

of the NOPR LGIP (Construction Sequencing), which requires that the Transmission Provider use Reasonable Efforts to accommodate the Generating Facility's In-Service Date. Accordingly, it proposes that Article 5.12 be revised.

397. Cleco argues that the Party requesting early construction should pay all Network Upgrade costs associated with the early construction. FP&L argues that to avoid the need to continuously restudy and revise Network Upgrades, the LGIA should require the timely construction of Network Upgrades relied upon by lower-queued Interconnection Customers.

398. Entergy, Dairyland Power, and others state that the Final Rule should address which Interconnection Customer finances Network Upgrades in the event of a delay by the higher-queued Interconnection Customer to whom the Network Upgrades are assigned. Cal ISO states that language regarding milestones should be inserted between proposed LGIA Articles 5.12 and Article 5.13.

#### Commission Conclusion

399. In response to the concerns of Entergy and others, the Commission notes that a lower-queued Interconnection Customer always has the right under this article to accelerate its construction schedule by completing all required Network Upgrades on schedule despite any delays by higher-queued Interconnection Customers. This would require the lower-queued Interconnection Customer to fund those Network Upgrades at least initially; however, in the absence of participant funding, it would be reimbursed over time through credits, with interest. Article 5.12 does not need to be changed to allow this.

400. Regarding "best" versus "reasonable" efforts, the Commission agrees with MidAmerican that there was an inconsistency between proposed LGIA Article 5.12 and proposed LGIP Section 12.3, which requires the Transmission Provider to use Reasonable Efforts to accommodate the Interconnection Customer's requested In-Service Date. Article 5.12 is the more stringent of the two because it requires the Transmission Provider to construct facilities necessary to accommodate the Interconnection Customer's In-Service Date. The Commission's intent is to expedite the interconnection of new generators in a manner that does not undermine the reliability of a Transmission Provider's Transmission System. However, there may be circumstances beyond the Transmission Provider's control that would prevent it

from meeting the construction deadline. To address this concern and to ensure consistency between this article and LGIP Section 12.3, the Commission agrees with MidAmerican's comment that the term "Reasonable Efforts" is appropriate. This article, which is designated Article 5.15 in the Final Rule LGIA, uses that term.

401. An additional article regarding milestones is not needed. By the time the LGIA is executed, the Parties will have already established under Article 5.1 the milestones Cal ISO refers to.

402. *Article 5.13—Suspension* (In the Final Rule LGIA: Article 5.16)—Proposed LGIA Article 5.13 would allow the Interconnection Customer, upon written notice to the Transmission Provider, to suspend work on Interconnection Facilities or Network Upgrades as long as the Interconnection Customer agrees to be responsible for all reasonable and necessary costs incurred by the Transmission Provider in suspending work. This article proposed that the LGIA be deemed terminated if the Interconnection Customer has not requested the Transmission Provider to recommence work within three years from the date of the suspension request.

#### Comments

403. Peabody supports allowing an Interconnection Customer to suspend work on the interconnection for up to three years because this offers the Interconnection Customer the flexibility that large-scale generation projects need to accommodate permitting and other delays. Other commenters, including BPA, Cinergy, and SoCal PPA, argue that a three year suspension period is unreasonably long. SoCal PPA further states that substantial changes to the Transmission System could occur during that time. Western believes that letting an Interconnection Customer contract with a Transmission Provider for an interconnection and then suspend operation for as long as three years could allow the Interconnection Customer to game the system. Consequently, Western and other commenters argue that the suspension period should be limited to six months, while Cinergy recommends limiting the suspension period to one year. NYTO believes the entire provision is unreasonable.

404. Cinergy requests that Article 5.13 make it clear that if an Interconnection Customer gives a Transmission Provider written notice of suspension of work, the Transmission Provider does not have to obtain written permission from the Interconnection Customer to cancel or suspend material, equipment and labor contracts associated with that

work, and that the Commission clarify what is included in the definition of "suspension of work." Further, to prevent gaming the process, Cinergy proposes that an Interconnection Customer be allowed to provide written notice of suspension of work only once per Generating Facility.

405. Dominion Resources questions whether the responsibility for funding the cost of Network Upgrades would fall on the Interconnection Customer suspending or terminating construction or on other Interconnection Customers remaining in the queue. The Interconnection Customer actually using the Network Upgrades should be required to pay for them. Dominion Resources recognizes that this may shift costs from the Interconnection Customer requesting the suspension to Interconnection Customers further down the queue, which could mean that an Interconnection Customer will be subject to potential cost increases even after signing an LGIA. However, it views this as a more acceptable allocation of cost responsibility than requiring an Interconnection Customer that desires to suspend or terminate its project to bear the full cost of Network Upgrades it may never use. In order to avoid gaming of the interconnection queue, if the suspending Interconnection Customer later continues with its project, it should be required to reimburse any lower-queued Interconnection Customers for any Network Upgrade costs related to its suspension.

406. NERC and MidAmerican comment that there must be a requirement to leave the system in a safe and reliable condition, consistent with Good Utility Practice, if a project is suspended in a partially complete state.

407. The Midwest ISO requests that Article 5.13 make it clear that a suspending Interconnection Customer must provide notice to the Transmission Owner and to any independent Transmission Provider.

408. The Midwest ISO and Georgia Transmission request clarification that the Transmission Provider will be reimbursed for any expenses related to the suspension.

#### Commission Conclusion

409. Many commenters express concern over the effect that a suspending Interconnection Customer might have on lower-queued Interconnection Customers. We agree with Dominion Resources that, in some cases, a subsequent (*i.e.*, lower queued) Interconnection Customer may be responsible for funding the costs of completing the Network Upgrades constructed for a higher-queued