

the Transmission Provider certain “as built” drawings, information, and documents pertaining to the construction of the Interconnection Customer’s Interconnection Facilities.

#### Comments

381. NERC proposes that the Interconnection Customer also provide the Transmission Provider specifications for the excitation system, automatic voltage regulator, generator control and protection settings, transformer tap settings, and communications.

#### Commission Conclusion

382. The Commission adopts NERC’s proposal and revises Proposed LGIA Article 5.8.3 to make clear that the list of information to be provided is not exhaustive.

383. This article is designated Article 5.10.3 in the Final Rule LGIA.

384. *Article 5.11—Lands of Other Property Owners* (In the Final Rule LGIA: Article 5.13)—Article 5.11 proposed that Transmission Providers would be required to use Reasonable Efforts, including use of its eminent domain authority if necessary, to facilitate the interconnection of Generating Facilities. The Interconnection Customer would be required to pay any expenses related to obtaining rights of use, rights of way, easements, or eminent domain costs that the Transmission Provider might incur, up to the fair market value of the land or “such other price as required by the applicable inter-affiliate transaction requirements.”

#### Comments

385. EPSA and several Interconnection Customers, including Calpine, El Paso, and Reliant Energy, request that the Transmission Provider or Transmission Owner be required to use its eminent domain authority to facilitate the exercise of the Parties’ rights and obligations under the LGIA to the extent it is permitted to do so. Numerous Transmission Provider commenters express concern that the eminent domain provisions of the NOPR are too broad, placing the Transmission Provider in an untenable situation. Specifically, several argue that the Commission’s proposal conflicts with state limitations on their eminent domain authority.<sup>73</sup> Cleco, for example, states that in Louisiana, a utility cannot legally request eminent domain on behalf of another entity. National Grid

and the Construction Issues Coalition argue that many states require that eminent domain authority be used only “to further a public need”—something that is lacking in the NOPR. Cinergy proposes deleting the entire eminent domain provision, arguing that it imposes an inappropriate burden on the Transmission Provider and reiterates that it conflicts with existing state laws. Similarly, El Paso requests that the use of eminent domain be at the sole discretion of the Transmission Provider or Transmission Owner, citing the numerous factors that must be considered in such an undertaking.

386. Duke Energy proposes that the Commission require a Transmission Provider to use eminent domain only when it reasonably determines that (1) other alternatives are not available and (2) use of eminent domain is permissible under state law. Duke Energy also asserts that the Transmission Provider should provide a written explanation of why other alternatives are appropriate or why the use of eminent domain would not be permitted under state law.

387. National Grid argues that the Commission should eliminate the eminent domain provision, citing the long delays and heavy litigation that often accompany the seizure of property. National Grid, the Construction Issues Coalition, and others argue that regulation of eminent domain differs from state to state, making the type of national contract clause envisaged by the Commission impossible.

388. PJMTO also opposes the eminent domain provision, arguing that eminent domain is an unpopular last resort and one that is rarely exercised even by a Transmission Provider or Transmission Owner on its own behalf. Instead, it proposes requiring that a Transmission Provider or Transmission Owner, upon receipt of a reasonable request, to assist an Interconnection Customer in acquiring land rights using efforts similar to those it typically undertakes on its own behalf.

389. PJMTO also argues for eliminating the cap on land value, noting that individual state laws already contain mechanisms for valuing property. The Commission may lack authority to require a price cap on property sold by an Affiliate of a Transmission Provider, according to National Grid and the Construction Issues Coalition.

390. Salt River Project also opposes the eminent domain language and instead proposes that the Commission work with federal land holding agencies to streamline the procurement of land

rights. SoCal Edison adds that it does not believe the Commission has the authority to impose an eminent domain requirement. Instead, it proposes requiring Transmission Providers to exercise good faith efforts in using whatever eminent domain authority state law may allow on an Interconnection Customer’s behalf.

#### Commission Conclusion

391. We agree that a mandatory eminent domain requirement can be difficult for a Transmission Provider or Transmission Owner. The Final Rule requires that a Transmission Provider or Transmission Owner use efforts similar to those it typically undertakes on its own behalf (or on behalf of an Affiliate) to secure land rights for the Interconnection Customer. We are also clarifying that the Transmission Provider or Transmission Owner’s efforts must also comply with state law.

392. If the Transmission Provider is an independent entity, the Transmission Owner, the Transmission Provider, and the Interconnection Customer may all sign the LGIA. This allows a Transmission Owner and a Transmission Provider to jointly undertake efforts to secure land rights for the Interconnection Customer.

393. Regarding the cap on land value, while the Commission remains concerned that Affiliates of a Transmission Provider or Transmission Owner might request above-market compensation for land necessary to facilitate the interconnection, the Commission also recognizes that the valuation of property is a matter of state law. Therefore, we eliminate this cap in the Final Rule.

394. This article is designated Article 5.13 in the Final Rule LGIA.

395. *Article 5.12—Early Construction of Base Case Facilities*—Proposed LGIA Article 5.12 would have required that, at the Interconnection Customer’s request, the Transmission Provider must construct, using Reasonable Efforts to accommodate the Interconnection Customer’s In-Service Date, all or any portion of Network Upgrades reflected in the Base Case of the Interconnection Customer’s Facilities Study that are necessary to accommodate the Interconnection Customer’s In-Service Date. Construction of the Network Facilities would be required even if the Network Facilities are shared with other interconnecting generators that would not be completed in time to meet the Generating Facility’s In-Service Date.

#### Comments

396. MidAmerican contends that this article is inconsistent with Section 12.3

<sup>73</sup> E.g., Cinergy, Cleco, the Construction Issues Coalition, Duke Energy, National Grid, PJMTO, Salt River Project, SoCal Edison, and Southern.