

the balance of costs that the higher-queued Interconnection Customer is owed. At this point, the payment of credits will cease and the payment of credits to the higher-queued Interconnection Customer can begin. The latter credits will continue until the higher-queued Interconnection Customer has been reimbursed for the portion of the Network Upgrade costs that it has paid. The Transmission Provider is also not required to advance funds for construction or to pay total credits in excess of the cost of the Network Upgrades, including any interest that may be due. Finally, the higher-queued Interconnection Customer is responsible for paying the costs of the advanced Network Upgrade on the date that it would have been required to pay had there been no request for accelerated construction.

257. In response to Duke Energy's final concern, the Commission recognizes that there may be circumstances under which the Transmission Provider, in attempting to accommodate the Interconnection Customer's request to accelerate the project, may have to incur costs that would exceed what would normally be required to meet a reasonable construction schedule. However, we will consider such costs to have been prudently incurred unless it is demonstrated in a rate proceeding that the Transmission Provider could have met the Interconnection Customer's requested In-Service Date at a lower cost through the construction of alternative Network Upgrades, or by other means. Consequently, the Transmission Provider should have no reason to challenge the provision of credits for any costs that it prudently incurs.

258. Consistent with the above discussion, the Final Rule clarifies Section 12.3 and removes certain text that is largely redundant.

259. This section is designated Section 12.2 in the Final Rule LGIP.

260. *Section 13—Miscellaneous*—Proposed LGIP Section 13 included a variety of provisions, described below.

261. *Section 13.1—Confidentiality*—Proposed LGIP Section 13.1 would have required that the Transmission Provider afford confidential treatment to all information it receives from the Interconnection Customer to process its request for Interconnection Service except for information that is in the Interconnection Request and information that is or becomes generally available to the public. The Transmission Provider would be permitted to use this information only for the Interconnection Study and to share it only with those who need it for

Interconnection Studies and actions to interconnect the Generating Facility. The Transmission Provider would not be permitted to share such information with the merchant generation or marketing functions of the Transmission Provider or its Affiliates' merchant functions or as otherwise prohibited by Order No. 889.

262. The Transmission Provider would be liable to the Interconnection Customer for any Breach of confidentiality caused by its agent or contractor. If requested by the Interconnection Customer, the Transmission Provider would be required to destroy or return to the Interconnection Customer information no longer needed. If the Transmission Provider is required to disclose the information to any regulatory body, it would be obligated to request confidential treatment of the information. The Transmission Provider must provide the Interconnection Customer with prompt written notice if it receives a request for the Confidential Information to allow the Interconnection Customer an opportunity to contest the disclosure. The confidentiality provisions would not require the Transmission Provider or Interconnection Customer to disclose information in violation of any confidentiality obligations to third parties.

Comments

263. Several commenters, including Central Maine and MidAmerican, argue that these confidentiality protections should be extended to the Transmission Provider as well. Central Maine seeks a clear policy about what information may be disclosed, what information must be disclosed, the manner of disclosure, and what information must remain confidential as part of the interconnection process.

264. Lakeland seeks reconciliation of the differences between the confidentiality provisions of the NOPR LGIA and the NOPR LGIP. Specifically, the Final Rule LGIP should accommodate compliance with state Open Records laws, including Florida's, as in the NOPR LGIA.

265. Entergy opposes requiring a Transmission Provider to provide Confidential Information, or disclose anything not public, to an Interconnection Customer. If that disclosure is required by the Final Rule, the confidentiality requirements should be reciprocal and a Party should be required to designate which materials warrant confidential treatment.

266. The Midwest ISO agrees with the proposal that Confidential Information

only be shared among employees of the Transmission Provider (including Transmission Owners of Affected Systems) and third parties that need the information to perform or review Interconnection Studies. Moreover, in accordance with Order No. 889, the information should not be shared with individuals responsible for merchant or marketing functions. The Midwest ISO also requests that the Commission clarify what type of planning information should be kept confidential for security reasons and what information should be made available, perhaps under a non-disclosure agreement executed by the Parties. Proposed LGIP Section 13.1 would have required that the Transmission Provider keep confidential all information provided by the Interconnection Customer related to Interconnection Service that is not provided in the Interconnection Request; the Midwest ISO and NERC state that some information in the Interconnection Request may be commercially sensitive, such as unit-specific data, and should be kept confidential.

267. GE Power notes that developers generally prefer to look at alternative project scenarios before going "on the record" with their plans. GE Power requests that the Commission address the balance between commercial confidentiality or security-based secrecy and the need to make the data available so that studies and business forecasting can be completed.

268. NERC comments that the information provided by Interconnection Customers that may be considered confidential under Section 13.1 is needed to protect reliability because it generally is shared not only with directly affected neighboring systems, but also with regional and NERC study groups for modeling inter-regional and interconnection reliability effects. NERC states that this data is generally provided in a manner that masks ownership and other commercial terms and that NERC has standards of conduct for Reliability Coordination and a data confidentiality agreement. It requests that mechanisms remain in place to ensure the availability and confidentiality of such data so that Interconnection Customers will provide data needed for reliability assessment. NERC proposes that an Interconnection Customer identify specific information to be protected as confidential and that the Transmission Provider share this information only with parties to confidentiality agreements.