

## Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 *Options.* Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Transmission Provider's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities and Network Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.

5.1.1 *Standard Option.* The Transmission Provider shall design, procure, and construct the Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete the Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. The Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Provider reasonably expects that it will not be able to complete the Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, the Transmission Provider shall promptly provide written notice to the Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 *Alternate Option.* If the dates designated by Interconnection Customer are acceptable to Transmission Provider, the Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 *Option to Build.* If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, the Transmission Provider shall so notify the Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, Interconnection Customer shall have the option to assume responsibility for

the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. Both Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A to the LGIA. Except for Stand Alone Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 *Negotiated Option.* If the Interconnection Customer elects not to exercise its option under Article 5.1.3, Option to Build, Interconnection Customer shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades by Interconnection Customer) pursuant to which Transmission Provider is responsible for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Network Upgrades pursuant to 5.1.1, Standard Option.

5.2 *General Conditions Applicable to Option to Build.* If Interconnection Customer assumes responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

(1) The Interconnection Customer shall engineer, procure equipment, and construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(4) Prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly

respond to requests for information from Transmission Provider;

(5) At any time during construction, Transmission Provider shall have the right to gain unrestricted access to the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, the Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) The Interconnection Customer shall indemnify the Transmission Provider for claims arising from the Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) The Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider; and

(9) Transmission Provider shall approve and accept for operation and maintenance the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2.

5.3 *Liquidated Damages.* The actual damages to the Interconnection Customer, in the event the Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by the Interconnection Customer and accepted by the Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Transmission Provider to the Interconnection Customer in the event that Transmission Provider does not complete any portion of the Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Transmission Provider Interconnection Facilities and Network Upgrades for which the Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Transmission Provider to the Interconnection Customer as