

Transmission Provider would be able to take whatever actions or inactions it deems necessary during an Emergency Condition to preserve the safety and reliability of the Transmission System or the Transmission Provider Interconnection Facilities.

Comments

608. Dynegey contends that during an Emergency Condition, the Transmission Provider should compensate the Interconnection Customer for starting up or shutting down a Generating Facility or increasing or decreasing its real or reactive output.

Commission Conclusion

609. Compensation during an Emergency Condition is appropriately addressed in Final Rule LGIA Article 11.6.1 (Generator Compensation for Actions During Emergency Conditions).

610. *Article 13.6—Interconnection Customer Authority*—Proposed LGIA Article 13.6 would allow the Interconnection Customer to take actions or inactions necessary to protect the integrity of its Generating Facility or Interconnection Facilities during an Emergency Condition.

Comments

611. NERC proposes that Article 13.6 be revised to read as follows: “Consistent with Good Utility Practice and the [LG]IA and [LG]IP, the Interconnection Customer may take actions or inactions with regard to the [Generating] Facility or the [Interconnection Customer’s] Interconnection Facilities during an Emergency Condition in order to (1) preserve public health and safety, (2) preserve the reliability of the [Generating] Facility or the [Interconnection Customer’s] Interconnection Facilities, (3) limit or prevent damage, and (4) expedite restoration of service.” Central Maine requests that proposed LGIA Article 13.6 be revised to require that an Interconnection Customer exercise its rights in an Emergency Condition in accordance with Good Utility Practice.

Commission Conclusion

612. We adopt NERC’s proposed language in Final Rule Article 13.6 because it provides greater specificity concerning the Interconnection Customer actions or inactions that may be taken during the course of an Emergency Condition.

613. *Article 14—Regulatory Requirements and Governing Law*—Proposed LGIA Article 14 described the regulatory requirements and governing

law for each Party’s obligations under the LGIA.

614. *Article 14.1—Regulatory Requirements & Article 14.2—Governing Law and Applicable Tariffs*—Article 14.1 of the NOPR LGIA proposed that each Party’s obligations shall be subject to its receipt of any required approval or certificate from Governmental Authorities in a form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities. Article 14.1 also stated that nothing in the LGIA shall require an Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended. Article 14.2 of the NOPR LGIA provided that the LGIA is governed by the laws of the state where the Point of Interconnection is located, without regard to conflicts of state law principles, and that the LGIA is subject to all Applicable Laws and Regulations.

Comments

615. The Bureau of Reclamation states that it does not have investors or shareholders, is not subject to the Commission’s jurisdiction under sections 205 or 206 of the Federal Power Act, and is not subject to the jurisdiction of state public utility commissions. The Bureau of Reclamation has sovereign immunity except to the extent that immunity has been waived by Congress. It believes that proposed LGIA Article 14.2 does not reflect that, as a federal agency, it must comply with the Constitution of the United States and all applicable laws. It states that this includes statutory and regulatory limitations on its ability to submit disputes to arbitration. SoCal PPA requests that Parties have the option of selecting the laws of a state other than the state where the interconnection will occur as the governing law for the LGIA.

Commission Conclusion

616. The Bureau of Reclamation and SoCal PPA argue that public power entities cannot adopt Article 14 without variation. We will not require these entities to adopt provisions that they are legally forbidden to adopt in order to have their reciprocity tariffs approved. As described more fully in the reciprocity discussion,⁹⁴ nonjurisdictional entities with safe

harbor status for their tariffs may add the Final Rule LGIP and Final Rule LGIA if they wish to continue to have safe harbor protection, but only need to provide services they are “capable” of providing.⁹⁵ We will consider the legal restrictions on nonjurisdictional entities when we evaluate their reciprocity compliance filings.

617. *Article 15—Notices*—Proposed LGIA Article 15 contained the addresses at which the Transmission Provider and Interconnection Customer will receive, among other things, notices, bills and payments. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

618. *Article 16—Force Majeure*—A Force Majeure clause excuses performance under a contract due to an event beyond a Party’s control. Article 16 of the NOPR LGIA proposed to adopt the Force Majeure language of the OATT. It defined Force Majeure events as: “[A]ny act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, or flood, explosion, breakage or accident to machinery or equipment, any curtailment order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party’s control * * *.” The NOPR provision would have required the Parties “to make all Reasonable Efforts” to comply with their obligations and resolve the Force Majeure condition.

Comments

619. Several commenters ask that the Commission establish a list of non-Force Majeure events.⁹⁶ More specifically, some commenters believe that Article 16 should exclude economic hardship from the definition of Force Majeure,⁹⁷ while the Coalition for Contract Terms and PSEG comment that the Commission should not treat “removable or remediable causes” as Force Majeure.

620. Some commenters request that the Commission establish a formal notice requirement that Parties must follow when claiming Force Majeure.⁹⁸ NYTO asks the Commission to require the Party claiming Force Majeure to notify those affected of what steps the

⁹⁵ Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁹⁶ E.g., The Coalition for Contract Terms, Monongahela Power, PJMTO, and PSEG.

⁹⁷ E.g., The Coalition for Contract Terms, Entergy, Mirant, PJMTO, and PSEG.

⁹⁸ E.g., The Coalition for Contract Terms, Dominion Resources, Mirant, Monongahela Power, and Progress Energy.

⁹⁴ See Part II.C.7 (OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA).