

Commission not permit the test results for one generating unit to be allowed to represent the characteristics of all generating units, if there is more than one unit at the Generating Facility with the same design characteristics. NERC believes that it is necessary to verify modeling characteristics of each generating unit for system planning purposes and to verify the operational capabilities of each generating unit for operations purposes. NERC states that the electrical characteristics of each Generating Facility are unique.

Commission Conclusion

659. We concur with NERC's position and adopts its recommended revisions.

660. *Article 25—Information Access and Audit Rights*—Proposed LGIA Article 25 required that each Party make information available to the other Party necessary to verify costs for which the other Party is responsible under this LGIA and to carry out its obligations and responsibilities under the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

661. *Article 26—Subcontractors*—Proposed LGIA Article 26 provided that the Parties would be able to use subcontractors to perform obligations under the LGIA if the subcontractors comply with the applicable terms and conditions of the LGIA and each Party remains liable to the other for the subcontractor's performance. The hiring Party would retain all of its obligations under this article. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

662. *Article 27—Disputes*—Proposed LGIA Article 27 explained the Dispute Resolution and arbitration procedures that would apply to the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed with one change to emphasize that Parties should consider using informal dispute resolution as well as more formal options.

663. *Article 28—Representations, Warranties and Covenants*—Proposed LGIA Article 28 would have required that each Party be organized and qualified to do business in the relevant jurisdiction. Each Party would be required to have the authority to enter into this LGIA, and performance of its duties would not conflict with organizational or formation documents. No significant comments were submitted on this article. Accordingly,

the Commission adopts this article in the Final Rule as proposed.

664. *Article 29—Joint Operating Committee* (in the NOPR: Operating Committee)—Proposed LGIA Article 29 provided that the Transmission Provider shall set up: (1) An Operating Committee made up of a member from the Interconnection Customer and a member from the Transmission Provider, and (2) a Joint Operating Committee made up of members of all of its Operating Committees, in order to coordinate operating and technical considerations of Interconnection Service. The Operating Committee would meet when necessary, but not less than once each calendar year. The duties of the Operating Committee would include, among other things, establishing and maintaining control and operating procedures, data requirements and operating record requirements, reviewing outage forecasts, and coordinating outage schedules.

Comments

665. Avista and FirstEnergy oppose this requirement as unduly burdensome and unnecessary because it will impose additional costs on them. Moreover, some of the tasks envisioned for the Operating Committee are being performed either by NERC or an Applicable Reliability Council. For example, Avista argues that NERC is responsible for establishing standards for operating and control procedures for generators. Dynegy, on the other hand, would keep the Operating Committee and proposes some minor changes to the proposed language of this provision.

666. PJM and Cal ISO argue that ISOs should be exempt from this requirement because they already perform the tasks envisioned for Operating Committee in the normal course of their business.

Commission Conclusion

667. The Final Rule LGIA eliminates the requirement that the Transmission Provider constitute an Operating Committee for each Interconnection Customer. However, we are requiring a Joint Operating Committee because it provides Interconnection Customers and Transmission Providers a forum in which to discuss and coordinate operating and technical considerations of Interconnection Service. We are revising Final Rule LGIA to eliminate tasks that are already being performed by NERC, thereby responding to Avista's concern.

668. Finally, we agree with PJM and Cal ISO's proposal that the Final Rule article exempt an RTO or ISO from this requirement because an RTO or ISO

performs Joint Operating Committee-type functions in their normal course of business.

669. *Article 30—Miscellaneous*—Proposed LGIA Article 30 addressed matters such as rules of interpretation, a prohibition on third party beneficiaries, and the right to amend the LGIA by mutual agreement. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

670. *Article 30.11—Reservation of Rights*—Proposed Article 30.11 would have reserved to each Party their rights to unilaterally seek modification to the LGIA pursuant to sections 205 and 206 of the FPA, except as restricted by the other provisions of the executed LGIA.

Comments

671. Dynegy and Mirant note that this clause is redundant because another Reservation of Rights provision appears in Proposed Article 2.7.

Commission Conclusion

672. The Commission deletes proposed Article 2.7, and modifies proposed Article 30.11 in this Final Rule. As proposed, Article 30.11 contains a redundancy. The Commission deletes the second paragraph of this Article, because it repeats the reservation of rights set forth in the first paragraph of the Article.

673. *Appendices*—The NOPR LGIA contained appendices for Interconnection Facilities and Network Upgrades, time schedule, interconnection details, standard LGIA, security arrangement details, Commercial Operation Date, and interconnection guidelines. The Commission adopts these appendices in the Final Rule LGIA, with the exception of Appendix G (Interconnection Guidelines) since the Final Rule LGIA captures the provisions of that Appendix elsewhere.

C. Other Significant Policy Issues

674. A number of issues such as interconnection pricing policy, permitted variations in the terms of the Final Rule for independent transmission entities, and legal issues such as consequential damages and liquidated damages transcend individual sections in the Final Rule LGIP or articles in the Final Rule LGIA. Accordingly, they are addressed in the individual discussions that follow.

1. Interconnection Pricing Policy

675. In the NOPR, the Commission proposed to adopt its existing interconnection pricing policy for a