

owner to file with the Commission a proposal to recover its costs. Further, AEP believes that the Interconnection Customer, the existing generation owner and the Transmission Provider should be obligated to use Reasonable Efforts to minimize the impact of any outage.

713. ATC states that dividing the costs between the Interconnection Customer and the Transmission Provider may provide the most equitable results. It believes that a reasonable approach might be to allocate up to the full costs of the line outage to the Interconnection Customer so long as the timing is primarily under the Interconnection Customer's control. However, if the Transmission Provider has substantial influence over the timing and engineering aspects of the outage, ATC recommends that all or a large percentage of the new facility costs may be appropriate for rolling into transmission rates.

Commission Conclusion

714. The Final Rule does not permit the Transmission Provider to allocate interconnection-related outage costs to the Interconnection Customer. The Commission recognizes that the Transmission Provider and the owners of other generators may incur costs as a result of having to take a transmission line out of service in order to complete an interconnection. Such costs may include generator shut-down and restart costs, redispatch and purchased power costs, lost opportunity costs on sales not made, costs of power to compensate for additional line losses, and possibly other costs. In prior orders,¹¹⁵ the Commission has generally rejected, without prejudice, proposals by a Transmission Provider to allocate these costs to the Interconnection Customer. Among other things, the Commission has found that the proposals are vague, leave too much discretion to the Transmission Provider, and do not provide for adequate regulatory oversight by the Commission. For example, in *NSTAR*, the Commission stated that "determining how much cost responsibility to assign to an interconnecting generator, when other factors also may contribute to the need to redispatch contemporaneously, would be unacceptably arbitrary: for example, higher redispatch costs may be the result of a planned or unplanned outage, maintenance that requires a line to be taken out of service temporarily, or an unexpected shift in load."¹¹⁶

Furthermore, while the Transmission Provider may be able to propose an objective method for determining its own outage-related costs, estimating the outage-related costs of unaffiliated generation owners could pose a significant problem. The Commission does not believe that AEP's proposal to have the Interconnection Customer replace the energy that would otherwise have been generated by the affected Generating Facility solves this problem in part because the value of the replacement energy may bear no relationship to the actual outage-related costs.

715. As the Commission concluded above, when the Transmission Provider asks the Interconnection Customer to reschedule a planned maintenance outage of the Generating Facility (per Article 9.7—Outages, Interruptions, and Disconnection), the Interconnection Customer should be compensated for only the direct costs that the Interconnection Customer incurs. It should not be compensated, for example, for lost opportunity costs. One reason is that outages of transmission and generation facilities for maintenance and other purposes are a routine part of electric system operations and, in fairness, these costs also should be considered a normal part of doing business. Moreover, the determination of the appropriate level of costs to be allocated involves a process that is inevitably arbitrary and contentious, particularly when the determination is made by a Transmission Provider that is not an independent entity. Therefore, in the Final Rule we are codifying our policy of not allowing interconnection-related outage costs to be allocated to the Interconnection Customer.

Issues Concerning the Five Year Refund Period and the Payment of Interest

716. Many commenters object to the proposal to require the Interconnection Customer to be reimbursed for the costs of Network Upgrades within a five year period. Several also object to the payment of interest on outstanding balances or to the formula for determining the rate of interest.

717. Duke Energy generally supports the provisions as proposed but, to be consistent with the Commission's policy of allowing the Transmission Provider to collect the higher of incremental or embedded costs for transmission service, it recommends elimination of the five year "sunset" provision in Section 11.4.1 of the NOPR LGIA. Cleco is concerned that a Transmission Provider may be liable for payment of refunds after a five year period has

elapsed because the Interconnection Customer has not taken enough transmission service to be credited the full amount for upgrades originally paid for. Westconnect RTO submits that arbitrarily setting a five year term is unjustified and unreasonable. It proposes that a more appropriate approach would be to allow unused transmission credits to expire after a set term. However, Mirant argues that once the Network Upgrades are placed in service, every network customer receives some benefit from those facilities. Therefore, it sees no reason to limit the refund to the requirement in proposed LGIA Article 11.4.1 that the Transmission Provider continue to receive payment for transmission service from the Generating Facility.

718. Western states that if it has to return monies to an Interconnection Customer in less time than the service life of an upgrade, rates may have to be increased to ensure the timely repayment of other federal investments. It believes such a rate increase would be inequitable to existing customers. BPA states that the Interconnection Customer should not be entitled to a refund over an arbitrary five year period and argues that other customers should not have to bear the risk that the Interconnection Customer will cease taking transmission service. LADWP states that the five year requirement imposes an undue burden on public power customers. It requests that, if the Commission's generation interconnection pricing policy is applied to a non-jurisdictional transmission owner, that owner should have the flexibility to provide such refunds over the same period that it would use to amortize such facilities if constructed for the benefit of its own customers. WEPCO states that the Commission should recognize that sometimes both the Interconnection Customer and the Transmission Provider may desire a payback period of less than five years. Accordingly, it recommends that the Commission revise Article 11.4.1 of the NOPR LGIA to provide for repayment at such earlier time as the Parties may agree.

719. Mirant argues that, at a minimum, the Commission should require that interest on any Network Upgrades be calculated using the Transmission Provider's most recent Commission-approved rate of return in the Transmission Provider's OATT. For a non-public utility that does not have a rate of return, Mirant proposes that the Commission use the rate of return set forth in the most recent Commission order as a proxy for such entity. Peabody recommends that the Commission modify the proposed LGIA

¹¹⁵ See, e.g., *id.*; ISO New England, Inc., 91 FERC ¶ 61,311 (2000).

¹¹⁶ Cambridge Electric Light Co., *et al.*, (NSTAR), 95 FERC ¶ 61,339 (2001).