

to provide for a more flexible, incentive-based rate of interest for transmission credits. Also, if a Transmission Provider files for incentive pricing for transmission service, Peabody recommends that it be required to file simultaneously to amend the interest rate in LGIA Article 11.4.1 to match such incentive mechanism. Progress Energy disagrees with the requirement to pay an Interconnection Customer interest, arguing that the Transmission Provider cannot use the funds advanced by the Interconnection Customer for purposes other than constructing the Network Upgrades and that it should not be put in the position of being a bank for the Interconnection Customer. If interest must be paid, Progress Energy proposes using the Federal Fund Commercial Rate or a similar rate to ensure that the payment of interest is not a source of profit for the Interconnection Customer.

Commission Conclusion

720. Regarding the specific rules for the payment of credits, the Commission clarifies that the Interconnection Customer is entitled to a full refund of the payments it makes toward the cost of Network Upgrades within five years after the Commercial Operation Date, as long as the Generating Facility remains in operation through the five year period.¹¹⁷ During the five year period, credits must be awarded on a dollar-for-dollar basis as payments are made for transmission services. However, the Commission is also permitting the payments to be made on any other basis that is mutually agreeable to the Interconnection Customer and the Transmission Provider. For example, if the Parties agree to a stream of uniform monthly payments designed to fully reimburse the Interconnection Customer over the five year period, that would be acceptable. In addition, as stated in Article 11.3 of the Final Rule LGIA, the Transmission Provider may elect to fund the Network Upgrades itself, with no advance payment by the Interconnection Customer, and thus no need for subsequent credits.

721. With regard to Cleco's concern about the Transmission Provider's liability at the end of the five year crediting period, the Commission

clarifies that the Transmission Provider must make a lump-sum payment to the Interconnection Customer for any balance owed to the Interconnection Customer five years after the Interconnection Customer has begun commercial operation.

722. The Commission recognizes that the choice of the length of the repayment period is somewhat arbitrary. However, specifying five years as the maximum repayment period will promote the development of new generation by reducing the Interconnection Customer's risk, thereby facilitating project financing. Contrary to the views of LADWP and others, it would not be appropriate to extend repayment over a period that corresponds to the Transmission Provider's amortization period for similar facilities. As explained above, the Commission's policy for a non-independent Transmission Provider is to roll the costs of interconnection-related Network Upgrades into the Transmission Provider's transmission rate base. However, rather than require immediate roll-in, we have chosen a five year repayment period, in part to provide the Interconnection Customer with an incentive to make good faith requests for Network Upgrades.

723. With regard to the payment of interest on unpaid credits, the Commission adopts the policy proposed in the NOPR. The Commission continues to believe that the Interconnection Customer is entitled to a refund for all of the costs of the Network Upgrades for which it has paid, including a reasonable estimate of the carrying costs that it incurs in making the advance payments. The determination of an interest rate that accurately reflects this carrying cost cannot be reduced to a completely objective calculation. Interest calculated in accordance with 18 CFR § 35.19(a)(2)(ii) provides a reasonable proxy for this carrying cost, and because it offers an objective calculation, the Commission retains this provision in Article 11.4.1 of the Final Rule LGIA.

Rules Governing the Payment of Credits

724. With regard to the payment of credits, Interconnection Customers generally are in favor of a flexible policy that allows credits to be paid under a wide range of circumstances, while Transmission Providers advocate a policy that places strict limits on when and how an Interconnection Customer may receive credits.

725. For example, Dynegy states that the Final Rule must ensure that the credits do not limit the Interconnection Customer to purchasing the delivery

component of transmission service on the Transmission Provider's system with the Interconnection Customer's Generating Facility as the Point of Receipt. Instead, Dynegy believes that the credits should apply to transmission at any location on the Transmission Provider's system. Duke Energy believes that an Interconnection Customer's flexibility in obtaining refunds should be similar to the flexibility a Transmission Customer has to reassign transmission service under the OATT. Accordingly, it proposes to allow credits not only for the charges for transmitting power from the Generating Facility, but also for the charges for transmitting power from an Affiliated Generating Facility. Similarly, Peabody states that the Interconnection Customer should be allowed to receive credits for any transmission service that it purchases on the Transmission Provider's Transmission System. Both Calpine and EPSA offer modified language for Article 11 of the NOPR LGIA that would implement these recommendations. Cal Cogen and the Energy Producers and Users Coalition claims that a term-based credit mechanism (*i.e.*, one where the credits are paid out according to a fixed schedule) is preferable to the NOPR's proposed transmission-based mechanism.

726. Edison Mission states that Articles 2 and 11 of the NOPR LGIA should be modified so that if an Interconnection Customer pays for Network Upgrades but the interconnection agreement is then terminated or the Generating Facility not constructed, the Interconnection Customer nonetheless receives payments for the upgrades it paid for, with the payments coming from other users of the Transmission System.

727. Other commenters propose limiting the availability of credits. Dominion Resources argues that, if Network Upgrades funded by the Interconnection Customer are not used for output from the Generating Facility, a refund for such upgrades is inappropriate. Similarly, the Coalition for Pricing claims that proposed LGIP Section 11.4.2 can be read to suggest that the Interconnection Customer has some right to transmission credits as transmission service is taken anywhere on the Transmission Provider's system. It asks the Commission to clarify that this is not the case. The Alabama PSC argues that providing transmission credits only when transmission service is taken from an Interconnection Customer's Generating Facility would prevent the socialization of upgrade costs that do not benefit the network.

¹¹⁷ Although Article 11.4.1 of the NOPR LGIA proposed to begin the five year period on the date that the Network Upgrades are placed in service, as the Commission explains below, the Commission concludes that the Interconnection Customer should not be entitled to receive a refund unless the Generating Facility achieves commercial operation. Therefore, the Commission is modifying Article 11.4.1 to specify that the five year period begins with the Generating Facility's Commercial Operation Date.