

Customer would have to arrange for the supply of energy when there is a difference between actual and scheduled output.

#### Comments

331. Some commenters, such as NERC, PacifiCorp and American Wind Energy, argue that the provision of energy imbalance service is not related to interconnection and should not be addressed in this rulemaking.

332. Cinergy and others object to the use of a clock hour basis to match Generating Facility output to delivery, indicating that a 10-minute interval basis may be more appropriate so that energy injections will be more consistent across the scheduled hour. NERC likewise has concerns about adopting an integrated clock hour specification, and notes that the Generating Facility's scheduling period may be something other than a clock hour, as specified in the Transmission Provider's Commission-approved Tariff or market structure. NERC recommends revising this provision to ensure consistency with the Tariff and market structure.

333. Cinergy argues that any balancing arrangement to be implemented by the Interconnection Customer should be determined to be technically feasible by the Transmission Provider and recommends that ramp time be excluded in the balancing arrangement because it may conflict with NERC scheduling requirements. Arkansas Coops notes that use of the clock hour may be inconsistent with operating procedures developed in RTOs.

#### Commission Conclusion

334. The Commission concludes that a provision for balancing service arrangements must be included in the Final Rule LGIA because it describes one of the important requirements that the Interconnection Customer must meet before it takes delivery service. Therefore, the Commission retains Article 4.3 in the Final Rule LGIA.

335. However, the Commission agrees with commenters that Article 4.3 of the NOPR LGIA is overly prescriptive. Accordingly, in the Final Rule, the Commission adopts NERC's proposal to revise NOPR LGIA Article 4.3.1 to omit the reference to an integrated clock hour basis, and to add the phrase, "consistent with the scheduling requirements of the Transmission Provider's Commission-approved Tariff and any applicable Commission-approved market structure."

336. *Article 5—Interconnection Facilities Engineering, Procurement,*

*and Construction*—Proposed LGIA Article 5 described procedures for designing, procuring, and constructing the Transmission Provider's Interconnection Facilities and Network Upgrades and the Interconnection Customer's Interconnection Facilities. Construction options, rights, and responsibilities were also presented. This article would have provided that the Interconnection Customer will not be directly assigned the costs of modifications made to the Transmission Provider's Interconnection Facilities or the Transmission System to facilitate interconnection of a Generating Facility of another Interconnection Customer or to provide transmission service under the Transmission Provider's Tariff.

337. *Article 5.1—Options*—Proposed LGIA Article 5.1 specified the method for determining which Party is responsible for the construction of the Transmission Provider's Interconnection Facilities and Network Upgrades. The Interconnection Customer would specify various construction completion dates (such as the In-Service Date, the Initial Synchronization Date, and the Commercial Operation Date), and the Transmission Provider would then choose among three options: (1) *Option A* would have provided that the Transmission Provider construct the Transmission Provider's Interconnection Facilities and Network Upgrades using Reasonable Efforts to complete construction by the dates designated by the Interconnection Customer, but would not be responsible for any liquidated damages in case it fails to meet the construction completion dates established by the Interconnection Customer; (2) *Option B(i)a* would have provided that the Transmission Provider construct the Transmission Provider's Interconnection Facilities and Network Upgrades according to the construction completion dates established by the Interconnection Customer, and if it fails to meet those dates, it may be liable for liquidated damages; however, the Transmission Provider can opt out of this provision by notifying the Interconnection Customer of its intention to do so within 30 Calendar Days; and (3) *Option B(i)b* would have provided that, if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by the Interconnection Customer, the Interconnection Customer could assume responsibility for the construction of the Transmission Provider's Interconnection Facilities

and Stand Alone Network Upgrades.<sup>69</sup> This option would also provide that if the Interconnection Customer does not want to assume responsibility for construction, the Parties would negotiate in good faith to revise the construction completion dates and other provisions. Any agreement reached by the Parties during this negotiation shall be binding. However, if the Parties are unable to reach an agreement, the Transmission Provider would assume responsibility for construction of its Interconnection Facilities and Network Upgrades in accordance with Option A. Proposed LGIA Article 5.1 would establish standards for the Interconnection Customer to follow if it assumes responsibility for constructing the Transmission Provider's Interconnection Facilities and system upgrades that are not Stand Alone Network Upgrades. It does not grant any right to the Interconnection Customer to construct upgrades that are not Stand-Alone Network Upgrades.

#### Comments

338. Cinergy states that the distinction between Options A and B(i)a is not clear. Monongahela Power recommends that the Commission rename Option B(i)a as Option B and Option B(i)b as Option C.<sup>70</sup>

339. Cinergy and NSTAR seek clarification as to whether the Commission intended that the Interconnection Customer take the responsibility for the construction of upgrades that are not Stand-Alone Network Upgrades.

340. Several commenters, including Cinergy, NYTO, and SoCal PPA, argue that the Interconnection Customer may choose unrealistic construction completion dates and expose the Transmission Provider to liquidated damages. Cinergy states that if several Interconnection Customers choose their construction completion dates close to each other, the Transmission Provider may not be able to meet the dates due to limited construction staff. PacifiCorp recommends that any construction completion date should be treated as an estimate and that any delays on the part of the Interconnection Customer completing its Generating Facility should automatically extend the time for the Transmission Provider to complete its Interconnection Facilities and Network Upgrades.

<sup>69</sup> Stand-Alone Network Upgrades are those Network Upgrades that the Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction.

<sup>70</sup> A typographical error in the NOPR added to the lack of clarity.