

Transmission Provider and the Interconnection Customer to agree to a schedule for the construction of Interconnection Facilities and Network Upgrades that are needed to accommodate the Interconnection Request. It also provided for an Interconnection Customer to request the acceleration of Network Upgrades that are needed for a higher-queued Interconnection Customer that would not have otherwise been completed in time to support the lower queued Interconnection Customer's In-Service Date as long as it commits to pay any costs associated with expediting the project, including the cost of any Network Upgrades assigned to the higher-queued Interconnection Customer.

245. *Section 12.1—Schedule*—Proposed LGIP Section 12.1 provided that the Transmission Provider and Interconnection Customer negotiate in good faith to develop a schedule for the construction of the Transmission Provider's Interconnection Facilities and Network Upgrades.

Comments

246. Duke Energy and FirstEnergy contend that this section should be deleted, since it is already covered in Article 5 of the NOPR LGIA.

Commission Conclusion

247. The Commission finds no reason to delete Section 12.1. It merely states that the Parties must negotiate a construction schedule in good faith. The fact that the negotiated construction schedule is in Appendix B (Milestones) of the LGIA does not require us to delete Section 12.1 from the Final Rule LGIP.

248. *Section 12.2—Permits*—Proposed LGIP Section 12.2 provided that the Parties specify in the LGIA each Party's responsibility for obtaining permits, licenses, and authorizations necessary to construct the Interconnection Facilities and Network Upgrades needed to accommodate the proposed interconnection in conformance with all Applicable Laws and Regulations.

Comments

249. Duke Energy states that the first sentence of Section 12.2 should be stricken because it duplicates NOPR LGIA Article 14.1. FirstEnergy contends that the entire section should be deleted because the topic is more properly addressed in the LGIA. Cinergy asks the Commission to clarify that nothing in the section requires the Transmission Provider to exercise its power of eminent domain. Central Maine argues that the phrase "nothing in this Section 12.2 shall be construed to waive any

rights under Applicable Laws and Regulations" should be either deleted or applied to the entire Final Rule LGIP, because its inclusion in just one provision creates confusion.

Commission Conclusion

250. The Commission disagrees with Duke Energy. Proposed LGIP Section 12.2 merely requires the Parties to specify in the LGIA each Party's responsibility for obtaining permits, licenses, and authorizations necessary to construct the Interconnection Facilities and Network Upgrades. Article 14.1 of the NOPR LGIA, on the other hand, states that each Party's obligations under the LGIA are conditioned upon regulatory approval from relevant Governmental Authorities.

251. In response to Cinergy's assertion, while the Commission does not require that the Transmission Provider exercise its right of eminent domain in all instances, we do not prohibit it from doing so. Rather, in the Final Rule, consistent with the Commission's discussion of NOPR LGIA Article 5.11 (now Final Rule LGIA Article 5.13), Lands of Other Property Owners, we require 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), which may include use of eminent domain rights, to secure permits for the Interconnection Customer, unless restricted from doing so by state law.

252. We agree with Central Maine's arguments and are therefore not incorporating into this section the proposed text dealing with the waiving of rights under Applicable Laws and Regulations.

253. Finally, the Commission agrees with FirstEnergy that the issues contained in this section are more appropriately discussed in the Final Rule LGIA. Accordingly, proposed LGIP Section 12.2 is being deleted from the Final Rule LGIP and is being incorporated into the Final Rule LGIA as Article 5.14.

254. *Section 12.3—Construction Sequencing* (In the Final Rule LGIP: Section 12.2)—Proposed LGIP Section 12.3 stated that an Interconnection Customer may ask the Transmission Provider to advance construction of Network Upgrades supporting other generators that were assumed to be completed in time to support the Interconnection Customer's Generating Facility's In-Service Date. The Transmission Provider would have to use Reasonable Efforts to advance the construction of such Network Upgrades,

provided that the Interconnection Customer commits to pay the Transmission Provider the cost of the Network Upgrades and any associated expediting costs. The Transmission Provider must refund to the Interconnection Customer the costs of any expedited Network Upgrades after the Transmission Provider receives payment from the entity for which the Network Upgrades were to be originally constructed. Until such costs are refunded, the Transmission Provider must provide the Interconnection Customer with transmission credits for the costs of the expedited Network Upgrades.

Comments

255. Duke Energy seeks clarification that (1) the Interconnection Customer earlier in the queue is obligated to pay the Transmission Provider only the amount not refunded, through credits, to the Interconnection Customer requesting the acceleration (and thus is eligible for transmission credits only for that amount), (2) the Interconnection Customer requesting the accelerated construction is reimbursed for Network Upgrade costs only up to the amount of the transmission credits not received, (3) the Transmission Provider is not required to advance funds for construction or to pay total credits in excess of the cost of the Network Upgrades; and (4) the higher-queued Interconnection Customer must pay for the expedited Network Upgrades on the date that it would have been required to pay were it not for the request for acceleration. Duke Energy also notes that there may be circumstances when acceleration requires greater expenditures than would be required to meet a reasonable construction schedule. It therefore recommends that if a Transmission Provider believes that the Commission would not allow such expenditures to be included in the revenue requirement under traditional ratemaking principles, the Transmission Provider should have the opportunity to challenge the provision of credits for these costs.

Commission Conclusion

256. The Commission affirms that an Interconnection Customer higher in the queue is obligated to pay the Transmission Provider for only that portion of the costs of the expedited Network Upgrades not already paid to the Interconnection Customer that requested expedition through transmission credits. The Transmission Provider can then forward this amount to the expediting Interconnection Customer as a lump sum payment for