

Energy also supports the 30 day requirement.

588. NMA and Peabody state that while a Transmission Provider should not be placed at risk financially if an Interconnection Customer either terminates its interconnection agreement or breaches its obligation to make monthly payments to the Transmission Provider, at no time will the Transmission Provider be exposed to the financial costs of all the amounts of Network Upgrades or additions as contemplated under the NOPR LGIA. Requiring an Interconnection Customer to guarantee the total cost of the Network Upgrades is unfair because it causes the Interconnection Customer seeking to interconnect a very large generator to incur significant interest costs that it will never be able to recover, and this does not represent the true financial exposure the Transmission Provider faces for Network Upgrades. Further, limiting the security requirement to an amount that reflects the Transmission Provider's cost exposure during a 120 day forward-looking period is more appropriate than requiring an Interconnection Customer with a very large generator to provide security for the total cost of the project. Calpine warns that unnecessary financial security would be a barrier to entry.

589. Several commenters, mostly Transmission Providers, believe that the Transmission Provider or Transmission Owner should determine the form of security to be provided by the Interconnection Customer,⁹⁰ since they bear the risk if an Interconnection Customer abandons a project. The Financial Security Issues Coalition argues that the specific reference to surety bonds should be deleted from proposed LGIA Article 11.5 because surety bonds are not in the OATT as an acceptable form of collateral. Also, to reduce bankruptcy and fraudulent conveyance issues, any proposed guaranty should be from a parent, and not merely an Affiliate, of the Interconnection Customer. Finally, any proposed guarantor should have a BBB+ bond rating or higher.

590. Sempa argues that proposed LGIA Article 11.5.1 should be revised to clarify that the decision whether to provide security is the option of the Interconnection Customer. The provision should require an Interconnection Customer to provide a substitute security if it suffers serious financial erosion and financial-ratings

downgrades that could lead the Transmission Provider to require assurances of a guarantor's ability to perform its financial and performance obligations. Dominion Resources does not object to the NOPR provision, provided that a subsequent Interconnection Customer is responsible for the costs of completing Network Upgrades if a higher-queued Interconnection Customer chooses to suspend or terminate construction of the Interconnection Facilities.

591. Arkansas Coops argue that Article 11.5.1 should require the Transmission Provider to accept security from the National Rural Utilities Cooperative Finance Corporation (CFC), since this is critical for cooperatives that obtain financing from the CFR.

Commission Conclusion

592. We note at the outset that Article 11.5 and Article 11.5.1 are substantially identical, and the inclusion of both provisions in the NOPR was redundant. We are therefore deleting Article 11.5 in the Final Rule, and renumbering the remaining articles accordingly. The discussion that follows, however, will refer to article numbers contained in the NOPR LGIA.

593. With respect to commenters' concern that the 30 day window for providing a reasonable form of security is too short, the NOPR stated that the form of security must be provided by the Interconnection Customer at least 30 Calendar Days in advance of the procurement, installation, or construction of Interconnection Facilities or Network Upgrade projects. Parties, therefore, remain free to agree to an earlier deadline for the security if they foresee circumstances such as a long lead time for delivery of equipment. We expect that an Interconnection Customer will honor a reasonable request for an earlier deadline for providing a reasonable form of security. And, we will not require that the security be available at an earlier time, or at some specified period after execution of an interconnection agreement, because the purpose of the security is to fund procurement and construction. Since it is uncertain when procurement and construction will begin, it is reasonable to make such activity the trigger for tendering the security.

594. We are not persuaded that providing security on a 120 day or six month rolling basis is superior to the approach proposed in the NOPR. We retain the article as proposed for the following reasons. First, the Final Rule LGIA provides for the reduction of the

security amount on a dollar-for-dollar basis as payments are made; this protects the Interconnection Customer against providing too much security and ensures that the Transmission Provider is always adequately protected against its cost exposure. Second, commenters provide inadequate support for their claim that they would be unduly burdened if the article remained unchanged, or that a Transmission Provider and its other customers would suffer no financial harm if the Commission adopted a rolling 120 Calendar Days or six month security period. Third, retaining the proposed language will help to ensure that only a financially sound generation project will advance to the point where a Transmission Provider must make an irreversible financial commitment on its behalf. Fourth, the approach proposed by the commenters could expose a Transmission Provider and its other customers to financial risk if the Interconnection Customer defaults before the construction of new facilities and Network Upgrades have advanced to the point where those facilities can be put to productive use.

595. In response to Exelon's concern that the amount of security be permitted to increase as well as decrease, Final Rule Article 11.5 does not prohibit the Parties from increasing the total amount of security required under an executed LGIA. The prices quoted for interconnection in the LGIA are estimates based on the results of studies conducted during the LGIP phase of the interconnection process. As a result, the final cost of Network Upgrades may rise or fall and with it, the security required under the LGIA.

596. We disagree with commenters' contention that the article requires the Interconnection Customer to guarantee the total cost of the Network Upgrades. Final Rule Article 11.5 requires the Interconnection Customer to provide security to the Transmission Provider for discrete portions of the Transmission Provider's Interconnection Facilities or Network Upgrades, not the total amount of the Network Upgrades. It also provides that the security amount is reduced on a dollar-for-dollar basis for payments made to the Transmission Provider, thereby protecting the Interconnection Customer from having to provide too much security.

597. With respect to commenters' arguments as to the form of security, the Final Rule states that the Interconnection Customer has the right to select a form of security that is acceptable to the Transmission Provider and that the Transmission Provider cannot unreasonably refuse to accept a

⁹⁰ E.g., BPA, Central Maine, Duke Energy, Exelon, the Financial Security Issues Coalition, Georgia Transmission, NSTAR, and NYTO.