

Resources recommends that Section 3.5 of the NOPR LGIP require the Interconnection Customer to be responsible for all costs incurred by the Transmission Provider in coordinating the interconnection request with the affected party, including all study costs. Reliant states that there is presently no mechanism that provides the Interconnection Customer with transmission credits for a contribution to the construction of Network Upgrades on third party systems. Reliant recommends that the Commission add to Section 3.5 of the NOPR LGIP language proposed by EPSA that addresses this omission. Mirant recommends that the Commission require the Transmission Provider to coordinate the provision of transmission credits associated with funding Network Upgrades on affected third party systems.

737. LADWP is concerned that the NOPR did not address how the Commission intends the financing and crediting to be implemented if the Interconnection Customer does not purchase transmission service on the Affected System.

Commission Conclusion

738. The NOPR LGIP and NOPR LGIA included no pricing provisions that specifically address situations where Network Upgrades must be constructed on Affected Systems to protect the reliability of those systems. However, the Commission concurs with the commenters that state that the NOPR LGIA should be modified to expressly allow for refunds to be provided to the Interconnection Customer when such Network Upgrades must be constructed and the Interconnection Customer is required to pay for them. Therefore, the Commission modifies Article 11.4 of the Final Rule LGIA to make it applicable to all jurisdictional Affected System Operators on whose systems Network Upgrades are constructed to accommodate the Interconnection Customer's Interconnection Request. This means that, prior to the Commercial Operation Date, an Affected System Operator may require the Interconnection Customer to pay for all Interconnection Facilities and Network Upgrades constructed to accommodate the Interconnection Customer's Interconnection Request. Then, upon commencement of commercial operation, any Affected System Operator that has received payments from the Interconnection Customer must begin to refund to the Interconnection Customer the costs of Network Upgrades that the Interconnection Customer has paid. Furthermore, refunds are to be

provided without regard to whether the Interconnection Customer has contracted for delivery service on the Affected System Operator's Transmission System. If the Interconnection Customer has not contracted for delivery service, and in the absence of another mutually agreeable payment schedule, refunds shall be provided by means of a uniform stream of monthly payments designed to fully reimburse the Interconnection Customer, with interest, over a five year period commencing with the Generating Facility's Commercial Operation Date.

739. When the Interconnection Customer is required to pay for Network Upgrades on an Affected System, it must enter into an agreement with the Affected System Operator unless the payments are incorporated in the interconnection agreement that the Interconnection Customer signs with the Transmission Provider. Any agreement with an Affected System Operator must specify the terms governing payments to be made by the Interconnection Customer as well as the payment of refunds by the Affected System Operator. The Commission is revising proposed Article 11.4.1 to incorporate this new requirement.

Policies Regarding Previously Approved Cost Allocations and Pricing Arrangements

740. A number of commenters express their views regarding the NOPR's proposal to require that all Transmission Providers remove from their transmission rates the costs of Interconnection Facilities constructed for the Transmission Provider's own Generating Facilities, and to treat them as directly assigned, generation-related costs. Commenters also address the possible retroactive application of the pricing policy adopted in the Final Rule. Calpine and Mirant request that the Commission require that all Transmission Owners make compliance filings to remove the costs of Interconnection Facilities from existing transmission rates. The Arkansas PSC states that it does not object in principle to the proposal to remove such costs from transmission rates, but notes that this could shift additional costs onto the retail customers of regulated generation-owning utilities. It proposes that, if the cost-shifting burden is judged to be significant, a phase-in or modification may be appropriate. PSNM believes that the Commission's proposal to require all Transmission Providers to remove sole use facilities from their transmission rates currently in place resolves the lack of pricing comparability alleged by Interconnection Customers.

741. PJMTO generally agrees with the NOPR's proposal to assign to the generator the costs of Interconnection Facilities, but requests that the Commission clarify that, to the extent this policy alters existing practices, it will apply prospectively and only affect interconnections that post-date the Final Rule. PJMTO states that, historically, transmission providers have used a variety of approaches to assign cost responsibility for Interconnection Facilities, claiming that some have rolled these costs into transmission rates while others have directly assigned the costs to the Interconnection Customer. PJMTO urges the Commission not to undercut the business assumptions of existing project sponsors or to require the Transmission Provider to refile transmission rates to remove any non-network costs that have been rolled in, and invoice Interconnection Customers for such removed costs. Exelon and Sithe express similar views and state that, since Order No. 888, numerous vertically integrated utilities have spun off their Generation Facilities to non-affiliated third parties. Exelon and Sithe believe that those parties would likely claim that their interconnection arrangements have been effectively grandfathered and that no interconnection costs that may have been rolled into base transmission rates are now recoverable from them. Exelon and Sithe argue this could lead to costly and time-consuming litigation.

742. Calpine requests that the Commission find here that any policy that requires the Interconnection Customer to pay for Network Upgrades is unjust and unreasonable, and unless otherwise barred by explicit contract language, any Interconnection Customer should be permitted to have the facility cost allocation provisions of any existing agreement modified pursuant to Section 206 of the FPA to reflect the current interconnection pricing policies. However, Exelon and Sithe, using arguments similar to those above, recommend that any historical allocation of the costs of Network Upgrades that was agreed to by the parties and accepted by the Commission should not be disturbed now. Exelon and Sithe recommend that those costs be rolled into the transmission rate base only for new Interconnection Requests.

Commission Conclusion

743. The Commission believes that, to ensure fully comparable treatment of all Generating Facilities, transmission rates should not include the costs of Interconnection Facilities. As stated in the NOPR, this policy is consistent with the Commission's current treatment of