

are adequately protected as it can terminate the LGIA in case of Default by the Interconnection Customer.

303. The Commission also notes that the LGIA, in addition to addressing the electrical connection of the Interconnection Customer to the Transmission Provider's Transmission System, also fixes the performance, operational, and financial obligations of the Parties even after the Generating Facility begins commercial operation. These obligations and responsibilities are of indefinite duration, existing as long as the Generating Facility is connected to the Transmission Provider's Transmission System. Therefore, it is appropriate for the term of the LGIA to be indefinite as well.

304. In addition, a ten year minimum term allows the Parties to avoid tax liability for the payments to the Transmission Provider under current Internal Revenue Service policy.<sup>66</sup>

305. *Article 2.3.1—Written Notice*—Proposed LGIA Article 2.3.1 provides that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider 30 Calendar Days advance written notice.

#### Comments

306. MidAmerican proposes requiring an Interconnection Customer to provide three years' advance notice to terminate the LGIA. According to MidAmerican, the unexpected retirement of the Generating Facility may result in reduced system reliability due to decreased generation resources, and a Transmission Provider may need to construct or upgrade its own generating or transmission facilities if this occurs. MidAmerican notes that three years is the time customarily required to construct such facilities. Therefore, a three year termination provision would provide a Transmission Provider the opportunity to maintain reliability if the Generating Facility shuts down unexpectedly.

#### Commission Conclusion

307. We are not persuaded to increase the advance notice and termination period to three years as proposed by MidAmerican. MidAmerican's concern appears to be that the Generating Facility, due to several years of load growth and other changes, may be essential to system reliability. Utilities should not allow themselves to become critically dependent on one generator; however, if they do, they can enter into a "reliability must-run" contract before the Interconnection Customer exercises

its right to terminate. While there may be a problem if many Interconnection Customers were to cancel concurrently, we do not believe that the LGIA is the best vehicle for addressing this problem, or that every Interconnection Customer in every circumstance should be constrained by a three year termination provision whether or not such a general problem exists.

308. However, we extend the notice period to 90 Calendar Days in order to conform with the Commission's Regulations, which provide that the Transmission Provider is required to notify the Commission of the proposed cancellation or termination of a contract at least 60 Calendar Days, but no more than 180 Calendar Days, before the cancellation or termination is proposed to take effect.<sup>67</sup>

309. *Article 2.3.2—No Commercial Operation*—Proposed LGIA Article 2.3.2 would have provided that the Transmission Provider be allowed to terminate the LGIA if the Interconnection Customer has not met its obligation to achieve commercial operation of its Generating Facility within five years of the scheduled Commercial Operation Date or fails to be available for operation for a period of five years unless a major Generating Facility upgrade is in progress.

#### Comments

310. Mirant favors deleting this provision. It asserts that there is no valid reason for a Transmission Provider to terminate the LGIA if the Interconnection Customer has paid for the necessary system upgrades and has met every other obligation under the LGIA. Others point out that PJM's interconnection agreement does not include such a provision. Mirant argues that the Transmission Provider should be able to terminate the LGIA only if the Interconnection Customer defaults under the terms and conditions of the LGIA. PSNM and Dairyland Power also favor deleting this provision altogether and claim that, at best, it should be left to the Parties to negotiate a reasonable period for not achieving commercial operation without risking termination of the LGIA.

311. Most Transmission Providers, on the other hand, object to the five year window for achieving commercial operation as being too long, claiming that one to three years is a more reasonable period of time.<sup>68</sup> They point out that the Interconnection Customer determines the Generating Facility's

Commercial Operation Date without any input from the Transmission Provider and that the Interconnection Customer should not have an additional five years to achieve commercial operation.

312. Central Vermont PSC also advocates shortening the period from five to two years, and expresses concern that proposed LGIA Article 2.3.2, read with proposed Article 4.1.2, might require a Transmission Provider to reserve transmission capacity on its transmission system for an Interconnection Customer taking Network Resource Interconnection Service for up to five years if the Interconnection Customer fails to meet its scheduled Commercial Operation Date or fails to be operable for a consecutive five-year period.

#### Commission Conclusion

313. We agree with Mirant that the Transmission Provider should not be allowed to terminate the LGIA if the Interconnection Customer has paid all costs for which it is responsible and has met all of its other obligations under the LGIA. The Commission is removing this provision from the Final Rule LGIA because it contains other provisions for termination, such as failure to meet milestones and other obligations. Furthermore, we note that an Interconnection Customer cannot begin to receive credits for Network Upgrades until its Generating Facility has achieved commercial operation, thereby providing an incentive to the Interconnection Customer to perform.

314. *Article 2.4—Termination Costs*—Proposed LGIA Article 2.4 would have required a Party terminating the interconnection agreement to pay for all costs incurred by the other Party (including costs of cancellation orders or contracts for Interconnection Facilities and equipment).

#### Comments

315. Mirant argues that an Interconnection Customer should be held responsible only for the Network Upgrades that it has agreed to pay for. It and others are concerned that a higher-queued Interconnection Customer responsible for numerous Network Upgrades might terminate its LGIA and leave lower-queued Interconnection Customers to pay for the Network Upgrades that would otherwise have been assigned to the higher-queued Interconnection Customer. Dominion Resources argues that if a higher-queued Interconnection Customer suspends or terminates construction of its Generating Facility, the lower-queued Interconnection

<sup>66</sup> See part II.B.2 Article 5.14.1 (Interconnection Customer Payments Not Taxable).

<sup>67</sup> 18 CFR 35.15 (2003).

<sup>68</sup> E.g., Central Vermont PSC, Cinergy, El Paso, Exelon, MidAmerican, and PG&E.