. Entergy complains that Order No. 2003 provides virtually no guidance as to how the Transmission Provider is to evaluate a Network Resource Interconnection Service request. EEI recommends that the Commission clarify the Interconnection Customer's rights when it takes Network Resource Interconnection Service and the obligations that the service imposes on the Transmission Provider. Southern claims that because Network Resource Interconnection Service is so unclear and contains numerous inconsistencies, it may be impossible for the Transmission Provider to know how to plan the Transmission System reliably to provide this service and still be assured that it is complying with the requirements of Order No. 2003.[90] Furthermore, Southern and the Mississippi PSC contend that the inconsistencies in the Network Resource Interconnection Service requirements violate due process. Southern argues that the inconsistencies violate the Administrative Procedure Act and will lead to numerous disputes with Interconnection Customers that have differing interpretations of Network Resource Interconnection Service.

505. Georgia Transmission and Southern argue that Network Resource Interconnection Service undermines rational system planning. Southern claims that, because Network Resource Interconnection Service requires upgrades to be constructed before the designation of the Generating Facility as a Network Resource, the valuable economic analysis of whether the Generating Facility, including the required transmission upgrades, is a prudent option would essentially be eliminated. This will lead to inefficient siting of new generation and transmission upgrades. Georgia Transmission interprets Order No. 2003 as requiring the Transmission Provider to expand its Transmission System so that the Generating Facility has sufficient capacity to perform as a Network Resource while maintaining the reliability of the Transmission System, while not requiring a demonstration of need by customers for the additional facilities.

Commission Conclusion

506. We are not eliminating Network Resource Interconnection Service. Although the minimal Energy Resource Interconnection Service meets the needs of many Interconnection Customers, the more comprehensive Network Resource

[88] However, as discussed more fully below, when an Interconnection customer wants to deliver the output of the Generating Facility to a particular load (or set of loads), it may simultaneously request Network Interconnection Transmission Service under the OATT.

[89] *E.g.,* Alabama PSC, EEI, Entergy, Georgia PSC, Mississippi PSC, Southern, and TAPS.

[90] The inconsistencies that Southern refers to are in language in Order No. 2003 that, according to Southern, can be interpreted as contradicting the Commission's statements that Network Resource Interconnection Service does not provide the Interconnection Customer with a reservation of transmission capacity. Requests for rehearing or clarification of matters concerning the capacity reservation issue and other delivery service implications of Energy Resource Interconnection Service and Network Resource Interconnection Service are discussed below.

Interconnection Service is also needed to provide the Interconnection Customer with the quality of transmission access needed to compete in the energy marketplace. This is especially important in markets that continue to be dominated by a Transmission Provider that has a vested interest in market outcomes.

507. We disagree that Network Resource Interconnection Service undermines rational system planning. It is true that requiring the Transmission Provider to provide Network Resource Interconnection Service to any Interconnection Customer that requests it could result in a different pattern of generation and transmission investments than would occur under a traditional process by which a vertically integrated utility plans both generation and transmission expansions simultaneously. However, in the long run, customers are more likely to experience lower overall costs if the industry relies on robust wholesale competition to determine the appropriate level of generation and related transmission development than if it continues to rely on traditional integrated planning processes. That is, we fully expect the benefits of robust competition in wholesale generation to outweigh any short-term inefficiencies in the siting of new facilities that may result from the movement away from traditional planning approaches.

508. We are nevertheless concerned that a number of petitioners believe that the description of Network Resource Interconnection Service in Order No. 2003 is unclear or that the service contains inconsistencies. Obviously, Order No. 2003 cannot achieve its purposes unless all market participants are able to understand the Interconnection Services that the rule prescribes. Therefore, to eliminate confusion and uncertainty, we provide several clarifications as discussed below.

b. Delivery Service Implications of Energy Resource Interconnection Service and Network Resource Interconnection Service

509. Several petitioners argue that Energy Resource Interconnection Service and Network Resource Interconnection Service, as they are defined in Order No. 2003, effectively reserve delivery service for the Interconnection Customer, even though Order No. 2003 says that Interconnection Service does not include transmission delivery service.[91] They ask the Commission to either remove the elements of delivery service from Interconnection Service or to require the Interconnection Customer to pay a reservation fee. For example, Ameren notes that Interconnection Service is defined in Order No. 2003 as a service that enables the Transmission Provider to ''receive electric energy and capacity from the Generating Facility at the Point of Interconnection.'' It contends that allowable Generating Facility output and upgrades related to output are not relevant to Interconnection Service and that Interconnection Service should not require the Transmission Provider to receive the output of the Generating Facility. The North Carolina Commission states that, if Interconnection Service does not include delivery service, then it is not clear that Interconnection Service is within the Commission's jurisdiction.

510. PacifiCorp argues that, if the Transmission Provider must define the maximum amount of power that can be delivered on an ''as available'' basis without Network Upgrades (beyond the Point of Interconnection), as well as the Network Upgrades for full delivery of the Generating Facility output, the Interconnection Customer should be required to identify one delivery point for the power delivery. The Commission should also require the customer to identify delivery parameters to be used for these studies. PacifiCorp contends that Network Upgrades, except modifications at the Point of Interconnection itself, should not be assigned to the Energy Resource Interconnection Service Interconnection Customer, since deliveries that occur only on an ''as-available'' basis will not affect the Transmission System. It also asks the Commission to clarify whether Network Upgrades for Energy Resource Interconnection Service should include only upgrades at the Point of Interconnection, for purposes of the Interconnection Feasibility and Interconnection System Impact Studies. Alternatively, the Commission should set forth procedures or guidance for determining the costs necessary to implement Energy Resource Interconnection Service.

511. EEI, the Mississippi PSC, and Southern state that, because Order No. 2003 assumes that a Generating Facility with Network Resource Interconnection Service will be designated as a Network Resource, a transmission reservation is also necessary so that service can be taken from the Generating Facility if it is ever so designated. Southern and EEI say that the Commission's assertions that Network Resource Interconnection Service does not provide a transmission capacity reservation are inconsistent with the language of LGIA Article 4.1.2.2, which strongly indicates that a reservation is required. In addition, Southern asserts that the Commission previously had required the ''socialization'' only of facilities required for interconnection. With Network Resource Interconnection Service, however, the required upgrades could be quite costly because, Southern claims, they are needed also to ensure the delivery of the Generating Facility's output.

512. Progress Energy believes that an Interconnection Customer taking Network Resource Interconnection Service should pay a fee for reserved, but unused, transmission capacity until the Interconnection Customer is designated as a Network Resource by a native load or Network Customer.

513. FP&L states that the general industry understanding of what it means to study and construct transmission facilities necessary to ''integrate'' generation is that the Generating Facility has firm delivery service to the load. It claims that, without clarification, that understood usage conflicts with the statement that ''Network Resource Interconnection Service in and of itself does not convey any transmission delivery service.''

514. Georgia Transmission claims that when the Interconnection Customer requests Network Resource Interconnection Service, upgrades must be built for Network Integration Transmission Service and that the Transmission Provider must then reserve that capacity for the benefit of the Interconnection Customer, to be called upon at a future time, if ever. Therefore, Network Resource Interconnection Service provides the Interconnection Customer with delivery rights that properly belong to customers. The fact that the Interconnection Customer is not using those delivery rights because it has not yet executed a Network Integration Transmission Service agreement or been designated by a Network Customer as a Network Resource elevates form over substance. Georgia Transmission also seeks clarification of the Commission's statement that capacity created by Network Upgrades constructed to meet the Interconnection Customer's Network Resource Interconnection Service request will be available for use by all customers on an ''equal basis.'' Because Network Resource Interconnection Service gives the Interconnection

[91] *E.g.,* Alabama PSC, Ameren, EEI, Entergy, FP&L, Georgia PSC, Georgia Transmission, Mississippi PSC, North Carolina Commission, PacifiCorp, Progress Energy, and Southern.

Customer the right to have the Generating Facility designated as a Network Resource and obtain Network Integration Transmission Service, other customers on the Transmission System would be able to use that capacity only on a non-firm basis, unless additional upgrades are made.

Commission Conclusion

515. LGIP sections 3.2.1.1 (regarding Energy Resource Interconnection Service) and 3.2.2.2 (regarding Network Resource Interconnection Service) state that these Interconnection Services do not in and of themselves convey any right to the delivery component of Transmission Service. LGIA Article 4.4 (formerly Article 4.5) says the same.

516. Some petitioners argue that in spite of this clear language, Interconnection Services do provide for transmission delivery service. We do agree that Energy Resource Interconnection Service and Network Resource Interconnection Service both provide the Interconnection Customer with the technical capability to inject the output of the Generating Facility onto the Transmission System at the Point of Interconnection, and Network Resource Interconnection Service makes it possible for the Generating Facility to be designated as a Network Resource. Thus, both services include a capability to move power onto the system. However, actual delivery service, which is provided as Point to Point Transmission Service or Network Integration Transmission Service under the OATT, requires the Transmission Customer to specify one or more Points of Delivery on the Transmission System at which the injected output will be withdrawn. Because the Interconnection Services do not provide the Interconnection Customer with the right to withdraw power at any particular Point of Delivery, they are not delivery services, per se. To eliminate confusion on this point, we are amending the LGIP and LGIA language cited above to state that Energy Resource Interconnection Service and Network Resource Interconnection Service do not ''convey any right to deliver electricity to any specific customer or Point of Delivery.''

517. We recognize that, to provide these Interconnection Services, the Transmission Provider often must construct Network Upgrades to provide the Transmission System with the capacity to receive the output of the Generating Facility.[92] Including this capability with Interconnection Services is appropriate because it allows the Interconnection Customer to obtain a minimal capability of delivery service under the Transmission Provider's OATT without the need to construct additional upgrades. The Interconnection Customer must arrange separately for delivery service. Once the Interconnection Customer has made the necessary arrangements, including the designation of a point or points of delivery, the Transmission Provider may charge a delivery service reservation fee. However, we will not allow the Transmission Provider to charge an additional reservation fee for the limited delivery capability that is included with the Interconnection Services.

518. Finally, Georgia Transmission seeks clarification of the statement in Order No. 2003 that the capacity created by Network Upgrades constructed to meet a Network Resource Interconnection Service request will be available for use by all customers on an ''equal basis.'' This statement means that all customers must have equal access to any available (*i.e.*, unused) capacity on the Transmission System for the period during which that capacity is available.

c. Conflicts With Network Integration Transmission Service

519. Several petitioners contend that Network Resource Interconnection Service conflicts with the requirements of Network Integration Transmission Service under the OATT, or that it provides the Interconnection Customer with a service that is superior to that which the Transmission Provider provides for its own generating facilities.[93] Ameren and Entergy note that a generating facility that is designated as a Network Resource is modeled to serve only the load that has designated it for the provision of Network Integration Transmission Service. They argue that Network Resource Interconnection Service may require the Interconnection Customer to be modeled and interconnected as if it is serving any, or all, load within a particular Control Area at any given time. Ameren asks the Commission to require the Interconnection Customer to designate the load it will serve and to separately obtain Transmission Service to such load. PacifiCorp asks that the Interconnection Request require an applicant for Network Resource Interconnection Service to indicate on the Interconnection Request which network load its resource should be assumed to serve. PacifiCorp claims that it has a number of Network Customers that are dispersed across a broad geographic territory, and that study assumptions may change depending on which of those Network Customers the resource intends to serve. It states that without information on the load delivery parameters for the study, Interconnection Feasibility and Interconnection System Impact studies cannot begin.

520. Entergy notes that Network Resource Interconnection Service does not require the Interconnection Customer to serve the Transmission Provider's native load and does not require the Generating Facility to be designated as a Network Resource by any Network Customer. Network Resource Interconnection Service creates interconnection rights that are superior to any Transmission Service under the OATT. Entergy asks that Network Resource Interconnection Service be made comparable with existing Transmission Services or delayed until a market structure that includes locational marginal pricing, financial transmission rights, and participant funding is in place. Similarly, Southern argues that a merchant Generating Facility that has not been designated by any Network Customer is not similarly situated to the Transmission Provider's (or any other) Network Resources. Designated Network Resources and generating facilities which are not Network Resources should be subject to different requirements (which are already in the OATT). Southern also claims that an Interconnection Customer taking Network Resource Interconnection Service receives an unfair advantage under LGIA Article 4.1.2.2. Under that provision, if the Interconnection Customer taking Network Resource Interconnection Service has not been designated as a Network Resource, it is not required to provide Ancillary Services, whereas other Network Resources are.

521. Some petitioners are concerned that Network Resource Interconnection Service does not necessarily provide the capability to deliver the output of the Generating Facility to any particular network load on the Transmission System without incurring congestion costs.[94] Georgia Transmission claims that Network Resource Interconnection Service allows the Generating Facility to

[92] Because these Network Upgrades may be required anywhere on the Transmission System, we deny PacifiCorp's request for clarification that Network Upgrades for Energy Resource Interconnection Service should include only transmission modifications at the Point of Interconnection.

[93] *E.g.,* Alabama PSC, Ameren, Entergy, Georgia Transmission, PacifiCorp, Southern, and TAPS.

[94] *E.g.,* Alabama PSC, Georgia Transmission, Mississippi PSC, and TAPS.

create congestion on the Transmission System that is then ''socialized'' to the detriment of existing customers, either through Transmission Line Loading Relief (TLR), which can endanger reliability of service, or through congestion charges. Georgia Transmission states that Network Resource Interconnection Service leaves other transmission customers with the choice of either (1) paying for expansion of the Transmission System so that the Generating Facility can sell power to any customer anywhere in the Transmission Provider's service area without congestion, or (2) paying congestion charges caused by the addition of the new Generating Facility to the system without Network Upgrades. It claims that this approach is discriminatory.

522. The Alabama PSC notes that the OATT does not include an LMP-based congestion management system and that redispatch costs are borne pro rata on the basis of load by the Transmission Provider and its Network Customers. It and the Mississippi PSC argue that Network Resource Interconnection Service forces all of a Transmission Provider's customers to subsidize a Generating Facility that is designated as a Network Resource. The Alabama PSC states that this violates basic principles of cost causation, the Energy Policy Act of 1992 (''EPAct'') [95], and the Commission's Transmission Pricing Policy Statement. If Network Resource Interconnection Service requires the imposition of congestion or redispatch costs in lieu of building upgrades, the Commission must clarify that in a non-LMP system, the Transmission Provider may directly assign such costs to the Interconnection Customer or Network Customer.

523. TAPS claims that Order No. 2003 improperly eliminates the OATT's specific deliverability requirement for Network Integration Transmission Service, allowing a Generating Facility that satisfies only an aggregate deliverability test to pre-qualify for designation as a Network Resource by any network load, while exposing load serving entities to crushing congestion charges. TAPS states that Order No. 2003 undermines the delivered price certainty that load serving entities need to (1) finance the new generation essential to making Standard Market Design work, and (2) allow load serving entities to continue to provide reliable, affordable service to their customers. Order No. 2003 would substitute congestion management procedures for meaningful resource and transmission planning, and encourage market participants and Transmission Providers to abdicate responsibility for assuring that resources can be reliably delivered to loads. TAPS asks that the Interconnection Service products, particularly Network Resource Interconnection Service, be defined so that they are compatible with a model in which a load serving entity can designate Network Resources much as it does under OATT Network Integration Transmission Service.

524. TAPS continues that Order No. 2003's ''aggregate'' deliverability test for qualifying for Network Resource Interconnection Service unduly favors market participants with the largest loads, such as large investor-owned utilities. Where a single load serving entity is the vast majority of load, TAPS interprets the test as requiring all new generating facilities seeking Network Resource status to satisfy the existing OATT standard for Network Resource designation by the dominant load serving entity. For example, a transmission dependent utility that builds a Generating Facility to serve its loads might be required to fund Network Upgrades to deliver the output of the Generating Facility to the surrounding investor-owned utility in order for the transmission dependent utility to designate the Generating Facility as a Network Resource, even if those upgrades are not necessary to assure firm delivery to the transmission dependent utility's loads. With Network Resource Interconnection Service, the transmission dependent utility could face (1) a requirement that it fund the Network Upgrades necessary to deliver the output of the Generating Facility to the loads of the surrounding investor-owned utility, and (2) hefty congestion charges (or perhaps the requirement that it fund additional, entirely different upgrades) to deliver the output of the Generating Facility to its loads.

525. TAPS claims that Network Resource Interconnection Service appears to be modeled on the ''Capacity Resource'' concept developed by PJM to determine whether the Generating Facility can be used to meet the PJM capacity obligations of load serving entities and to participate in the PJM capacity credit and Ancillary Service markets. TAPS states that PJM imposes a two part deliverability requirement on generating facilities that seek capacity resource status. First, energy must be deliverable from the aggregate of resources available to the Control Area to load in portions of the Control Area experiencing a localized capacity or deficiency. Second, capacity resources within a given electrical area must, in aggregate, be exportable to other areas of the Control Area within some bounds that separate the reliability requirements of the Control Area from the reasonable economic function of the marketplace. TAPS argues that this standard does not assure the ability of a capacity resource to deliver non-interruptible service to any particular network load. It believes that an additional form of Interconnection Service beyond Energy Resource Interconnection Service may have value, but this service would be different from Network Resource Interconnection Service. Although TAPS believes that PJM's deliverability standard could provide one such approach, it recommends that the Commission not lock in a capacity resource market framework in this proceeding. Further, TAPS argues that such a capacity resource Interconnection Service should not be called ''Network Resource Interconnection Service'' and should not override the OATT process for designation of Network Resources.

526. In summary, TAPS states that the Commission should modify Order No. 2003 either to eliminate Network Resource Interconnection Service, restrict its role (*e.g.*, ''pre-qualifying'' generating facilities to be capacity resources under a PJM-type capacity market), or define it in a manner that is friendly to load serving entities consistent with proposals TAPS has made in the Standard Market Design proceeding, so that it does not undermine the delivered price certainty that TAPS says is needed to make Standard Market Design work for customers.

527. Some petitioners, including FP&L, PacifiCorp, and Southern, offer interpretations of how Network Resource Interconnection Service should be implemented, and ask the Commission to clarify which, if any, of the possible interpretations is correct. For example, Southern proposes that Network Resource Interconnection Service be implemented based on three different assumptions: (1) That no ongoing reservation is provided (at least not until the Generating Facility is actually designated as a Network Resource), but that studies and upgrades can be performed if the Generating Facility is actually designated as a Network Resource, and that instead of charging the Interconnection Customer for such studies and upgrades, the Network Customer bears any such charges, (2) that no ongoing transmission reservation is provided and, once the Generating Facility is designated as a Network Resource,

[95] Energy Policy Act of 1992 (EPAct) section 722 (codified at 16 U.S.C. 824k(a)).

whatever inefficiencies that result are treated as redispatch/congestion costs or through Curtailment, which can be directly assigned to the Interconnection Customer or the Network Customer, or (3) that Network Resource Interconnection Service really does provide a reservation of transmission capacity, which would require the Interconnection Customer to pay a charge.

528. FP&L states that outside a centrally dispatched RTO or ISO, one interpretation of LGIA Article 4.1.2.2 is that the Generating Facility must be studied so it may be designated at its full output by any Network Customer under the Transmission Provider's OATT. For example, assume that the Generating Facility is rated at 900 MW and there are three possible Network Customers, A, B, and C, with loads at three different locations. FP&L asks whether the Commission intends for the Transmission Provider to build sufficient transmission facilities so that any of the three Network Customers may designate all 900 MW, or whether the Transmission Provider should wait until one of the three Network Customers has designated all or a portion of the Generating Facility as a Network Resource and then build the transmission facilities necessary to provide firm network service from the Generating Facility to that Network Customer. This creates a quandary because, under the Network Service (delivery service) part of the OATT, multiple Network Customers cannot designate the same Generating Facility as a Network Resource for its full output, and thus cannot request the Transmission Provider to construct overlapping and unnecessary Network Upgrades. Instead of the Transmission Provider planning the Transmission System for the possibility of integrating 900 MW three times to three different Network Customer's loads, FP&L asks the Commission to clarify that the Transmission Provider should plan to integrate only 900 MW in the aggregate to the sum of the loads at A, B, and C.

529. FP&L proposes two ways to accomplish this. First, the Interconnection Customer could request specific amounts of output to go to each Network Customer load of A, B, and C (*e.g.,* 300 MW to each load) for a total of 900 MW. Second, the Commission could clarify that the Transmission Provider is required to study the Interconnection Customer's Generating Facility as if it would be designated for any Network Customer, but the Transmission Provider will do a final study only after a specific Network Customer has, under the OATT, designated the Generating Facility as a Network Resource (for delivery service) and will construct only those Network Upgrades that result from this final study. FP&L states that it does not have a preference regarding which solution the Commission selects, but unless one is chosen, it is unclear how a Transmission Provider not in a centrally dispatched RTO or ISO is to model the Network Resource Interconnection Service study required in LGIA Articles 4.1.2.1 (2) and 4.1.2.2. FL&L further requests clarification that the study under LGIA Article 4.1.2.1(2) is appropriate only for an RTO or ISO that centrally dispatches Network Resources to an aggregate network load.

Commission Conclusion

530. Petitioners raise a number of important questions about the relationship between Network Resource Interconnection Service and Network Integration Transmission Service. Some believe that Network Resource Interconnection Service is incompatible with Network Integration Transmission Service or that it provides the Interconnection Customer with a service that is superior to that which the Transmission Provider provides for its own generating facilities, or those of an Affiliate. Others object to the fact that Network Resource Interconnection Service does not ensure that the output of the Generating Facility can be delivered to a network load without incurring congestion costs. Some, including TAPS and Georgia Transmission, may have misconstrued Network Resource Interconnection Service as a replacement for Network Integration Transmission Service under the OATT.

531. We first clarify the study requirements for Network Resource Interconnection Service. The purpose of Network Resource Interconnection Service is to provide for only those Network Upgrades needed to allow the aggregate of generation in the Generating Facility's local area to be delivered to the aggregate of load on the Transmission Provider's Transmission System, consistent with the Transmission Provider's reliability criteria and procedures. Network Resource Interconnection Service does not ensure physical delivery to specific loads or locations, and it does not provide delivery service rights to specific loads or locations. TAPS is correct that Network Resource Interconnection Service is similar to the procedures used by PJM and other ISOs to identify the Network Upgrades that are needed for the Generating Facility to qualify as a ''capacity resource.'' Network Resource Interconnection Service ensures that the Generating Facility, as well as other generating facilities in the same electrical area, can be operated simultaneously at peak load and that any output produced above peak load requirements can be transmitted to other electrical areas within the Transmission Provider's Transmission System. Thus, Network Resource Interconnection Service ensures that the output of the Generating Facility will not be ''bottled up'' during peak load conditions.

532. We recognize that not all Transmission Providers apply the same procedures or reliability criteria in their studies to ensure that the aggregate of generation in any particular area can be delivered to the aggregate of load, and we do not intend to require any Transmission Provider to use a procedure that is not compatible with accepted regional practice. Therefore, subject to Commission approval under the ''consistent with or superior to'' standard, each Transmission Provider may tailor Network Resource Interconnection Service by adopting reasonable procedures and criteria that are generally accepted in the region and consistently adhered to by the Transmission Provider. Accordingly, each Transmission Provider must include in a subsequent compliance filing a general description and justification of its proposed approach to Network Resource Interconnection Service.

533. In response to TAPS and Georgia Transmission, we clarify that Network Resource Interconnection Service (which is an Interconnection Service) is not a replacement for Network Integration Transmission Service (which is a delivery service). Although LGIP section 3.2.2.1 states that Network Resource Interconnection Service allows the Generating Facility to be designated as a Network Resource ''on the same basis as all other Network Resources interconnected to the Transmission Provider's Transmission System,'' our intent is merely to establish general requirements for Network Resource Interconnection Service, not to ensure physical delivery to specific network loads. Although Network Resource Interconnection Service may allow the Generating Facility to serve some loads without redispatching other generators or incurring congestion costs, it does not ensure that any particular Network Customer can designate the Generating Facility as a Network Resource and use the output of that Generating Facility to serve a particular Network Load without incurring congestion (or redispatch) costs. The Interconnection Customer or

Network Customer seeking to designate the Generating Facility as a Network Resource must do so under the requirements for Network Integration Transmission Service under the OATT. In response to the Alabama PSC, we clarify that we will consider proposals to allocate redispatch costs among Network Customers on a basis other than *pro rata* provided the proposal is shown to be just and reasonable and non-discriminatory.

534. In response to TAPS's concern that the Interconnection Customer may be required to fund Network Upgrades that allow the Generating Facility to serve loads other than those that the Network Customer wishes to serve, we note first that LGIP Section 3.2 makes it possible for the Interconnection Customer to obtain Network Integration Transmission Service without having to fund all of the Network Upgrades needed for full Network Resource Interconnection Service. This section provides that an Interconnection Customer that elects to be studied for Network Resource Interconnection Service has the option also to be studied for Energy Resource Interconnection Service and proceed with Network Resource Interconnection Service or a lower level Interconnection Service whereby only certain Network Upgrades will be completed. This option thus allows the Interconnection Customer to avoid having to fund Network Upgrades that it does not need. We emphasize, however, that the Interconnection Customer that declines to fund certain Network Upgrades should understand that this action may limit its opportunity to be designated in the future as a Network Resource for certain network loads.

535. As a further clarification, we emphasize that this rule should not be construed as taking away any option that a Network Customer, or any other Transmission Customer, now has with respect to interconnecting a new Generating Facility and obtaining firm transmission service to load. Although obtaining Interconnection Service under this rule and obtaining transmission delivery service under the OATT is a two-step process, the Interconnection Customer has every right to request the two services at the same time, just as it did in the past. For example, a Network Customer that does not need all of the features of Network Resource Interconnection Service may determine that the most economical and practical approach to interconnecting a new Network Resource is to request Energy Resource Interconnection Service and at the same time request Network Integration Transmission Service under the Transmission Provider's OATT. This process would be completely analogous to the approach that a Network Customer now uses when it constructs a new Network Resource to serve its Network Load. The fact that Energy Resource Interconnection Service, by itself, allows access to the existing capacity of the Transmission System only on an ''as available'' basis should be of no concern to the Network Customer. The Network Customer can simultaneously obtain firm deliverability to its Network Loads by requesting the Transmission Provider to construct, under the terms of the Network Integration Transmission Service provisions of the OATT, any additional upgrades that may be necessary to ensure deliverability of the Network Resource to serve Network Load.

536. Entergy, Southern and others claim that, because Network Resource Interconnection Service does not require the Interconnection Customer to serve native load or to have the Generating Facility designated as a Network Resource, Network Resource Interconnection Service is superior to other services under the OATT. This comparison to existing services is not appropriate. First, prior to Order No. 2003, the OATT did not include specific provisions for Interconnection Service in any form, and comparisons between Interconnection Services and the OATT's delivery services are inapposite. Second, Network Resource Interconnection Service is available to all customers taking service under the OATT, including the Transmission Provider and its Affiliates. Third, in that Network Resource Interconnection Service allows the Interconnection Customer to defer to a future time the designation of the Generating Facility as a Network Resource, this Interconnection Service is similar to the service that the Transmission Provider provides for its own generating facilities when they are constructed in anticipation of serving future, uncertain loads.

537. Southern also claims that the Generating Facility receives an undue advantage with respect to the requirement to provide Ancillary Services. We disagree. LGIA Article 4.1.2.2 states that if the Generating Facility has not been designated as a Network Resource, it cannot be required to provide Ancillary Services. However, LGIA Article 4.1.2.2 also states that the Generating Facility can be required to provide Ancillary Services if that requirement applies to all generating facilities that are similarly situated. This provision allows for fully comparable treatment of the Generating Facility with respect to the requirement to provide Ancillary Services.

d. Coordinating the Network Resource Interconnection Service Queue With the Transmission Delivery Service Queue

538. FL&L, Southern, and TAPS ask the Commission to clarify how the Transmission Provider should coordinate the queue for Network Resource Interconnection Service with the queue for transmission delivery service. TAPS asks the Commission to revise or clarify Order No. 2003 to eliminate any provisions that conflict with the OATT.

539. Southern asserts that, if Order No. 2003 provides rights to the Transmission System through Network Resource Interconnection Service, Interconnection Studies for Network Resource Interconnection Service must consider higher queued transmission delivery service requests. In addition, Southern states that changes in the transmission delivery service queue would also delay and cause frequent restudies of Network Resource Interconnection Service requests. Therefore, if Network Resource Interconnection Service is to provide transmission rights, Southern requests that the Commission address these issues and provide a workable manner in which Network Resource Interconnection Service queuing issues can be merged into transmission delivery service queuing issues and vice versa.

540. FP&L states that Order No. 2003 is unclear as to whether an Interconnection Customer seeking Network Resource Interconnection Service or a Transmission Customer seeking Network Integration Transmission Service is entitled to existing transmission capability, and notes that the issue of priority is not addressed. It is also unclear as to how the queue for Network Resource Interconnection Service requests is to work in conjunction with the queue for network service requests under the OATT. One possible solution is to have the Interconnection Customer enter the network service queue when it applies for Network Resource Interconnection Service. According to FP&L, this would resolve many of the queue coordination issues.

Commission Conclusion

541. Although interconnection and delivery are separate services, we agree that the queues for the two services must be closely coordinated. This means that in general, Interconnection Customers and transmission delivery

service customers should have equal access to available transmission capacity, with priority being established on a first come, first served basis according to the date on which service is requested. Furthermore, Interconnection Studies for Interconnection Services should be coordinated with the facilities studies performed for transmission delivery services. This ensures that all required upgrades are planned and designed in a least cost manner.

e. Responsibility for Additional Studies and Network Upgrades

542. LGIA Article 4.1.2.2 states that once the Interconnection Customer satisfies the requirements for obtaining Network Resource Interconnection Service, any future Transmission Service request for delivery from the Generating Facility within the Transmission Provider's Transmission System up to the amount of capacity or energy initially studied will not require that any additional studies be performed or that any further upgrades be undertaken. Some petitioners find this provision confusing.[96] NYTO believes that the provision is confusing because Network Resource Interconnection Service itself does not convey any right to delivery service. Alternatively, NYTO asks that the provision be deleted. The Alabama PSC states that the provision seems to indicate that even when upgrades are needed, the Interconnection Customer gets a ''free ride.'' It objects to such cost socialization policies. In addition, the Alabama PSC, the Mississippi PSC, and Southern argue that the provision threatens reliability by limiting the Transmission Provider's ability to perform transmission studies and to construct upgrades needed both to integrate the Generating Facility as a Network Resource and to maintain the reliability of the Transmission System once the Generating Facility is designated as a Network Resource.

543. Reliant asks the Commission to clarify that a Interconnection Customer that requests Network Resource Interconnection Service and funds the construction of Network Upgrades necessary to accommodate that request, has a right to be designated as a Network Resource by a Network Customer on the Transmission Provider's Transmission System, and that the Transmission Provider cannot then require the Interconnection Customer to bear the cost of additional studies or Network Upgrades.

Commission Conclusion

544. We agree that LGIA Article 4.1.2.2 needs clarification. The intent of this portion of Article 4.1.2.2 is to state that the Interconnection Customer cannot be charged for additional studies or Network Upgrades merely by requesting to have the Generating Facility designated as a Network Resource by a Network Customer. This should satisfy Reliant's concern.

545. However, we note that this provision is not intended to prevent the Transmission Provider from performing any additional studies or constructing any additional upgrades when necessary. For example, additional studies and upgrades may be needed to reduce the incidence of redispatch or congestion costs that may be incurred when the Generating Facility is designated as a Network Resource by a Network Customer and delivery service begins. Thus, we are adding the following sentence to Article 4.1.2.2: ''The provision of Network Integration Transmission Service or firm Point to Point Transmission Service may require additional studies and the construction of additional upgrades.'' We note, however, that because such studies and upgrades would be associated with a request for delivery service under the OATT, cost responsibility for the studies and upgrades would be determined in accordance with the Commission's policy for pricing delivery services.

f. Miscellaneous Requests Regarding Energy Resource Interconnection Service and Network Resource Interconnection Service

546. TDU Systems notes that the Commission states in Order No. 2003 that when the Transmission Provider is an independent entity, it ''may determine, subject to Commission approval, that the designation of Network Resources is not necessary.'' It argues that the Commission should not permit RTOs and ISOs to decide that designation of Network Resources is not necessary. Questions as to the continued need for designation of Network Resources have ramifications far beyond the realm of generator interconnections, and it is unreasonable for the Commission to determine in this proceeding that an RTO or ISO may declare such designation unnecessary.

547. TAPS claims that the treatment of RTOs with multiple Control Areas is arbitrary and discriminatory.[97] It argues that using Control Area borders to trigger extra deliverability requirements for Network Resource designation or Network Upgrade payment obligations is arbitrary, and will unduly favor certain market participants.

548. Calpine notes that P 785 of Order No. 2003, which states that the Commission ''will allow an RTO or ISO to seek an 'independent entity variation' from the Final Rule LGIP if it wants to adopt a different study requirement,'' does not track the ANOPR negotiations. It asks the Commission to clarify that RTOs and ISOs not be required to make their Network Resource interconnection criteria more stringent as a result of Order No. 2003.

549. PacifiCorp asks for clarification with respect to Article 4.1.1.2 that an RTO need not automatically grant an Interconnection Customer taking Energy Resource Interconnection Service the right to bid amounts to RTO markets above the megawatt cap applicable to that Generating Facility without conducting additional studies and determining if additional upgrades are needed to move additional plant output above the cap without exposing the Transmission Provider's other customers to possible congestion costs in excess of what they otherwise would experience. The RTO should be permitted to require the Energy Resource Interconnection Service Interconnection Customer to bear the cost of additional Network Upgrades before giving it the right to sell output beyond the capped amount into the RTO markets.

550. EEI notes that LGIP Section 3.2.2.2 describes in general terms the Interconnection Study for Network Resource Interconnection Service. It requests clarification of the scope of the Interconnection Feasibility Study for Network Resource Interconnection Service. Specifically, EEI asks whether transmission contingencies or generation redispatch are to be considered.

551. Calpine asks for clarification as to how Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA) [98] are to obtain Network Resource Interconnection Service. At P 815 of Order No. 2003, the Commission states that ''we conclude that the owner of a QF need not submit an Interconnection Request if it represents that the output of the facility will be substantially the same as before'' and further states that ''it would be unreasonable for the Transmission Provider to require the former QF to join the interconnection queue.'' Calpine recommends that the Transmission Provider be required to include in its

[96] *E.g.,* Alabama PSC, FP&L, Mississippi PSC, NYTO, Reliant, and Southern.

[97] Order No. 2003 at P 771.

[98] *See* 16 U.S.C. 2601 *et seq.* (2000).

compliance filing a list of all of the QFs that automatically receive Network Resource Interconnection Service status by virtue of their current or prior status as a QF.

552. Reliant notes that Network Resource Interconnection Service conveys the right for the Generating Facility to be designated as a Network Resource in the same manner as the Transmission Provider would designate its own resources. It proposes that the Commission limit the time that the Transmission Provider is required to hold this right for the Network Resource Interconnection Service Interconnection Customer. For example, if the resource is not designated as a Network Resource by a Network Customer within the Transmission Provider's planning period from the Commercial Operation Date of the Generating Facility, the Network Resource Interconnection Service Interconnection Customer might lose the right, but the right should not be lost before that time expires.

553. Southern asserts that the conflicting requirements in Order No. 2003 about Network Resource Interconnection Service were not presented for comment in either the ANOPR or the NOPR, so the Commission's adoption of these provisions violates fundamental rulemaking requirements.

Commission Conclusion

554. In response to TDU Systems, we clarify that we are not deciding in this Final Rule whether any particular RTO or ISO may adopt a policy that makes the designation of Network Resources unnecessary. We note that we have allowed existing ISOs to adopt different policies, and we will continue to allow ISOs and RTOs to present proposals for our consideration on a case-by-case basis.

555. In response to Calpine, we clarify that Order No. 2003 does not necessarily require an RTO or ISO to adopt Network Resource interconnection criteria more stringent than those it currently uses, but such issues will be decided case-by-case on compliance.

556. In response to PacifiCorp's request for clarification, we are not determining here what procedures an RTO must follow when the Interconnection Customer seeks to sell into the market an amount of energy that exceeds the Generating Facility's approved output. We will make such determinations on a case-by-case basis.

557. In response to TAPS, we clarify that we are not establishing in this Final Rule any new policy about the way the Transmission Provider may use Control Area boundaries to determine deliverability requirements for Network Resources. We note, however, that we will not permit the Transmission Provider to adopt any requirements or procedures for Network Resources that are not comparable to those that the Transmission Provider uses for its own generating facilities.

558. In response to EEI, we clarify that the Interconnection Feasibility Study must consider transmission contingencies, but not generation redispatch. Generation redispatch refers to decisions the system operator makes to manage congestion. These decisions take into account the relative running costs of the available generating facilities. LGIP section 3.2.2.2 states that the approach used to study Network Resource Interconnection Service assumes that some portion of existing Network Resources is displaced by the output of the Generating Facility. However, because the purpose of the Network Resource Interconnection Service study is only to determine whether the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission System, consistent with the Transmission Provider's reliability criteria and procedures, the generation that is displaced for study purposes is selected on the basis of its impact on Transmission System operation, not on the basis of the generating facilities' relative costs of producing energy.

559. Regarding Calpine's request for clarification about the process by which a QF may obtain Network Resource Interconnection Service, the Interconnection Service available to an existing QF is that which is specified in its existing interconnection agreement. We are not requiring the Transmission Provider to identify QFs that would automatically receive Network Resource Interconnection Service status.

560. In response to Reliant, we consider it reasonable for the Interconnection Customer to hold, through the life of the interconnection agreement, the right to use the Network Upgrade capacity that allows the Generating Facility to be designated as a Network Resource.

561. Finally, in response to Southern, we note that all of the significant features of Network Resource Interconnection Service adopted in Order No. 2003 were also included in the NOPR that was presented for public comment. The Commission carefully reviewed the comments and drafted provisions for Network Resource Interconnection Service in Order No. 2003 that differ in only minor ways from the original proposal. The Commission has met the scope of notice requirement applicable to rulemakings.

2. Interconnection Pricing Policy

a. Summary of the Principal Determinations in Order No. 2003

562. In Order No. 2003, the Commission adopted, for a non-independent Transmission Provider, an interconnection pricing policy that generally reflects the Commission's existing policy for such entities. For an independent Transmission Provider, Order No. 2003 continued the Commission's policy of allowing flexibility regarding the specific pricing approach that each such entity chooses, subject to Commission approval.

563. The relevant pricing provisions of Order No. 2003 for the non-independent Transmission Provider were included in LGIA Articles 4, 9, and 11 and LGIP Section 12.[99] LGIA Articles 11.1 and 11.2 stated that the Interconnection Customer is solely responsible for the costs of all Interconnection Facilities and Article 11.3 stated that the Interconnection Customer is responsible for the costs of Distribution Upgrades. Article 11.3 stated that the Interconnection Customer must initially fund the Network Upgrades associated with the interconnection, and will be reimbursed by the Transmission Provider, unless the Transmission Provider chooses to pay for them itself. In addition, the Interconnection Customer is solely responsible for the costs of any Stand-Alone Network Upgrades that the Transmission Provider allows it to own. If the Transmission Provider owns them, the Interconnection Customer must fund them initially but is entitled to reimbursement by the Transmission Provider.

564. LGIA Article 11.4 provided that the Interconnection Customer is entitled to a refund equal to the total amount paid to the Transmission Provider and the Affected System Operator,[100] if any, for Network Upgrades, including any tax-related payments. The refunds were to be paid to the Interconnection Customer, with interest, as credits on a dollar-for-dollar basis for the non-usage

[99] In Article 11, the word ''refund'' was used throughout to describe the repayment of the amounts paid upfront by the Interconnection Customer for Network Upgrades. However, the use of ''refund'' in this context is not consistent with the meaning of the term as it is used elsewhere in the Commission's Regulations. Therefore, in this order we are revising Article 11 to remove ''refund'' and substituting other terms that preserve the meaning of the original language.

[100] An Affected System is an electric system other than the Transmission Provider's Transmission System that may be affected by a proposed interconnection.

sensitive portion [101] of transmission charges, as payments are made under the Transmission Provider's Tariff and the Affected System's Tariff for any Transmission Services taken by the Interconnection Customer on the respective systems, whether or not the Generating Facility is the source of the power being transmitted. The Interconnection Customer, Transmission Provider, and Affected System Operator were permitted to adopt any alternative payment schedule that is mutually agreeable provided all amounts paid by the Interconnection Customer for Network Upgrades were refunded, with interest, within five years of the Commercial Operation Date of the Generating Facility. Article 11.4 permitted the Interconnection Customer to assign its refund rights to any person.

565. Order No. 2003 provided that, when Network Upgrades are constructed on an Affected System, the Interconnection Customer and Affected System Operator must enter into an agreement that provides for the Interconnection Customer's payments to the Affected System Operator, and the repayment of the Interconnection Customer's upfront payment by the Affected System Operator. Article 11.4.2 stated that refunds were to be paid whether or not the Interconnection Customer contracts for Transmission Service on the Affected System. All refunds were to be paid within five years of the Commercial Operation Date.

Rehearing Requests

566. Many petitioners ask for clarification or rehearing of Order No. 2003's interconnection pricing policy, particularly as it applies to a non-independent Transmission Provider.

b. Fairness of the Order No. 2003 Pricing Policy: Applicability of the Commission's ''Higher of'' Ratemaking Policy

567. Several petitioners argue that the Commission's interconnection pricing policy for a non-independent Transmission Provider inappropriately subsidizes the interconnection of a new Generating Facility, particularly when it is used to serve off-system customers. Some claim that the policy violates the Commission's ''higher of'' ratemaking policy for transmission services, and one petitioner argues that the policy is inconsistent with the Commission's policy for pricing natural gas pipeline expansions.[102]

568. The South Carolina PSC states that requiring ''rolled-in'' pricing for Network Upgrades violates the principle of cost causation. The Kentucky PSC argues that the pricing policy subsidizes an unregulated supplier that has no apparent reciprocal obligation. Entergy and Southern assert that the Commission did not explain its abrupt departure from previous policies, particularly the system-wide benefit test, and that this is arbitrary and capricious.

569. Entergy also asserts that Order No. 2003 eliminates the prior distinction between Interconnection Facilities and Network Upgrades and does not conform to the Commission's OATT. It claims that the OATT provides that interconnection switchyard facilities should be directly assigned to the Interconnection Customer requiring the construction of, and solely benefiting from, such facilities. Similarly, Southern and the Mississippi PSC ask the Commission to allow direct assignment to the Interconnection Customer of the costs of substations, circuit breakers, and stability modifications that are necessary to implement the interconnection but provide no benefit to other customers. Southern also claims that the Network Upgrades that would be required to provide Network Resource Interconnection Service would not necessarily benefit other Transmission Customers. The construction of such upgrades would be required before the Interconnection Customer even knows if it will have a Network Customer or if it would even make use of the upgrades constructed.

570. Idaho Power argues that assigning the costs of Network Upgrades to Transmission Customers is discriminatory because, while they are held responsible for costs they cause, the Interconnection Customer is not being made responsible for the costs it causes. The Commission seems to assume that all Network Upgrades benefit all Transmission Customers. However, at the same time, the Commission suggests that this is not necessarily the case by allowing participant funding for an Independent Transmission Provider. When the Network Upgrades do not benefit all Transmission Customers, there is no basis for assigning the costs of the Network Upgrades to all Transmission Customers. Accordingly, Idaho Power requests that the Commission not limit the availability of the participant funding option to RTOs, ISOs, and Transmission Owners preparing to join an RTO or ISO.

571. The Alabama PSC and Old Dominion support transmission credits for the cost of Network Upgrades that provide a system-wide benefit, but not for facilities that benefit only the Interconnection Customer. Old Dominion requests that the Commission require the Interconnection Customer to bear the costs of Network Upgrades unless it can affirmatively show that the Network Upgrades will benefit all users of the Transmission System or that the Generating Facility will serve load in the Transmission Provider's area. It also supports a policy that distinguishes between required and optional Network Upgrades. Required Network Upgrades would be those that the Transmission Provider determines are necessary to maintain the reliability and stability of the Transmission System and benefit all users of the Transmission System and, therefore, should be rolled into the rates paid by all Transmission Customers. Optional Network Upgrades would include any facilities beyond those required by the Transmission Provider and would be paid for by the Interconnection Customer.

572. Various petitioners [103] complain that Order No. 2003 includes no requirement that the Interconnection Customer demonstrate that any portion of the output of the Generating Facility will be used to serve load on the Transmission Provider's Transmission System. Consequently, Transmission Customers could be unfairly burdened with the costs of Network Upgrades from which they will receive no benefit. The North Carolina Commission and the South Carolina PSC are concerned that the pricing policy will unfairly burden native load customers when Interconnection Customers locating in a state intend to sell power out of state (where, for example, the Generating Facility is located closer to a low-cost fuel supply than to its intended distant load).

573. NRECA–APPA contends that a merchant generator that has not committed in a long-term agreement to serve network and native load customers in the Transmission Provider's service area is not comparable to the Transmission Provider's own generating facilities.

[101] Non-usage sensitive transmission charges include all transmission charges except those for items such as congestion charges, line losses and Ancillary Services.

[102] Petitioners that raise fairness issues include Alabama PSC, Ameren, Entergy, Georgia PSC, Georgia Transmission, Kentucky PSC, Mississippi PSC, North Carolina Commission, NRECA–APPA, NYTO, Old Dominion, Salt River Project, South Carolina PSC, Southern, and TDU Systems.

[103] *E.g.,* Georgia Transmission, North Carolina Commission, NRECA–APPA, Old Dominion, South Carolina PSC, and TDU Systems.

NRECA–APPA asks the Commission to clarify that such a discriminatory approach was not intended. Nevertheless, it contends that Network Upgrades needed to interconnect a Generating Facility that will serve Network Load on the Transmission System should be rolled into the Transmission Provider's transmission rates. TDU Systems states that the Interconnection Customer should be required to designate the Generating Facility as a Network Resource or to undertake a long-term firm commitment to share in the fixed costs of the Transmission System to offset the subsidy effect of the pricing policy that would otherwise lead to excessive amounts of upgrades. It notes that NRECA–APPA has set out a compromise participant funding proposal that would call for the rolling-in of Network Upgrades costs if the Generating Facility in question will serve loads in the Transmission Provider's region as evidenced through long-term contractual arrangements.

574. A number of petitioners argue that the Commission is abandoning in Order No. 2003 its ''higher of'' transmission pricing policy.[104] AEP, PacifiCorp, and others argue that, although the Commission bases its pricing policy in part on its policy forbidding ''and'' pricing, an Interconnection Customer that receives a refund of Network Upgrade costs but whose Generating Facility does not use a commensurate amount of Transmission Service pays neither the incremental cost of the Network Upgrades nor the embedded cost of the system.

575. Idaho Power claims that Order No. 2003 contradicts ''higher of'' pricing by requiring that the Interconnection Customer be refunded the costs of Network Upgrades after five years regardless of how much Transmission Service it has taken from the Generating Facility. There is no guarantee that the Transmission Provider will have an opportunity to recover from the Interconnection Customer the higher of the incremental costs of Network Upgrades or the embedded costs of the Transmission System via Transmission Service. Idaho Power believes that the policy, in effect, imposes on the Transmission Owner the potential for embedded-costs-only pricing.

576. Southern states that the Commission's previous policy of allowing transmission credits only as service is taken from a particular Generating Facility, without a requirement that refunds be completed within five years, was arguably consistent with ''or pricing.'' However, if a full refund of upgrade costs is always required within five years, ''or pricing'' would be violated if insufficient Transmission Service is taken so that there is a remaining balance of credits.

577. PacifiCorp contends that, even if the Interconnection Customer uses all its credits during the five years, to the extent those credits are for services not needed to deliver the output of the Generating Facility, the Transmission Provider has not recovered the contribution contemplated by the Commission's ''higher of'' pricing. Thus, the Order No. 2003 pricing provisions will likely result in cost shifts away from the Interconnection Customer to the customers or shareholders of the Transmission Provider. It asserts that this is both discriminatory and bad public policy. PacifiCorp and Idaho Power assert that the Commission's alleged departure from its ''higher of'' pricing policy was neither adequately explained nor justified in Order No. 2003.

578. Finally, the Kentucky PSC states that the pricing policy is inconsistent with the Commission's policy for pricing natural gas pipeline upgrades. It is unreasonable to require customers that do not need upgrades to subsidize upgrades for an electric Transmission System but not for a natural gas pipeline. The Commission's statement that transmission-owning utilities unduly discriminate against other Transmission System users lacks evidentiary support and is insufficient to justify different pricing policies for electric utilities and natural gas pipelines.

Commission Conclusion

579. As we stated in Order No. 2003, we adopted our interconnection pricing policy in order to achieve certain important goals. First, the policy enhances competition in bulk power markets by removing barriers to the construction of new generation, and by promoting the development of a robust and reliable transmission system through grid enhancements, particularly in areas where entry barriers due to unduly discriminatory transmission practices may still be significant. Second, the policy helps to ensure that all new generating facility interconnections are treated comparably. Third, the policy upholds our traditional restriction on ''and'' pricing by ensuring that the Interconnection Customer will not have to pay both an incremental cost rate and an average embedded cost rate for using the Transmission System.

580. In Order No. 2003, the Commission did not intend to abandon any of the fundamental principles that have long guided our transmission pricing policy.[105] In particular, the Commission had no intention to adopt a policy that is inconsistent with its ''higher of'' pricing standard for non-independent transmission providers. Thus, we clarify that under our interconnection pricing policy, the Transmission Provider continues to have the option to charge a transmission rate that is the higher of the incremental cost rate for network upgrades required to interconnect its generating facility or an embedded cost rate for the entire transmission system (including the cost of the Network Upgrades).[106] This clarification applies to both Energy Resource Interconnection Service and to Network Resource Interconnection Service. Allowing transmission providers to charge the higher of an incremental cost rate or an embedded cost rate ensures that other transmission customers, including the Transmission Provider's native load, will not subsidize Network Upgrades required to interconnect merchant generation.

581. Our experience indicates that the incremental rate associated with network upgrades required to

[104] When, to meet a request for Transmission Service, a Transmission Provider must construct Network Upgrades, Commission policy has been to allow the Transmission Provider to charge customers the higher of embedded cost of transmission service (with the cost of the Network Upgrades rolled in) or the incremental cost of the Network Upgrades, but not the sum of the two. *See* American Electric Power Service Corporation, 91 FERC ¶ 61,308 (2000) and Consumers Energy Company, 95 FERC ¶ 61,233 (2001).

[105] *See* Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Act, Policy Statement, FERC Stats. And Reg. Preambles par. 31,005.

[106] Where rolling in the costs of network upgrades incurred for an interconnection would have the effect of raising the average embedded cost rate paid by existing customers, the Transmission Provider may elect to charge an incremental cost rate to the interconnection customer and thereby fully insulate existing customers from the costs of any necessary system upgrades. However, under no circumstances may a non-independent Transmission Provider charge an Interconnection Customer both an incremental cost rate and an embedded cost rate associated with existing network transmission facilities. *See* Northeast Utilities Service Company (Re: Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070 (1992), *reh'g denied*, Opinion No. 364–B, 59 FERC ¶ 61,042, order granting motion to vacate and dismissing request for rehearing, 59 FERC ¶ 61,089, *aff'd* in part and remanded in part *sub nom. Northeast Utilities Service Company* v. *FERC*, 993 F.2d 937 (1st Cir. 1993), order on remand, 66 FERC ¶ 61,332, *reh'g denied*, 68 FERC ¶ 61,041 (1994) *pet. denied*; Pennsylvania Electric Company, 58 FERC ¶ 61,278, *reh'g denied* and pricing policy clarified, 60 FERC ¶ 61,034, *reh'g denied*, 60 FERC ¶ 61,244 (1992), *aff'd sub nom. Pennsylvania Electric Co.* v. *FERC*, 11 F.3d 207 (DC Cir. 1993) (Penelec).

interconnect a new generator (dividing the costs of any necessary network upgrades by the projected transmission usage by the new generator) will generally be less that the embedded average cost rate (including the costs of the new facilities in the numerator and the additional usage of the system in the denominator). In other words, in most instances, the additional usage of the transmission system by a new Interconnection Customer will generally cause the average embedded cost transmission rate to decline for all remaining customers. Accordingly, we would expect that the Transmission Provider would want to roll-in the costs of any Network Upgrades necessary to interconnect the new generator to enable its existing transmission customers to benefit from this overall lower average embedded cost rate.[107] This, in turn, is dependent upon an appropriate mechanism for returning any money contributed by the Interconnection Customer related to the initial financing of the necessary upgrades.

582. In this regard, we note that many of the petitioners' criticisms of the crediting and reimbursement provisions of Order No. 2003 are misplaced. The Interconnection Customer's upfront payment, with the associated credits and reimbursements, serves simply as a financing mechanism that is designed to facilitate the construction of the Network Upgrades. This mechanism in no way undermines the Commission's fundamental ratemaking policy of allowing the Transmission Provider to charge the higher of an incremental or an average embedded cost rate for the services it provides. Nevertheless, we agree with petitioners that certain of the crediting and reimbursement provisions should be modified, and we are granting rehearing in two specific areas. We discuss these matters in greater detail below in the section on Rules Governing the Interconnection Customer's Upfront Payment and the Payment of Credits and Reimbursements.

583. A number of petitioners argue that only the Interconnection Customer benefits from the Network Upgrades needed to interconnect the Generating Facility and, as a result, the Interconnection Customer should receive no credits toward the cost of the Network Upgrades. Rather, the petitioners assert that the cost of the Network Upgrades should be directly assigned to the Interconnection Customer. Petitioners argue that this is especially true when the Interconnection Customer sells the output of the Generating Facility off-system, and when the Interconnection Customer requests Network Resource Interconnection Service without making a commitment to be a Network Resource for any network load. Also, Southern and Entergy contend that the interconnection pricing policy, including the ''at or beyond'' test for separating Network Upgrades from sole-use facilities, departs from the policy of applying a system-wide benefit test.

584. We disagree with these petitioners. In response to Southern and Entergy, we note that, in assessing the benefits of the Network Upgrades needed to interconnect new generating capacity, the Commission's approach to interconnection pricing looks beyond the direct usage related benefits usually associated with transmission system enhancements. That is, our approach also recognizes the reliability benefits of a stronger transmission infrastructure and more competitive power markets that result from a policy that facilitates the interconnection of new generating facilities. This approach was fully supported by the court in *Entergy Services*, which said ''[t]he Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects its policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest.'' [108]

585. In response to the petitioners that want the cost of the Network Upgrades to be directly assigned to the Interconnection Customer, we note that the Commission has long held that the Transmission System is a cohesive, integrated network that operates as a single piece of equipment, and that network facilities are not ''sole use'' facilities but facilities that benefit all Transmission Customers.[109] The Commission has reasoned that, even if a customer can be said to have caused the addition of a grid facility, the addition represents a system expansion used by and benefiting all users due to the integrated nature of the grid.[110] For this reason, the Commission has consistently priced the transmission service of a non-independent Transmission Provider based on the cost of the grid as a whole, and has rejected proposals to directly assign the cost of Network Upgrades.

586. This does not mean, however, that native load customers must subsidize the cost of the Network Upgrades. When rolling in the cost of Network Upgrades would cause the embedded cost rate paid by existing transmission customers to increase, we permit the non-independent Transmission Provider to charge an incremental rate (*i.e.*, the rate associated with the costs of the Network Upgrades divided by the Interconnection Customer's units of service) to the Interconnection Customer. This will fully insulate existing customers from the cost of the Network Upgrades. We emphasize, however, that an incremental rate is not the same as direct assignment; the Interconnection Customer that pays an incremental rate is paying for Transmission Service over the entire Transmission System. Charging both the incremental cost of the Network Upgrades and an embedded cost transmission rate would be charging twice for the same service, *i.e.*, ''and'' pricing, and we do not permit such pricing for the Transmission Services of a non-independent Transmission Provider.

587. As we explained in Order No. 2003, the Commission has made exceptions to its policy of prohibiting the direct assignment of Network Upgrade costs in cases where the Transmission Provider is independent of market participants. The Commission noted that, unlike a non-independent Transmission Provider, a Transmission Provider that is independent would have no incentive to use the cost determination and allocation process to unfairly advantage its own generation. This independence allows the Transmission Provider to utilize a more creative and flexible approach to competitive energy markets. For example, we have permitted the direct assignment of Network Upgrade costs by an independent Transmission Provider

[107] In those instances where a Transmission Provider elects to charge an Interconnection Customer an incremental transmission rate for interconnection-related Network Upgrades because it results in a rate that is higher than the average embedded cost rate, the issue of whether crediting results in native load or other Transmission Customers ultimately bearing the cost of the Network Upgrades becomes somewhat irrelevant. This is because the incremental rate approach ensures that the costs associated with those Network Upgrades will not be included in the transmission rates charged to other customers. However, we emphasize that a non-independent Transmission Provider may not, under any circumstances, charge the Interconnection Customer both an incremental cost rate and an embedded cost rate for interconnecting to (or using) the integrated network.

[108] *Entergy Services, Inc.* v. *FERC*, 319 F.3d 536 (DC Cir. 2003) at 543–44.

[109] *See, e.g.*, Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993).

[110] *Id.* at 61,061.

when the Interconnection Customer receives well-defined congestion rights in return. Where the customer receives these rights in exchange for a direct cost assignment, and at the same time obtains access to the network in exchange for an embedded cost access fee, the Commission has found that the customer is paying separate charges for separate services.[111] This issue is discussed more fully below.

588. We also deny requests to directly assign the cost of Network Upgrades to the Interconnection Customer in cases where the customer sells off-system. When the Interconnection Customer chooses to sell the output of the Generating Facility off-system, other transmission customers are protected because the Transmission Customer has the assurance that it can recover from the Interconnection Customer the higher of incremental or embedded costs.

589. We disagree with the Kentucky PSC's assertion that the interconnection pricing policy is inconsistent with the Commission's policy for pricing interstate natural gas pipeline facilities. The Commission's policy for pricing transmission services does not differ in any fundamental way from the pricing policy for natural gas pipeline expansions as set forth in our Statement of Policy.[112] There the Commission adopted a threshold requirement of no financial subsidies for pipeline expansions in order to ensure that existing customers of the pipeline do not subsidize service to a new customer. In this order, we are clarifying that the Transmission Provider has the opportunity to charge the Interconnection Customer the higher of an incremental cost rate or embedded cost rate under all circumstances. Accordingly, our interconnection pricing policy is entirely consistent with our pricing policy for pipeline expansions.

590. In conclusion, we believe that our interconnection pricing policy is reasonable because it provides efficient incentives for new generation and transmission expansion, while our ''higher of'' ratemaking standard prevents subsidization of merchant generation and prevents undue discrimination by native load or other Transmission Customers. The policy ensures that all Transmission Customers (including the Interconnection Customer when it takes transmission delivery service) will bear a fair share of the cost of the Transmission System, reflecting the fact that all customers benefit from having a Transmission System that provides reliable service and supports new, competitive generation options.

c. Legal Challenges to the Interconnection Pricing Policy

591. Southern and Entergy argue that the Commission's pricing policy violates Section 212 of the FPA. First, they argue that Section 212 applies even though the Commission is acting under Section 205 of the FPA; Southern states that ''the directives of Section 212 apply regardless of the provision of the FPA under which the Commission chooses to require service to be provided. The Commission itself recognized this to be the case when it adopted its Transmission Pricing Policy * * *'' [113]

592. Southern goes on to argue that the pricing policy the Commission adopted for a non-independent Transmission Provider violates the standards of Section 212. It states that Section 722 of EPAct amended Section 212 of the FPA to impose the following restrictions when the Commission requires wholesale Transmission Service (including Interconnection Service) to be provided. Southern quotes section 212, with an omission, as follows:

> Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services * * * are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.[114]

Southern characterizes section 212 as providing that when the Commission orders a utility to provide Transmission Service, other Transmission Customers must not be required to bear the cost of providing that service. It claims that the Commission's pricing policy violates section 212 because it forces other Transmission Customers to help pay for upgrades that benefit only the new Interconnection Customer.

593. As further support for its claim that section 212 does not allow the pricing policy the Commission adopted for a non-independent Transmission Provider, Southern claims that the legislative history of section 212 shows that Congress intended to ensure that retail and other Transmission Customers are not required to bear the cost of facilities required to provide Interconnection Service to an Interconnection Customer. It cites various statements of Senator Wallop during the debates on the Energy Policy Act.

594. NYTO argues that, unless facilities are voluntarily constructed by the Transmission Owner, Sections 210–212 of the FPA apply to expansion and interconnection activities. NYTO further argues that the Commission's decision in *Nevada Power* [115] cannot be reconciled with Sections 210–212 of the FPA or the legislative history of those sections. NYTO states that Sections 210–212 also require the Commission to find that (1) the proposed activities are in the public interest, and (2) in accordance with Section 210 (interconnection) and Section 211 (mandatory wheeling/enlargement of facilities), that the cost recovery requirements of Section 212 have been met.

595. Entergy, Georgia Transmission, and Southern contend that the Commission's statement in Order No. 2003 that its interconnection pricing policy has ''withstood judicial review'' is overly broad.[116] They argue that *Entergy Services* involved only the provision of transmission credits for short circuit and stability-related upgrades. The payment of transmission credits with interest for what Entergy describes as direct-connection interconnection facilities, as well as Order No. 2003's policies with respect to the use and ultimate payback of transmission credits in five years, have not yet been reviewed in court. Also, Southern claims that *Entergy Services* could not have addressed the ''at or beyond test'' because that test had not been used when the Commission's orders underlying that case were issued. The ''at or beyond test'' did not appear until January 11, 2002 in the

[111] *See* Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 at 62,259–60 (1997), *order on reh'g. and clarification*, 92 FERC ¶ 61,282 at 61,955–56 (2000), *remanded on other grounds sub nom. Atlantic City Elec. Co.* v. *FERC*, 295 F.3d 1 (DC Cir. 2002).

[112] *See, e.g.*, Certification of New Interstate Natural Gas Pipeline Facilities (Statement of Policy), 88 FERC ¶ 61,227 (1999) and Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000).

[113] Southern Request for Rehearing at 49, citing Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement, FERC Stats. & Regs., Reg. Preambles ¶ 31,005, at p. 31,143 (1994).

[114] Southern's Request for Rehearing at 49.

[115] Nevada Power Co., 97 FERC ¶ 61,227 (2001), *reh'g denied*, 99 FERC ¶ 61,347 (2002) (*Nevada Power*). (''To hold new interconnecting generators responsible in the interconnection agreement * * * for upgrades on all interconnected systems, including not only the system to which the generator interconnects but other, more distant, systems as well, would create substantial obstacles to the construction of new generation at the very time that the Commission is trying to encourage the building of new generation.'')

[116] In support of the pricing policy, the Commission cites the case of *Entergy Services, Inc.* v. *FERC*, 319 F.3d 536 (DC Cir. 2003) (*Entergy Services*).

Commission's decision in *Entergy Gulf States, Inc.*, 98 FERC ¶ 61,014 (2002). Furthermore, the rationale for *Entergy Services* is not applicable to the expansive costs that are proposed to be subsidized under Order No. 2003. Claiming that Network Resource Interconnection Service requires transmission delivery upgrades, Southern asserts that Order No. 2003 is the first time that the Commission has required the socialization of such upgrades without a showing that they are needed to provide service to Network Customers.

Commission Conclusion

596. We do not agree with petitioners who argue that the Commission's pricing policy violates FPA Section 212. First, Section 212 applies only to Transmission Service that is ordered under Section 211, and we are acting under Section 206 here, not Section 211. The Commission's Transmission Pricing Policy Statement does not state that Section 212 applies to service under Sections 205 or 206 or that the two provisions are identical. What the Commission said was:

> As a general matter, transmission pricing should be fair and equitable. This has two important implications. First, EPAct requires that, to the extent practicable, existing wholesale, retail and transmission customers should not pay for the costs incurred in providing wholesale transmission services ordered under Section 211. Similarly, we do not believe that third-party transmission customers should subsidize existing customers. We believe this principle should apply equally to transmission services under both Section 211 and Sections 205 and 206.[117]

597. Second, as we explained above, under our ''higher of'' policy for transmission ratemaking, existing wholesale, retail and transmission customers are fully insulated from the costs incurred in providing transmission service, including Interconnection Service, to other customers. In the case of Interconnection Service, the Transmission Provider always has the option to charge the Interconnection Customer an incremental rate when rolling in the cost of Network Upgrades would otherwise cause the embedded cost rate paid by existing transmission customers to increase.

598. We note, however, that even if section 212 did apply to this rulemaking, we do not agree that it forbids rolled-in pricing of an upgrade to the transmission grid simply because the immediate impetus for that upgrade is the interconnection of a new Generating Facility. When Southern quotes section 212, it omits an important phrase, underlined below:

> Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.

599. As the Commission explained in the Transmission Pricing Policy Statement, the prohibition against improper subsidization forbids both improper subsidization by existing customers and improper subsidization by third parties. This basic pricing principle is consistent with the just and reasonable standard of FPA Sections 205, 206 and 212. With respect to the specific portion of Section 212 quoted above, we do not believe that the costs of Network Upgrades required to interconnect a Generating Facility to the Transmission System of a non-independent Transmission Provider are properly allocable to the Interconnection Customer through direct assignment because upgrades to the transmission grid benefit all customers, as we explained above. In addition to leaving out the statutory reference to ''properly allocable'' costs, Southern does not mention several other standards set forth in Section 212(a); that provision also states that the rates for transmission service ordered under Section 211 ''shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential.'' As explained above, the Commission's pricing policy for interconnection to the Transmission System of a non-independent Transmission Provider promotes economic efficiency, is just and reasonable, and is needed to prevent the Transmission Provider that has an incentive to discourage competitors from unduly discriminating against those competitors. Thus, the Commission's pricing policy would not violate Section 212, even if that provision applied here.

600. Southern's discussion of the legislative history of EPAct does not support a conclusion that Section 212 was intended to require a particular type of transmission pricing. There is ample evidence in the legislative history that Congress carefully decided not to either endorse or reverse the Commission's transmission pricing policies, although several representatives wished it to do so.[118]

601. Some petitioners argue that the Commission's statement in Order No. 2003 that the interconnection pricing policy has withstood judicial review is overly broad. We disagree. Most importantly, the finding of the court in *Entergy Services* is not limited to short circuit and stability-related upgrades. Indeed, *Entergy Services* went beyond the narrow question of these specific upgrades to look at the broader issue of the Commission's ''standard policy that requires credits for customer-funded network upgrades.''[119] The analysis was not restricted to the narrow question of whether specific ''evidence that the reliability upgrades are crucial to protect generation and other equipment,''[120] had been found, but took a broader view that benefits from all Network Upgrades would enhance network expansion and encourage competition by reducing barriers to entry.[121] Thus, *Entergy Services* is consistent with our conclusion that the crediting policy is appropriate for all customer-funded Network Upgrades.

602. Rolling in the costs of other types of Network Upgrades, such as those required for Network Resource Interconnection Service, is well within the scope of the policy objectives that were upheld by the court in *Entergy Services.* Indeed, the Network Upgrades needed for Network Resource Interconnection Service are likely to provide Transmission Customers with even greater benefits than do short circuit and stability-related Network Upgrades, because the former are more likely to reinforce the backbone facilities of the Transmission System. The court clearly affirmed the Commission's reasoning underlying rolled-in transmission rates and its view that all Transmission Customers benefit from an expanded, and thus more reliable, Transmission System.

d. Rules Governing the Interconnection Customer's Upfront Payment and the Payment of Credits and Reimbursements

603. Many petitioners object to various details of how the Interconnection Customer is to be reimbursed for its upfront payment. In particular, petitioners object to the payment of interest on unpaid credits, Order No. 2003's five year repayment period, and the ability of the Interconnection Customer to receive

[117] Transmission Pricing Policy Statement at 31,143–44.

[118] 138 Cong. Rec. S17613 (daily ed. October 8, 1992); 138 Cong Rec. H11400 (daily ed. October 5, 1992).

[119] 319 F.3d at 543.

[120] *Id.*

[121] *Id.* at 543–44.

credits for Transmission Service taken anywhere on the Transmission Provider's Transmission System, even if the GeneratingFacility is not the source of power.[122] Many argue that, because of these features, the policy provides a subsidy to merchant generation at the expense of retail and other transmission customers.

604. Various petitioners claim that crediting should be limited to the provision of Transmission Service with the Generating Facility as the Point of Receipt for the Transmission Service.[123] Georgia Transmission asks how the pricing policy satisfies the ''used and useful test''[124] if the Interconnection Customer is not required to move power from the Generating Facility across the facilities for which credits are being paid. It claims that the rate of crediting can be inappropriately accelerated if it is tied to other transmission transactions that greatly exceed the output capacity of the Generating Facility. Idaho Power and Central Maine would award credits only to an Interconnection Customer or its assignee taking Transmission Service with the Generating Facility as the source of the power. The Alabama PSC states that providing transmission credits in this manner avoids the socialization of upgrade costs in instances where the upgrades are of little or no benefit to the system.

605. Entergy insists that requiring credits to be awarded against the rates for Transmission Service taken anywhere on the Transmission Provider's Transmission System will likely lead to unneeded construction of Network Upgrades because it removes any financial discipline that the Interconnection Customer might otherwise have regarding the facilities necessary to complete its interconnection. Cinergy argues that basing the amount of credits in a given billing period on the amount of charges for Transmission Service from the Generating Facility will preserve the theoretical underpinnings of the pricing policy and restore and stabilize cash flows for the Transmission Provider.

606. Duke Energy and Progress Energy note an inconsistency between the Order No. 2003 preamble and LGIA Article 11.4.1. The latter ties credits to payments made ''for Transmission Services with respect to the Large Generating Facility.'' Duke Energy states that this phrase should be eliminated. However, Progress Energy recommends revising Article 11.4.1 to provide that credits will be paid only from the Commercial Operation Date of the Generating Facility and for Transmission Service that is provided for power from that specific Generating Facility.

607. Some petitioners contend that the reimbursement of unused credits to the Interconnection Customer at the end of five years is unreasonable.[125] Entergy and others argue that uncoupling the repayment of transmission credits from the facility with which they are associated exacerbates the arbitrariness of the five year credit payback period. This requirement shifts investment risk from the entity in control of such investment (the Interconnection Customer) to the Transmission Provider's retail customers and is contrary to the Commission's longstanding ratemaking principles. NRECA–APPA views this as a form of incentive rate policy, the application of which the Commission previously would consider only on a case-by-case basis.

608. Georgia Transmission and NRECA–APPA contend that the crediting period should, at a minimum, be determined by the length of time it takes for the Interconnection Customer to use the credits properly applicable to its Transmission Service, whether the period is shorter or longer than five years. NRECA–APPA and others suggest that crediting over a period coterminous with the depreciation schedule of the Network Upgrades is more appropriate.

609. AEP and others are concerned that the Interconnection Customer could declare Commercial Operation of the Generating Facility but produce only token amounts of electricity during the five year period and still be eligible for a full refund. Progress Energy seeks clarification of the requirement that the Generating Facility ''continue to operate.'' It asks whether the Generating Facility must actually put power on the Transmission System in order for the Interconnection Customer to receive credits, and asks the Commission to clarify that the LGIA allows crediting to be interrupted or terminated when the Generating Facility is not in Commercial Operation. It asks for the following clarifications: (1) That the Interconnection Customer is not entitled to transmission credits when Commercial Operation of the Generating Facility is suspended or terminated, (2) that if Commercial Operation of the Generating Facility is suspended or terminated, this will suspend the five year repayment period required in LGIA Article 11.4.1 (Refunds of Amounts Advanced for Network Upgrades), and (3) that the five year repayment period may restart only after Commercial Operation has resumed. AEP proposes that limiting the credit to actual transmission usage by the Generating Facility solves the problem of determining whether the Generating Facility is in Commercial Operation, because transmission usage is easily verified.

610. Regarding interest on unpaid credits, NYTO claims that basing the interest on Section 35.19a(a)(2)(ii) of the Commission's Regulations is excessive and not consistent with commercial bank interest rates. Southern asserts that the Interconnection Customer should not be entitled to receive interest. It claims that the third paragraph of LGIA Article 11.4 (Transmission Credits) is particularly inequitable because it requires interest to be accrued even when the upgrades are not being used. Southern adds that it should not be required to pay interest because neither the Transmission Provider nor its customers would be able to earn interest on the payments for the Network Upgrades received from the Interconnection Customer. Southern explains that the Interconnection Customer generally pays for Network Upgrades when costs for materials and labor are incurred and, consequently, the Transmission Provider is unable to utilize the funds for any other purpose and cannot earn any return on these monies.

611. SoCal Edison notes that, when the Transmission System has some available capacity, certain Network Upgrades that would otherwise be the cost responsibility of the Interconnection Customer may not ever be needed if the Interconnection Customer is able to use the available capacity as a result of a higher queued customer dropping out of the queue. SoCal Edison recommends a specific revision to the crediting provisions of LGIA Article 11 that addresses this possibility.

Commission Conclusion

612. Petitioners raise numerous objections to the provisions of Order No. 2003 concerning the Interconnection Customer's upfront payment and the mechanism for providing credits and reimbursements. However, as we

[122] *E.g.,* AEP, Alabama PSC, Ameren, Central Maine, Cinergy, Duke Energy, Entergy, Georgia Transmission, Idaho Power, NRECA–APPA, NYTO, PacifiCorp, Progress Energy, and Southern.

[123] *E.g.,* AEP, Alabama PSC, Central Maine, Cinergy, Entergy, Georgia Transmission, Idaho Power and Progress Energy.

[124] The Commission generally requires a showing that the Transmission Provider's assets are ''used and useful'' in providing Transmission Service before their costs can be included in transmission rates. *See* NEPCO Municipal Rate Committee v. FERC, 668 F.2d 1327, 1333 (D.C. Cir. 1981).

[125] *E.g.,* Ameren, Entergy, Georgia Transmission, NRECA–APPA, and Progress Energy.

explained above, their concerns that these provisions will lead to improper subsidies are misplaced. This is because petitioners fail to recognize that the Interconnection Customer's upfront payment, with provisions for the payment of interest, credits and reimbursements, serves not as a rate for interconnection or transmission service, but simply as a financing mechanism that is designed to facilitate the efficient construction of Network Upgrades.

613. The purpose of the upfront financial payment is twofold. First, by providing the Transmission Provider with a source of funds to construct the Network Upgrades, the upfront payment by the Interconnection Customer alleviates any delay that might result if the Transmission Provider were forced to secure funding elsewhere. Second, by placing the Interconnection Customer initially at risk for the full cost of the Network Upgrades, the upfront payment provides the Interconnection Customer with a strong incentive to make efficient siting decisions and, in general, to make good faith requests for Interconnection Service. However, the upfront payment is not a rate for service, and thus is not intended to be the means by which the Transmission Provider recovers the cost of the Network Upgrades. Rather, the Transmission Provider's right to charge for transmission service at the higher of an embedded cost rate, or an incremental rate designed to recover the cost of the Network Upgrades, provides the Transmission Provider with a cost recovery mechanism that ensures that native load and other transmission customers will not subsidize service to the Interconnection Customer.

614. Nevertheless, we find merit in the arguments of petitioners that object to certain features of the crediting and reimbursement mechanisms. These features are the right of the Interconnection Customer to receive credits for transmission service that does not include the Generating Facility as the source of the power transmitted, and the right of the Interconnection Customer to receive a full reimbursement of the outstanding balance of its upfront payment after only five years. The Commission agrees that, in both instances, these features may serve to insulate the Interconnection Customer from the consequences of its siting decision, as well as other factors that can significantly affect the cost of the interconnection, because if the Interconnection Customer continues to be a Transmission Customer (and receives credits unrelated to service from the Generating Facility at issue), it does not bear an appropriate level of risk that the Network Upgrades may be rendered unnecessary should its facility become commercially infeasible. We note that, while all Transmission Customers benefit generally from upgrades to the transmission network, all customers do not necessarily benefit equally from upgrades that may be required for a particular interconnection. To help ensure that the Interconnection Customer makes efficient and cost-effective siting decisions, we conclude that it is appropriate that credits be given only for transmission service that includes the Generating Facility as the source of the power transmitted. We therefore grant rehearing with regard to these two features as described below.

615. First, we will no longer require the Transmission Provider to provide credits to the Interconnection Customer for all of the transmission services that it takes on the system, but instead will limit credits to transmission service taken with respect to the Generating Facility. As petitioners have noted, allowing the Interconnection Customer to receive credits for services unrelated to the Generating Facility tends to shift risk from the entity in control of the investment to native load and other Transmission Customers. This shifting of risk may cause the construction of unneeded or more costly Network Upgrades. In addition, it may result in native load or other Transmission Customers having to bear the cost of the Network Upgrades in cases where the Interconnection Customer takes little additional transmission service that is associated with the new Generating Facility, or where the Interconnection Customer elects to retire the Generating Facility early. Therefore, we are restoring to Article 11.4.1 language from the NOPR LGIA that required the Transmission Provider to provide the Interconnection Customer with dollar-for-dollar credits only for the payments that are made for transmission services taken with respect to the Generating Facility.[126]

616. Second, we are allowing the Transmission Provider to choose, five years from the Commercial Operation Date of the Generating Facility, one of the following two options: (1) Reimburse to the Interconnection Customer the remaining balance of the Interconnection Customer's upfront payment plus accrued interest, or (2) continue to provide credits to the Interconnection Customer until the total of all credits equals the Interconnection Customer's initial payment for the Network Upgrades, plus interest. As discussed above, this ensures that the Interconnection Customer bears the risk associated with Network Upgrades that were built to accommodate its interconnection request and provides an incentive for efficient and cost effective siting decisions. More importantly, this modification also helps to ensure that other Transmission Customers, including the Transmission Provider's native load, will not have to bear the cost of the Network Upgrades if the Interconnection Customer ceases operation of the Generating Facility prematurely.

617. However, this revision also gives the Transmission Provider the option to credit the full amount of any customer contributed funds if it so chooses. By electing that option, the Transmission Provider can avoid the further accumulation of interest on the Interconnection Customer's upfront payment, and can charge, without credits, for the embedded cost of all transmission services taken with respect to the Generating Facility. We are substantially revising Article 11.4 to effect these changes.

618. With respect to the payment of interest, the Commission continues to believe that the Interconnection Customer is entitled to be reimbursed for all of the costs that it incurs in financing the Network Upgrades, including a reasonable estimate of the carrying cost of the upfront payment. We conclude that using Section 35.19a(a)(2)(ii) of the Commission's Regulations as the basis for the interest calculation is appropriate because it ensures that the Interconnection Customer is fully and fairly compensated for the time value of its upfront payment for the Network Upgrades that it is required to finance. Arguments that the Section 35.19a(a)(2)(ii) interest rate is not compensatory with respect to the financing that could be obtained by the Transmission Provider are not relevant here. We note, however, that if the Transmission Provider believes it can obtain financing for the Network Upgrades at a more favorable rate, it always has the option to finance the Network Upgrades itself and immediately include the associated costs in rates. In so doing, the Transmission Provider avoids having to provide credits to the Interconnection Customer and can immediately seek to

[126] Duke Energy and Progress Energy point out an inconsistency between P 730 of Order No. 2003 and the first paragraph of LGIA Article 11.4.1, and state that the phrase ''for Transmission Services with respect to the Large Generating Facility'' should be deleted from Article 11.4.1. However, with the change to Article 11.4.1. that we are requiring here, this phrase is now consistent with our pricing policy as revised. Therefore, we are allowing it to remain.

recover its investment costs through transmission rates.

619. On other matters, Progress Energy states that Order No. 2003 does not clearly articulate what the phrase ''continue to operate'' means or how it should be applied. We agree and are defining Commercial Operation in the LGIP and LGIA as ''the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.'' Also, we clarify that, once it achieves Commercial Operation, a generating Facility is deemed to ''continue to operate'' if the Interconnection Agreement between the Interconnection Customer and the Transmission Provider remains in full force and effect.

620. Progress Energy also states that Order No. 2003 does not address what happens if the Generating Facility suspends or terminates Commercial Operation before it has been completely reimbursed through transmission credits. With the changes we are making to the crediting and reimbursement provisions of Article 11.4, this issue is moot. As AEP notes, tying credits to payments for transmission services taken with respect to the Generating Facility solves the problem of determining whether the Generating Facility is in Commercial Operation, because transmission usage is easily verified. Also, the payment of a lump sum reimbursement is now at the option of the Transmission Provider whether or not the Generating Facility continues to operate after five years.

621. SoCal Edison requests clarification about credits for certain Network Upgrades that are the responsibility of a lower queued Interconnection Customer that become unneeded if a higher queued Interconnection Customer drops out of the queue. Such a situation can occur, for example, if the Transmission System has sufficient capacity to accommodate the higher queued Interconnection Customer's Generating Facility, but not enough to accommodate the lower queued Interconnection Customer's Generating Facility.[127]

622. We clarify as follows. If the lower queued Interconnection Customer chooses an In-Service Date for the Generating Facility that precedes that of the higher queued Interconnection Customer, the lower queued Interconnection Customer must be allowed to proceed using the capacity earmarked for the higher queued Interconnection Customer, to the extent possible. When the higher queued Interconnection Customer is ready to proceed, the Network Upgrades originally required for the lower queued Interconnection Customer would have to be built. Once those Network Upgrades are placed in service, the lower queued Interconnection Customer would be required to pay the associated cost. At the same time, the period would begin for crediting the amount that the lower queued Interconnection Customer has paid. However, if the higher queued Interconnection Customer ultimately drops out of the queue, then some or all of the Network Upgrades would not have to be built, eliminating at least in part the need for funding by the lower queued Interconnection Customer and for subsequent payment of credits. To address this situation, we are revising Article 11.4 to state that the crediting period begins on the later of the Commercial Operation Date or the date that the Network Upgrades are placed in service.

e. Economic Efficiency Implications of the Order No. 2003 Pricing Policy for a Non-Independent Transmission Provider

623. A number of petitioners seeking rehearing of the interconnection pricing policy claim that it provides the Interconnection Customer with poor incentives to choose an efficient location for the Generating Facility. Some petitioners also are convinced the policy will lead to inefficient expansion of the Transmission System[128] and create reliability risks.[129]

624. For example, the South Carolina PSC and some other state commissions say that inefficiencies can occur because the costs of interconnection-related Network Upgrades must be passed on to other Transmission Customers regardless of whether they actually benefit from the Generating Facility or the related Network Upgrades. The Kentucky PSC argues that the policy will shield a merchant generator from the real costs of Network Upgrades and remove incentives to locate near load to minimize the costs of upgrades. However, Old Dominion argues that the Interconnection Customer should not be expected to bear the burden of determining the least cost, most efficient approach to generator interconnections. Rather, the Commission should require the Transmission Provider and RTOs to take the lead in assisting Interconnection Customers making decisions on where and how to interconnect by developing forward-looking studies of the most efficient interconnection voltage levels and locations for new generating facilities.

625. Georgia Transmission complains that Network Resource Interconnection Service gives the Interconnection Customer little incentive to accommodate Transmission Provider planning and reliability activity because it does not require it to bear the costs of mitigating transmission-related problems that arise from its site selection. Georgia Transmission says that large numbers of alternate generation scenarios could arise from uncommitted potential Network Resources under Network Resource Interconnection Service. Georgia Transmission claims that the uncertainty created by many possible generation patterns complicates planning considerations and creates reliability risks in the operation of the Transmission System.

626. Salt River Project contends that the Commission's decision to require the Transmission Provider to refund payments made for Network Upgrades is a disincentive to upgrade transmission facilities in response to an Interconnection Request. This can result in a decrease in reliability, according to Salt River Project. Southern maintains that it is questionable whether encouraging new generation is currently a legitimate goal, given the oversupply of capacity that exists in some areas of the country, or whether the five year refund period will actually promote the development of new generation.

Commission Conclusion

627. Petitioners argue that the interconnection pricing policy will cause the Interconnection Customer to make inefficient siting decisions and require the Transmission Provider to expand and operate its Transmission System in an inefficient manner. We disagree. With regard to the Interconnection Customer's incentives, we note that the Interconnection Customer is required to provide the up front funding to finance the cost of the Interconnection Facilities required for its interconnection. We believe this will provide the Interconnection Customer with a strong incentive to make efficient siting decisions. We note, moreover, that a number of the factors that influence siting decisions are beyond the control of both the Interconnection Customer and the Commission. Most importantly, the approval and siting of new generating facilities is ultimately under the control of state authorities.

[127] *See, e.g.,* Virginia Electric and Power Company, 104 FERC ¶ 61,249 (2003).

[128] *E.g.,* Ameren, Georgia Transmission, Kentucky PSC, Mississippi PSC, Old Dominion, Salt River Project, South Carolina PSC, and Southern.

[129] *E.g.,* Georgia Transmission and Salt River Project.

628. With regard to the implications of the pricing policy for Transmission System expansion and operation, we disagree with Georgia Transmission that the pricing policy will give rise to large numbers of uncommitted potential Network Resources that will create a reliability risk. Georgia Transmission has not cited any provisions of the LGIP, LGIA or its tariff that support its claim that the pricing policy will create a reliability risk. Network Resource Interconnection Service is intended to be comparable to the service that the Transmission Provider provides to its own generating facilities. Moreover, the operation of these generating facilities, and all Transmission Services, must be scheduled with the Transmission Provider in accordance with the Transmission Provider's established procedures. Order No. 2003 does not require a Transmission Provider to either construct or operate its Transmission System in any way that departs from its established reliability criteria and operating protocols.

629. We also disagree with Salt River Project's claim that the pricing policy will create an incentive for a Transmission Provider not to construct Network Upgrades needed for reliability. While we are not permitting the direct assignment of Network Upgrade costs by a non-independent Transmission Provider, we are providing the Transmission Provider with the opportunity to recover the higher of incremental or embedded costs. This fully protects the Transmission Provider and its other customers from having to bear the cost of Network Upgrades needed to interconnect a new Generating Facility. Thus, the ''higher of'' policy removes any pricing incentive for a Transmission Provider to decide, contrary to its public service obligation, not to construct Network Upgrades when necessary to maintain reliability.

630. We agree with Old Dominion that information about the most efficient locations and interconnection voltage levels for new generating facilities on the Transmission Provider's Transmission System would be useful. Although we are not requiring the Transmission Provider to develop the forward-looking studies that Old Dominion recommends, we support and encourage the Transmission Provider to make such information available to potential Interconnection Customers.

f. Credits for Network Upgrades on Affected Systems [130]

631. Numerous petitioners object to the Commission's decision to apply the pricing policy to Affected Systems.[131] They state that it is arbitrary and capricious to require the Affected System and its customers to pay for facilities needed to mitigate the harm of interconnecting the Generating Facility with a neighboring Transmission System. They note that the ANOPR and NOPR did not address this matter. NRECA–APPA protest that since the Commission's pre-Order No. 2003 policy did not address how costs are to be allocated between the Transmission Provider, the Interconnection Customer, and the Affected System Operator, there is also no precedent for the approach adopted in Order No. 2003. The Georgia PSC and others argue that reasoned decision making requires that the Interconnection Customer, not the Affected System's customers, should bear these costs. They allege that Affected System's customers will not benefit from the upgrades unless the Interconnection Customer sells the output of the Generating Facility into the Affected System's market.

632. Salt River Project asserts that the rationale to support the payment of credits when the Interconnection Customer connects directly to a Transmission Provider's system does not apply to an Affected System. It maintains that, because the Interconnection Customer is not actually requesting interconnection to the Affected System, credits are not needed to prevent the Interconnection Customer from being treated in an unduly discriminatory manner vis-à-vis the Transmission Provider's own generating facilities. Salt River Project also contends that since there are legitimate factors justifying different treatment of costs of Network Upgrades on the Affected System and those on the Transmission System to which the Interconnection Customer actually interconnects, *Entergy Services* is factually distinguishable because here the Commission requires refunds to third party systems.

633. Idaho Power, PacifiCorp, and others are concerned that an Affected System must refund the cost of any Network Upgrades to the Interconnection Customer within five years regardless of whether the Interconnection Customer pays anything toward the embedded costs of the Affected System through Transmission Service charges. NYTO and Central Maine argue that the Interconnection Customer should not receive transmission credits for Network Upgrades it funds on an Affected System if it does not take service on the Affected System.

634. APS seeks revision of LGIA Article 11.4.1 so that there is no ambiguity as to which entity is responsible for crediting the Interconnection Customer for amounts it pays to the Affected System Operator, and to make the article consistent with provisions stating that the Affected System Operator should credit the Interconnection Customer directly. APS contends this matter would be of particular concern where the Affected System Operator is non-jurisdictional.

635. Finally, Central Maine recommends that policies for Network Upgrades to Affected Systems be covered in a separate agreement rather than in the interconnection agreement.

Commission Conclusion

636. With regard to the pricing of Network Upgrades on Affected Systems, the Commission concludes, as it did in Order No. 2003, that our interconnection pricing policy as it applies to an Affected System Operator that is not independent should be consistent with the policy we adopt for the non-independent Transmission Provider. That is, the Interconnection Customer must pay upfront for any Network Upgrades needed on the Affected System, but is entitled to credits for transmission service taken on the Affected System. As we explained in Order No. 2003, our pricing policy is designed in part to promote competition in markets that may still be dominated by non-independent Transmission Providers. If the Affected System Operator is not independent, it has the same incentives that the non-independent Transmission Provider has to frustrate development of new, competitive generation.[132]

637. We note, however, that revised Article 11 now requires the Affected System Operator to provide credits to the Interconnection Customer only to the extent that the Interconnection Customer takes transmission service on the Affected System. This should alleviate the concerns, expressed by

[130] The *pro forma* LGIP and LGIA define an Affected System as an electric system other than the Transmission Provider's Transmission system that may be affected by the proposed interconnection.

[131] *E.g.,* APS, Georgia PSC, Central Maine, Georgia Transmission, Idaho Power, NRECA–APPA, NYTO, PacifiCorp, Salt River Project, and Southern.

[132] If the Affected System Operator is an independent Transmission Provider, we are allowing flexibility regarding the interconnection pricing policy (including participant funding) that the Affected System Operator may propose.

PacifiCorp, Idaho Power, NYTO, Central Maine and others, that the Interconnection Customer must be provided with credits or reimbursement even when it takes no transmission service on the Affected System and, as a result, the Affected System's customers allegedly receive no benefit from the Network Upgrades.

638. We are not revising the first sentence of LGIA Article 11.4.1, as APS requests, because it is not necessary. When read in its entirety, Article 11.4 makes clear that the Transmission Provider and the Affected System Operator are each responsible for reimbursing only the amounts that each receives from the Interconnection Customer toward the cost of Network Upgrades.

639. In response to Central Maine, Article 11.4.1 already provides that the Interconnection Customer shall enter into a separate agreement with the Affected System Operator unless, through coordination with the Affected System Operator, the Transmission Provider chooses to make separate arrangements associated with the Network Upgrades constructed on the Affected System on behalf of the Interconnection Customer.

g. Credits for the Costs of Expediting Construction

640. LGIP section 12.2 allows the Interconnection Customer to request that the Transmission Provider advance the construction of Network Upgrades that the Transmission Provider already planned to build if the Network Upgrades are needed to support the Generating Facility's In-Service Date and would not otherwise be completed in time. The Transmission Provider must use Reasonable Efforts to advance the construction of the Network Upgrades, provided the Interconnection Customer agrees to finance any associated expediting costs. The Interconnection Customer is entitled to transmission credits for any expediting costs that it finances. However, the Interconnection Customer is not responsible for financing the original cost of the Network Upgrades that the Transmission Provider was already planning to build.

641. A few petitioners [133] oppose giving the Interconnection Customer the right to have the Transmission Provider construct upgrades contained in its expansion plan before the scheduled construction date. NRECA–APPA contends that Order No. 2003 should not have included the provision that allows the Interconnection Customer to seek expedited construction because the NOPR gave no opportunity for commenters to address this issue, and because all costs, including the additional cost of expediting construction, will be borne by the customers of the Transmission Provider. Ameren and Entergy object to providing credits for the costs of expediting construction because the Interconnection Customer is the only entity that benefits from the early construction. Entergy argues that the Interconnection Customer's right to request acceleration should be limited because an expansion plan changes as system conditions change, and because an expansion might not be constructed but for the Interconnection Customer's request for acceleration of its construction. Ameren asks the Commission to clarify that the right to acceleration is only for projects for which the Transmission Provider has received final approval and has funding.

Commission Conclusion

642. In response to NRECA–APPA, we note that all of the substantive provisions in Order No. 2003 that concern the Interconnection Customer's right to accelerate the construction of Network Upgrades and the treatment of expediting costs were included in the NOPR.

643. In response to Ameren and Entergy, we conclude that it is unreasonable to require the Interconnection Customer to finance Network Upgrades that the Transmission Provider intends to construct anyway. The Transmission Provider may from time to time adjust its expansion plan. However, for purposes of this rule, we assume that any project included in the expansion plan at the time the Interconnection Facilities Study is undertaken is a project that the Transmission Provider intends to construct. Otherwise, the Transmission Provider could always claim that it did not intend to construct a project in its expansion plan. If such a project is required to meet the In-Service Date for the Interconnection Customer's Generating Facility, the Transmission Provider may require the Interconnection Customer to finance the expediting of the construction schedule for the project, but it may not require the Interconnection Customer to finance Network Upgrades that the Transmission Provider was planning to build.

h. Compensation for Line Outage Costs and Rescheduled Maintenance

644. Order No. 2003 does not permit the Transmission Provider to charge the Interconnection Customer the costs, such as increased energy costs, that the former incurs when a transmission line must be taken out of service to complete an interconnection. However, LGIA Article 9.7 provides that the Transmission Provider may direct the Interconnection Customer to reschedule Generating Facility maintenance as necessary to maintain the reliability of the Transmission System. The Transmission Provider must pay the Interconnection Customer for any direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts, and other costs above the cost the Interconnection Customer would have incurred absent the Transmission Provider's request to reschedule maintenance. However, the Interconnection Customer is not entitled to compensation if, during the twelve months before the scheduled maintenance, the Interconnection Customer modified its schedule of maintenance activities.

645. A number of petitioners argue that the Transmission Provider should be able to assign interconnection-related line outage costs to the Interconnection Customer, since the Transmission Provider must reimburse the Interconnection Customer for the costs the Interconnection Customer incurs when it must reschedule maintenance activities at the Transmission Provider's request.[134] The Alabama PSC maintains that this is a subsidy. Southern asserts that it is arbitrary and capricious and violates EPAct to require all Transmission Customers to share in these costs without considering a method of accurately quantifying them. AEP asks the Commission to consider using the cost of replacement energy as a proxy for the cost of a line outage. Even though the value of the replacement energy may not exactly match that of the displaced energy, it is a reasonable proxy and is certainly better than no compensation. The Mississippi PSC contends that these costs should be directly assigned to the Interconnection Customer because it causes them.

646. NYTO and Entergy argue that the LGIA does not provide for comparable treatment of the Interconnection Customer and the Transmission Provider. They state that it is

[133] *E.g.*, Ameren, APS, Entergy, and NRECA–APPA.

[134] *E.g.*, AEP, Alabama PSC, Entergy, Mississippi PSC, NYTO, and Southern.

unreasonable to require the Transmission Provider (or its Transmission Customers) to pay the Interconnection Customer for costs associated with rescheduling maintenance of the Generating Facility, including maintenance required to sustain reliability of the Transmission System, without the reciprocal requirement for the Interconnection Customer to pay the Transmission Provider for modifying the Transmission Provider's scheduled maintenance to accommodate the Interconnection Customer. Entergy asks the Commission to amend or remove the obligation. NYTO also asks that the Commission revise LGIA Article 9.7.1.2 (Outage Schedules) to say that the ISO, not the Transmission Owner, must pay the Interconnection Customer under an ISO Tariff.

Commission Conclusion

647. We note that, in a recent decision, the United States Court of Appeals for the DC Circuit ruled that Southern is not entitled to recover outage costs from certain Interconnection Customers because Southern's Interconnection Agreements with these customers do not specifically authorize such recovery.[135] However, the court left open the possibility that recovery of outage costs may be permissible in cases where the Interconnection Agreement specifically authorizes it. We agree that, if authorized contractually, recovery may be justified on a case-by-case basis, depending on the facts of individual cases, and will grant rehearing to allow the Transmission Provider to propose to recover line outage costs on a case-by-case basis.

648. With regard to compensation for rescheduled maintenance, we note that Order No. 2003 requires the Transmission Provider to pay the Interconnection Customer only for the nominal, direct costs of rescheduling maintenance, and only when the Interconnection Customer has not modified its schedule of maintenance activities during the year before the date of the originally scheduled maintenance. Without such a compensation requirement, the Transmission Provider could gain an undue competitive advantage over the Interconnection Customer by manipulating the maintenance scheduling process.

649. In response to NYTO's request that we modify LGIA Article 9.7.1.2 to make the ISO responsible for compensating the Interconnection Customer, we note that each RTO and ISO is free to propose such a compensation arrangement. In the interest of providing flexibility for RTOs and ISOs, we are not mandating such an approach here.

i. Transmission Provider's Recovery of Costs of Network Upgrades

650. A number of Transmission Providers are concerned that they will not have a chance to recover through transmission rates the costs of Network Upgrades.[136] Idaho Power argues that Transmission Owners should not be required to provide service for free or at a loss. The pricing policy forces the Transmission Provider or the Affected System Operator to pass the cost of transmission credits on to its native load customers to be made whole, even where the Network Upgrades may hardly be used by the Interconnection Customer. Idaho Power therefore requests that the five year payback period be eliminated.

651. Ameren argues that, due to regulatory lag, the Transmission Provider may have to pay credits for several years until the cost can be included in rates. PacifiCorp recommends that the Commission redesign the crediting provisions to prevent ''trapped costs'' that the Transmission Provider may never be able to recover from its retail customers. Because the Commission has left to the States the setting of bundled transmission rates, which could lead to ''trapped costs'' for the shareholders of integrated utilities, PacifiCorp states that it may challenge the application of Order No. 2003 to any action that it believes unlawfully imposes costs without providing a recovery mechanism.

652. NYTO contends that, at a minimum, the Commission should allow the Transmission Provider to accrue the costs of credits with interest and include them in jurisdictional rate base along with the cost of the relevant facilities when it next files with the Commission to adjust its transmission rates. This should be under the Commission's Regulations at 18 CFR 35.19a (2003), with the deferred amounts recorded in Account No. 186. NYTO also asks: (1) When would any facility costs be included in transmission rates, and would related rate revisions be required each time a new Generating Facility interconnects, and (2) why or how would a Transmission Provider provide a credit for costs that are not yet reflected in its rate base due to the imposition of a periodic rate adjustment procedure or a rate freeze?

653. SoCal Edison requests that the Commission clarify that its interconnection pricing policy is not intended to refund to the Interconnection Customer ''one-time costs'' that may not be allowed in rates. According to SoCal Edison, one-time costs ordinarily must be expensed as they occur. They are ineligible for recording in the plant accounts and may not otherwise be eligible for recovery in rates because they are non-recurring. If the Commission intends that one-time costs be subject to transmission credits, SoCal Edison requests that the Commission authorize a mechanism by which the Transmission Provider will be permitted to recover all prudently incurred one-time costs in future transmission rates. Otherwise, SoCal Edison seeks rehearing because such action is an unconstitutional taking in violation of the Fifth Amendment of the Constitution.

654. Duke Energy seeks clarification that Order No. 2003 does not preclude a Transmission Provider from submitting proposals with selective rate treatment options, with the understanding that the Commission has not preauthorized this type of rate treatment and that the Transmission Provider would be required to justify its proposal and address any departures from the Commission's usual practices.

655. Southern is concerned that rating agencies might view the balance of costs yet to be refunded through credits as a debt of the Transmission Provider. Southern argues that, if they do, this could cause the Transmission Provider's cost of capital to increase.

Commission Conclusion

656. The concerns raised by Ameren, Idaho Power and PacifiCorp are addressed in Order No. 2003 and they have raised no new arguments on rehearing. In response to SoCal Edison, we note that the costs that are eligible for credits are those associated with investments in long-lived facilities, which typically create one or more units of property. The prudently incurred costs of such investments are recoverable in transmission rates. For other costs that create no unit of property but are of a recurring nature, the Commission allows a representative test year expense projection for cost recovery purposes.[137] Most one-time costs, such as the costs of

[135] *Southern Company Services, Inc.* v. *FERC*, 353 F.3d 29 (DC Cir. 2003).

[136] *E.g.*, Ameren, Duke Energy, Idaho Power, NYTO, PacifiCorp, and SoCal Edison.

[137] *See, e.g.*, Southern California Edison Company, 105 FERC ¶ 61,080 (2003).

interconnection studies, are properly charged directly to the Interconnection Customer, therefore the Transmission Provider will be reimbursed for any out-of-pocket costs. The Commission's interconnection pricing policy should create few problems with regard to the recovery of one-time costs.

657. In response to NYTO, we note that the Commission has explained the process by which the cost of Network Upgrades financed by the Interconnection Customer may be included in the Transmission Provider's cost of service.[138] When the Interconnection Customer initially bears the entire cost of the Network Upgrades, the Transmission Provider, which initially bears none of the cost, clearly cannot include such cost in its rates. As we explained, the Transmission Provider cannot include the cost of the Network Upgrades in its transmission rates until it has provided credits to the Interconnection Customer, and as long as any part of the cost of the Network Upgrades remains the responsibility of the Interconnection Customer, that part of the cost cannot be recovered in transmission rates. This means that while all other transmission customers have access to the network, which includes the new Network Upgrades, they do not have to bear a full share of the cost responsibility until the crediting process is complete. In this regard, the accrual of interest is comparable to an Allowance for Funds Used During Construction, which recognizes a time value of funds used by the Transmission Provider for expansion prior to their inclusion in rate base.

658. In response to Southern, we do not believe rating agencies will interpret the obligation to provide transmission credits as creating significant risk exposure for the Transmission Provider. Having granted rehearing regarding certain features of the crediting mechanism, the Transmission Provider now is under no obligation to provide credits or a reimbursement to the Interconnection Customer except to the extent that it takes Transmission Service with respect to the Generating Facility. In addition, the Transmission Provider always has the option to finance the Network Upgrades itself and immediately seek to recover the associated costs through its transmission rates.

659. In response to Duke Energy, we will continue to require non-independent Transmission Providers to adhere to the Commission's ''higher of'' pricing policy.

j. Transmission Provider's Recovery of Its Costs of Interconnection Facilities [139]

660. In Order No. 2003, the Commission ordered Transmission Providers in the future to remove from transmission rates the costs of Interconnection Facilities that were constructed after March 15, 2000 to interconnect generating facilities that the Transmission Providers owned on the effective date of the order.

661. TDU Systems and TAPS object to the Commission's decision to allow the Transmission Provider to continue to recover through transmission rates the costs of certain Interconnection Facilities constructed before March 15, 2000. TDU Systems asserts that Order No. 2003 does not require comparable rate treatment of the costs of the Transmission Provider's own Interconnection Facilities and those of unaffiliated Interconnection Customers in a timely manner. The Commission should require the Transmission Provider in its compliance filing to explain its past interconnection-related cost allocation and rate design practices and, if necessary, submit a separate compliance filing to remedy any non-comparability by a date certain. TDU Systems further proposes that, if the costs at issue are not substantial, then a single rate readjustment should suffice, but if the costs are large, a phase-in period might be necessary.

662. TAPS objects to continued rate base treatment (grandfathering) for the Transmission Provider's Interconnection Facilities constructed before March 15, 2000, along with Interconnection Facilities associated with generation the Transmission Provider has divested. It claims that some generating facilities have been divested without their Interconnection Facilities, which remain in rate base. Some utilities may have maintained records that make it difficult to isolate costs associated with Interconnection Facilities. TAPS therefore urges the Commission to require each Transmission Provider to demonstrate that removal of its Interconnection Facilities from rate base would be unjust and unreasonable. TAPS also urges the Commission to reject arguments that the lack of separate bookkeeping records for such facilities excuses noncompliance. Utilities can make estimates, as they do routinely in their ratemaking processes.

Commission Conclusion

663. The arguments presented by TAPS and TDU Systems are not persuasive. First, with respect to the Transmission Provider's recovery of Interconnection Facility costs, the Commission's pricing policy treats the Transmission Provider and the Interconnection Customer in a fully comparable manner. Second, any Interconnection Facility costs that the Transmission Provider incurred before March 15, 2000, and that remain in the Transmission Provider's rate base on the effective date of Order No. 2003, could be hard to identify (because they are not recorded in separate accounts) and are likely to be small (*i.e.*, largely depreciated). Also, the complexity of the rate adjustments does not end with the identification of plant balances. The rate adjustments would require adjustments to income taxes as well as allocation of operation and maintenance expenses, all of which require subjective assumptions. Our experience with such cost of service calculations indicates that the benefits of adjusting transmission rates to remove these costs are outweighed by the administrative burden that such adjustments would entail. Finally, petitioners may raise in appropriate rate proceedings the claim that some Transmission Providers retain in rate base interconnection facilities associated with divested generation facilities.

k. Generator Balancing Service Arrangements

664. LGIA Article 4.3 requires the Interconnection Customer to make appropriate generator balancing service arrangements before submitting any schedules for delivery service that identify the Generating Facility as the point of receipt for the scheduled delivery. The Interconnection Customer is responsible for ensuring that the Generating Facility output matches the scheduled delivery, consistent with applicable scheduling requirements. It must also arrange for the supply of energy when there is a difference between the actual output and the scheduled delivery. Article 4.3 allows the Interconnection Customer to make generator balancing service arrangements in a variety of ways.

665. Some petitioners object to the LGIA requirement that the Interconnection Customer arrange for balancing service before submitting a

[138] *See* Southern Company Services, 98 FERC ¶ 61,328 (2002).

[139] *The pro forma* LGIP and LGIA define Interconnection Facilities as all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, addition or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

schedule for delivery service.[140] American Wind Energy and TAPS state that, in effect, the provision requires a new Ancillary Service under the OATT. TAPS argues that this should be considered in the Standard Market Design rulemaking, in which the Commission is proposing a new Transmission Service Tariff.[141] TAPS further states that, while the Commission on occasion has approved generator balancing services as additions to some Transmission Providers' OATTs, this has been the exception.[142] American Wind Energy asks why the Commission has decided to reverse its decision to allow RTOs the flexibility to determine Ancillary Service requirements. It also asserts that Order No. 2003 does not address whether the new requirement's ''point of receipt for such scheduled energy'' is consistent with Network Integration Transmission Service under the OATT or with existing bandwidth exceptions and intermittent scheduling rules the Commission has approved. The requirement will have a discriminatory effect on wind and other intermittent resources and thus will thwart the Commission's objective of eliminating bias against new market entrants. Accordingly, the Commission should delete LGIA Articles 4.3 (Generator Balancing Service Arrangements) and 4.3.1.

666. TAPS alleges that the Commission has failed to consider the effect of the balancing requirement on the Interconnection Customer. TAPS offers the example of an Interconnection Customer in an RTO with an out-of-Control Area Generating Facility that will be required to pay both the generator balancing service arrangements charge to the Control Area in which the facility is located and an energy imbalance charge for mismatches between generation and load within the Control Area(s) where the load is located. TAPS further questions why the generator balancing service arrangements requirement is imposed only on a new Generating Facility. If TDU Systems objects to having to adhere to the new requirement whether or not there is a net imbalance on the Transmission Provider's Transmission System claiming that this could unjustly enrich the Transmission Provider.

[140] *E.g.,* American Wind Energy, TAPS, and TDU Systems.

[141] Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55542 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002).

[142] TAPS cites Florida Power Corp., 89 FERC ¶ 61,263 (1999) as one example.

Commission Conclusion

667. The petitioners' objections to the balancing service requirement of Article 4.3 are well taken. Therefore, we are granting American Wind Energy's request for rehearing and are deleting Article 4.3 (and Article 4.3.1) from the LGIA. We note that the purpose of this article was not to establish a new requirement for balancing service or to preclude any options currently available to the Interconnection Customer. However, we now recognize that this requirement is more closely related to delivery service than to Interconnection Service. Because delivery service requirements are addressed elsewhere in the OATT, the balancing service requirement, and requirements related to Ancillary Services generally, should not appear in the LGIA.

l. Miscellaneous Issues Regarding Interconnection Pricing for the Non-Independent Transmission Provider

668. Cinergy seeks clarification that LGIA Article 5.19.3 (Modification Costs) does not eliminate the ability of the Transmission Provider to charge the Interconnection Customer for the cost of upgrades needed to provide Transmission Service. It requests modification of the following language in Article 5.19.3: ''Interconnection Customer shall not be directly assigned the costs of any additions, modifications, or replacements that Transmission Provider makes to the Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to Transmission Provider's Interconnection Facilities or the Transmission System, or to provide Transmission Service to a third party under the Transmission Provider's Tariff.'' Cinergy states that this language could be read to eliminate the application of the Commission's ''higher of'' policy to transmission delivery service.

669. Southern requests that LGIA Article 5.19.3 be clarified to state: ''Interconnection Customer shall be responsible for the costs of any such additions, modifications, or replacements to the Transmission Provider's Interconnection Facilities or the Transmission System to the extent they are necessitated by Interconnection Customer's additions, modifications, or replacements to Interconnection Customer's Interconnection Facilities.''

670. Cinergy argues that the LGIA contemplates the possibility of the Generating Facility failing to achieve Commercial Operation ten years or more in the future. However, it would be practically impossible to do the analyses necessary to retroactively determine which other generating facilities made use of the upgrades that were funded by the Interconnection Customer with the failed project. It claims that this would not be the case with Stand Alone Network Upgrades, such as new switchyard facilities constructed for the Interconnection Customer, because they would be easy to track. Cinergy asks the Commission to provide for refunds to a canceling Interconnection Customer if Stand Alone Network Upgrades are later used by another Interconnection Customer.

671. Duke Energy and EEI contend that Order No. 2003 is not clear about the provision of credits for the non-usage sensitive portion of transmission charges. Duke Energy is concerned that the language in Order No. 2003 and in the LGIA does not clearly delineate the crediting options the Commission has approved, and that this will lead to controversy. It recommends that the Commission clarify that credits are to be applied in full to reservation charges set forth in OATT Schedule 7—Long-Term Firm and Short-Term Firm Point to point Transmission Service, Schedule 8—Non-Firm Point to point Transmission Service, and to the basic transmission charges based on Attachment H-Annual Transmission Revenue Requirement for Network Integration Transmission Service. However, credits should not be applied to other transmission-related charges (*e.g.*, line losses, Ancillary Services) in other provisions of the OATT. Duke Energy claims that this will ensure that the phrase ''usage sensitive charges'' does not refer to selective cost components of the transmission revenue requirement that underlies the basic transmission charge.

672. Idaho Power asserts that the Commission does not justify departing from its prior policy of making credits payable only to the Transmission Customer taking service from the Generating Facility and instead has made credits a fungible commodity that may be assigned to anyone.

Commission Conclusion

673. Cinergy states that Article 5.19.3 could be read to eliminate the application of the Commission's ''higher of'' policy to the delivery component of transmission service. The Commission's intent was to ensure that the Interconnection Customer is not directly assigned the costs of any additions, modifications or replacements that a Transmission Provider makes to its Interconnection Facilities or

Transmission System to facilitate the interconnection to the Transmission Provider's Interconnection Facilities or Transmission System or to provide delivery service to a third party. To eliminate confusion, we are adding the words ''to a third party'' before the phrase ''under the Transmission Provider's Tariff'' in Article 5.19.3. Southern's requested modification of Article 5.19.3 is a broad statement of cost responsibility with implications that are more appropriately addressed on a case-by-case basis.

674. Cinergy argues that if the Interconnection Customer's Generating Facility does not achieve Commercial Operation, the Interconnection Customer should be entitled to a credit for only the cost of Stand Alone Network Upgrades constructed for that Generating Facility, when the Stand Alone Network Upgrades are later used by it or another Generating Facility. Cinergy argues that it is difficult to determine retroactively which Generating Facility, if any, made use of Network Upgrades that were constructed, perhaps several years earlier, for an Interconnection Customer that subsequently cancelled its Generating Facility. We do not agree. We recognize that such determinations may require judgment. However, the Transmission Provider should be able to estimate any savings in Network Upgrade costs that may accrue to a subsequent Generating Facility due to the presence of the earlier Network Upgrades. When such savings can be demonstrated, the original Interconnection Customer is entitled to a credit.

675. Duke Energy makes a valid point with regard to credits for the non-usage sensitive portion of transmission charges, and we so clarify. That is, credits are to be applied in full to reservation charges set forth in OATT Schedule 7—Long-Term Firm and Short-Term Firm Point to Point Transmission Service, Schedule 8—Non-Firm Point to Point Transmission Service, and to the basic transmission charges based on Attachment H—Annual Transmission Revenue Requirement for Network Integration Transmission Service.

676. We disagree with Idaho Power, however. The LGIA explicitly allows the Interconnection Customer to assign its rights to credits to any person. These are valuable rights whose value is maximized when they are assignable. Moreover, the Interconnection Customer, as owner of the Generating Facility, is rarely the customer that takes transmission delivery service. For this reason, effective implementation of the crediting provision requires that the credit rights be assignable.

m. Interconnection Pricing Policy for the Independent Transmission Provider

677. The Commission stated in Order No. 2003 that it is continuing to allow flexibility, including participant funding, regarding the interconnection pricing policy that an independent Transmission Provider may propose. In addition, the Commission stated that it will permit an ''independent administrator'' to implement, for a one year transition period before the start of RTO or ISO operations, a participant funding policy for the Network Upgrades needed for generator interconnections. Any such independent administrator must first be approved by the Commission and the affected states, and it must perform transmission planning and related cost allocation for the regional Transmission System. The Commission invited a Regional State Committee to establish criteria that an independent entity would use to determine which Transmission System upgrades should be subject to a participant funding requirement.

678. Numerous petitioners contend that allowing pricing flexibility for an independent Transmission Provider, but not a non-independent Transmission Provider, is unduly discriminatory.[143] Others object to allowing an independent Transmission Provider to use participant funding.[144] Some raise issues about the Commission's decision to allow an independent administrator to implement participant funding during a transition period.[145]

679. Some petitioners argue that allowing flexibility only for an independent Transmission Provider causes a similarly situated customer not to be treated in a comparable manner. They claim that retail customers of the non-RTO or non-ISO Transmission Provider must pay for the costs of Network Upgrades, while retail customers of an independent Transmission Provider do not. Idaho Power asserts that while the Commission recognizes that participant funding is just and reasonable, it ignores this determination for some public utilities based solely on their identity as non-independent Transmission Providers. This contravenes the FPA requirement that all public utilities are entitled to the same just and reasonable standard. Entergy recommends the continued use of the system-wide benefits test to mitigate inequitable cost-shifting until the Commission authorizes the Transmission Provider to implement participant funding or such other funding as may be requested by an RTO or ISO.

680. Old Dominion complains that participant funding for independent Transmission Providers is discriminatory because it creates a disincentive for the Generating Facility to be located in an RTO that opts for participant funding, since participant funding is more favorable to Transmission Providers. Participant funding limits the Interconnection Customer's compensation to Firm Transmission Rights for the amount of increased transfer capability that results from the Network Upgrades the Interconnection Customer pays for. In contrast, an Interconnection Customer locating its Generating Facility in a non-RTO region would recover the full costs of the Network Upgrades through credits.

681. The Georgia PSC and other petitioners contend that the interconnection pricing policy is unnecessary to prevent undue discrimination, which has not been shown to exist in the Southeast. The North Carolina Commission and the Alabama PSC view Order No. 2003 as an improper attempt to coerce by indirect means participation in an independent transmission organization when the Commission cannot impose such a requirement directly.[146] Salt River Project asserts that requiring participation in an RTO should not be the Commission's answer to Order No. 2003's inefficiencies in siting and unfair cost subsidization.

682. Entergy and others argue that mere administrative convenience does not warrant adopting a generic pricing approach that imposes a penalty on customers outside an RTO, when the justness and reasonableness of the facilities at issue can be evaluated by the Commission on a case-by-case basis under the FPA. The North Carolina Commission asserts that the Commission should modify its transmission pricing policy to provide that the cost of upgrades will be borne by those causing the upgrades or expansions if an independent review of those cost allocations is conducted by a third party, such as the Commission,

[143] *E.g.,* Arkansas PSC, Entergy, Georgia PSC, Kentucky PSC, Idaho Power, Mississippi PSC, North Carolina Commission, NYTO, Old Dominion, Progress Energy, Salt River Project, South Carolina PSC, and Southern.

[144] *E.g.,* TAPS and TDU Systems.

[145] *E.g.,* Arkansas PSC, EEI, TAPS, and TDU Systems.

[146] The Alabama PSC cites *National Fuel Gas Supply Corp.* v. *FERC,* 909 F.2d 1519, 1522 (DC Cir. 1990).

upon request. Progress Energy proposes that an independent, impartial entity such as the state regulatory body or state-appointed administrator could review the criteria for participant funding and related cost allocations.

683. The Arkansas PSC maintains that the Commission should allow participant funding whenever there is an independent administrator to implement transmission planning, cost determination and beneficiary assessment procedures. It therefore requests that the Commission eliminate the fixed time frame for transition to RTO approval, as well as the ultimate requirement of RTO implementation as the *quid pro quo* for use of participant funding. This will mitigate any detrimental effect on retail customers. EEI seeks clarification as to whether the Commission intends to allow participant funding for a transition period beginning on the effective date of Order No. 2003 or after approval of an independent administrator by the Commission and the affected states, or after the start of RTO or ISO operations.

684. TAPS and TDU Systems oppose reliance on an independent administrator. It would likely be working based on the existing Transmission Provider's plans and would be too susceptible to the Transmission Provider's influence, since it would not be involved in the day-to-day operation of the Transmission System or have first-hand experience with the transmission facilities. This could also reduce the incentive for a Transmission Owner to join an RTO or ISO. In the alternative, the Commission should clarify that the one year transition deadline will be strictly enforced with retroactive transmission crediting where necessary.

685. TAPS and other petitioners assert that participant funding for an independent Transmission Provider lacks a proven track record or a solid theoretical foundation and is inconsistent with the Commission's April 28, 2003 White Paper.[147] TAPS urges instead that the costs of Network Upgrades be rolled in, leaving room for a form of participant funding where the upgrade to integrate new generation is outside the scope of the plan devised to meet regional needs. Old Dominion requests that, even in RTO regions, the cost of upgrades be rolled in only if the new generation and transmission facilities will actually benefit all customers. Firm Transmission Rights associated with increased transfer capability should be allocated to load if the Transmission Provider allocates the costs of the upgrades to load, or allocated to the Interconnection Customer if the Transmission Provider associates the costs of the upgrades with the Generating Facility.

686. NRECA–APPA asks that the Commission state clearly that RTOs and ISOs have the obligation to plan Network Upgrades to meet both the reliability and economic needs of their customers and that they must provide rolled-in treatment for both kinds of transmission upgrades. If an RTO or ISO plans only reliability upgrades, and thus leaves it to the market to develop all Network Upgrades required to relieve congestion, Order No. 2003 is arbitrary and capricious.

687. TDU Systems asserts that allowing RTOs and ISOs to adopt participant funding violates the FPA by effectively delegating to Regional State Committees (RSC) determinations of when participant funding would be acceptable unless an RSC's role in setting criteria for the allocation of costs of Network Upgrades is advisory only.]

688. NRECA–APPA asks the Commission to clarify that Order No. 2003 does not prematurely establish a role for RSCs. NRECA–APPA states that the role of RSCs, if any, should be determined in the Commission's SMD rulemaking. If the Commission does give the RSCs a role in this rulemaking, NRECA–APPA asks that the Commission clarify that any criteria for participant funding to be established by the RSCs may not be inconsistent with NRECA–APPA's position on transmission cost allocation.

689. NYTO states that the failure to grandfather existing Commission-approved ISO interconnection policies could result in a waste of the tremendous efforts undertaken to resolve interconnection issues within an ISO service area.

690. Duke Energy seeks clarification that the Commission does not intend to prejudge the pricing mechanisms that a Transmission Provider may submit to the Commission as alternatives to the participant funding approach discussed in Order No. 2003.

Commission Conclusion

691. We disagree that it is unduly discriminatory to allow an independent Transmission Provider to propose innovative cost recovery methods, including participant funding, while requiring a non-independent Transmission Provider to continue to use more traditional pricing required by Order No. 2003 for new interconnections. This different treatment is fair because the two types of Transmission Providers are not similarly situated. As we have explained, when implemented by an independent Transmission Provider which does not have an incentive to discourage new generation by competitors, new cost recovery methods including participant funding can yield efficient competitive results. However, because of their inherent subjectivity, new approaches such as participant funding could allow a non-independent Transmission Provider to propose methods that frustrate the development of new generating facilities that will compete with its own. For example, because RTOs and ISOs are independent, and neither own nor have affiliates that own generating facilities, we have less concern that existing utility-owned generating facilities will be favored over new generating facilities or that utilities will ''gold plate'' their systems at the Interconnection Customer's expense. The Commission gives some deference to RTOs and ISOs in many areas, not just interconnection, because they have no incentive to administer the Transmission System in a discriminatory manner.

692. In addition, as we explained above, an independent Transmission Provider is in a position to implement a policy of direct assignment for Network Upgrades without violating our prohibition on ''and'' pricing. For example, we have permitted the direct assignment of Network Upgrade costs by an independent Transmission Provider when the Interconnection Customer receives well-defined congestion rights in return.[148] In this case, the customer is not paying twice for the same service but rather is paying separate charges for separate services.

693. We do not view our policy as penalizing the utility that does not join an RTO or ISO. The purpose of the policy is to ensure a level playing field. Indeed, Order No. 2003 pricing for new interconnections benefit the Transmission Customers of such a utility by increasing the supply of competitively priced power that might not otherwise be available and by enhancing Transmission System reliability.

694. Continued reliance on the use of evidentiary proceedings, case-by-case adjudication of Interconnection Requests, or other third party review procedures will not ensure that new

[147] White Paper: Wholesale Power Market Platform, Docket No. RM01–12–000 (Apr. 28, 2003)(*White Paper*).

[148] *See* Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 at 62,259–60 (1997), *order on reh'g. and clarification,* 92 FERC ¶ 61,282 at 61,955–56 (2000), *remanded on other grounds sub nom. Atlantic City elec. Co.* v. *FERC,* 295 F.3d 1 (DC Cir. 2002).

interconnections are completed in a timely manner by the non-independent Transmission Provider. Speeding up the interconnection process is a primary goal of this proceeding. Administrative review of complex technical matters is costly and time consuming. In today's competitive power market environment, allowing a Transmission Provider that is also a competitor in the wholesale power market to delay competitive entry or to propose subjective and potentially discriminatory pricing policies is unacceptable. Therefore, we continue to require the non-independent Transmission Provider to adhere to the Commission's ''higher of'' pricing policy.

695. Contrary to the views of TAPS, TDU Systems, NRECA-APPA, and others, Order No. 2003 does not prescribe specific policies for RTOs and ISOs. In particular, we are not determining which types of transmission expansion projects should be participant funded or how any Firm Transmission Rights might be allocated to the Interconnection Customer. Order No. 2003 does not require an RTO or ISO to adopt a traditional pricing policy for projects that provide a system-wide benefit. The Commission has stated that it is allowing flexibility for an independent Transmission Provider to adopt policies of its choosing, subject to Commission approval. This is reasonable in light of the RTO's or ISO's independence and representative governance structure. If entities wish to object to specific RTO or ISO proposals, including the role of RSCs in setting criteria for the allocation of costs of Network Upgrades, they may do so in the compliance filing proceeding.

696. With respect to the implementation of participant funding by an independent administrator, we deny the Arkansas PSC's request that the Commission eliminate the maximum one year transition period to an RTO or ISO. In addition, we will continue to permit an ''independent administrator'' to implement, for a one year transition period before the start of RTO or ISO operations, a participant funding policy for the Network Upgrades needed for generator interconnections. Any such independent administrator must first be approved by the Commission and the affected states, and it must perform transmission planning and related cost allocation for the regional Transmission System. Although an independent administrator alleviates many of our concerns about undue discrimination, we do not believe that an independent administrator provides an effective long-term solution to the problem of transmission planning and cost allocation, given its limited authority and what is likely to be an ongoing need to obtain and verify information from the Transmission Provider. However, we do not agree with TAPS and TDU Systems that an independent administrator would be so susceptible to Transmission Provider influence that its decisions would be compromised.

697. Finally, in response to EEI, the one year transition period for an independent administrator begins on the effective date of the Commission's order approving the independent administrator or the effective date of this order, whichever is later.

3. Commission Jurisdiction Under the Federal Power Act

698. Sections 205 and 206 of the FPA require the Commission to address and remedy undue discrimination by public utilities. The record underlying Order No. 888 showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices. Because interconnection is an essential element of Transmission Service that is required to be provided under the OATT, the Commission concluded in Order No. 2003 that it may order generic interconnection terms and procedures under its authority to remedy undue discrimination and preferences under Sections 205 and 206 of the FPA.[149]

699. It is evident that the Commission did not state clearly enough its intention with regard to jurisdiction and the applicability of Order No. 2003 and, as a result, many of the petitions for rehearing are based on a misunderstanding. The jurisdiction asserted by the Commission in Order No. 2003 is identical to that asserted in Order No. 888 and affirmed by the Supreme Court in *New York* v. *FERC.*[150] Further, it is consistent with the recent *Detroit Edison Co.* v. *FERC* case, which interpreted *New York* v. *FERC.* [151]

700. There is no intent to expand the jurisdiction of the Commission in any way; if a facility is not already subject to Commission jurisdiction at the time interconnection is requested, the Final Rule will not apply. Thus, only facilities that already are subject to the Transmission Provider's OATT are covered by this rule. The Commission is not encroaching on the States' jurisdiction and is not improperly asserting jurisdiction over ''local distribution'' facilities. This should address most, if not all, of the arguments that the Commission is overreaching its jurisdiction.

a. The Detroit Edison Case Precedent

Rehearing Requests

701. Several petitioners cite the recent *Detroit Edison Co.* v. *FERC* case for the proposition that the Commission lacks the jurisdiction to make Order No. 2003 applicable in the manner set forth in the order.[152]

702. Specifically, NYTO argues that *Detroit Edison* ''exhaustively considered the scope of the Commission's authority with respect to distribution facilities.'' It says that the court rejected the proposition that a state cedes jurisdiction over unbundled retail distribution if it unbundles retail service or if a public utility voluntarily provides such unbundled service. *Detroit Edison,* NYTO continues, made clear that ''there are no FERC jurisdictional distribution facilities.'' As a result, states have jurisdiction over the terms, conditions, and cost allocations related to distribution-level interconnections.

703. The North Carolina Commission says the Commission's jurisdictional claims are untenable in light of the ruling in *Detroit Edison.* There the court held that ''when a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA § 201(b)(1).''[153] When such a facility is used to deliver energy to a bundled or unbundled retail customer, however, the Commission lacks any authority over such a facility and the state has sole jurisdiction over that transaction.[154] The North Carolina Commission concludes that because Order No. 2003 is a generic pronouncement based on Commission jurisdiction over Transmission Service, and is not limited to wholesale transactions, it exceeds the Commission's statutory jurisdiction.

704. In addition, LPPC and the New York PSC argue that the Commission's assertion of jurisdiction for ''dual use'' facilities is inconsistent with *Detroit Edison,* which rejected the idea that the Commission may exercise jurisdiction over local distribution facilities because part of those facilities are used in an otherwise Commission-jurisdictional manner. Avista argues that, in light of the holding in *Detroit Edison,* the

[149] Order No. 2003 at PP 18–20.

[150] *TAPS* v. *FERC,* 225 F.3d at 696. (affirming the Commission's assertion of jurisdiction in Order No. 888).

[151] 334 F.3d 48 (DC Cir. 2003) (*Detroit Edison*).

[152] *Id.*

[153] *Id.* at 51.

[154] *Id.*

Commission should recognize that the States have jurisdiction with respect to new interconnections to dual use ''distribution'' facilities and that, if such interconnection is with respect to unbundled retail distribution service, the state's jurisdiction is exclusive.

Commission Conclusion

705. Contrary to arguments made by petitioners, *Detroit Edison* does not prohibit the Commission from exercising jurisdiction in the manner intended in Order No. 2003. That case did not overrule *TAPS,* where the Supreme Court affirmed the Commission's jurisdiction, and since the Commission is asserting no jurisdiction beyond what it asserted in Order No. 888, Order No. 2003 cannot violate *Detroit Edison.*

706. In *Detroit Edison,* the court prohibited the Commission from asserting *exclusive* jurisdiction over local distribution facilities used to provide unbundled retail distribution. In fact, the court in *Detroit Edison* contrasted the Commission's lack of jurisdiction over local distribution facilities used to deliver energy to an unbundled retail customer with the Commission's jurisdiction over the use of a local distribution facility for wholesale sales, and stated that ''when a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA section 201(b)(1).''[155] With respect to ''distribution'' facilities, Order No. 2003 applies when the facilities are subject to a Commission-approved OATT and the purpose of the interconnection is to make wholesale sales.[156] We thus conclude that the ''distribution'' interconnections to which Order No. 2003 applies are within the Commission's statutory authority.

b. Transmission Provider Facilities Subject to Order No. 2003

Rehearing Requests

707. The North Carolina Commission challenges the Commission's statement that it is not extending its jurisdiction to any facility not already under its jurisdiction under a Commission-filed OATT.

708. LPPC asks how one determines whether a particular facility is under the OATT. It argues that the Commission should use the seven-factor test set forth in Order No. 888 to determine whether facilities used to deliver electric energy directly to an end user are under its jurisdiction or are ''local distribution'' facilities under state jurisdiction.

709. NARUC argues that it may not be easy to determine whether a given distribution line is Commission-jurisdictional. The Transmission Owner's uniform system of accounts may not clearly indicate whether a given distribution line is under the OATT. Accordingly, the Commission should provide a method for determining when specific distribution facilities are covered by an OATT. NARUC's members are concerned that ''in cases where distribution facilities are known to be included in an OATT, but it is difficult or impossible to identify whether specific facilities are covered by an OATT, some Parties may assert and the Commission may conclude that all the Transmission Owner's distribution facilities are covered by the OATT because distribution costs are recovered under the OATT on a rolled in basis.'' Accordingly, the Commission must clarify that unless distribution facilities are clearly identified as being subject to the OATT, all interconnections to those facilities are within state jurisdiction.

Commission Conclusion

710. Order No. 2003 applies to interconnections to the facilities of a public utility's Transmission System that are subject to the public utility's OATT at the time the interconnection is requested. Facilities subject to the OATT are: Transmission facilities used to transmit electric energy in interstate commerce either at wholesale or for unbundled retail sales; and ''distribution'' facilities that are used for wholesale sales in interstate commerce.[157] Order No. 2003 thus applies to a request to interconnect to a public utility's ''distribution'' facilities only if those facilities are used to deliver electric energy in interstate commerce to accommodate wholesale sales pursuant to a Commission-filed OATT. An Interconnection Customer is entitled to use the LGIP and LGIA to request interconnection to ''distribution'' facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, but only if those distribution facilities are used to provide Transmission Service under an OATT that is on file at the Commission at the time of the Interconnection Request and the interconnection is for the purpose of facilitating a jurisdictional wholesale sale of electricity.

711. LPPC requests that the Commission apply the seven-factor test to distinguish ''local distribution'' and transmission facilities. As explained above, since we are asserting jurisdiction only over facilities that are already subject to an OATT, the availability of the facilities under a Commission-approved OATT, and not their nominal classification, determines eligibility for Commission-jurisdictional interconnection.[158]

712. In response to NARUC's request that there be a readily discernible method for determining which facilities are subject to an OATT, we note first that in most cases there will be no controversy about whether a facility is under the OATT. When there is, however, there is no simple method of deciding what facilities are under an OATT. Even if the Interconnection Customer consults the Transmission Provider's rate filings, it might be unable to determine whether a facility to which it seeks interconnection is subject to the OATT. We conclude that the only reasonable method for identifying which facilities are subject to a Transmission Provider's OATT is to rely on the Transmission Provider in the first instance to make this information available to the Interconnection Customer during the Scoping Meeting or earlier. If the Interconnection Customer disagrees with the Transmission Provider's conclusion that the facility in

[155] *Detroit Edison,* 334 F.3d at 51 (citing Order No. 888 and *TAPS* v. *FERC*). *See also TAPS* v. *FERC,* 225 F.3d at 696 (explaining that Section 201(a) of the FPA ''makes clear that all aspects of wholesale sales are subject to federal regulation, regardless of the facilities used'').

[156] Order No. 2003 at P 804.

[157] As explained in Order No. 2003 at P 803, the term ''distribution'' is usually used to refer to lower voltage lines that are not networked and that carry power in one direction. The term ''local distribution'' is a legal term, and under Section 201(b)(1) of the FPA, the Commission lacks jurisdiction over ''local distribution'' facilities. The court in Detroit Edison used the terms ''distribution'' and ''local distribution'' interchangeably. The court recognized that certain ''distribution'' facilities serve a dual use function (*i.e.,* they are used for both wholesale and retail sales) and that there could be Commission-jurisdictional uses of ''local distribution'' facilities; in such case, the court viewed the Commission's jurisdiction as extending only to the use of the facilities for purposes of the wholesale transaction. Detroit Edison, 334 F.3d at 51. Consistent with Detroit Edison, the Final Rule applies to a dual use facility only if the facility is already part of a Commission-filed OATT and the interconnection is for the purpose of making a jurisdictional sale of electric energy for resale in interstate commerce.

We note that some facilities labeled by a utility as ''distribution'' may actually carry out a transmission rather than a local distribution function and thus would be subject to Commission jurisdiction for accommodating wholesale as well as unbundled retail transactions. In this circumstance, we do not view the label as controlling.

[158] Pursuant to Order No. 888, the seven-factor test may be used to determine what facilities are jurisdictional to states and what facilities are or are not subject the Commission's open-access requirements. Order No. 888 at p. 31,770–71.

question lies within or outsidethe Transmission Provider's OATT, it should bring the issue to the attention of the Commission.

c. Interconnections to Low-Voltage Facilities for the Purpose of Making Wholesale Sales

Rehearing Requests

713. NARUC argues that Order No. 2003 violates the ''bright line'' distinguishing jurisdictional transmission from nonjurisdictional local distribution. It claims that Order No. 2003 adopts a murkier ''dual use'' theory that will hinder the development of a distributed generation market. NARUC asserts that the Commission has created the inaccurate impression that there is a significant amount of ''distribution'' facilities over which it has authority. While the Commission concedes that Order No. 2003 does not apply to any facility not already under its jurisdiction under an OATT at the time the interconnection request is made, NARUC believes this is insufficient. Instead, NARUC believes that the Commission should admit that because the States are best situated to secure the safe, efficient, and reliable interconnection of generators to state-jurisdictional distribution systems, they should continue to have that authority.

714. NRECA–APPA and Salt River argue that the Commission should disclaim jurisdiction over distribution-level interconnections as a matter of policy and that the LGIP and LGIA are designed with the high voltage system in mind and are inappropriate for distribution-level interconnections and smaller distribution companies with fewer resources. Additionally, NRECA–APPA argues that Order No. 2003 does not adequately address commenters' concerns that the Commission lacks the staff, experience, or expertise to oversee distribution-level interconnections.

715. NRECA–APPA also argues that the Commission's regulation of distribution-level interconnections will not encourage the development of new distribution-level generation. The exception for distribution-only facilities is extremely limited and ''is in fact a one-shot deal.'' For example, once a generator interconnects, if a non-public utility agrees to provide wheeling service over a theretofore distribution-only facility, it becomes a public utility subject to full Commission jurisdiction, including the obligation to file an OATT. If a second generator seeks interconnection to the Transmission Provider's system, then the LGIP and LGIA would apply, because at that time the Transmission Provider does have facilities subject to Commission jurisdiction, under an OATT. This creates a ''huge disincentive for Transmission Providers to interconnect the first generator, and even more so, to provide wheeling service to the interconnecting generator.'' On the other hand, the Commission would not slow interconnections by disclaiming jurisdiction over distribution-level interconnections, since states are filling any gap that the Commission may perceive in distribution interconnection rules. To this end, both NARUC and NRECA–APPA offer model interconnection documents that they argue will aid the states in exercising their regulatory responsibilities.

716. NRECA–APPA further argues that if the Commission does not disclaim jurisdiction over all dual-use distribution facilities, including those owned by public utilities, it should create a safe harbor for non-public utilities that want to interconnect, but want to maintain their non-jurisdictional status under the FPA. It points to several examples of ''limited jurisdiction certificates'' from the Commission's experience regulating natural gas. The fact that the Commission lacks certificate authority under the FPA makes this goal easier to accomplish. The Commission could state that the safe harbor does not apply to entities that are already jurisdictional because they offer Commission-jurisdictional Transmission Services under an OATT on file with the Commission. If a non-public utility interconnects with a generator under a mutually satisfactory contract, that interconnection should not change the jurisdictional status of the entity.

717. NRECA–APPA also argues that a similar result could be achieved through FPA Section 211. The Commission could permit non-public utilities to submit to the Commission agreements in the form of Section 211 settlements stating that the non-public utility will provide wheeling service to the generators under agreed upon terms. This approach would permit the Commission and the Parties to bypass the extended dispute and hearing process required by Section 211. This is a ''permissive policy choice'' about how and when to assert jurisdiction that the Commission should exercise.[159]

718. The North Carolina Commission concludes that because Order No. 2003 is a generic pronouncement based on Commission jurisdiction over Transmission Service, and is not limited to wholesale transactions, it exceeds the Commission's statutory jurisdiction.

719. Avista and the Washington UTC argue that the Commission should further clarify that a utility's past decision to allow an interconnection to distribution facilities does not convert such facilities to exclusive Commission jurisdiction. If this was indeed the Commission's intent, then Avista requests rehearing. It wants the rule to say that the States retain authority over new interconnections to dual use distribution facilities, unless there is an OATT on file by the owner of the facilities that makes available new Commission-jurisdictional service over those facilities.

720. The New York PSC asks the Commission to clarify what it means by ''distribution.'' The Commission should clarify whether it intends to refer to low voltage lines that could be subject to the Commission's jurisdiction as transmission lines, or to ''local distribution'' facilities that are not subject to the Commission's jurisdiction under the FPA. In the Commission's description of ''dual use'' facilities in particular, it is unclear whether the Commission seeks to assert jurisdiction over low voltage transmission lines or over ''local distribution'' facilities. Furthermore, even if sales for resale occur on a local distribution system, such sales would not support Commission jurisdiction over generator interconnection. Sales for resale would not affect Commission jurisdiction over the underlying facilities, which remain distribution facilities. The interconnection of such lines would be a purely ''local distribution'' function that remains exempt from Commission regulation.

721. NRECA–APPA argues that even if the Commission and the courts ultimately conclude that any facility carrying a wholesale electron, including a local distribution facility, is under Commission jurisdiction, the Commission still will not have jurisdiction to regulate most distribution-level interconnections. In most distribution-level interconnections, no electrons from the generator will ever cross state lines and generators seldom, if ever, export power beyond the customer's meter. While the wholesale sale transaction may be in interstate commerce and subject to Commission jurisdiction, the transmission itself and the distribution facilities used for that purpose are not.

722. NARUC argues that the intention of the Interconnection Customer to sell power to a wholesale buyer at some time in the future does not provide the Commission with jurisdiction over the

[159] NRECA–APPA cites *New York* v. *FERC,* 535 U.S. 1, 28 (2002).

interconnection itself, although the wholesale power sale may be Commission-jurisdictional when made. The Commission should remove ambiguity by clearly disclaiming jurisdiction over interconnections to distribution facilities not covered by an OATT.

723. LPPC seeks clarification that an interconnection request for the purpose of making sales in interstate commerce will not be under the LGIP and LGIA for facilities that are not otherwise under the Commission's jurisdiction at the time that the request is made. To do otherwise would impermissibly expand the Commission's jurisdiction to cover ''local distribution.'' NRECA–APPA seeks clarification that no OATT would be required when an entity voluntarily interconnects a generator to non-jurisdictional facilities and that customer then seeks wheeling service.

724. The North Carolina Commission and PacifiCorp argue that because only Commission-jurisdictional service can be taken under an OATT, Commission jurisdiction over interconnection to a distribution facility must be determined on a case-by-case basis and must be solely for the purpose of regulating actual wholesale sales. The Commission has overreached its statutory authority, since Order No. 2003 requires neither an agreement for the delivery component of Transmission Service, nor a contract for the sale of the Generating Facility's output at the time of interconnection. The North Carolina Commission argues that because retail service in North Carolina is bundled, the Commission lacks authority over local distribution facilities except when they are actually being used to effectuate a wholesale sale. These facilities cannot be made subject to an OATT. The North Carolina Commission also argues that because the transmission component of bundled retail service is not provided under the OATT, it follows that interconnections or Network Upgrades related to the provision of bundled retail service are not subject to the OATT, the LGIP, or the LGIA. While Order No. 2003 refers to this issue, the LGIP and LGIA do not clearly make this distinction.

725. PacifiCorp asks that the LGIP be amended to allow the Transmission Provider or state agency to have an opportunity to challenge the Interconnection Customer's plan to provide wholesale service.

726. SoCal Edison asks if the Commission intends that a wholesale generator interconnecting to a local distribution facility currently used exclusively for retail would not be subject to SoCal Edison's Commission-approved wholesale distribution access tariff (WDAT), that SoCal Edison be permitted to continue to process all wholesale distribution interconnection requests under its WDAT.

727. The South Carolina PSC argues that, absent express legislative authority, it cannot abdicate its responsibilities for the regulation of electric utilities in South Carolina. Resource and facility planning are matters subject to the jurisdiction of the individual states. The Commission should not attempt to stretch the boundaries of its limited statutory authority to conquer those areas over which the States are exercising regulatory authority. The Commission should revise Order No. 2003 to remove any portion that invades a state's jurisdictional province. The Washington UTC makes a similar argument.

728. SoCal Edison argues that Order No. 2003 would be clearer if the Commission recognized that facilities that deliver energy fall into only two categories—transmission facilities and local distribution facilities—and that the Commission has jurisdiction over wholesale transactions and services provided to wholesale customers over both sets of facilities.

729. Finally, the Georgia PSC states that the Commission erred by determining that these rules are necessary to prevent undue discrimination. It argues that since it has not been shown that such undue discrimination exists in the Southeast, these rules are unnecessary in the Southeast.

Commission Conclusion

730. Order No. 2003 provides that if a ''distribution'' facility is used for both wholesale and bundled retail sales, *i.e.*, it has a dual use, ''the Final Rule applies to interconnections to these facilities *only for the purpose of making sales of electric energy for resale in interstate commerce.*''[160] Thus, we are not ousting the States' jurisdiction. Several petitioners challenge this assertion, arguing that *Detroit Edison* prohibits this jurisdiction. We disagree. Because *Detroit Edison* does not prohibit the Commission from asserting jurisdiction over ''distribution'' facilities to the extent they are used for wholesale sales,[161] we do not interpret it as prohibiting the Commission from exercising jurisdiction over an interconnection to dual use facilities if the interconnection is intended to facilitate a wholesale sale. And because the Commission has the authority to regulate all aspects of wholesale transactions in interstate commerce,[162] it will exercise jurisdiction over interconnections to a ''distribution'' facility when the facility is included in a public utility's Commission-filed OATT and the interconnection is for the purpose of facilitating a jurisdictional wholesale sale of electric energy. If the Interconnection Customer seeks interconnection to a ''distribution'' facility that is already subject to the OATT, but does not intend to engage in a Commission-jurisdictional wholesale sale, then the Commission will not assert jurisdiction over the interconnection to the ''distribution'' facility.[163]

731. Regarding dual-use facilities, the Commission in Order No. 888 stated that ''[t]here are, of course, facilities that are used to provide delivery to both wholesale purchasers and end users. In those situations, we believe that the Commission and the States have jurisdiction to set rates for the services that are within their respective jurisdictions.''[164] Order No. 2003 retains the same jurisdiction over dual-use facilities that the Commission exercised in Order No. 888.

732. Some petitioners argue that there are practical considerations that make the Commission's exercise of jurisdiction over certain distribution-level interconnections inadvisable as a policy matter. They argue that states are best situated to regulate interconnections to ''distribution'' facilities. As noted above, we recognize that almost all interconnections to lower-voltage or ''distribution'' facilities will be under state jurisdiction.

733. The New York PSC seeks clarification about the Commission's use of the term ''distribution.'' Order No. 2003 explains that ''distribution'' is an imprecise term that is ''usually used to refer to lower-voltage lines that are not networked and that carry power in one

[160] Order No. 2003 at P 804 (emphasis in original).

[161] *See Detroit Edison,* 334 F.3d at 51.

[162] *See also TAPS* v. *FERC,* 225 F.3d at 696 (''FPA § 201(a) makes clear that all aspects of wholesale sales are subject to federal regulation, regardless of the facilities used.''); *Duke Power Co.* v. *FPC,* 401 F.2d 930, 935–36 (DC Cir. 1968) (noting that the FPC regulates public utility facilities used in wholesale transmission or sales in interstate commerce); *Arkansas Power & Light Co.* v. *FPC,* 368 F.2d 376, 383 (8th Cir. 1966) (stating that the functional use of lines—wholesale versus retail—control); Wisconsin-*Michigan Power Co.,* v. *FPC,* 197 F.2d 472, 477 (7th Cir. 1952) (finding that facilities used at wholesale are not ''local distribution facilities'').

[163] The cases that SoCal Edison cites to support its position that the Commission should make interconnections for wholesale sales to all ''local distribution'' facilities subject to Order No. 2003 rely on the authority granted by PURPA, which is not the source of Commission authority in Order No. 2003.

[164] Order No. 888 at n.13.

direction.''[165] The New York PSC asks for clarification whether the Commission uses ''distribution'' to refer to low voltage lines that could be subject to Commission jurisdiction as transmission, or to ''local distribution'' facilities not subject to the Commission's jurisdiction. We clarify that Order No. 2003 applies to all facilities subject to a Commission-approved OATT, regardless of how the facilities may be labeled by the Transmission Provider.[166] Far from creating jurisdictional uncertainty, as NARUC contends, this approach sets forth a method for determining Commission jurisdiction that is consistent with statutory and judicial precedent and straightforward in its application.

734. In response to SoCal Edison's concern about its wholesale distribution access tariff (WDAT), this is a matter of specific applicability that is better suited to SoCal Edison's compliance filing.

735. In response to Avista's and the Washington UTC's comments, we clarify that a public utility's past decision to allow an interconnection to distribution facilities does not convert such facilities to exclusive Commission jurisdiction. Order No. 2003 states that when any facility, including a ''distribution'' facility, is used to facilitate a jurisdictional wholesale sale, only the use of the facility for Commission-jurisdictional service is subject to Commission jurisdiction.[167] All state-jurisdictional uses remain subject to state jurisdiction. States will retain jurisdiction over interconnection to dual use facilities when either (1) the interconnection to a facility subject to a Commission-approved OATT is not for a wholesale sale, or (2) the facility is not subject to a Commission-approved OATT at the time the Interconnection Request is made, even if the Interconnection Customer intends to make a jurisdictional wholesale sale.[168]

736. In response to the North Carolina Commission's request for clarification about bundled retail transmission, Order No. 2003 states that it applies to facilities subject to a Commission-filed OATT. If the facilities in question were used exclusively for bundled retail transmission facilities, the OATT would not apply. However, in practice, these facilities are likely to be used for wholesale sales and purchases as well as bundled retail sales. Further, as we have previously clarified in this order, if ''distribution'' facilities, at the time an interconnection to such facilities is requested, are being used for bundled retail sales as well as wholesale sales, Order No. 2003 will apply only if the interconnection is to facilitate wholesale sales.

737. NARUC, the North Carolina Commission, and PacifiCorp argue that intent to sell at wholesale is insufficient for providing the Commission with jurisdiction over the interconnection transaction. We will not require an Interconnection Customer seeking interconnection to facilities subject to a Commission-approved OATT to tender proof of a wholesale sale to secure Interconnection Service. That would be unduly burdensome for the Interconnection Customer and would serve no purpose. Given the potential for a long delay between the Interconnection Request and the Commercial Operation Date, it is unreasonable to expect that the Interconnection Customer will already have a contract for the sale of its power when it submits its Interconnection Request. Furthermore, if the Interconnection Customer decides that it will not sell its power at wholesale it would then be subject to state jurisdiction and state jurisdictional charges.

738. NRECA–APPA and Salt River Project argue that the LGIP and LGIA are not appropriate for low-voltage interconnections. NRECA–APPA further argues that the Commission's willingness to accept modified Interconnection Studies in the unlikely event that such a request is received is not reasoned decisionmaking. We disagree. Order No. 2003 explains that under most circumstances, generators larger than 20 MW are interconnected to high voltage facilities. Order No. 2003 also permits Transmission Providers to offer revised studies tailored to examine the effects that a generator larger than 20 MW would have on a low voltage facility. We conclude that the Interconnection Customer will be best served by a process that remains standardized to the extent practicable, even if the studies themselves will change. This will bring greater certainty to all.

739. We disagree with NRECA–APPA's argument that Order No. 2003 will do nothing to encourage the development of new generation interconnection to lower-voltage facilities. We recognize that Order No. 2003 does not apply to most distributed generation, since these facilities almost always interconnect to facilities that are not subject to an OATT. However, Order No. 2003 may be a useful model for states and others that are considering actively encouraging such generation.

740. As we understand it, NRECA–APPA is primarily concerned with distribution cooperatives that do not receive Rural Utilities Service financing and, as a result, are not necessarily exempt from Commission jurisdiction. The concern appears to be that Order No. 2003 could allow an Interconnection Customer to force these otherwise nonjurisdictional entities into jurisdictional status. This is an incorrect understanding of Order No. 2003. While such an entity may voluntarily provide jurisdictional wheeling service, and thereby become Commission-jurisdictional, Order No. 2003 in no way forces it to do so. If a non-public utility offers jurisdictional service, then it—like all other public utilities—would be required to file an OATT and provide open access service, including Interconnection Service, unless it qualified for a waiver of Order No. 888 and 889 requirements.[169] In deciding whether to wheel power, the entity would have to consider whether it wishes to become a public utility subject to the FPA. Order No. 2003 does not substantially increase any burdens associated with public utility status.

741. Accordingly, we do not believe that an additional standardized element of Transmission Service will deter development of distributed generation. We expect that in most instances in which the Transmission Provider has an OATT in effect, the additional obligation of applying the LGIP and LGIA to ''distribution'' facilities already subject to an OATT will not create a significant burden.

742. NRECA–APPA asks the Commission to create a safe harbor for non-public utilities that want to interconnect generation, but wish to do so without becoming jurisdictional under the FPA. There is no need. Order No. 2003 applies only to public utilities. The authority underlying this rule is the Commission's authority over public utilities under Sections 205 and 206 of the FPA. If a non-public utility does not wish to voluntarily provide Interconnection Service for fear of losing its non-public utility status, persons seeking an interconnection from

[165] Order No. 2003 at P 803.

[166] *See New York* v. *FERC,* 535 U.S. at 12. *See also* Puget Sound Energy, 104 FERC ¶ 61,272 at P 16–18 (2003).

[167] Order No. 2003 at P 804 n.129.

[168] If a QF seeks interconnection to a non-OATT ''distribution'' facility to make jurisdictional wholesale sales, the Commission exercises jurisdiction over these interconnections, even though Order No. 2003 does not apply *See Western Massachusetts Electric Co.* v. *FERC,* 165 F.3d 922, 926 (DC Cir. 1999) (noting that the Commission exercises jurisdiction over a QF's interconnection when it transmits power in interstate commerce).

[169] Non-jurisdictional entities faced this same scenario prior to adoption of Order No. 2003.

the non-public utility may file an application under Sections 210, 211, and 212 of the FPA. While interconnections ordered by the Commission pursuant to Sections 210, 211, and 212 make the non-public utility jurisdictional, they do so only for the purpose of carrying out those provisions and enforcing those provisions.[170]

743. Lastly, in response to the Georgia PSC, on appeal of Order No. 888, the court concluded that the Commission acted within its authority when it based Order No. 888 on general findings of systemic monopoly conditions and the resulting potential for anticompetitive behavior.[171] The Commission in Order No. 2003 acted under the same undue discrimination findings that formed the basis for Order No. 888. Moreover, the Commission does not have to make region-specific findings of undue discrimination.

d. Net Metering Issues

744. Net metering allows a retail electric customer to produce and sell power onto the Transmission System without being subject to the Commission's jurisdiction. A participant in a net metering program must be a net consumer of electricity—but for portions of the day or portions of the billing cycle, it may produce more electricity than it can use itself. This electricity is sent back onto the Transmission System to be consumed by other end-users. Since the program participant is still a net consumer of electricity, it receives an electric bill at the end of the billing cycle that is reduced by the amount of energy it sold back to the utility. Essentially, the electric meter ''runs backwards'' during the portion of the billing cycle when the load produces more power that it needs, and runs normally when the load takes electricity off the system.

Rehearing Requests

745. NARUC argues that the Commission should clarify that a Generating Facility covered by a state's net metering policy will not be interconnected under Order No. 2003. The Commission has held that power flowing from a generator participating in a state-established net metering program back to its interconnecting electric utility (for which the generator receives a credit against its retail power purchases from the utility) is not a wholesale sale subject to Commission jurisdiction. The Commission should clarify that in cases of net metering, interconnection is state-jurisdictional, even when a net-metered generator produces more power in a given time period than it consumes from its serving utility.

746. The New York PSC argues that the Commission should not treat net metering by a generator on a distribution system as equivalent to a sale of electric energy for resale in interstate commerce. The Commission has recognized that it does not have jurisdiction over net energy metering by a small producer.[172] Only when a generator actually produces energy resold to another entity would there be a jurisdictional sale under Section 201(d) of the FPA.

Commission Conclusion

747. In response to NARUC's and the New York PSC's arguments about net metering, under most circumstances the Commission does not exert jurisdiction over a net energy metering arrangement when the owner of the generator receives a credit against its retail power purchases from the selling utility.[173] Only if the Generating Facility produces more energy than it needs and makes a net sale of energy to a utility over the applicable billing period would the Commission assert jurisdiction.[174] In either event, the same rules about the applicability of Order No. 2003 apply to these scenarios. In order for the LGIP and LGIA to apply, the net metering customer at the time it requests interconnection has to both seek interconnection to a facility subject to a Commission-approved OATT and intend to make net sales of energy to a utility.

e. Non-Public Utilities and Order No. 2003

Rehearing Requests

748. NYTO argues that, ''despite the Commission's stated goal to standardize the interconnection process nationwide,'' Order No. 2003 ''is devoid of any discussion as to what extent it will apply the Final rule to ERCOT, and, if not, why not.''

749. Order No. 2003 requires a jurisdictional public utility that owns facilities jointly with a non-public utility to apply the LGIP and LGIA to Interconnection Service provided by the public utility on its portion of a jointly owned facility. APS argues that this ignores the difference between use of transmission facilities, which can be dealt with through a joint owner's use rights associated with its undivided share of facilities, and interconnection, which inherently involves a physical connection between the facilities of the generator and all of the undivided ownership interests in the facilities in question, not just a portion thereof. Order No. 2003 does not acknowledge that for Interconnection Service, unlike Transmission Service, the ownership interests of the facilities are inseparable and a generator must interconnect with the whole facility or not interconnect at all. If a public utility is successful in convincing the non-public utility to adopt the requirements of Order No. 2003 in a reciprocity tariff, there may not be a problem. But should such negotiations be unsuccessful, it is unclear how the jurisdictional public utility can permit interconnection only to the public utility's ''portion'' of the facilities. APS asks that the Commission ensure that jurisdictional Transmission Providers are not held accountable for the non-compliance of non-public utilities that jointly own the facilities.

750. APS also recommends that the Commission clarify that when there is joint ownership of a transmission facility with a non-public utility, the Interconnection Request should go to the participant with operational control over the facilities in question, who can coordinate with other owners and facilities as necessary.

Commission Conclusion

751. NYTO argues that Order No. 2003 does not state whether it applies within the Electric Reliability Council of Texas (ERCOT). Because Commission jurisdiction under Sections 205 and 206 of the FPA, which we rely on here, is limited to transmission and wholesale sales of electric energy in interstate commerce,[175] and there is no such interstate commerce in ERCOT, or Alaska and Hawaii for that matter, this rule does not apply in these regions.

752. APS argues that when a jurisdictional entity owns transmission facilities jointly with a non-public utility, the jurisdictional entity may not be able to interconnect, since the non-public utility may be uncooperative. Following the same principle described in Order No. 888, Order No. 2003 states that joint ownership does not affect the Commission's authority to regulate the

[170] 16 U.S.C. 824(b)(2) (2000).

[171] *TAPS* v. *FERC*, 225 F.3d at 688.

[172] The New York PSC cites to *MidAmerican Energy Co.*, 94 FERC ¶ 61,340 (2001).

[173] *See* MidAmerican Energy Co., 94 FERC ¶ 61,340 at 62,263 (2001) (Commission would not assert jurisdiction when an individual home owner or farmer or similar entity installs generation and accounts for its dealings with the utility through netting).

[174] *See id.* (if there is a net sale of energy to a utility, and the generator is not a QF, the generator's owner must comply with the requirements of the FPA).

[175] Section 201(b)(1) of the FPA, 16 U.S.C. 824(b)(1) (2000).

public utility. Accordingly, the LGIP and LGIA apply to Interconnection Service provided by the public utility on its portion of a jointly owned facility.

753. As the Commission explained in Order No. 888, each public utility that owns interstate transmission facilities jointly with a non-public utility must offer OATT service over its share of joint facilities.[176] If a portion of a facility is owned by a jurisdictional public utility, the Interconnection Customer seeking interconnection for a Commission-jurisdictional purpose will be able to secure interconnection to that facility under the terms of Order No. 2003 through the jurisdictional co-owner of the facility.

754. As the Commission required in Order No. 888, should the joint ownership agreement prohibit or restrict the right of the public utility to offer interconnection service to third parties, the public utility must make a section 206 compliance filing containing proposed revisions (mutually agreeable or unilateral) to its contracts with the non-jurisdictional co-owners to remove those restrictions.[177]

755. If the non-public utility provides transmission and interconnection under a reciprocity ''safe harbor'' tariff, and the tariff applies to the Interconnection Customer, then the jurisdictional and non-jurisdictional co-owners should decide which one should receive and study the Interconnection Request. If the non-jurisdictional co-owner does not have a reciprocity tariff, then the Interconnection Request should go to the Commission-jurisdictional co-owner, who must then work with its non-jurisdictional co-owner to coordinate the study process.

4. Variations From the Final Rule

756. In Order No. 2003, the Commission states that, on compliance, if a non-RTO or non-ISO (or other non-independent) Transmission Provider offers a variation from the LGIP and LGIA and the variation is necessary to meet established reliability requirements (*i.e.*, approved by the Applicable Reliability Council), then it may seek to justify its variation using the regional difference rationale. If the variation is for any other reason, the non-RTO or ISO Transmission Provider must justify the variation using the ''consistent with or superior to'' rationale that the Commission applies to variations from the OATT in Order No. 888. The Commission will afford an RTO or ISO greater flexibility in its compliance filing to seek ''independent entity variations'' from the provisions of Order No. 2003.

Rehearing Requests

757. Salt River Project urges the Commission to give all Transmission Providers flexibility to adopt variations for purposes of preserving reliability. The Commission's decision to grant independent Transmission Providers greater flexibility is not supported by substantial evidence, is arbitrary and capricious, and is unduly preferential in violation of the FPA, according to Salt River Project. It concludes that the Commission's decision coerces those non-independent Transmission Providers to join RTOs to avoid the rigid requirements of Order No. 2003, which some petitioners believe endanger reliability.

758. The South Carolina PSC likewise claims that Order No. 2003 is discriminatory because it favors one group of generators and customers over another. By allowing independent Transmission Providers greater flexibility than non-independent Transmission Providers, the Commission is encouraging, rather than preventing, undue discrimination. Despite differences in compliance requirements, in the end all Tariff rates, terms, and conditions for both independent and non-independent Transmission Providers must be approved by the Commission.

Commission Conclusion

759. We conclude that there is a rational basis for giving RTOs and ISOs more flexibility than non-independents, as discussed above. The foremost reason for different treatment is the fact that an RTO or ISO is independent and is less likely to act in an unduly discriminatory manner than is a Transmission Provider that is a market participant. The RTO or ISO also may have operating characteristics, such as a more complex market design, that are different from non-independents and that require more flexibility than provided by the ''regional differences'' justification.

5. OATT Reciprocity Requirements

760. The reciprocity requirement permits a public utility to require, as a condition of providing open access service to another utility (including a non-public utility) that owns, controls, or operates transmission facilities to deny Transmission Service to the non-public utility unless that non-public utility provides reciprocal Transmission Service. In Order No. 2003, the Commission explains that the reciprocity provision applies to Interconnection Service in a manner consistent with the reciprocity provision in the OATT.

761. A non-public utility may satisfy the reciprocity requirement in one of three ways. First, it may provide service under a Commission-approved ''safe harbor'' Tariff—a Tariff that the Commission has determined offers truly open access service. Second, the non-public utility may provide service to a public utility under a bilateral agreement that satisfies its reciprocity obligation. Third, the non-public utility may ask the public utility to waive the reciprocity condition.[178] A non-public utility that has a ''safe harbor'' Tariff must add to that Tariff an interconnection agreement and interconnection procedures that substantially conform to or are superior to the LGIP and LGIA if it wishes to continue to qualify for ''safe harbor'' treatment. A non-public utility that owns, controls, or operates transmission, has not filed with the Commission a ''safe harbor'' Tariff, and seeks Transmission Service from a public utility that invokes the reciprocity provision must either satisfy its reciprocity obligation under a bilateral agreement or ask the public utility to waive the OATT reciprocity condition.

762. Order No. 2003 does not require that a non-public utility also provide transmission credits for Network Upgrade costs to satisfy the Commission's reciprocity condition. With respect to a Tariff filed under the ''safe harbor'' provision, the Commission's reciprocity policy requires that it contain rates comparable to the rates the non-public utility charges itself. As for rates contained in a bilateral agreement, they will be subject to case-by-case review.

Rehearing Requests

763. LPPC contends that there are inconsistent statements in Order No. 2003 as to the terms and conditions of service that a non-public utility must provide to satisfy the reciprocity requirement. Specifically, the Commission states: ''With the addition of the Final Rule LGIP and Final Rule LGIA to the OATT, in order to meet its reciprocity obligations, a non-public utility would have to provide Interconnection Service to the Transmission Provider and the Transmission Provider's Affiliates *under the same terms and conditions under which it receives service.*'' [179] Later, the Commission notes that ''we shall limit reciprocity compliance to those services

[176] Order No. 888 at p. 31,692.

[177] *Id.*

[178] Order No. 2003 at P 841.

[179] Order No. 2003 at P 832 (emphasis added).

a non-public utility is capable of providing on its system.'' [180] LPPC argues that in some cases, the service a non-public utility is capable of providing may be quite different from the service the non-public utility receives from a public utility. To be consistent with Order No. 888's reciprocity requirement, LPPC seeks clarification that the Commission requires a non-public utility to provide Transmission Service in a manner comparable to the way it provides service to itself as a condition of obtaining Transmission Service from a jurisdictional public utility.

764. Salt River makes a similar argument, suggesting that the Commission intended to require a non-public utility to provide Interconnection Service under ''comparable'' terms and conditions (*i.e.*, not unduly discriminatory), but did not intend to require it to adopt the ''same'' tariff provisions adopted by the public utility from whom the non-public utility receives service. Additionally, Salt River seeks clarification that offering Interconnection Service to its own or affiliated generation that it offers to all other Interconnection Customers would meet the reciprocity requirements.

765. LPPC also cites the Commission's statement that a non-public utility would have to provide reciprocal service not only to the utility from which it takes Transmission Service, but also to all of that utility's Affiliates.[181] It says this is contrary to the assurance that the Commission is not changing the reciprocity policy adopted in Order No. 888 [182] and that it would inhibit voluntary participation of public power in restructured markets.

766. LPPC and Salt River Project ask the Commission to clarify a non-public utility need not refund to the Interconnection Customer the payments the Interconnection Customer made for Network Upgrades over a five year period. Instead, the non-public utility should simply have to charge rates for interconnection comparable to what it charges itself to satisfy the reciprocity provision. According to LPPC, this is consistent with the Commission's intent not to expand the reciprocity provision of Order No. 888, which requires that a non-public utility use rates, terms and conditions comparable to what it charges itself.

767. LIPA argues that a municipal utility participating in an RTO or ISO, should be allowed to depart from the Commission's standard cost recovery mechanisms, as long as it meets the Commission's comparability standard. So long as all Interconnection Customers—those affiliated with the non-public utility as well as other non-affiliated Interconnection Customers—recover costs in a comparable manner, LIPA argues that the Commission should not interfere with the cost recovery mechanism chosen by the non-public utility.

768. APS argues that a non-public utility should be required to provide transmission credits to satisfy the reciprocity condition. This disparate treatment will provide perverse incentives for generators to interconnect with a jurisdictional rather than a non-jurisdictional Transmission Provider solely to obtain the credits or payments required by Order No. 2003. Hydro One understands from Order No. 2003 that non-public utilities are not required to refund transmission upgrade costs, and seeks clarification that this is the Commission's position.

769. LPPC requests clarification that an Affected System, that is not a public utility, need not provide transmission credits to Interconnection Customers to satisfy the reciprocity provisions of Order No. 2003.

770. NRECA–APPA applauds the statement at P 840 of Order No. 2003 ''that this Final Rule in no way alters the applicability of the reciprocity provision in the OATT and the reciprocity policy articulated in Order No. 888 and its progeny.'' NRECA–APPA also notes that, while Order No. 2003 reiterates Order No. 888's statement that reciprocal service will not be required if such service would endanger a cooperative's bond status, the rule does not include a similar statement that reciprocal service is not required from a tax-exempt entity [183] if providing such service would jeopardize its tax status.[184]

Commission Conclusion

771. The Commission's reciprocity policy says that any non-public utility may gain access to a public utility's Transmission System under the public utility's OATT so long as the utility seeking the access agrees to offer comparable (not unduly discriminatory) service in return.[185] Order No. 2003 does not alter the Commission's current reciprocity policy.

772. The requirement that a non-public utility offer comparable service may be satisfied in one of three ways. First, the utility may provide service under a Commission-approved ''safe harbor'' Tariff—a Tariff that the Commission has determined offers truly open access service. Second, the utility may provide service under a bilateral agreement that satisfies its reciprocity obligation. Third, the non-public utility may ask the public utility to waive the reciprocity condition.[186]

773. Under Order No. 2003, a non-public utility that has a ''safe harbor'' Tariff must add to that Tariff an interconnection agreement and interconnection procedures that substantially conform to or are superior to the *pro forma* LGIP and LGIA if it wishes to continue to qualify for ''safe harbor'' treatment. A non-public utility that owns, controls, or operates transmission facilities that does not have a ''safe harbor'' Tariff and that seeks Transmission Service from a public utility that invokes the reciprocity provision, must either satisfy its reciprocity obligation under a bilateral agreement or ask the public utility to waive the reciprocity condition.

774. The Commission's reciprocity policy requires that a ''safe harbor'' Tariff contain rates, terms and conditions comparable to the rates, terms and conditions the non-public utility applies to its own or affiliated generation. The easiest way for a non-public utility to satisfy the ''safe harbor'' Tariff condition is to adopt Order No. 888's *pro forma* OATT. Rates, terms and conditions contained in a bilateral agreement are subject to case-by-case review.

775. LPPC, LIPA, and Salt River are correct that a non-public utility need only offer comparable service in order to satisfy the reciprocity condition.[187] The rates, terms and conditions of the reciprocal service are not required to be identical to those offered by the public utility. Offering Interconnection Service to all Interconnection Customers identical to that offered to its own or affiliated generation, as Salt River proposes, would be one way for a non-public utility to meet the reciprocity condition. In addition, LPPC and Salt River are correct that reciprocity is satisfied if the non-public utility offers to provide to the public utility all services that the non-public utility provides, or is capable of providing, on its Transmission System.[188]

[180] Order No. 2003 at P 844.

[181] Order No. 2003 at P 832.

[182] Order No. 2003 at P 840.

[183] *See* the Internal Revenue Service Code at 26 U.S.C. 501(c)(12) (2002).

[184] Order No. 888 at P 31,762, n.499.

[185] Order No. 888–A at ¶ 30,285.

[186] Order No. 2003 at P 841.

[187] LPPC and others appear to have confused P 832 of Order No. 2003, which summarizes the NOPR discussion of reciprocity, with the Commission Conclusion.

[188] *See* Order No. 888–A at ¶ 30,286.

776. The Commission caused confusion when it discussed LADWP's comment on P 722 of Order No. 2003 regarding the crediting of Network Upgrade costs. While P 722 is correct for a public utility, a non-public utility seeking to satisfy reciprocity must provide services it already provides, or is capable of providing, on a non-discriminatory and comparable basis.

777. We agree with LIPA that a non-public utility must apply interconnection cost recovery and other terms and conditions of Interconnection Service to third parties in a manner comparable to the process it applies to itself in order to satisfy the reciprocity condition. This includes the ten year repayment period that applies to all non-independent public utilities.

778. APS's concern that this will discourage Interconnection Customers from interconnecting with non-public utilities is misplaced, since reciprocity requires only that costs be recovered for third-party interconnections in a manner consistent with the way costs are recovered for interconnections of the non-public utility's own or affiliated generation. Since those costs must be recovered, only the method of funding those costs will vary. Similarly, in response to LPPC, we clarify that if an Affected System is a non-public utility, Order No. 2003 does not require that it provide refunds to the Interconnection Customer to satisfy the reciprocity condition. To satisfy reciprocity, the non-public utility must treat the upgrade payments in a manner comparable to how it treats its own upgrade costs.

779. In response to LIPA's concerns regarding cost recovery for non-public utility facilities under the control of an independent Transmission Provider, we clarify that Transmission Systems operated by the independent Transmission Provider (regardless of whether those facilities are owned by a public or non-public utility) are subject to its Tariff. In such cases the ''safe harbor'' reciprocity Tariff is not applicable.

780. In response to Hydro One, we clarify that a non-public utility will be required to refund transmission upgrade costs only if it affords itself comparable treatment. Otherwise, the non-public utility would not be required to refund transmission upgrade costs.

781. Regarding Affiliates, we are not deviating from the approach taken in Order No. 888. LPPC is correct that Order No. 2003 does not require a non-public utility (that has not voluntarily filed a ''safe harbor'' tariff) to provide reciprocal service to all of the Affiliates of the public utility from which it takes Transmission Service. As described in Order No. 888 and 888–A, a non-public utility subject to a reciprocity condition must extend reciprocity rights only to the public utility from which it receives open access service and not to that public utility's Affiliates.[189]

782. Finally, as NRECA–APPA suggests, we clarify that, as in Order No. 888, reciprocal service will not be required if providing such service would jeopardize the tax-exempt status of the non-public utility or the bond status of the non-public utility.[190]

6. Two vs. Three Party Agreements

783. Order No. 2003 requires that both the Transmission Provider and the Transmission Owner sign the LGIA, if they are not the same entity.

Rehearing Requests

784. Old Dominion expresses concern that, in regions where RTOs exist, Order No. 2003 could let the Transmission Owner exert influence over the interconnection process, with potentially anticompetitive effects. It cites to the Commission's statement in PJM Interconnection, LLC, 96 FERC ¶ 61,061, 61,234 (2001) that ''efficient decision-making on investment in transmission facilities requires that the entire interconnection process must be under the decisional control of the RTO.'' Old Dominion fears that, while an independent RTO may be willing to negotiate in good faith with the Interconnection Customer, a self-interested Transmission Owner may not be as flexible. However, Old Dominion does not categorically object to a three-party agreement, and requests clarification that, if three-party agreements are required, (1) the RTO has sole authority over the interconnection process and will not be unduly influenced by the Transmission Owner, and (2) the RTO must ensure that the interconnection standards for individual Transmission Owners are consistently applied to all Interconnection Customers.

Commission Conclusion

785. In requiring three-party agreements in Order No. 2003, our intent was to allow ''one-stop shopping'' for Interconnection Customers interconnecting to a facility under the operational control of an RTO or ISO and to speed the sometimes lengthy interconnection process. It is our intent that, while the Transmission Owner is a necessary part of interconnecting to a facility under the operational control of an RTO or ISO, its role in negotiating the agreement will be a limited one. Interconnection Studies and transmission planning remain the providence of the Transmission Provider. However, construction scheduling and other construction-related matters must involve and be negotiated by all three Parties.

786. In response to Old Dominion's concern that generating facilities associated with a Transmission Owner could receive preferential treatment, the independent oversight exercised by the RTO or ISO will guard against this sort of discrimination. If the Interconnection Customer believes that it has been treated unfairly, it may invoke Dispute Resolution or bring the matter to the attention of the Commission.

III. Information Collection Statement

787. Order No. 2003 contains information collection requirements for which the Commission obtained approval from the Office of Management and Budget (OMB).[191] Given that this Order on Rehearing makes only minor changes to Order No. 2003, OMB approval for this order is not necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

IV. Regulatory Flexibility Act Certification

788. The Regulatory Flexibility Act (RFA)[192] requires rulemakings either to contain (1) a description and analysis of the effect that the proposed or Final Rule will have on small entities or (2) a certification that the rule will not have a significant economic effect on a substantial number of small entities. In Order No. 2003, the Commission certifies that the Final Rule would not have a significant economic effect on a substantial number of small entities.[193]

Rehearing Request

789. NRECA–APPA challenges this certification. According to NRECA–APPA, there are nearly 40 rural electric cooperatives that are public utilities and that are ''small businesses'' as defined by the Small Business Administration. Further, the Commission identifies 176 public utilities that would have to modify their OATTs to incorporate the requirements of Order No. 2003. Of this number, the Commission estimates that ten percent of the respondents are small entities. NRECA–APPA contends that

[189] *See* Order No. 888, OATT section 6; *see also* Order No. 888–A at ¶ 30,286.

[190] Order No. 888 at P 312,762, n. 499.

[191] The OMB Control Number for this collection is 19021–0096.

[192] 5 U.S.C. 601–612.

[193] Order No. 2003 at P 924.

the number is actually closer to 25 percent.

790. NRECA–APPA also states that while the Commission indicated in Order No. 2003 that small entities would be eligible for a waiver, the Commission has not taken into consideration the burden and costs for applying for a waiver.[194] Furthermore, small entities have no guarantee that upon filing for a waiver, they will ever receive one.

791. NRECA–APPA recommends that the Commission (1) provide a blanket waiver of the Final Rule requirements to all currently FPA-jurisdictional utilities that qualify as ''small'' public utilities under the SBA utility size standards, and (2) provide a safe harbor for all ''small'' non-jurisdictional providers that want to work with customers to interconnect generation, but want to maintain their non-jurisdictional status.

Commission Conclusion

792. We disagree with NRECA–APPA. The question is whether Order No. 2003 has a significant economic effect on a substantial number of small entities. Order No. 2003 applies only to interconnections to facilities already subject to an OATT. Accordingly, the affected entities are only those entities that have OATTs at the time interconnection is requested. The number of such entities is not substantial. Moreover, because Order No. 2003 applies only to entities that already have OATTs, the amendment of these OATTs to add the LGIP and LGIA will not impose a significant economic burden.

793. Regarding distribution cooperatives not currently offering wheeling, they are not relevant to this analysis because they are not required to adopt the provisions of Order No. 2003.

794. As to the waiver option, securing a waiver should not pose a burden for two reasons. First, small entities that already have secured a waiver from compliance with Order No. 888 need not seek an additional waiver for Order No. 2003. Second, the cost of applying for a waiver is minimal. The blanket waiver NRECA–APPA requests is unnecessary and, as described in the discussion of ''distribution'' interconnections above, the Commission rejects NRECA–APPA's requested safe harbor.

V. Document Availability

795. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to obtain this document from the Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC The full text of this document is also available electronically from the Commission's eLibrary system (formerly called FERRIS) in PDF and Microsoft Word format for viewing, printing, and downloading. eLibrary may be accessed through the Commission's Home Page (*http://www.ferc.gov*) . To access this document in eLibrary, type ''RM02–1–'' in the docket number field and specify a date range that includes this document's issuance date.

796. User assistance is available for eLibrary and the Commission's Web site during normal business hours from our Help line at 202–502–8222 or the Public Reference Room at 202–502–8371 Press 0, TTY 202–502–8659. E–Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VI. Effective Date

797. Changes to Order No. 2003 made in this order on rehearing will become effective on April 26, 2004.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

The Appendices will not be published in the Code of Federal Regulations.

Appendix A—Petitioner Acronyms

AEP—American Electric Power System
Alabama PSC—Alabama Public Service Commission
American Wind Energy—American Wind Energy Association
APS—Arizona Public Service Company
Arkansas PSC—Arkansas Public Service Commission
Avista—Avista Corporation
California Parties—California Independent System Operator Corporation, Public Utilities Commission of the State of California, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company
Calpine—Calpine Corporation
Central Maine—Central Maine Power Company, New York State Electric & Gas Corporation, and Rochester Gas & Electric CorporationCinergy—Cinergy Services, Inc.
CPUC—California Public Utilities Commission
Duke Energy—Duke Energy Corporation
Dynegy—Dynegy Power Corporation
EEI—Edison Electric Institute, Alliance of Energy Suppliers, EEI Transmission Group, EEI Distributed Generation Task Force and Tax Analysis Research Subcommittee
Entergy—Entergy Services, Inc.
FPL Energy—FPL Energy, LLC
FP&L—Florida Power & Light Company
Georgia Transmission—Georgia Transmission Corporation
Georgia PSC—Georgia Public Service Commission
Hydro One—Hydro One Networks Inc.
Idaho Power—Idaho Power Company
Kentucky PSC—Public Service Commission of the Commonwealth of Kentucky
LIPA—Long Island Power Authority
LPPC—Large Public Power Council
Louisiana PSC—Louisiana Public Service Commission
Midwest ISO TO—Midwest ISO Transmission Owners
Mississippi PSC—Mississippi Public Service Commission
MSAT—Midwest Stand Alone Transmission Companies (American Transmission Company LLC, GridAmerica LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC)
NARUC—National Association of Regulatory Utility Commissioners
National Grid—National Grid USA
New York PSC—New York State Public Service Commission
North Carolina Commission—North Carolina Utilities Commission
NRECA–APPA—National Rural Electric Cooperative Association and the American Public Power Association
NYTO—New York Transmission Owners
Old Dominion—Old Dominion Electric Cooperative
PacifiCorp—PacifiCorp
Progress Energy—Progress Energy, Inc.
PSEG—The PSEG Companies
Reliant—Reliant Resources, Inc.
Salt River Project—Salt River Project Agricultural Improvement and Power District
SoCal Edison—Southern California Edison Company
South Carolina PSC—South Carolina Public Service Commission
Southern— Southern Company Services, Inc.
TAPS—Transmission Access Policy Study Group
TDU Systems—Transmission Dependent Utility Systems
Washington UTC—Washington Utilities and Transportation Commission

Appendix B—Standard Large Generator Interconnection Procedures (LGIP) Including Standard Large Generator Interconnection Agreement (LGIA); Standard Large Generator Interconnection Procedures (LGIP) (Applicable to Generating Facilities That Exceed 20 MW)

Table of Contents

[194] The issue of waiver availability for small entities is discussed in Order No. 2003 at PP 828–831.

Section 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shall mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to

the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by an Applicable Reliability Council.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

Emergency Condition shall mean a condition or situation: (1) That in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean 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. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection

Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) The Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) The Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and

commissioning of the Generating Facility prior to Commercial Operation.

Section 2. Scope and Application

2.1 Application of Standard Large Generator Interconnection Procedures

Sections 2 through 13 apply to processing an Interconnection Request pertaining to a Large Generating Facility.

2.2 Comparability

Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this LGIP. Transmission Provider will use the same Reasonable Efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Generating Facilities are owned by Transmission Provider, its subsidiaries or Affiliates or others.

2.3 Base Case Data

Transmission Provider shall provide base power flow, short circuit and stability databases, including all underlying assumptions, and contingency list upon request subject to confidentiality provisions in LGIP Section 13.1. Transmission Provider is permitted to require that Interconnection Customer sign a confidentiality agreement before the release of commercially sensitive information or Critical Energy Infrastructure Information in the Base Case data. Such databases and lists, hereinafter referred to as Base Cases, shall include all (1) generation projects and (ii) transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.

2.4 No Applicability to Transmission Service

Nothing in this LGIP shall constitute a request for transmission service or confer upon an Interconnection Customer any right to receive transmission service.

Section 3. Interconnection Requests

3.1 General

An Interconnection Customer shall submit to Transmission Provider an Interconnection Request in the form of Appendix 1 to this LGIP and a refundable deposit of $10,000. Transmission Provider shall apply the deposit toward the cost of an Interconnection Feasibility Study. Interconnection Customer shall submit a separate Interconnection Request for each site and may submit multiple Interconnection Requests for a single site. Interconnection Customer must submit a deposit with each Interconnection Request even when more than one request is submitted for a single site. An Interconnection Request to evaluate one site at two different voltage levels shall be treated as two Interconnection Requests. At Interconnection Customer's option, Transmission Provider and Interconnection Customer will identify alternative Point(s) of Interconnection and configurations at the Scoping Meeting to evaluate in this process and attempt to eliminate alternatives in a reasonable fashion given resources and information available. Interconnection Customer will select the definitive Point(s) of Interconnection to be studied no later than the execution of the Interconnection Feasibility Study Agreement.

3.2 Identification of Types of Interconnection Services

At the time the Interconnection Request is submitted, Interconnection Customer must request either Energy Resource Interconnection Service or Network Resource Interconnection Service, as described; provided, however, any Interconnection Customer requesting Network Resource Interconnection Service may also request that it be concurrently studied for Energy Resource Interconnection Service, up to the point when an Interconnection Facility Study Agreement is executed. Interconnection Customer may then elect to proceed with Network Resource Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

3.2.1 Energy Resource Interconnection Service

3.2.1.1 *The Product.* Energy Resource Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. Energy Resource Interconnection Service does not in and of itself convey any right to deliver electricity to any specific customer or Point of Delivery.

3.2.1.2 *The Study.* The study consists of short circuit/fault duty, steady state (thermal and voltage) and stability analyses. The short circuit/fault duty analysis would identify direct Interconnection Facilities required and the Network Upgrades necessary to address short circuit issues associated with the Interconnection Facilities. The stability and steady state studies would identify necessary upgrades to allow full output of the proposed Large Generating Facility and would also identify the maximum allowed output, at the time the study is performed, of the interconnecting Large Generating Facility without requiring additional Network Upgrades.

3.2.2 Network Resource Interconnection Service

3.2.2.1 *The Product.* Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service Allows Interconnection Customer's Large Generating Facility to be designated as a Network Resource, up to the Large Generating Facility's full output, on the same basis as all other existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur.

3.2.2.2 *The Study.* The Interconnection Study for Network Resource Interconnection Service shall assure that Interconnection Customer's Large Generating Facility meets the requirements for Network Resource Interconnection Service and as a general matter, that such Large Generating Facility's interconnection is also studied with Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Large Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on Transmission Provider's Transmission System, consistent with Transmission Provider's reliability criteria and procedures. This approach assumes that some portion of existing Network Resources are displaced by the output of Interconnection Customer's Large Generating Facility. Network Resource Interconnection Service in and of itself does not convey any right to deliver electricity to any specific customer or Point of Delivery.

3.3 Valid Interconnection Request

3.3.1 Initiating an Interconnection Request

To initiate an Interconnection Request, Interconnection Customer must submit all of the following: (i) A $10,000 deposit, (ii) a completed application in the form of Appendix 1, and (iii) demonstration of Site Control or a posting of an additional deposit of $10,000. Such deposits shall be applied toward any Interconnection Studies pursuant to the Interconnection Request. If Interconnection Customer demonstrates Site Control within the cure period specified in Section 3.3.3 after submitting its Interconnection Request, the additional deposit shall be refundable; otherwise, all such deposit(s), additional and initial, become non-refundable.

The expected In-Service Date of the new Large Generating Facility or increase in capacity of the existing Generating Facility shall be no more than the process window for the regional expansion planning period (or in the absence of a regional planning process, the process window for Transmission Provider's expansion planning period) not to exceed seven years from the date the Interconnection Request is received by Transmission Provider, unless Interconnection Customer demonstrates that engineering, permitting and construction of the new Large Generating Facility or increase in capacity of the existing Generating Facility will take longer than the regional expansion planning period. The In-Service Date may succeed the date the Interconnection Request is received by Transmission Provider by a period up to ten years, or longer where Interconnection Customer and Transmission Provider agree, such agreement not to be unreasonably withheld.

3.3.2 Acknowledgment of Interconnection Request

Transmission Provider shall acknowledge receipt of the Interconnection Request within five (5) Business Days of receipt of the request and attach a copy of the received Interconnection Request to the acknowledgement.

3.3.3 Deficiencies in Interconnection Request

An Interconnection Request will not be considered to be a valid request until all items in Section 3.3.1 have been received by Transmission Provider. If an Interconnection Request fails to meet the requirements set forth in Section 3.3.1, Transmission Provider shall notify Interconnection Customer within five (5) Business Days of receipt of the initial Interconnection Request of the reasons for such failure and that the Interconnection Request does not constitute a valid request. Interconnection Customer shall provide Transmission Provider the additional requested information needed to constitute a valid request within ten (10) Business Days after receipt of such notice. Failure by Interconnection Customer to comply with this Section 3.3.3 shall be treated in accordance with Section 3.6.

3.3.4 Scoping Meeting

Within ten (10) Business Days after receipt of a valid Interconnection Request, Transmission Provider shall establish a date agreeable to Interconnection Customer for the Scoping Meeting, and such date shall be no later than thirty (30) Calendar Days from receipt of the valid Interconnection Request, unless otherwise mutually agreed upon by the Parties.

The purpose of the Scoping Meeting shall be to discuss alternative interconnection options, to exchange information including any transmission data that would reasonably be expected to impact such interconnection options, to analyze such information and to determine the potential feasible Points of Interconnection. Transmission Provider and Interconnection Customer will bring to the meeting such technical data, including, but not limited to: (i) General facility loadings, (ii) general instability issues, (iii) general short circuit issues, (iv) general voltage issues, and (v) general reliability issues as may be reasonably required to accomplish the purpose of the meeting. Transmission Provider and Interconnection Customer will also bring to the meeting personnel and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. On the basis of the meeting, Interconnection Customer shall designate its Point of Interconnection, pursuant to Section 6.1, and one or more available alternative Point(s) of Interconnection. The duration of the meeting shall be sufficient to accomplish its purpose.

3.4 OASIS Posting

Transmission Provider will maintain on its OASIS a list of all Interconnection Requests. The list will identify, for each Interconnection Request: (i) The maximum summer and winter megawatt electrical output; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the projected In-Service Date; (v) the status of the Interconnection Request, including Queue Position; (vi) the type of Interconnection Service being requested; and (vii) the availability of any studies related to the Interconnection Request; (viii) the date of the Interconnection Request; (ix) the type of Generating Facility to be constructed (combined cycle, base load or combustion turbine and fuel type); and (x) for Interconnection Requests that have not resulted in a completed interconnection, an explanation as to why it was not completed. The list will not disclose the identity of Interconnection Customer until Interconnection Customer executes an LGIA or requests that Transmission Provider file an unexecuted LGIA with FERC. Before holding a Scoping Meeting with its Affiliate, Transmission Provider shall post on OASIS an advance notice of its intent to do so. Transmission Provider shall post to its OASIS site any deviations from the study timelines set forth herein. Interconnection Study reports and Optional Interconnection Study reports shall be posted to Transmission Provider's OASIS site subsequent to the meeting between Interconnection Customer and Transmission Provider to discuss the applicable study results. Transmission Provider shall also post any known deviations in the Large Generating Facility's In-Service Date.

3.5 Coordination With Affected Systems

Transmission Provider will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System Operators and, if possible, include those results (if available) in its applicable Interconnection Study within the time frame specified in this LGIP. Transmission Provider will include such Affected System Operators in all meetings held with Interconnection Customer as required by this LGIP. Interconnection Customer will cooperate with Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Transmission Provider which may be an Affected System shall cooperate with Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

3.6 Withdrawal

Interconnection Customer may withdraw its Interconnection Request at any time by written notice of such withdrawal to Transmission Provider. In addition, if Interconnection Customer fails to adhere to all requirements of this LGIP, except as provided in Section 13.5 (Disputes), Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to Interconnection Customer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Upon receipt of such written notice, Interconnection Customer shall have fifteen (15) Business Days in which to either respond with information or actions that cures the deficiency or to notify Transmission Provider of its intent to pursue Dispute Resolution.

Withdrawal shall result in the loss of Interconnection Customer's Queue Position. If an Interconnection Customer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, Interconnection Customer's Interconnection Request is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position. An Interconnection Customer that withdraws or is deemed to have withdrawn its Interconnection Request shall pay to Transmission Provider all costs that Transmission Provider prudently incurs with respect to that Interconnection Request prior to Transmission Provider's receipt of notice described above. Interconnection Customer must pay all monies due to Transmission Provider before it is allowed to obtain any Interconnection Study data or results.

Transmission Provider shall (i) update the OASIS Queue Position posting and (ii) refund to Interconnection Customer any portion of Interconnection Customer's deposit or study payments that exceeds the costs that Transmission Provider has incurred, including interest calculated in accordance with section 35.19a(a)(2) of FERC's regulations. In the event of such withdrawal, Transmission Provider, subject to the confidentiality provisions of Section 13.1, shall provide, at Interconnection Customer's request, all information that Transmission Provider developed for any completed study conducted up to the date of withdrawal of the Interconnection Request.

Section 4. Queue Position

4.1 General

Transmission Provider shall assign a Queue Position based upon the date and time of receipt of the valid Interconnection Request; provided that, if the sole reason an Interconnection Request is not valid is the lack of required information on the application form, and Interconnection Customer provides such information in accordance with Section 3.3.3, then Transmission Provider shall assign Interconnection Customer a Queue Position based on the date the application form was originally filed. Moving a Point of Interconnection shall result in a lowering of Queue Position if it is deemed a Material Modification under Section 4.4.3. The Queue Position of each Interconnection Request will be used to determine the order of performing the Interconnection Studies and determination of cost responsibility for the facilities necessary to accommodate the Interconnection Request. A higher queued Interconnection Request is one that has been placed ''earlier'' in the queue in relation to another Interconnection Request that is lower queued. Transmission Provider may allocate the cost of the common upgrades for clustered Interconnection Requests without regard to Queue Position.

4.2 Clustering

At Transmission Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the Interconnection System Impact Study.

Clustering shall be implemented on the basis of Queue Position. If Transmission Provider elects to study Interconnection Requests using Clustering, all Interconnection Requests received within a period not to exceed one hundred and eighty (180) Calendar Days, hereinafter referred to as the ''Queue Cluster Window'' shall be studied together without regard to the nature of the underlying Interconnection Service, whether Energy Resource Interconnection Service or Network Resource Interconnection Service. The deadline for completing all Interconnection System Impact Studies for which an Interconnection System Impact Study Agreement has been executed during a Queue Cluster Window shall be in accordance with Section 7.4, for all Interconnection Requests assigned to the same Queue Cluster Window. Transmission Provider may study an Interconnection Request separately to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Large Generating Facility. Clustering Interconnection System Impact Studies shall be conducted in such a manner to ensure the efficient implementation of the applicable regional transmission expansion plan in light of the Transmission System's capabilities at the time of each study.

The Queue Cluster Window shall have a fixed time interval based on fixed annual opening and closing dates. Any changes to the established Queue Cluster Window interval and opening or closing dates shall be announced with a posting on Transmission Provider's OASIS beginning at least one hundred and eighty (180) Calendar Days in advance of the change and continuing thereafter through the end date of the first Queue Cluster Window that is to be modified.

4.3 Transferability of Queue Position

An Interconnection Customer may transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change.

4.4 Modifications

Interconnection Customer shall submit to Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. Interconnection Customer shall retain its Queue Position if the modifications are in accordance with Sections 4.4.1, 4.4.2 or 4.4.5, or are determined not to be Material Modifications pursuant to Section 4.4.3. Notwithstanding the above, during the course of the Interconnection Studies, either Interconnection Customer or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request. To the extent the identified changes are acceptable to Transmission Provider and Interconnection Customer, such acceptance not to be unreasonably withheld, Transmission Provider shall modify the Point of Interconnection and/or configuration in accordance with such changes and proceed with any re-studies necessary to do so in accordance with Section 6.4, Section 7.6 and Section 8.5 as applicable and Interconnection Customer shall retain its Queue Position.

4.4.1 Prior to the return of the executed Interconnection System Impact Study Agreement to Transmission Provider, modifications permitted under this Section shall include specifically: (a) A decrease of

up to 60 percent of electrical output (MW) of the proposed project; (b) modifying the technical parameters associated with the Large Generating Facility technology or the Large Generating Facility step-up transformer impedance characteristics; and (c) modifying the interconnection configuration. For plant increases, the incremental increase in plant output will go to the end of the queue for the purposes of cost allocation and study analysis.

4.4.2 Prior to the return of the executed Interconnection Facility Study Agreement to Transmission Provider, the modifications permitted under this Section shall include specifically: (a) Additional 15 percent decrease of electrical output (MW), and (b) Large Generating Facility technical parameters associated with modifications to Large Generating Facility technology and transformer impedances; provided, however, the incremental costs associated with those modifications are the responsibility of the requesting Interconnection Customer.

4.4.3 Prior to making any modification other than those specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5, Interconnection Customer may first request that Transmission Provider evaluate whether such modification is a Material Modification. In response to Interconnection Customer's request, Transmission Provider shall evaluate the proposed modifications prior to making them and inform Interconnection Customer in writing of whether the modifications would constitute a Material Modification. Any change to the Point of Interconnection, except those deemed acceptable under Sections 4.4.1, 6.1, 7.2 or so allowed elsewhere, shall constitute a Material Modification. Interconnection Customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification.

4.4.4 Upon receipt of Interconnection Customer's request for modification permitted under this Section 4.4, Transmission Provider shall commence and perform any necessary additional studies as soon as practicable, but in no event shall Transmission Provider commence such studies later than thirty (30) Calendar Days after receiving notice of Interconnection Customer's request. Any additional studies resulting from such modification shall be done at Interconnection Customer's cost.

4.4.5 Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Large Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing.

Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Standard Large Generator Interconnection Procedures

5.1 Queue Position for Pending Requests

5.1.1 Any Interconnection Customer assigned a Queue Position prior to the effective date of this LGIP shall retain that Queue Position.

5.1.1.1 If an Interconnection Study Agreement has not been executed as of the effective date of this LGIP, then such Interconnection Study, and any subsequent Interconnection Studies, shall be processed in accordance with this LGIP.

5.1.1.2 If an Interconnection Study Agreement has been executed prior to the effective date of this LGIP, such Interconnection Study shall be completed in accordance with the terms of such agreement. With respect to any remaining studies for which an Interconnection Customer has not signed an Interconnection Study Agreement prior to the effective date of the LGIP, Transmission Provider must offer Interconnection Customer the option of either continuing under Transmission Provider's existing interconnection study process or going forward with the completion of the necessary Interconnection Studies (for which it does not have a signed Interconnection Studies Agreement) in accordance with this LGIP.

5.1.1.3 If an LGIA has been submitted to FERC for approval before the effective date of the LGIP, then the LGIA would be grandfathered.

5.1.2 Transition Period

To the extent necessary, Transmission Provider and Interconnection Customers with an outstanding request (*i.e.*, an Interconnection Request for which an LGIA has not been submitted to FERC for approval as of the effective date of this LGIP) shall transition to this LGIP within a reasonable period of time not to exceed sixty (60) Calendar Days. The use of the term ''outstanding request'' herein shall mean any Interconnection Request, on the effective date of this LGIP: (i) That has been submitted but not yet accepted by Transmission Provider; (ii) where the related interconnection agreement has not yet been submitted to FERC for approval in executed or unexecuted form, (iii) where the relevant Interconnection Study Agreements have not yet been executed, or (iv) where any of the relevant Interconnection Studies are in process but not yet completed. Any Interconnection Customer with an outstanding request as of the effective date of this LGIP may request a reasonable extension of any deadline, otherwise applicable, if necessary to avoid undue hardship or prejudice to its Interconnection Request. A reasonable extension shall be granted by Transmission Provider to the extent consistent with the intent and process provided for under this LGIP.

5.2 New Transmission Provider

If Transmission Provider transfers control of its Transmission System to a successor Transmission Provider during the period when an Interconnection Request is pending, the original Transmission Provider shall transfer to the successor Transmission Provider any amount of the deposit or payment with interest thereon that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required by this LGIP shall be paid by or refunded to the Interconnection, as appropriate. The original Transmission Provider shall coordinate with the successor Transmission Provider to complete any Interconnection Study, as appropriate, that the original Transmission Provider has begun but has not completed. If Transmission Provider has tendered a draft LGIA to Interconnection Customer but Interconnection Customer has not either executed the LGIA or requested the filing of an unexecuted LGIA with FERC, unless otherwise provided, Interconnection Customer must complete negotiations with the successor Transmission Provider.

Section 6. Interconnection Feasibility Study

6.1 Interconnection Feasibility Study Agreement

Simultaneously with the acknowledgement of a valid Interconnection Request Transmission Provider shall provide to Interconnection Customer an Interconnection Feasibility Study Agreement in the form of Appendix 2. The Interconnection Feasibility Study Agreement shall specify that Interconnection Customer is responsible for the actual cost of the Interconnection Feasibility Study. Within five (5) Business Days following the Scoping Meeting Interconnection Customer shall specify for inclusion in the attachment to the Interconnection Feasibility Study

Agreement the Point(s) of Interconnection and any reasonable alternative Point(s) of Interconnection. Within five (5) Business Days following Transmission Provider's receipt of such designation, Transmission Provider shall tender to Interconnection Customer the Interconnection Feasibility Study Agreement signed by Transmission Provider, which includes a good faith estimate of the cost for completing the Interconnection Feasibility Study. Interconnection Customer shall execute and deliver to Transmission Provider the Interconnection Feasibility Study Agreement along with a $10,000 deposit no later than thirty (30) Calendar Days after its receipt. On or before the return of the executed Interconnection Feasibility Study Agreement to Transmission Provider, Interconnection Customer shall provide the technical data called for in Appendix 1, Attachment A. If the Interconnection Feasibility Study uncovers any unexpected result(s) not contemplated during the Scoping Meeting, a substitute Point of Interconnection identified by either Interconnection Customer or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of Queue Position, and Re-studies shall be completed pursuant to Section 6.4 as applicable. For the purpose of this Section 6.1, if Transmission Provider and InterconnectionCustomer cannot agree on the substituted Point of Interconnection, then Interconnection Customer may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

If Interconnection Customer and Transmission Provider agree to forgo the Interconnection Feasibility Study, Transmission Provider will initiate an Interconnection System Impact Study under Section 7 of this LGIP and apply the $10,000 deposit towards the Interconnection System Impact Study.

6.2 Scope of Interconnection Feasibility Study

The Interconnection Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System.The Interconnection Feasibility Study will consider the Base Case as well as all generating facilities (and with respect to (iii), any identified Network Upgrades) that, on the date the Interconnection Feasibility Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC. The Interconnection Feasibility Study will consist of a power flow and short circuit analysis. The Interconnection Feasibility Study will provide a list of facilities and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

6.3 Interconnection Feasibility Study Procedures

Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. Transmission Provider shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement. At the request of Interconnection Customer or at any time Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Feasibility Study, Transmission Provider shall notify Interconnection Customer as to the schedule status of the Interconnection Feasibility Study. If Transmission Provider is unable to complete the Interconnection Feasibility Study within that time period, it shall notify Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Interconnection Feasibility Study, subject to confidentiality arrangements consistent with Section 13.1.

6.3.1 Meeting with Transmission Provider

Within ten (10) Business Days of providing an Interconnection Feasibility Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Feasibility Study.

6.4 Re-Study

If Re-Study of the Interconnection Feasibility Study is required due to a higher queued project dropping out of the queue, or a modification of a higher queued project subject to Section 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Interconnection Customer in writing. Such Re-Study shall take not longer than forty-five (45) Calendar Days from the date of the notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 7. Interconnection System Impact Study

7.1 Interconnection System Impact Study Agreement

Unless otherwise agreed, pursuant to the Scoping Meeting provided in Section 3.3.4, simultaneously with the delivery of the Interconnection Feasibility Study to Interconnection Customer, Transmission Provider shall provide to Interconnection Customer an Interconnection System Impact Study Agreement in the form of Appendix 3 to this LGIP. The Interconnection System Impact Study Agreement shall provide that Interconnection Customer shall compensate Transmission Provider for the actual cost of the Interconnection System Impact Study. Within three (3) Business Days following the Interconnection Feasibility Study results meeting, Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection System Impact Study.

7.2 Execution of Interconnection System Impact Study Agreement

Interconnection Customer shall execute the Interconnection System Impact Study Agreement and deliver the executed Interconnection System Impact Study Agreement to Transmission Provider no later than thirty (30) Calendar Days after its receipt along with demonstration of Site Control, and a $50,000 deposit.

If Interconnection Customer does not provide all such technical data when it delivers the Interconnection System Impact Study Agreement, Transmission Provider shall notify Interconnection Customer of the deficiency within five (5) Business Days of the receipt of the executed Interconnection System Impact Study Agreement and Interconnection Customer shall cure the deficiency within ten (10) Business Days of receipt of the notice, provided, however, such deficiency does not include failure to deliver the executed

Interconnection System Impact Study Agreement or deposit.

If the Interconnection System Impact Study uncovers any unexpected result(s) not contemplated during the Scoping Meeting and the Interconnection Feasibility Study, a substitute Point of Interconnection identified by either Interconnection Customer or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of Queue Position, and restudies shall be completed pursuant to Section 7.6 as applicable. For the purpose of this Section 7.6, if Transmission Provider and Interconnection Customer cannot agree on the substituted Point of Interconnection, then Interconnection Customer may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

7.3 Scope of Interconnection System Impact Study

The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System. The Interconnection System Impact Study will consider the Base Case as well as all generating facilities (and with respect to (iii) below, any identified Network Upgrades associated with such higher queued interconnection) that, on the date the Interconnection System Impact Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC.

The Interconnection System Impact Study will consist of a short circuit analysis, a stability analysis, and a power flow analysis. The Interconnection System Impact Study will state the assumptions upon which it is based; state the results of the analyses; and provide the requirements or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The Interconnection System Impact Study will provide a list of facilities that are required as a result of the Interconnection Request and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

7.4 Interconnection System Impact Study Procedures

Transmission Provider shall coordinate the Interconnection System Impact Study with any Affected System that is affected by the Interconnection Request pursuant to Section 3.5 above. Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. Transmission Provider shall use Reasonable Efforts to complete the Interconnection System Impact Study within ninety (90) Calendar Days after the receipt of the Interconnection System Impact Study Agreement or notification to proceed, study payment, and technical data. If Transmission Provider uses Clustering, Transmission Provider shall use Reasonable Efforts to deliver a completed Interconnection System Impact Study within ninety (90) Calendar Days after the close of the Queue Cluster Window. At the request of Interconnection Customer or at any time Transmission Provider determines that it will not meet the required time frame for completing the Interconnection System Impact Study, Transmission Provider shall notify Interconnection Customer as to the schedule status of the Interconnection System Impact Study. If Transmission Provider is unable to complete the Interconnection System Impact Study within the time period, it shall notify Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, Transmission Provider shall provide Interconnection Customer all supporting documentation, workpapers and relevant pre-Interconnection Request and post-Interconnection Request power flow, short circuit and stability databases for the Interconnection System Impact Study, subject to confidentiality arrangements consistent with Section 13.1.

7.5 Meeting with Transmission Provider

Within ten (10) Business Days of providing an Interconnection System Impact Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection System Impact Study.

7.6 Re-Study

If Re-Study of the Interconnection System Impact Study is required due to a higher queued project dropping out of the queue, a modification of a higher queued project subject to 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Interconnection Customer in writing. Such Re-Study shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 8. Interconnection Facilities Study

8.1 Interconnection Facilities Study Agreement

Simultaneously with the delivery of the Interconnection System Impact Study to Interconnection Customer, Transmission Provider shall provide to Interconnection Customer an Interconnection Facilities Study Agreement in the form of Appendix 4 to this LGIP. The Interconnection Facilities Study Agreement shall provide that Interconnection Customer shall compensate Transmission Provider for the actual cost of the Interconnection Facilities Study. Within three (3) Business Days following the Interconnection System Impact Study results meeting, Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection Facilities Study. Interconnection Customer shall execute the Interconnection Facilities Study Agreement and deliver the executed Interconnection Facilities Study Agreement to Transmission Provider within thirty (30) Calendar Days after its receipt, together with the required technical data and the greater of $100,000 or Interconnection Customer's portion of the estimated monthly cost of conducting the Interconnection Facilities Study.

8.1.1 Transmission Provider shall invoice Interconnection Customer on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

8.2 Scope of Interconnection Facilities Study

The Interconnection Facilities Study shall specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facility to the Transmission System. The Interconnection Facilities Study shall also identify the electrical switching configuration of the connection equipment, including, without limitation: The transformer, switchgear, meters, and other station equipment; the nature and estimated cost of any Transmission Provider's Interconnection Facilities and Network Upgrades necessary to accomplish the interconnection; and an estimate of the time required to complete the construction and installation of such facilities.

8.3 Interconnection Facilities Study Procedures

Transmission Provider shall coordinate the Interconnection Facilities Study with any Affected System pursuant to Section 3.5 above. Transmission Provider shall utilize existing studies to the extent practicable in performing the Interconnection Facilities Study. Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to Interconnection Customer within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: Ninety (90) Calendar Days, with no more than a +/ − 20 percent cost estimate contained in the report; or one hundred eighty (180) Calendar Days, if Interconnection Customer requests a +/ − 10 percent cost estimate.

At the request of Interconnection Customer or at any time Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Facilities Study, Transmission Provider shall notify Interconnection Customer as to the schedule status of the Interconnection Facilities Study. If Transmission Provider is unable to complete the Interconnection Facilities Study and issue a draft Interconnection Facilities Study report within the time required, it shall notify Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required.

Interconnection Customer may, within thirty (30) Calendar Days after receipt of the draft report, provide written comments to Transmission Provider, which Transmission Provider shall include in the final report. Transmission Provider shall issue the final Interconnection Facilities Study report within fifteen (15) Business Days of receiving Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it will not provide comments. Transmission Provider may reasonably extend such fifteen-day period upon notice to Interconnection Customer if Interconnection Customer's comments require Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 13.1.

8.4 Meeting With Transmission Provider

Within ten (10) Business Days of providing a draft Interconnection Facilities Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.

8.5 Re-Study

If Re-Study of the Interconnection Facilities Study is required due to a higher queued project dropping out of the queue or a modification of a higher queued project pursuant to Section 4.4, Transmission Provider shall so notify Interconnection Customer in writing. Such Re-Study shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 9. Engineering & Procurement ('E&P') Agreement

Prior to executing an LGIA, an Interconnection Customer may, in order to advance the implementation of its interconnection, request and Transmission Provider shall offer the Interconnection Customer, an E&P Agreement that authorizes Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. However, Transmission Provider shall not be obligated to offer an E&P Agreement if Interconnection Customer is in Dispute Resolution as a result of an allegation that Interconnection Customer has failed to meet any milestones or comply with any prerequisites specified in other parts of the LGIP. The E&P Agreement is an optional procedure and it will not alter the Interconnection Customer's Queue Position or In-Service Date. The E&P Agreement shall provide for Interconnection Customer to pay the cost of all activities authorized by Interconnection Customer and to make advance payments or provide other satisfactory security for such costs.

Interconnection Customer shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for its interconnection, which cannot be mitigated as hereafter described, whether or not such items or equipment later become unnecessary. If Interconnection Customer withdraws its application for interconnection or either party terminates the E&P Agreement, to the extent the equipment ordered can be canceled under reasonable terms, Interconnection Customer shall be obligated to pay the associated cancellation costs. To the extent that the equipment cannot be reasonably canceled, Transmission Provider may elect: (i) To take title to the equipment, in which event Transmission Provider shall refund Interconnection Customer any amounts paid by Interconnection Customer for such equipment and shall pay the cost of delivery of such equipment, or (ii) to transfer title to and deliver such equipment to Interconnection Customer, in which event Interconnection Customer shall pay any unpaid balance and cost of delivery of such equipment.

Section 10. Optional Interconnection Study

10.1 Optional Interconnection Study Agreement

On or after the date when Interconnection Customer receives Interconnection System Impact Study results, Interconnection Customer may request, and Transmission Provider shall perform a reasonable number of Optional Studies. The request shall describe the assumptions that Interconnection Customer wishes Transmission Provider to study within the scope described in Section 10.2. Within five (5) Business Days after receipt of a request for an Optional Interconnection Study, Transmission Provider shall provide to Interconnection Customer an Optional

Interconnection Study Agreement in the form of Appendix 5. The Optional Interconnection Study Agreement shall: (i) Specify the technical data that Interconnection Customer must provide for each phase of the Optional Interconnection Study, (ii) specify Interconnection Customer's assumptions as to which Interconnection Requests with earlier queue priority dates will be excluded from the Optional Interconnection Study case and assumptions as to the type of interconnection service for Interconnection Requests remaining in the Optional Interconnection Study case, and (iii) Transmission Provider's estimate of the cost of the Optional Interconnection Study. To the extent known by Transmission Provider, such estimate shall include any costs expected to be incurred by any Affected System whose participation is necessary to complete the Optional Interconnection Study. Notwithstanding the above, Transmission Provider shall not be required as a result of an Optional Interconnection Study request to conduct any additional Interconnection Studies with respect to any other Interconnection Request.

Interconnection Customer shall execute the Optional Interconnection Study Agreement within ten (10) Business Days of receipt and deliver the Optional Interconnection Study Agreement, the technical data and a $10,000 deposit to Transmission Provider.

10.2 Scope of Optional Interconnection Study

The Optional Interconnection Study will consist of a sensitivity analysis based on the assumptions specified by Interconnection Customer in the Optional Interconnection Study Agreement. The Optional Interconnection Study will also identify Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or Interconnection Service based upon the results of the Optional Interconnection Study. The Optional Interconnection Study shall be performed solely for informational purposes. Transmission Provider shall use Reasonable Efforts to coordinate the study with any Affected Systems that may be affected by the types of Interconnection Services that are being studied. Transmission Provider shall utilize existing studies to the extent practicable in conducting the Optional Interconnection Study.

10.3 Optional Interconnection Study Procedures

The executed Optional Interconnection Study Agreement, the prepayment, and technical and other data called for therein must be provided to Transmission Provider within ten (10) Business Days of Interconnection Customer receipt of the Optional Interconnection Study Agreement. Transmission Provider shall use Reasonable Efforts to complete the Optional Interconnection Study within a mutually agreed upon time period specified within the Optional Interconnection Study Agreement. If Transmission Provider is unable to complete the Optional Interconnection Study within such time period, it shall notify Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required. Any difference between the study payment and the actual cost of the study shall be paid to Transmission Provider or refunded to Interconnection Customer, as appropriate. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation and workpapers and databases or data developed in the preparation of the Optional Interconnection Study, subject to confidentiality arrangements consistent with Section 13.1.

Section 11. Standard Large Generator Interconnection Agreement (LGIA)

11.1 Tender

Interconnection Customer shall tender comments on the draft Interconnection Facilities Study Report within thirty (30) Calendar Days of receipt of the report. Within thirty (30) Calendar Days after the comments are submitted, Interconnection Customer shall tender a draft LGIA, together with draft appendices completed to the extent practicable. The draft LGIA shall be in the form of Transmission Provider's FERC-approved standard form LGIA, which is in Appendix 6. Interconnection Customer shall execute and return the completed draft appendices within thirty (30) Calendar Days.

11.2 Negotiation

Notwithstanding Section 11.1, at the request of Interconnection Customer Transmission Provider shall begin negotiations with Interconnection Customer concerning the appendices to the LGIA at any time after Interconnection Customer executes the Interconnection Facilities Study Agreement. Transmission Provider and Interconnection Customer shall negotiate concerning any disputed provisions of the appendices to the draft LGIA for not more than sixty (60) Calendar Days after tender of the final Interconnection Facilities Study Report. If Interconnection Customer determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the LGIA pursuant to Section 11.1 and request submission of the unexecuted LGIA with FERC or initiate Dispute Resolution procedures pursuant to Section 13.5. If Interconnection Customer requests termination of the negotiations, but within sixty (60) Calendar Days thereafter fails to request either the filing of the unexecuted LGIA or initiate Dispute Resolution, it shall be deemed to have withdrawn its Interconnection Request. Unless otherwise agreed by the Parties, if Interconnection Customer has not executed the LGIA, requested filing of an unexecuted LGIA, or initiated Dispute Resolution procedures pursuant to Section 13.5 within sixty days of tender of completed draft of the LGIA appendices, it shall be deemed to have withdrawn its Interconnection Request. Transmission Provider shall provide to Interconnection Customer a final LGIA within fifteen (15) Business Days after the completion of the negotiation process.

11.3 Execution and Filing

Within fifteen (15) Business Days after receipt of the final LGIA, Interconnection Customer shall provide Transmission Provider (A) reasonable evidence that continued Site Control or (B) posting of $250,000, non-refundable additional security, which shall be applied toward future construction costs. At the same time, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at Interconnection Customer election, has been achieved: (i) The execution of a contract for the supply or transportation of fuel to the Large Generating Facility; (ii) the execution of a contract for the supply of cooling water to the Large Generating Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility; (iv) execution of a contract for the sale of electric energy or capacity from the Large Generating Facility; or (v) application for an air, water, or land use permit.

Interconnection Customer shall either: (i) Execute two originals of the tendered LGIA and return them to Transmission

Provider; or (ii) request in writing that Transmission Provider file with FERC an LGIA in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of the tendered LGIA (if it does not conform with a FERC-approved standard form of interconnection agreement) or the request to file an unexecuted LGIA, Transmission Provider shall file the LGIA with FERC, together with its explanation of any matters as to which Interconnection Customer and Transmission Provider disagree and support for the costs that Transmission Provider proposes to charge to Interconnection Customer under the LGIA. An unexecuted LGIA should contain terms and conditions deemed appropriate by Transmission Provider for the Interconnection Request. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LGIA, they may proceed pending FERC action.

11.4 Commencement of Interconnection Activities

If Interconnection Customer executes the final LGIA, Transmission Provider and Interconnection Customer shall perform their respective obligations in accordance with the terms of the LGIA, subject to modification by FERC. Upon submission of an unexecuted LGIA, Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted LGIA, subject to modification by FERC.

Section 12. Construction of Transmission Provider's Interconnection Facilities and Network Upgrades

12.1 Schedule

Transmission Provider and Interconnection Customer shall negotiate in good faith concerning a schedule for the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades.

12.2 Construction Sequencing

12.2.1 General

In general, the In-Service Date of an Interconnection Customer seeking interconnection to the Transmission System will determine the sequence of construction of Network Upgrades.

12.2.2 Advance Construction of Network Upgrades That Are an Obligation of an Entity Other Than Interconnection Customer

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Were assumed in the Interconnection Studies for such Interconnection Customer, (ii) are necessary to support such In-Service Date, and (iii) would otherwise not be completed, pursuant to a contractual obligation of an entity other than Interconnection Customer that is seeking interconnection to the Transmission System, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that Interconnection Customer commits to pay Transmission Provider: (i) Any associated expediting costs and (ii) the cost of such Network Upgrades. Transmission Provider will refund to Interconnection Customer both the expediting costs and the cost of Network Upgrades, in accordance with Article 11.4 of the LGIA. Consequently, the entity with a contractual obligation to construct such Network Upgrades shall be obligated to pay only that portion of the costs of the Network Upgrades that Transmission Provider has not refunded to Interconnection Customer. Payment by that entity shall be due on the date that it would have been due had there been no request for advance construction. Transmission Provider shall forward to Interconnection Customer the amount paid by the entity with a contractual obligation to construct the Network Upgrades as payment in full for the outstanding balance owed to Interconnection Customer. Transmission Provider then shall refund to that entity the amount that it paid for the Network Upgrades, in accordance with Article 11.4 of the LGIA.

12.2.3 Advancing Construction of Network Upgrades That Are Part of an Expansion Plan of the Transmission Provider

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Are necessary to support such In-Service Date and (ii) would otherwise not be completed, pursuant to an expansion plan of Transmission Provider, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that Interconnection Customer commits to pay Transmission Provider any associated expediting costs. Interconnection Customer shall be entitled to transmission credits, if any, for any expediting costs paid.

12.2.4 Amended Interconnection System Impact Study

An Interconnection System Impact Study will be amended to determine the facilities necessary to support the requested In-Service Date. This amended study will include those transmission and Large Generating Facilities that are expected to be in service on or before the requested In-Service Date.

Section 13. Miscellaneous

13.1 Confidentiality

Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of an LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.1.1 Scope

Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without

restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of the LGIA; or (6) is required, in accordance with Section 13.1.6, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under the LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.1.2 Release of Confidential Information

Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Section 13.1 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Section 13.1.

13.1.3 Rights

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.1.4 No Warranties

By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.1.5 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under these procedures or its regulatory requirements.

13.1.6 Order of Disclosure

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of the LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.1.7 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Section 13.1. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Section 13.1, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Section 13.1, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Section 13.1.

13.1.8 Disclosure to FERC, Its Staff, or a State

Notwithstanding anything in this Section 13.1 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to the LGIP, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the LGIA when its is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner, consistent with applicable state rules and regulations.

13.1.9

Subject to the exception in Section 13.1.8, any information that a Party claims is competitively sensitive, commercial or financial information (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIP or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a subregional, regional or national reliability organization or planning group. The

Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

13.1.10

This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

13.1.11

Transmission Provider shall, at Interconnection Customer's election, destroy, in a confidential manner, or return the Confidential Information provided at the time of Confidential Information is no longer needed.

13.2 Delegation of Responsibility

Transmission Provider may use the services of subcontractors as it deems appropriate to perform its obligations under this LGIP. Transmission Provider shall remain primarily liable to Interconnection Customer for the performance of such subcontractors and compliance with its obligations of this LGIP. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

13.3 Obligation for Study Costs

Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Studies. Any difference between the study deposit and the actual cost of the applicable Interconnection Study shall be paid by or refunded, except as otherwise provided herein, to Interconnection Customer or offset against the cost of any future Interconnection Studies associated with the applicable Interconnection Request prior to beginning of any such future Interconnection Studies. Any invoices for Interconnection Studies shall include a detailed and itemized accounting of the cost of each Interconnection Study. Interconnection Customer shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefor. Transmission Provider shall not be obligated to perform or continue to perform any studies unless Interconnection Customer has paid all undisputed amounts in compliance herewith.

13.4 Third Parties Conducting Studies

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) Interconnection Customer receives notice pursuant to Sections 6.3, 7.4 or 8.3 that Transmission Provider will not complete an Interconnection Study within the applicable timeframe for such Interconnection Study, or (iii) Interconnection Customer receives neither the Interconnection Study nor a notice under Sections 6.3, 7.4 or 8.3 within the applicable timeframe for such Interconnection Study, then Interconnection Customer may require Transmission Provider to utilize a third party consultant reasonably acceptable to Interconnection Customer and Transmission Provider to perform such Interconnection Study under the direction of Transmission Provider. At other times, Transmission Provider may also utilize a third party consultant to perform such Interconnection Study, either in response to a general request of Interconnection Customer, or on its own volition.

In all cases, use of a third party consultant shall be in accord with Article 26 of the LGIA (Subcontractors) and limited to situations where Transmission Provider determines that doing so will help maintain or accelerate the study process for Interconnection Customer's pending Interconnection Request and not interfere with Transmission Provider's progress on Interconnection Studies for other pending Interconnection Requests. In cases where Interconnection Customer requests use of a third party consultant to perform such Interconnection Study, Interconnection Customer and Transmission Provider shall negotiate all of the pertinent terms and conditions, including reimbursement arrangements and the estimated study completion date and study review deadline. Transmission Provider shall convey all workpapers, data bases, study results and all other supporting documentation prepared to date with respect to the Interconnection Request as soon as practicable upon Interconnection Customer's request subject to the confidentiality provision in Section 13.1. In any case, such third party contract may be entered into with either Interconnection Customer or Transmission Provider at Transmission Provider's discretion.

In the case of (iii) Interconnection Customer maintains its right to submit a claim to Dispute Resolution to recover the costs of such third party study. Such third party consultant shall be required to comply with this LGIP, Article 26 of the LGIA (Subcontractors), and the relevant OATT procedures and protocols as would apply if Transmission Provider were to conduct the Interconnection Study and shall use the information provided to it solely for purposes of performing such services and for no other purposes. Transmission Provider shall cooperate with such third party consultant and Interconnection Customer to complete and issue the Interconnection Study in the shortest reasonable time.

13.5 Disputes

13.5.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with the LGIA, the LGIP, or their performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

13.5.2 External Arbitration Procedures

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be

knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 13, the terms of this Section 13 shall prevail.

13.5.3 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the LGIA and LGIP and shall have no power to modify or change any provision of the LGIA and LGIP in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

13.5.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

13.6 Local Furnishing Bonds

13.6.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds

This provision is applicable only to a Transmission Provider that has financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code (''local furnishing bonds''). Notwithstanding any other provision of this LGIA and LGIP, Transmission Provider shall not be required to provide Interconnection Service to Interconnection Customer pursuant to this LGIA and LGIP if the provision of such Transmission Service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance Transmission Provider's facilities that would be used in providing such Interconnection Service.

13.6.2 Alternative Procedures for Requesting Interconnection Service

If Transmission Provider determines that the provision of Interconnection Service requested by Interconnection Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such Interconnection Service, it shall advise the Interconnection Customer within thirty (30) days of receipt of the Interconnection Request.

Interconnection Customer thereafter may renew its request for interconnection using the process specified in Article 5.2(ii) of the Transmission Provider's OATT.

Appendix 1 to LGIP—Interconnection Request for a Large Generating Facility

1. The undersigned Interconnection Customer submits this request to interconnect its Large Generating Facility with Transmission Provider's Transmission System pursuant to a Tariff.

2. This Interconnection Request is for (check one):

____ A proposed new Large Generating Facility

____ An increase in the generating capacity or a Material Modification of an existing Generating Facility

3. The type of interconnection service requested (check one):

____ Energy Resource Interconnection Service

____ Network Resource Interconnection Service

4. ____ Check here only if Interconnection Customer requesting Network Resource Interconnection Service also seeks to have its Generating Facility studied for Energy Resource Interconnection Service

5. Interconnection Customer provides the following information:

a. Address or location or the proposed new Large Generating Facility site (to the extent known) or, in the case of an existing Generating Facility, the name and specific location of the existing Generating Facility;

b. Maximum summer at ____ degrees C and winter at ____ degrees C megawatt electrical output of the proposed new Large Generating Facility or the amount of megawatt increase in the generating capacity of an existing Generating Facility;

c. General description of the equipment configuration;

d. Commercial Operation Date (Day, Month, and Year);

e. Name, address, telephone number, and e-mail address of Interconnection Customer's contact person;

f. Approximate location of the proposed Point of Interconnection (optional); and

g. Interconnection Customer Data (set forth in Attachment A)

6. Applicable deposit amount as specified in the LGIP.

7. Evidence of Site Control as specified in the LGIP (check one)

____ Is attached to this Interconnection Request

____ Will be provided at a later date in accordance with this LGIP

8. This Interconnection Request shall be submitted to the representative indicated below: [To be completed by Transmission Provider]

9. Representative of Interconnection Customer to contact: [To be completed by Interconnection Customer]

10. This Interconnection Request is submitted by:

Name of Interconnection Customer: ____

By (signature): _____

Name (type or print): _____

Title: _____

Date: _____

Attachment A to Appendix 1—Interconnection Request

Large Generating Facility Data Unit Ratings

kVA _____

°F _____

Voltage _____

Power Factor _____

Speed (RPM) _____

Connection (*e.g.* Wye) _____

Short Circuit Ratio _____

Frequency, Hertz _____

Stator Amperes at Rated kVA _____

Field Volts _____

Max Turbine MW ____ °F __ _____

Combined Turbine-Generator-Exciter Inertia Data

Inertia Constant,

H = _____ kW sec/kVA

Moment-of-Inertia,

WR^2 = _____ lb. $ft.^2$

REACTANCE DATA (PER UNIT-RATED kVA)

	Direct axis	Quadrature axis
Synchronous—saturated	X_{dv} _____	X_{qv} _____
Synchronous—unsaturated	X_{di} _____	X_{qi} _____
Transient—saturated	X'_{dv} _____	X'_{qv} _____
Transient—unsaturated	X'_{di} _____	X'_{qi} _____
Subtransient—saturated	X''_{dv} _____	X''_{qv} _____
Subtransient—unsaturated	X''_{di} _____	X''_{qi} _____
Negative Sequence—saturated	$X2_v$ _____	
Negative Sequence—unsaturated	$X2_i$ _____	
Zero Sequence—saturated	$X0_v$ _____	
Zero Sequence—unsaturated	$X0_i$ _____	
Leakage Reactance	Xl_m _____	

Field Time Constant Data (SEC)

Open Circuit	T'_{do} _____	T'_{qo} _____
Three-Phase Short Circuit Transient	T'_{d3} _____	T'_q _____
Line to Line Short Circuit Transient	T'_{d2} _____	
Line to Neutral Short Circuit Transient	T'_{dl} _____	
Short Circuit Subtransient	T''_d _____	T''_q _____
Open Circuit Subtransient	T''_{do} _____	T''_{qo} _____

Armature Time Constant Data (SEC)

Three Phase Short Circuit—
T_{a3} _____
Line to Line Short Circuit—
T_{a2} _____
Line to Neutral Short Circuit—
T_{a1} _____

Note: If requested information is not applicable, indicate by marking ''N/A.''

MW Capability and Plant Configuration
Large Generating Facility Data
Armature Winding Resistance Data (Per Unit)

Positive—R_1 _____
Negative—R_2 _____
Zero—R_0 _____
Rotor Short Time Thermal Capacity I_2^2t = _____
Field Current at Rated kVA, Armature Voltage and PF = _____ amps
Field Current at Rated kVA and Armature Voltage, 0 PF = _____ amps
Three Phase Armature Winding Capacitance = _____ microfarad
Field Winding Resistance = _____ ohms _____ °C
Armature Winding Resistance (Per Phase) = _____ ohms _____ °C

Curves

Provide Saturation, Vee, Reactive Capability, Capacity Temperature Correction curves.
Designate normal and emergency Hydrogen Pressure operating range for multiple curves.

Generator Step-Up Transformer Data Ratings

Capacity; Self-cooled/Maximum Nameplate
_____/_____ kVA
Voltage Ratio (Generator Side/System side/Tertiary)
_____/_____/_____ kV
Winding Connections (Low V/High V/ Tertiary V (Delta or Wye))
_____/_____/_____
Fixed Taps Available _____
Present Tap Setting _____

Impedance

Positive: Z_1 (on self-cooled kVA rating) _____% _____ X/R
Zero: Z_0 (on self-cooled kVA rating) _____% _____ X/R

Excitation System Data

Identify appropriate IEEE model block diagram of excitation system and power system stabilizer (PSS) for computer representation in power system stability simulations and the corresponding excitation system and PSS constants for use in the model.

Governor System Data

Identify appropriate IEEE model block diagram of governor system for computer representation in power system stability simulations and the corresponding governor system constants for use in the model.

Wind Generators

Number of generators to be interconnected pursuant to this Interconnection Request: _____
Elevation: _____
____ Single Phase
____ Three Phase
Inverter manufacturer, model name, number, and version: _____

List of adjustable setpoints for the protective equipment or software: _____

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet or other compatible formats, such as IEEE and PTI power flow models, must be supplied with the Interconnection Request. If other data sheets are more appropriate to the proposed device, then they shall be provided and discussed at Scoping Meeting.

Induction Generators

(*) Field Volts: _____
(*) Field Amperes: _____
(*) Motoring Power (kW): _____
(*) Neutral Grounding Resistor (If Applicable): _____
(*) I_2^2t or K (Heating Time Constant): __
(*) Rotor Resistance: _____
(*) Stator Resistance: _____
(*) Stator Reactance: _____
(*) Rotor Reactance: _____
(*) Magnetizing Reactance: _____
(*) Short Circuit Reactance: _____
(*) Exciting Current: _____
(*) Temperature Rise: _____
(*) Frame Size: _____
(*) Design Letter: _____
(*) Reactive Power Required In Vars (No Load): _____
(*) Reactive Power Required In Vars (Full Load): _____
(*) Total Rotating Inertia, H: _____ Per Unit on KVA Base

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

Appendix 2 to LGIP—Interconnection Feasibility Study Agreement

This agreement is made and entered into this ____ day of _____, 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Large Generating Facility to the Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's FERC-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Section 6.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection Feasibility Study shall be based on the technical information provided by Interconnection Customer in the Interconnection Request, as may be modified as the result of the Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Section 3.3.4 of the LGIP. If, after the designation of the Point of Interconnection pursuant to Section 3.3.4 of the LGIP, Interconnection Customer modifies its Interconnection Request pursuant to Section 4.4, the time to complete the Interconnection Feasibility Study may be extended.

5.0 The Interconnection Feasibility Study report shall provide the following information:

- Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
- Preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection; and
- Preliminary description and non-bonding estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit and power flow issues.

6.0 Interconnection Customer shall provide a deposit of $10,000 for the performance of the Interconnection Feasibility Study.

Upon receipt of the Interconnection Feasibility Study Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Feasibility Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Interconnection Feasibility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable.]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer.]

By: _____

Title: _____

Date: _____

Attachment A to Appendix 2—Interconnection Feasibility Study Agreement

Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Scoping Meeting held on _____:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider]

Appendix 3 to LGIP—Interconnection System Impact Study Agreement

This agreement is made and entered into this ____ day of _____, 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System;

Whereas, Transmission Provider has completed an Interconnection Feasibility Study (the ''Feasibility Study'') and provided the results of said study to Interconnection Customer (This recital to be omitted if Transmission Provider does not require the Interconnection Feasibility Study.); and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection System Impact Study to assess the impact of interconnecting the Large Generating

Facility to the Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's FERC-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection System Impact Study consistent with Section 7.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Interconnection System Impact Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study and the technical information provided by Interconnection Customer in the Interconnection Request, subject to any modifications in accordance with Section 4.4 of the LGIP. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Customer System Impact Study. If Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the Interconnection System Impact Study may be extended.

5.0 The Interconnection System Impact Study report shall provide the following information:

—Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

—Identification of any thermal overload or voltage limit violations resulting from the interconnection;

—Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and

—Description and non-binding, good faith estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 Interconnection Customer shall provide a deposit of $50,000 for the performance of the Interconnection System Impact Study. Transmission Provider's good faith estimate for the time of completion of the Interconnection System Impact Study is [insert date].

Upon receipt of the Interconnection System Impact Study, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection System Impact Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Interconnection System Impact Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.]

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable.]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer.]

By: _____

Title: _____

Date: _____

Attachment A To Appendix 3—Interconnection System Impact Study Agreement

Assumptions Used in Conducting the Interconnection System Impact Study

The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study, subject to any modifications in accordance with Section 4.4 of the LGIP, and the following assumptions:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider]

Appendix 4 to LGIP—Interconnection Facilities Study Agreement

This Agreement is made and entered into this ____ day of _____, 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System;

Whereas, Transmission Provider has completed an Interconnection System Impact Study (the ''System Impact Study'') and provided the results of said study to Interconnection Customer; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Large Generating Facility to the Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's FERC-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 8.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.

4.0 The Interconnection Facilities Study report (i) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Large Generating Facility to the Transmission System and (ii) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Impact Study.

5.0 Interconnection Customer shall provide a deposit of $100,000 for the performance of the Interconnection Facilities Study. The time for completion of the Interconnection Facilities Study is specified in Attachment A.

Transmission Provider shall invoice Interconnection Customer on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

6.0 Miscellaneous. The Interconnection Facility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

Attachment A To Appendix 4—Interconnection Facilities Study Agreement

Interconnection Customer Schedule Election for Conducting the Interconnection Facilities Study

Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to Interconnection Customer within the following number of days after of receipt of an executed copy of this Interconnection Facilities Study Agreement:

—Ninety (90) Calendar Days with no more than a +/−20 percent cost estimate contained in the report, or

—one hundred eighty (180) Calendar Days with no more than a +/−10 percent cost estimate contained in the report.

Attachment B to Appendix 4—Interconnection Facilities Study Agreement

Data Form To Be Provided by Interconnection Customer With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections:

On the one line diagram indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one line diagram indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

Will an alternate source of auxiliary power be available during CT/PT maintenance?

____Yes ____No

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?

____Yes ____No

(Please indicate on one line diagram).

What type of control system or PLC will be located at Interconnection Customer's Large Generating Facility?

_____

What protocol does the control system or PLC use?

_____

Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider's transmission line.

_____

Tower number observed in the field. (Painted on tower leg)*

_____

Number of third party easements required for transmission lines*:

_____

*To be completed in coordination with Transmission Provider.

Is the Large Generating Facility in the Transmission Provider's service area?

____Yes ____No

Local provider: _____

Please provide proposed schedule dates:

Begin Construction Date: _____

Generator step-up transformer receives back feed power Date: _____

Generation Testing Date: _____

Commercial Operation Date: _____

Appendix 5 to LGIP—Optional Interconnection Study Agreement

This Agreement is made and entered into this ____ day of _____, 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a existing under the laws of the State of _____, (''Transmission Provider ''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____;

Whereas, Interconnection Customer is proposing to establish an interconnection with the Transmission System; and

Whereas, Interconnection Customer has submitted to Transmission Provider an Interconnection Request; and

Whereas, on or after the date when Interconnection Customer receives the Interconnection System Impact Study

results, Interconnection Customer has further requested that Transmission Provider prepare an Optional Interconnection Study;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's FERC-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Optional Interconnection Study consistent with Section 10.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Optional Interconnection Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Optional Interconnection Study shall be performed solely for informational purposes.

5.0 The Optional Interconnection Study report shall provide a sensitivity analysis based on the assumptions specified by Interconnection Customer in Attachment A to this Agreement. The Optional Interconnection Study will identify Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the assumptions specified by Interconnection Customer in Attachment A.

6.0 Interconnection Customer shall provide a deposit of $10,000 for the performance of the Optional Interconnection Study. Transmission Provider's good faith estimate for the time of completion of the Optional Interconnection Study is [insert date].

Upon receipt of the Optional Interconnection Study, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Optional Study.

Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Optional Interconnection Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

Appendix 6 to the Standard Large Generator Interconnection Procedures

Standard Large Generator Interconnection Agreement (LGIA)

Table of Contents

Standard Large Generator Interconnection Agreement

This Standard Large Generator Interconnection Agreement (''Agreement'') is made and entered into this __ day of ____ 20__, by and between _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ (''Interconnection Customer'' with a Large Generating Facility), and _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ (''Transmission Provider and/or Transmission Owner''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party'' or collectively as the ''Parties.''

Recitals

Whereas, Transmission Provider operates the Transmission System; and

Whereas, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

Whereas, Interconnection Customer and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System;

Now, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used or the Open Access Transmission Tariff (OATT).

Article 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more

intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shall mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by the Applicable Reliability Council.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

Emergency Condition shall mean a condition or situation: (1) That in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a et seq.

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other caused beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System.Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System.

Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean 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. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the

Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

SAIRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to Commercial Operation.

Article 2. Effective Date, Term, and Termination

2.1 Effective Date

This LGIA shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.

2.2 Term of Agreement

Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as Interconnection Customer may request (Term to be specified in individual agreements) and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination Procedures

2.3.1 *Written Notice.* This LGIA may be terminated by Interconnection Customer after giving Transmission Provider ninety (90) Calendar Days advance written notice, or by Transmission Provider notifying FERC after the Generating Facility permanently ceases Commercial Operation.

2.3.2 *Default.* Either Party may terminate this LGIA in accordance with Article 17.

2.3.3 Notwithstanding Articles 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.

2.4 Termination Costs

If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this LGIA. In the event of termination by a Party, the Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this LGIA, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which Transmission Provider has incurred expenses and has not been reimbursed by Interconnection Customer.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection

Upon termination of this LGIA, the Parties will take all appropriate steps to

disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

2.6 Survival

This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

Article 3. Regulatory Filings

3.1 Filing

Transmission Provider shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority, if required. Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 22. If Interconnection Customer has executed this LGIA, or any amendment thereto, Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

Article 4. Scope of Service

4.1 Interconnection Product Options

Interconnection Customer has selected the following (checked) type of Interconnection Service:

4.1.1 Energy Resource Interconnection Service

4.1.1.1 *The Product.* Energy Resource Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. To the extent Interconnection Customer wants to receive Energy Resource Interconnection Service, Transmission Provider shall construct facilities identified in Attachment A.

4.1.1.2 *Transmission Delivery Service Implications.* Under Energy Resource Interconnection Service, Interconnection Customer will be eligible to inject power from the Large Generating Facility into and deliver power across the interconnecting Transmission Provider's Transmission System on an ''as available'' basis up to the amount of MWs identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for Energy Resource Interconnection Service have been constructed. Where eligible to do so (*e.g.*, PJM, ISO–NE, NYISO), Interconnection Customer may place a bid to sell into the market up to the maximum identified Large Generating Facility output, subject to any conditions specified in the interconnection service approval, and the Large Generating Facility will be dispatched to the extent Interconnection Customer's bid clears. In all other instances, no transmission delivery service from the Large Generating Facility is assured, but Interconnection Customer may obtain Point-to-Point Transmission Service, Network Integration Transmission Service, or be used for secondary network transmission service, pursuant to Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of Transmission Provider's Tariff. The Interconnection Customer's ability to inject its Large Generating Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of Transmission Provider's Transmission System at such time as a transmission service request is made that would accommodate such delivery. The provision of firm Point-to-Point Transmission Service or Network Integration Transmission Service may require the construction of additional Network Upgrades.

4.1.2 Network Resource Interconnection Service

4.1.2.1 *The Product.* Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all Network Resources. To the extent Interconnection Customer wants to receive Network Resource Interconnection Service, Transmission Provider shall construct the facilities identified in Attachment A to this LGIA.

4.1.2.2 *Transmission Delivery Service Implications.* Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although Network Resource Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses other Network Resources. A Large Generating Facility receiving Network Resource Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generating facilities that are similarly situated. The provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades. Because such studies and upgrades would be associated with a request for delivery service under the Tariff, cost responsibility for the studies and upgrades would be in accordance with FERC's policy for pricing transmission delivery services.

Network Resource Interconnection Service does not necessarily provide

Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on Transmission Provider's Transmission System, Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in Transmission Provider's Transmission System in the same manner as all other Network Resources.

There is no requirement either at the time of study or interconnection, or at any point in the future, that Interconnection Customer's Large Generating Facility be designated as a Network Resource by a Network Service Customer under the Tariff or that Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Large Generating Facility as a Network Resource, it must do so pursuant to Transmission Provider's Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining Network Resource Interconnection Service, any future transmission service request for delivery from the Large Generating Facility within Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Large Generating Facility. However, the reduction or elimination of congestion or redispatch costs may require additional studies and the construction of additional upgrades.

To the extent Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Large Generating Facility outside Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for Transmission Provider to grant such request.

4.2 Provision of Service

Transmission Provider shall provide Interconnection Service for the Large Generating Facility at the Point of Interconnection.

4.3 Performance Standards

Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is a Transmission Provider or Transmission Owner, then that Party shall amend the LGIA and submit the amendment to FERC for approval.

4.4 No Transmission Delivery Service

The execution of this LGIA does not constitute a request for, nor the provision of, any transmission delivery service under Transmission Provider's Tariff, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.

4.5 Interconnection Customer Provided Services

The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 Options

Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of Transmission Provider's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities and Network Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.

5.1.1 *Standard Option.* Transmission Provider shall design, procure, and construct Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event Transmission Provider reasonably expects that it will not be able to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, Transmission Provider shall promptly provide written notice to Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 *Alternate Option.* If the dates designated by Interconnection Customer are acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities by the designated dates. If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 *Option to Build.* If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades on the dates specified in Article 5.1.2. Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A. Except for Stand Alone Network Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 *Negotiated Option.* If Interconnection Customer elects not to exercise its option under Article 5.1.3,

Option to Build, Interconnection Customer shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades by Interconnection Customer) pursuant to which Transmission Provider is responsible for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades pursuant to 5.1.1, Standard Option.

5.2 General Conditions Applicable to Option to Build

If Interconnection Customer assumes responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

(1) Interconnection Customer shall engineer, procure equipment, and construct Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(4) prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;

(5) at any time during construction, Transmission Provider shall have the right to gain unrestricted access to Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, Interconnection Customer shall be obligated to remedy deficiencies in that portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) Interconnection Customer shall indemnify Transmission Provider for claims arising from Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider;

(9) Unless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades to Transmission Provider;

(10) Transmission Provider shall approve and accept for operation and maintenance Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Interconnection Customer shall deliver to Transmission Provider ''as-built'' drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Interconnection Facilities and Stand-Alone Network Upgrades are built to the standards and specifications required by Transmission Provider.

5.3 Liquidated Damages

The actual damages to Interconnection Customer, in the event Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by Interconnection Customer and accepted by Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by Transmission Provider to Interconnection Customer in the event that Transmission Provider does not complete any portion of Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades for which Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by Transmission Provider to Interconnection Customer as just compensation for the damages caused to Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA. Liquidated damages, when the Parties agree to them, are the exclusive remedy for the Transmission Provider's failure to meet its schedule.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless Interconnection Customer would have been able to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) Transmission Provider's failure to meet the specified dates is the result of the action or inaction of Interconnection Customer or any other Interconnection Customer who has entered into an LGIA with Transmission Provider or any cause beyond Transmission Provider's

reasonable control or reasonable ability to cure; (3) the interconnection Customer has assumed responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 Power System Stabilizers

The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Applicable Reliability Council. Transmission Provider reserves the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. The requirements of this paragraph shall not apply to wind generators.

5.5 Equipment Procurement

If responsibility for construction of Transmission Provider's Interconnection Facilities or Network Upgrades is to be borne by Transmission Provider, then Transmission Provider shall commence design of Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.5.2 Transmission Provider has received written authorization to proceed with design and procurement from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 Construction Commencement

Transmission Provider shall commence construction of Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of Transmission Provider's Interconnection Facilities and Network Upgrades;

5.6.3 Transmission Provider has received written authorization to proceed with construction from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.6.4 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.7 Work Progress

The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, Interconnection Customer determines that the completion of Transmission Provider's Interconnection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Provider of such later date upon which the completion of Transmission Provider's Interconnection Facilities will be required.

5.8 Information Exchange

As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 Limited Operation

If any of Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and Interconnection Customer's Interconnection Facilities may operate prior to the completion of Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.

5.10 Interconnection Customer's Interconnection Facilities (''ICIF'') Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.10.1 *Interconnection Customer's Interconnection Facility Specifications.* Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 *Transmission Provider's Review.* Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider.

5.10.3 *ICIF Construction.* The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Interconnection Customer shall deliver to Transmission Provider

''as-built'' drawings, information and documents for the ICIF, such as: A one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. The Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

5.11 Transmission Provider's Interconnection Facilities Construction

Transmission Provider's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Transmission Provider shall deliver to Interconnection Customer the following ''as-built'' drawings, information and documents for Transmission Provider's Interconnection Facilities [include appropriate drawings and relay diagrams].

Transmission Provider will obtain control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 Access Rights

Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (''Granting Party'') shall furnish at no cost to the other Party (''Access Party'') any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) Interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.13 Lands of Other Property Owners

If any part of Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property.

5.14 Permits

The LGIA shall specify the allocation of the responsibilities of Transmission Provider or Transmission Owner and Interconnection Customer to obtain all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. Transmission Provider or Transmission Owner and Interconnection Customer shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations. With respect to this paragraph, Transmission Provider or Transmission Owner shall provide permitting assistance to Interconnection Customer comparable to that provided to Transmission Provider's own, or an Affiliate's generation.

5.15 Early Construction of Base Case Facilities

Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.

5.16 Suspension

Interconnection Customer reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this LGIA with the condition that Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this LGIA on or before the expiration of three (3) years following commencement of such suspension, this LGIA shall be deemed terminated. The three-year period shall begin on the date

the suspension is requested, or the date of the written notice to Transmission Provider, if no effective date is specified.

5.17 Taxes

5.17.1 *Interconnection Customer Payments Not Taxable.* The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 *Representations and Covenants.* In accordance with IRS Notice 2001–82 and IRS Notice 88–129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to Transmission Provider for Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Transmission Provider's Interconnection Facilities that is a ''dual-use intertie,'' within the meaning of IRS Notice 88–129, is reasonably expected to carry only a *de minimis* amount of electricity in the direction of the Large Generating Facility. For this purpose, ''*de minimis* amount'' means no more than 5 percent of the total power flows in both directions, calculated in accordance with the ''5 percent test'' set forth in IRS Notice 88–129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 *Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Provider.* Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from the cost consequences of any current tax liability imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA for Interconnection Facilities, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this LGIA unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; *provided, however,* that Transmission Provider may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated. The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 *Tax Gross-Up Amount.* Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider (''Current Taxes'') on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA (without regard to any payments under this Article 5.17) (the ''Gross Income Amount'') over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the ''Present Value Depreciation Amount''), plus (2) an additional amount sufficient to permit Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the ''Current Tax Rate''), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: (Current Tax Rate × (Gross Income Amount − Present Value of Tax Depreciation))/(1 − Current Tax Rate). Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 *Private Letter Ruling or Change or Clarification of Law.* At Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Provider and Interconnection Customer

shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

5.17.6 *Subsequent Taxable Events.* If, within 10 years from the date on which the relevant Transmission Provider's Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a ''disqualification event'' occurs within the meaning of IRS Notice 88–129, or (iii) this LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90–60.

5.17.7 *Contests.* In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.17.8 *Refund.* In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) Any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) On any amounts paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) With respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); *provided, however,* that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 *Taxes Other Than Income Taxes.* Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this LGIA.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's

documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.17.10 *Transmission Owners Who Are Not Transmission Providers.* If Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of Transmission Provider under this Article 5.17 of this LGIA.

5.18 Tax Status

Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.19 Modification

5.19.1 *General.* Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

5.19.2 *Standards.* Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA and Good Utility Practice.

5.19.3 *Modification Costs.* Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service to a third party under Transmission Provider's Tariff. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to Interconnection Customer's Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer's Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 Pre-Commercial Operation Date Testing and Modifications

Prior to the Commercial Operation Date, Transmission Provider shall test Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

6.2 Post-Commercial Operation Date Testing and Modifications

Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.3 Right to Observe Testing

Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 Right to Inspect

Each Party shall have the right, but shall have no obligation to: (i) Observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be Confidential Information and treated pursuant to Article 22 of this LGIA.

Article 7. Metering

7.1 General

Each Party shall comply with the Applicable Reliability Council requirements. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 Check Meters

Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

7.3 Standards

Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.

7.4 Testing of Metering Equipment

Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 Metering Data

At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

Article 8. Communications

8.1 Interconnection Customer Obligations

Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: System paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 Remote Terminal Unit

Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation

Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

Article 9. Operations

9.1 General

Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 Control Area Notification

At least three months before Initial Synchronization Date, Interconnection Customer shall notify Transmission Provider in writing of the Control Area

in which the Large Generating Facility will be located. If Interconnection Customer elects to locate the Large Generating Facility in a Control Area other than the Control Area in which the Large Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Control Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Control Area.

9.3 Transmission Provider Obligations

Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.4 Interconnection Customer Obligations

Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.

9.5 Start-Up and Synchronization

Consistent with the Parties' mutually acceptable procedures, Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to Transmission Provider's Transmission System.

9.6 Reactive Power

9.6.1 *Power Factor Design Criteria.* Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

9.6.2 *Voltage Schedules.* Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 *Governors and Regulators.* Whenever the Large Generating Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its speed governors and voltage regulators in automatic operation. If the Large Generating Facility's speed governors and voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.6.3 *Payment for Reactive Power.* Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in Article 9.6.1, provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

9.7 Outages and Interruptions

9.7.1 Outages

9.7.1.1 *Outage Authority and Coordination.* Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 *Outage Schedules.* Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Large

Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost Interconnection Customer would have incurred absent Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, Interconnection Customer had modified its schedule of maintenance activities.

9.7.1.3 *Outage Restoration.* If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.7.2 *Interruption of Service.* If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the Transmission System;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Interconnection Customer and Transmission Provider;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.7.3 *Under-Frequency and Over Frequency Conditions.* The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Council to ensure ''ride through'' capability of the Transmission System. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with Transmission Provider in accordance with Good Utility Practice. The term ''ride through'' as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

9.7.4 System Protection and Other Control Requirements.

9.7.4.1 *System Protection Facilities.* Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on Transmission Provider's Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and Interconnection Customer's Interconnection Facilities.

9.7.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of Interconnection Customer's units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 *Requirements for Protection.* In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the

Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over-or under-frequency, sudden load rejection, over-or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

9.7.6 *Power Quality.* Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1–1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1–1989, or any applicable superseding electric industry standard, ANSI Standard C84.1–1989, or the applicable superseding electric industry standard, shall control.

9.8 Switching and Tagging Rules

Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.9 Use of Interconnection Facilities by Third Parties

9.9.1 *Purpose of Interconnection Facilities.* Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

9.9.2 *Third Party Users.* If required by Applicable Laws and Regulations or 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 Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 Disturbance Analysis Data Exchange

The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

Article 10. Maintenance

10.1 Transmission Provider Obligations

Transmission Provider shall maintain the Transmission System and Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.2 Interconnection Customer Obligations

Interconnection Customer shall maintain the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.3 Coordination

The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

10.4 Secondary Systems

Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) Owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

Article 11. Performance Obligation

11.1 Interconnection Customer Interconnection Facilities

Interconnection Customer shall design, procure, construct, install, own and/or control Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.

11.2 Transmission Provider's Interconnection Facilities.

Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of the Interconnection Customer.

11.3 Network Upgrades and Distribution Upgrades

Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by Interconnection Customer.

11.4 Transmission Credits

11.4.1 *Repayment of Amounts Advanced for Network Upgrades.* Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments associated with Network Upgrades, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interconnection Customer may assign such repayment rights to any person.

Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and Affected System Operator take one of the following actions no later than five years from the Commercial Operation Date: (1) Return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Provider or Affected System Operator will continue to provide payments to Interconnection Customer pursuant to this subparagraph until all amounts advanced for Network Upgrades have been repaid.

If the Large Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time reimburse Interconnection Customer for the amounts advanced for the Network Upgrades.

11.4.2 *Special Provisions for Affected Systems.* Unless Transmission Provider provides, under the LGIA, for the repayment of amounts advanced to Affected System Operator for Network Upgrades, Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by Interconnection Customer to the Affected System Operator as well as the repayment by the Affected System Operator.

11.4.3 Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Large Generating Facility.

11.5 Provision of Security

At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 Interconnection Customer Compensation

If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.5.1 of this LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this LGIA, Transmission Provider agrees to compensate Interconnection Customer in such amount as would have been due Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 *Interconnection Customer Compensation for Actions During Emergency Condition.* Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 General

Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 Final Invoice

Within six months after completion of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 Payment

Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by either Party will not constitute a waiver of any rights or claims either Party may have under this LGIA.

12.4 Disputes

In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this LGIA as long as Interconnection Customer: (i) Continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii).

Article 13. Emergencies

13.1 Definition

''Emergency Condition'' shall mean a condition or situation: (i) That in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Large Generating Facility or Interconnection Customer's Interconnection Facilities' System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

13.2 Obligations

Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Joint Operating Committee.

13.3 Notice

Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or Interconnection Customer's Interconnection Facilities that may reasonably be expected to affect the Transmission System or Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.4 Immediate Action

Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or Interconnection Customer's Interconnection Facilities in response to an Emergency Condition either declared by Transmission Provider or otherwise regarding the Transmission System.

13.5 Transmission Provider Authority

13.5.1 *General.* Transmission Provider may take whatever actions or inactions with regard to the Transmission System or Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or Transmission Provider's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2; directing Interconnection Customer to assist with blackstart (if available) or restoration efforts; or

altering the outage schedules of the Large Generating Facility and Interconnection Customer's Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.5.2 *Reduction and Disconnection.* Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or Interconnection Customer's Interconnection Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of Transmission Provider pursuant to Transmission Provider's Tariff. When Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Interconnection Customer and Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 Interconnection Customer Authority

Consistent with Good Utility Practice and the LGIA and the LGIP, Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions.

13.7 Limited Liability

Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Regulatory Requirements and Governing Law

14.1 Regulatory Requirements

Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act, the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978.

14.2 Governing Law

14.2.1 The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This LGIA is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices.

15.1 General

Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings. Either Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 Billings and Payments

Billings and payments shall be sent to the addresses set out in Appendix F.

15.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by a Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F.

15.4 Operations and Maintenance Notice

Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

Article 17. Default

17.1 Default

17.1.1 *General.* No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party. Except as provided in Article 17.1.2, the breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

17.1.2 *Right to Terminate.* If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this LGIA, to recover from the breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this LGIA.

Article 18. Indemnity, Consequential Damages and Insurance

18.1 Indemnity

The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

18.1.1 *Indemnified Person.* If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

18.1.2 *Indemnifying Party.* If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

18.1.3 *Indemnity Procedures.* Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party.

Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

18.2 Consequential Damages

Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 Insurance

Each party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) aggregate combined single limit for personal

injury, bodily injury, including death and property damage.

18.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

18.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees (''Other Party Group'') as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the polices are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issues to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

18.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.

18.3.9 Within ten (10) days following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this article, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LGIA.

Article 19. Assignment

19.1 Assignment

This LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this LGIA without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that Interconnection Customer shall have the right to assign this LGIA, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that Interconnection Customer will promptly notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing the Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 Severability

If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this LGIA; provided that if Interconnection Customer (or any third party, but only if such third party is not acting at the direction of Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

Article 21. Comparability

21.1 Comparability

The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 Confidentiality

Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this LGIA. Information is

Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 *Term.* During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 *Scope.* Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of the LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 *Release of Confidential Information.* Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 *Rights.* Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 *No Warranties.* By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 *Standard of Care.* Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this LGIA or its regulatory requirements.

22.1.7 *Order of Disclosure.* If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this LGIA.

Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 *Termination of Agreement.* Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 *Remedies.* The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 *Disclosure to FERC, its Staff, or a State.* Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the

LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner, consistent with the applicable state rules and regulations.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this LGIA (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

Article 23. Environmental Releases

23.1

Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) Provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 Information Acquisition

Transmission Provider and Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 Information Submission by Transmission Provider

The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise agreed to by the Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) Progress to date; (2) a description of the activities since the last report'' (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Interconnection Customer

The updated information submission by Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information. If Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation

Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all ''as-built'' Large Generating Facility information or ''as-tested'' performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit ''step voltage'' test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to Transmission Provider for each individual generating unit in a station. Subsequent to the Operation Date, Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall

provide Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 Information Access

Each Party (the ''disclosing Party'') shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) Verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and (ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA.

25.2 Reporting of Non-Force Majeure Events

Each Party (the ''notifying Party'') shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.

25.3 Audit Rights

Subject to the requirements of confidentiality under Article 22 of this LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this LGIA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, Transmission Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this LGIA. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods

25.4.1 *Audit Rights Period for Construction-Related Accounts and Records.* Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 *Audit Rights Period for All Other Accounts and Records.* Accounts and records related to either Party's performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) For an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 Audit Results

If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 General

Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 Responsibility of Principal

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall Transmission Provider be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 No Limitation by Insurance

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

27.2 External Arbitration Procedures

Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the

dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties, and Covenants

28.1 General

Each Party makes the following representations, warranties and covenants:

28.1.1 *Good Standing.* Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LGIA.

28.1.2 *Authority.* Such Party has the right, power and authority to enter into this LGIA, to become a party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 *No Conflict.* The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 *Consent and Approval.* Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

Article 29. Joint Operating Committee

29.1 Joint Operating Committee

Except in the case of ISOs and RTOs, Transmission Provider shall constitute a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. At least six (6) months prior to the expected Initial Synchronization Date, Interconnection Customer and Transmission Provider shall each appoint one representative and one alternate to the Joint Operating Committee. Each Interconnection Customer shall notify Transmission Provider of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this LGIA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee, shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

29.1.1 Establish data requirements and operating record requirements.

29.1.2 Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.

29.1.3 Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Interconnection Customer's facilities at the Point of Interconnection.

29.1.4 Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Large Generating Facility and other facilities that impact the normal operation of the interconnection of the Large Generating Facility to the Transmission System.

29.1.5 Ensure that information is being provided by each Party regarding equipment availability.

29.1.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

Article 30. Miscellaneous

30.1 *Binding Effect.* This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

30.2 *Conflicts.* In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and

provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.

30.3 *Rules of Interpretation.* This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) The singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be; (6) ''hereunder'', ''hereof'', ''herein'', ''hereto'' and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) ''including'' (and with correlative meaning ''include'') means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, ''from'' means ''from and including'', ''to'' means ''to but excluding'' and ''through'' means ''through and including''.

30.4 *Entire Agreement.* This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this LGIA.

30.5 *No Third Party Beneficiaries.* This LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 *Waiver.* The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LGIA. Termination or Default of this LGIA for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this LGIA shall, if requested, be provided in writing.

30.7 *Headings.* The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

30.8 *Multiple Counterparts.* This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 *Amendment.* The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by the Parties.

30.10 *Modification by the Parties.* The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

30.11 *Reservation of Rights.* Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

30.12 *No Partnership.* This LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

In witness whereof, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

_____

By: _____

Title: _____

Date: _____

_____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

Appendix A to LGIA

Interconnection Facilities, Network Upgrades and Distribution Upgrades

1. Interconnection Facilities:

(a) [insert Interconnection Customer's Interconnection Facilities]:

(b) [insert Transmission Provider's Interconnection Facilities]:

2. Network Upgrades:

(a) [insert Stand Alone Network Upgrades]:

(b) [insert Other Network Upgrades]:

3. Distribution Upgrades:

Appendix B to LGIA—Milestones

Appendix C to LGIA—Interconnection Details

Appendix D to LGIA—Security Arrangements Details

Infrastructure security of Transmission System equipment and operations and control hardware and

software is essential to ensure day-to-day Transmission System reliability and operational security. FERC will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix E to LGIA—Commercial Operation Date

This Appendix E is a part of the LGIA between Transmission Provider and Interconnection Customer.

[Date]
[Transmission Provider Address]
Re: _____ Large Generating Facility
Dear _____:
On [Date] [Interconnection Customer] has completed Trial Operation of Unit No. __. This letter confirms that [Interconnection Customer] commenced Commercial Operation of Unit No. __ at the Large Generating Facility, effective as of [Date plus one day].
Thank you.
[Signature]
[Interconnection Customer Representative]

Appendix F to LGIA—Addresses for Delivery of Notices and Billings

Notices:
Transmission Provider:
[To be supplied.]
Interconnection Customer:
[To be supplied.]

Billings and Payments:
Transmission Provider:
[To be supplied.]
Interconnection Customer:
[To be supplied.]

Alternative Forms of Delivery of Notices (telephone, facsimile or email):
Transmission Provider:
[To be supplied.]
Interconnection Customer:
[To be supplied.]

Appendix G to LGIA—Requirements of Generators Relying on Newer Technologies

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