

480. *Article 5.14.8—Taxes Other Than Income Taxes* (In the Final Rule LGIA: Article 5.17.9)—Proposed LGIA Article 5.14.8 described the Parties' obligations if taxes other than federal or state income taxes, and for which the Interconnection Provider may be required to reimburse the Transmission Provider under the terms of the LGIA, are imposed. At the Interconnection Customer's expense, the Transmission Provider would appeal or oppose such a determination. Proposed LGIA Article 5.14.8 also described the procedures for settling the contested ruling.

Comments

481. FP&L asks the Commission to clarify Article 5.14.8 to require the Interconnection Customer to pay tax costs, other than income tax, related to interconnection payments.

Commission Conclusion

482. The Commission notes that Article 5.14 does not limit recovery to state or federal income taxes related to interconnection payments. This provision by itself does not create additional tax liability beyond income taxes. Because FP&L offered no justification for why additional tax protection is necessary, the Commission rejects its request.

483. This article is designated Article 5.17.9 in the Final Rule LGIA.

484. *Article 5.15—Tax Status* (In the Final Rule LGIA: Article 5.18)—Proposed LGIA Article 5.15 provided that each Party cooperate with the other to maintain the other Party's tax status. It also proposed that the LGIA would not be intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds.

Comments

485. NYTO proposes modifying the LGIA to be consistent with the tax-exempt bond provisions of the Transmission Owner's (or the ISO's) OATT. Thus, the LGIA would provide that the Transmission Owner is not obligated to take any action, and the Interconnection Customer is prohibited from taking any action, that would adversely affect the tax-exempt status of the Transmission Owner's (or the ISO's) local furnishing bonds.

486. Several commenters, including LADWP and TANC, are concerned about the effect that providing Interconnection Service will have on the tax-exempt status of their bond funding. TANC asks the Commission to provide flexibility for municipal utilities that adopt the Tariff additions. NRECA-APPA is concerned that contributions

by an Interconnection Customer for construction of interconnection facilities and Network Upgrades may result in loss of its tax-exempt status. A tax-exempt cooperative must ensure that at least 85 percent of its income comes from members.

487. LPPC urges the Commission to give public power utilities the option to: (1) Refuse to provide an interconnection if doing so would jeopardize the tax-exempt status of the public power utility's financing; or (2) proceed with the interconnection with an indemnification provision that would require Interconnection Customers to reimburse public power entities if any aspect of compliance with the Final Rule causes the utility to lose the tax-exempt status of its bonds.

Commission Conclusion

488. The Commission concludes that the tax status of the Parties is sufficiently protected by Proposed LGIA Article 5.15.

489. As described more fully in the reciprocity discussion in this preamble, public power and other nonjurisdictional entities with "safe harbor" tariffs may add the Final Rule LGIP and Final Rule LGIA to their safe harbor tariffs if they wish to continue to have safe harbor protection.⁸² The Commission limits reciprocity compliance to those services a nonjurisdictional entity is capable of providing on its system.⁸³ The Commission will consider the restrictions on nonjurisdictional and jurisdictional entities' conduct that would endanger the tax exempt status of their bond funding during compliance or upon submission of amended safe harbor tariffs, and we will act to ensure that they retain their tax-exempt status. Accordingly, the Commission need not address further here the argument raised by LPPC.

490. This article is designated Article 5.18 in the Final Rule LGIA.

491. *Article 6—Testing and Inspection*—Proposed LGIA Article 6 provided that, prior to the Commercial Operation of the Generating Facility, the Transmission Provider shall test the Transmission Provider Interconnection Facilities and Network Upgrades, and the Interconnection Customer shall test the Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. The Interconnection Customer would bear

the cost of these tests and any modifications. After the Commercial Operation Date, each Party shall conduct routine inspection and testing of its own facilities, at its own expense, in accordance with Good Utility Practice.

Comments

492. Entergy generally supports the testing and inspection provisions, but urges that Article 6.1 provide the Parties with additional scheduling flexibility if testing reveals the need for modifications to the Generating Facility. Entergy therefore proposes that the Parties' schedules for completing their respective obligations to construct and install facilities shall be extended to the extent reasonably necessary to complete any necessary modifications to the Generating Facility.

493. Arkansas Coops propose that Article 6.1 of the NOPR LGIA be modified to prohibit a Transmission Provider from preventing an Interconnection Customer sale of test energy to an entity other than the Control Area operator.

Commission Conclusion

494. The Commission does not believe that a change to the LGIA is required in order to satisfy Entergy's concern. The LGIA is premised on the idea that the Interconnection Customer and Transmission Provider will coordinate the interconnection of the Interconnection Customer's Interconnection Facilities on an ongoing basis. If the testing reveals a problem with the Interconnection Facilities or Network Upgrades, the LGIA contemplates that the Parties will work together to modify the schedule.

495. In response to Arkansas Coops, the Interconnection Customer may sell its energy to anyone; the LGIA does not need to address this matter, as it is not an interconnection matter.

496. *Article 7—Metering*—Proposed LGIA Article 7 would have required that, unless otherwise agreed to by the Parties, the Transmission Provider shall install, own, operate, and maintain Metering Equipment at the Point of Interconnection, with the Interconnection Customer bearing all reasonable documented costs.

497. *Article 7.2—Check Meters*—Proposed LGIA Article 7.2 provided that the Interconnection Customer, at its own expense, may install one or more meters on its side of the Point of Interconnection to check the accuracy of Transmission Provider's meters.

498. *Article 7.3—Standards*—Proposed LGIA Article 7.3 provided that if Article 7 conflicts with the manuals,

⁸² See part II.C.7 (OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA).

⁸³ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.