

14.2 (Governing Law and Applicable Tariffs).

645. *Article 20—Severability*—Article 20 of the NOPR LGIA explained that if a court or Governmental Authority determines that any provision of the LGIA is invalid, void, or unenforceable, such determination would not invalidate any other provision in the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule LGIA as proposed.

646. *Article 21—Comparability*—Article 21 of the NOPR LGIA would have required that the Parties comply with all applicable comparability requirements and code of conduct laws, rules and regulations. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule LGIA as proposed.

647. *Article 22—Confidentiality*—Article 22 of the NOPR LGIA described what constitutes Confidential Information and the protection proposed for such information when shared between Parties. It set forth proposed procedures for the release of Confidential Information and guidelines regarding how Confidential Information should be treated when it is subject to a request from the Commission as part of an investigation. The information of both Parties is protected by this article as long as the information is identified as Confidential Information in accordance with the article.

#### Comments

648. Cal ISO argues that an RTO or ISO should have access to operational, performance and maintenance data.

649. The Bureau of Reclamation argues that it may not be able to conform to the proposed confidentiality provisions because it must adhere to the Freedom of Information Act (FOIA)<sup>104</sup> when addressing confidentiality. It further explains that FOIA requires federal agencies to release most documents in their possession upon request, except to the extent their contents meet certain exceptions. The Bureau of Reclamation also notes that Article 22 should be revised to reflect security concerns raised by the release of information.

#### Commission Conclusion

650. In the Final Rule, the Commission adopts NOPR Article 22, with minor modifications, as described below.

651. In response to Cal ISO, the Final Rule allows an RTO or ISO to have

access to certain data. Final Rule Article 22.1.11 permits a Transmission Provider to make available information

“necessary to fulfill its obligations

\* \* \* as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the RTO/ISO.” A Transmission Provider that is obliged to disclose information to an RTO or ISO must notify the other Party in writing, assert confidentiality, and cooperate in seeking to protect the Confidential Information from public disclosure “by confidentiality agreement, protective order or other reasonable measures.” Thus a Transmission Provider may make available any required operational, performance or maintenance data as long as it maintains the confidentiality of the requested Confidential Information.

652. Regarding the Bureau of Reclamation’s argument about its obligations under FOIA, the Commission recognizes that Parties may be subject to statutory or regulatory information restrictions, some of which may address security concerns. If state or federal laws indeed conflict with the Final Rule’s confidentiality and information sharing provisions, the Commission expects that public utilities will make conforming changes to these provisions in their compliance filings and explain the statutory basis for such changes. This also applies to non-public utilities that plan to amend their safe harbor tariffs with a conforming Final Rule LGIP and Final Rule LGIA.

653. The Commission is also making several minor changes to NOPR LGIA Article 22.1.10 that addresses disclosure to the Commission or its staff. A Party must provide requested information to the Commission or its staff, even when the Party otherwise would be required by the LGIA to maintain this information in confidence. The Party receiving the request must ask the Commission to treat this information as confidential and non-public, consistent with Section 388.112 of the Commission’s Regulations.<sup>105</sup> A Party must notify the other Party when it learns that the Commission has received a request that such information be made public pursuant to Section 388.112. Commission policy prohibits a contracting Party from revealing to a counter-Party that it has received a request for information from the Commission, when such request is made pursuant to an investigation or otherwise.<sup>106</sup> The Commission likewise

prohibits a Party from notifying the other Party prior to the release of the Confidential Information to the Commission or its staff.<sup>107</sup>

654. The Commission is also revising Article 22.1.10 in the Final Rule LGIA to clarify that the Party receiving the request from the Commission or its staff will not contact the other Party before releasing the Confidential Information. In addition, because requests for information may be made under the investigation rules in Section 1b.20 of the Commission’s Regulations, the Final Rule article includes this reference.

655. *Article 23—Environmental Releases*—Proposed LGIA Article 23 described the procedures that would be required for notifying the other Party of the release or remediation of Hazardous Substances. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

656. *Article 24—Information Requirements*—Proposed LGIA Article 24 described the proposed requirements for sharing information regarding the electrical characteristics of the Parties’ respective facilities, including monthly status reports on construction and installation of the Transmission Provider’s Interconnection Facilities and Network Upgrades.

657. *Article 24.4—Information Supplementation*—Proposed LGIA Article 24.4 required the Parties, before the Commercial Operation Date of the Interconnection Customer’s Generating Facility, to provide either updated test and other technical information or written confirmation that the new technical data and the originally submitted data are consistent. It also describes the types of voltage tests that would be conducted by the Interconnection Customer and the type of recordings it is required to provide to the Transmission Provider. It provides that when there are multiple units at a Generating Facility, the Interconnection Customer would be required to provide recordings for only one generating unit if the other units have identical design and response characteristics.

#### Comments

658. NERC recommends that Article 24.4 be revised to require that tests conducted on the Generating Facility be consistent with Good Utility Practice. It also recommends requiring the Interconnection Customer to provide the Generating Facility’s characteristics based on validated test recordings, as opposed to raw test data. It asks that the

<sup>105</sup> 18 CFR 388.112 (2003).

<sup>106</sup> American Electric Power Service Corp., 99 FERC ¶ 61,312 at PP 22–24 (2002).

<sup>107</sup> *Id.*

<sup>104</sup> 5 U.S.C. 552(a) (2000).