

341. A number of Transmission Providers oppose giving the Interconnection Customer the option to build or have a contractor build the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. TXU argues that this could threaten the reliability of the Transmission System. SoCal Edison argues that the Transmission Provider must retain adequate control of the engineering and construction of any Transmission Provider Interconnection Facilities and Stand Alone Network Upgrades because of its obligation to protect the safety of the public and maintain the reliability of the Transmission System. Cinergy and NYTO assert that if the Commission does not eliminate the Interconnection Customer's option to build, the Final Rule must provide that an Interconnection Customer exercising this right shall indemnify or hold harmless the Transmission Provider from any resulting liability.

342. Southern states that to ensure that construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades does not impair the reliability or safety of the Transmission System: (1) The Transmission Provider should be allowed to approve the Interconnection Customer's contractors and engineers, as well as the vendors from which equipment and materials are purchased; (2) the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades should be constructed, and equipment and materials purchased, pursuant to contracts that are reasonably acceptable to the Transmission Provider, including acceptable equipment warranty provisions; (3) the Transmission Provider should retain some level of supervision over the construction, with unrestricted access to construction sites to perform inspections; (4) the Interconnection Customer should provide a construction schedule to the Transmission Provider before construction begins; (5) the Interconnection Customer should be required to respond promptly to all requests for information from the Transmission Provider; and (6) the Transmission Provider should be able to require the Interconnection Customer or its contractors to remedy any situation that does not meet the Transmission Provider's specifications or standards.

343. Similarly, the Construction Issues Coalition argues that the Interconnection Customers' right to build the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades should be

under specific conditions, such as: (1) The Transmission Provider must provide approval and oversight during design and construction; (2) the Transmission Provider must approve contractors in advance; (3) adequate time should be provided to the Transmission Provider for approval of engineering and construction activities; and (4) all equipment and construction must carry warranties to avoid risk exposure to the Transmission Provider. SoCal Edison argues that costs associated with the Transmission Provider's oversight of the construction should be borne by the Interconnection Customer.

344. NERC argues that if the Interconnection Customer assumes responsibility for construction, it should comply with Good Utility Practice and the Transmission Provider's safety and reliability criteria.

345. NYTO claims that several essential elements of the ERCOT model are absent from the Commission's proposal. It argues, for example, that the Commission should adopt ERCOT's 15 month minimum time period for completing construction after siting permits and land rights have been obtained.

346. American Transmission argues that the Transmission Provider must have the right to step in and assume construction responsibilities to protect the integrity of the system and rights of the third parties in case of serious lapses by an Interconnection Customer.

347. Southern argues that the Final Rule LGIA should require the Interconnection Customer to transfer the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider for ownership and operation after it completes construction.

348. PJMTO asserts that Final Rule LGIA Article 5.1 should contain more explicit provisions addressing the Transmission Owner's role in: (1) Obtaining permits and authorizations, (2) obtaining land rights, (3) performing direct line attachment tie-in work, and (4) calibrating remote terminal unit settings.

349. American Transmission states that proposed LGIP Section 8 (Interconnection Facilities Study) requires the Transmission Provider to develop detailed cost estimates for constructing the Transmission Provider's Interconnection Facilities and Network Upgrades under the assumption that the Transmission Provider will perform all of the construction, yet the Interconnection Customer may assume the responsibility

for part of the construction. It asks the Commission to clarify whether there is any relationship between the Transmission Provider's cost estimates and the actual cost of construction performed by the Interconnection Customer. It wants to require approval by the Transmission Provider of the Interconnection Customer's budget for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

350. Dynege asserts that the last sentence of Article 5.1.A(iv), which provides that the Interconnection Customer's selection of subcontractors is subject to the Transmission Provider's standards and specifications, is overly broad and conflicts with proposed LGIA Article 26.1 (Subcontractors—General), which states that “nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement.”

Commission Conclusion

351. The Commission is revising Proposed LGIA Article 5.1 to distinguish the various options more clearly. NOPR *Option A* is now renamed *Standard Option*. Under the *Standard Option*, the Transmission Provider shall construct the Transmission Provider's Interconnection Facilities and Network Upgrades using Reasonable Efforts to complete the construction by the dates designated by the Interconnection Customer, but shall not be responsible for any liquidated damages if it fails to complete the construction by the designated dates. The *Standard Option* also serves as the default in the event the Parties are unable to reach an agreement under the *Negotiated Option*.

352. *Option B(i)a* is renamed *Alternate Option*. Under the *Alternate Option*, the Transmission Provider shall 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 decline to use this option by notifying the Interconnection Customer of its intention to do so within 30 Calendar Days of executing the LGIA.

353. The last option—*Option B(i)b* in the NOPR—gives the Interconnection Customer two choices in the Final Rule LGIA: the *Option to Build* and the *Negotiated Option*. This is because the proposed *Option B(i)b* actually presented two options. Under the *Option to Build*, the Interconnection