

Customer may assume responsibility for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by Interconnection Customer. However, as clarified in Final Rule LGIA Article 5.1.3, it does not grant any right to the Interconnection Customer to construct upgrades that are not Stand-Alone Network Upgrades. Furthermore, both the Transmission Provider and the Interconnection Customer must agree on which facilities are the Stand Alone Network Upgrades and identify them in Appendix A to the LGIA.

354. *The Negotiated Option* provides that, if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by Interconnection Customer, and the Interconnection Customer does not want to assume responsibility for construction, the Interconnection Customer may decide that the Parties shall negotiate in good faith to revise the construction completion dates and other provisions under which the Transmission Provider is responsible for the construction. If the Parties are unable to reach an agreement, the Transmission Provider shall assume responsibility for construction of the Transmission Provider's Interconnection Facilities and Network Upgrades in accordance with the Standard Option.

355. Regarding Cinergy, NYTO, and SoCal PPA's concerns about the selection of unrealistic construction completion dates by an Interconnection Customer, the Final Rule Alternate Option allows the Transmission Provider to avoid unrealistic construction completion dates by notifying the Interconnection Customer that it is unable to meet the established dates. We agree with PacifiCorp that any delay on the part of the Interconnection Customer in meeting its construction completion dates should grant an automatic extension to the Transmission Provider. We note that Final Rule LGIA Article 5.3 (Liquidated Damages) provides that no liquidated damages shall be paid to the Interconnection Customer if the Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities and Network Upgrades on the specified construction dates except if such delay is due to the Transmission Provider's delay.⁷¹

356. With regard to the concern that giving the Interconnection Customer the right to construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades could threaten the safety and reliability of the Transmission System, Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build) has several safeguards. For example, the Interconnection Customer is required to use Good Utility Practice and the standards and specifications provided in advance by the Transmission Provider. In addition, the Transmission Provider has the right to approve the engineering design, the equipment acceptance tests, and the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

357. In response to those comments seeking an indemnification or hold harmless provision to protect the Transmission Provider from liability arising out of the Interconnection Customer's exercising its right to build, the Commission adds an indemnification clause to Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build).

358. With respect to various modifications that Southern and the Construction Issues Coalition seek, Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build) adds several provisions proposed by these commenters, such as a requirement that the Interconnection Customer (1) provide a construction schedule in advance of the start of construction, (2) remedy deficiencies brought to its attention by the Transmission Provider, and (3) carry warranties for equipment similar to those carried by the Transmission Provider. However, the Commission declines to grant fully the high level of Transmission Provider control that Southern and the Construction Issues Coalition seek, such as approval of subcontractors and vendors. Such control would be overly broad, and the Transmission Provider's ability to seek remedy of any deficiencies should enable it to carry out its responsibilities. The Commission also will deny SoCal Edison's request that the Interconnection Customer bear the Transmission Provider's costs associated with the oversight of construction performed by the Interconnection Customer because such costs are *de minimus*.

359. With respect to NERC's comment that an Interconnection Customer should follow Good Utility Practice and the safety and reliability criteria of the Transmission Provider, such standards

are in Final Rule LGIA Article 5.2 (General Conditions Applicable to Option to Build).

360. Regarding NYTO's argument that a minimum of 15 months is needed to complete construction of the Transmission Provider Interconnection Facilities and Network Upgrades, we conclude that specifying such a minimum period is unnecessary because under the Alternate Option, the Transmission Provider will be protected from incurring liquidated damages liability due to delays beyond its reasonable control or reasonable ability to cure.

361. The Commission rejects American Transmission's proposal that the Transmission Provider have a right to step in and assume construction responsibilities in case of lapses by an Interconnection Customer. Since Article 5.1 permits the construction of only Transmission Provider Interconnection Facilities and Stand Alone Network Upgrades, the Commission believes that any such lapses would affect only the Interconnection Customer. If it has the potential to affect anyone other than the Interconnection Customer, the Commission will address such concerns when brought to its attention.

362. The Final Rule does not require that the Interconnection Customer transfer ownership of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider after the Interconnection Customer completes them; however, the Commission will require transfer of *control* of such facilities. Reliability does not require ownership, but it does require control by the Transmission Provider.⁷²

363. With respect to PJMTO's request for provisions regarding the Transmission Owner's role in obtaining permits and land rights, Final Rule LGIA Articles 5.12 (Access Rights) and 5.13 (Lands of Other Property Owners) do not distinguish between the role of the Transmission Provider and the Transmission Owner in assisting the Interconnection Customer in obtaining land rights and permits. The Final Rule LGIA is not the appropriate place to set forth the nature of the relationship between the Transmission Owner and Transmission Provider. In addition, the Commission is stating in this Final Rule that it will give an independent transmission provider such as an RTO

⁷¹ Other comments on this issue are addressed in part II.C.8.b (Liquidated Damages).

⁷² See Arizona Public Service Company, 102 FERC ¶ 61,303 (2003). We also note that the ownership of Stand Alone Network Upgrades by an Interconnection Customer is discussed further under "Rules Governing the Payment of Credits" in part C.1 of this Preamble.