

in the case of (3), the Interconnection Customer could submit a claim to Dispute Resolution to recover the costs of the third party study. The consultant would be required to follow the LGIP protocols and use the information it receives to do the Interconnection Study for the sole purpose of completing the study. The Transmission Provider would be required to cooperate with the consultant to complete and issue the Interconnection Study in the shortest reasonable time.

Comments

282. Some commenters, including Duke Energy, EPSA, NYISO, and Sunflower Electric, endorse the NOPR proposal to allow an Interconnection Customer to request a consultant to undertake or complete an Interconnection Study, while others advocate the Transmission Provider being allowed to initiate use of a consultant to accelerate completion of Interconnection Studies, as well. Sunflower Electric sees use of a consultant as a short-term means to alleviate a Transmission Provider's backlog. Central Maine seeks clarification of the process for selecting the consultant. It argues that a 30 day deadline for a Transmission Provider to issue an RFP and select a consultant is not realistic.

283. BPA, MidAmerican, and PJM question whether use of a consultant will speed up the study process, whether it will significantly reduce a Transmission Provider's overall study effort, and whether it will help a Transmission Provider to more efficiently study multiple Interconnection Requests. They are concerned that any benefits may be limited to situations in which Interconnection Customers' projects are studied individually, on a non-integrated basis, in isolation from other higher-queued Interconnection Requests and system improvements and expansions. Others recommend allowing a Transmission Provider to complete pending Interconnection Studies for higher-queued Interconnection Requests before turning its databases, workpapers, and study results over to the consultant to help it move forward with its study. In addition, PJM observes that an independent Transmission Provider, such as an RTO or ISO, has no incentive to delay completion of an Interconnection Study. NYISO would have the ISO direct and review any consultant Interconnection Studies.

284. BPA proposes allowing a Transmission Provider to ignore the consultant's study if it is not completed

by the deadline. BPA also wants sufficient time for the Transmission Provider, as "the expert" in regard to its system, to review the study to ensure that it is adequate and to make necessary changes to it.

Commission Conclusion

285. Based on the foregoing comments and a balancing of the interests of an Interconnection Customer (to obtain the results of any necessary Interconnection Studies as soon as possible) and the responsibility of Transmission Provider (to efficiently and effectively plan its Transmission System), the Commission will permit use of a consultant upon the request of an Interconnection Customer at any time during the Interconnection Study process. This is subject to the Transmission Provider deciding that such use will (1) help maintain or accelerate the study process for the Interconnection Customer's pending Interconnection Request and (2) not interfere with the Transmission Provider's planning processes or hamper the Transmission Provider's progress on any other Interconnection Studies for pending Interconnection Requests. Moreover, a consultant hired to perform an Interconnection Study must follow the same rules and procedures as does a Transmission Provider that conducts the study in-house.

286. The Commission will not specify in Section 13.4 all the terms, conditions, and selection processes that would be applicable. Instead, the Final Rule leaves it up to the Parties to negotiate the details of the timing and process for selecting the consultant, the deadlines for the consultant's work, the Transmission Provider's direction and review of the consultant's work, the contingency rights and obligations of the Parties if the consultant fails to timely deliver a study of adequate quality, and any other relevant matters. This added flexibility may increase opportunities for the use of a consultant to accelerate the completion of necessary Interconnection Studies when it is feasible to do so.

287. *Section 13.6—Disputes*—Proposed LGIP Section 13.6 detailed requirements for the Dispute Resolution process. Upon written notice of a dispute arising out of the Interconnection and Operating Agreement or its performance, a senior representative or representatives of each Party would be required to try to resolve the dispute informally. Failing informal resolution within 30 Calendar days, by mutual agreement the dispute would be submitted to arbitration, or each Party would exercise its other legal or

equitable rights. Section 13.6.2 specified external arbitration procedures, and Section 13.6.3 stated that unless otherwise agreed, the arbitrator would be required to render a decision within 90 Calendar Days of its appointment that shall be binding upon each Party. Final decision affecting jurisdictional rates, terms, and conditions would be filed with the Commission. Finally, Section 13.6.4 delineated responsibility for costs related to the resolution of disputes.

Comments

288. Central Maine believes that the Parties should be precluded from settling by binding arbitration matters that are under the Commission's jurisdiction.

Commission Conclusion

289. Although Section 13.6 proposed making Dispute Resolution available only for disputes arising under the LGIA, the Final Rule extends the procedures to disputes arising under the LGIP. This section is designated Section 13.5 in the Final Rule LGIP.

290. The Commission has long encouraged the use of alternative dispute resolution to resolve disagreements over Commission-jurisdictional contracts. The Commission's complaint rule, in fact, requires Parties to specify in a formal complaint whether they have attempted an informal resolution of contract-related disputes, and if they have not done so, to explain why not.⁶³ Final Rule LGIP Sections 13.5.1 through 13.5.3 reflect the Commission's policy of encouraging alternative dispute resolution without compromising the Commission's authority. Final Rule LGIP Section 13.5.3 prevents arbitrators from changing the provisions of the interconnection agreement in any manner. Arbitrators may only interpret and apply the provisions. Any such changes to the interconnection agreement could be made only pursuant to Sections 205 and 206 of the Federal Power Act, and would require Commission review. Although the arbitrator's decision is binding in so far as it is enforceable in any court having jurisdiction, an arbitrator's decision must be filed with the Commission if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades. Thus, the Commission retains the authority to review the arbitrator's decision. Nor do we agree that the provision circumscribes the Parties' right to avail themselves of the Commission's

⁶³ 18 CFR 385.206(b)(9) (2003).