



NORTHWEST INDEPENDENT POWER PRODUCERS COALITION COMMENTS

Bonneville Power Administration's Proposed Large Generator Interconnection Procedures and Large Generator Interconnection Agreement

NIPPC is mindful that some provisions of the Commission's *pro forma* LGIP and LGIA are designed for public utilities, not non-public utilities such as BPA. Nevertheless, NIPPC urges BPA to adopt an LGIP and LGIA that substantially conform to or are superior to the *pro forma* LGIP and LGIA. Deviations from the *pro forma* LGIP and LGIA should be avoided entirely unless there is a sound legal reason for a deviation.

It also may be appropriate for BPA to deviate from the *pro forma* LGIP and LGIA for compelling policy reasons, but such deviations should be consistent with the purposes of Order No. 2003 and Order No. 2003-A (together, the "Orders"). The Commission stated that the Orders are designed to "prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity markets while ensuring that the reliability of the Transmission System is protected." Order No. 2003-A at para. 3. Some of BPA's discretionary deviations are inconsistent with the Commission's declared purposes.

I. LARGE GENERATOR INTERCONNECTION PROCEDURES

Section 1. Definitions

Definitions related to Network Upgrades should be clarified to better explain the application of the LGIP and LGIA, and the relationship of the LGIP and LGIA to BPA's policies for financing and refunding the cost of Transmission System upgrades necessary to provide transmission service. The *pro forma* LGIP states,

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection

Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

BPA should clarify which additions, modifications, and upgrades are covered under BPA's proposed LGIP and LGIA. In discussions with BPA staff and counsel, NIPPC has been advised that the LGIP and LGIA will not apply to BPA Transmission System additions, modifications, and upgrades beyond the facilities that have customarily been described as interconnection facilities. NIPPC also has been told that additions, modifications, and upgrades necessary to deliver power beyond interconnection facilities will receive transmission credits, presumably to refund the costs of upgrades funded by Transmission Customers. Clarification and release of the accompanying BPA policy regarding transmission credits for Transmission Customer-funded upgrades will be helpful to all customers.

Clarification will confirm that an Interconnection Customer will not be required to fund the cost of Network Upgrades beyond the interconnecting substation. BPA's Generation Interconnection Direct Assignment document, distributed at BPA's April 22, 2004, meeting (the "April 22 Meeting"), states that "Generator Interconnection Facilities do not include facilities located beyond the line terminal at the nearest network substation, except for the costs associated with communication, control, metering, telemetry, protection, RAS and ICCP equipment or replacements." Presumably, BPA intends Network Upgrades, as used in its proposed LGIP and LGIA, to be synonymous with the term Generator Interconnection Facilities. If that is correct, then the definition of "Network Upgrades" should be revised.

Section 11.2 Negotiation

The proposed LGIP eliminates Dispute Resolution. This is manifestly unfair to an Interconnection Customer who may have spent hundreds of thousands of dollars on studies and engineering analyses for a new Generating Facility. BPA, the owner and operator of approximately 75 percent of the region's transmission facilities, and virtually all of the region's 500 kV facilities, will have an absolute un-reviewable right to reject any new Generating Facility by offering LGIA terms that are burdensome, onerous and otherwise unacceptable. The message to Interconnection Customers is that they must accept BPA's offered LGIA, including appendices, or withdraw their applications.

At the April 22 Meeting, BPA explained that it eliminated Dispute Resolution to avoid subjecting its reliability determinations to Dispute Resolution. BPA's concern can be addressed by restoring Dispute Resolution, but modifying its scope. BPA should provide that an Interconnection Customer may request that BPA's offered LGIA, including appendices, be submitted to Dispute

Resolution, but that any dispute based on reliability concerns will be determined based on BPA's Technical Requirements for the Interconnection of Generating Resources.

II. LARGE GENERATOR INTERCONNECTION AGREEMENT

Section 1. Definitions

Our comments regarding the proposed LGIP definition of Network Upgrades is equally applicable to the LGIA definition of Network Upgrades. BPA should clarify which additions, improvements and upgrades are subject to the LGIA, and which are subject to other provisions of BPA's OATT regarding applications for Transmission Service. BPA's clarification should describe how upgrades beyond the point of Generator Interconnection Facilities will be funded and, if funded by Transmission Customers, whether BPA will refund the cost of upgrades through transmission credits.

Section 5.1.2 Alternate Option

The Commission provides a range of options for design, procurement and construction of Network Upgrades. The options permit an Interconnection Customer to have assurance that Network Upgrades will be available for operation of its Generating Facility. BPA's changes to the Alternate Option are unfair, defeat the purpose of the options, and change the relationship and meaning of the four options in the *pro forma* LGIA.

The Standard Option requires that BPA use "Reasonable Efforts" to design, procure materials and equipment, and to construct facilities. The Alternate Option is supposed to give an Interconnection Customer greater confidence that Network Upgrades will be constructed. If the dates designated by the Interconnection Customers are acceptable to the Transmission Provider, selection of the Alternate Option deletes the "Reasonable Efforts" qualification to a Transmission Provider's obligation to design, procure and construct the Network Upgrades, and exposes a Transmission Provider to Liquidated Damages.

Relying on a Transmission Provider's agreement to the in-service dates for Network Upgrades under the Alternate Option, an Interconnection Customer is likely to expend substantial sums, perhaps hundreds of millions of dollars, on the Generating Facility, enter into contracts for the sale of power from the generating facility, and deliver millions of dollars to BPA for Network Upgrade costs. Nevertheless, BPA proposes that it be required to use only "Reasonable Efforts" to completed Network Upgrades by the agreed upon date, and that it not pay Liquidated Damages for failure to complete Network Upgrades by the agreed upon date. BPA's proposed language shifts the entire risk for non-completion of Network Upgrades to the Interconnection Customer.

The Commission rejected that outcome, even for non-public utilities. “The LGIA provides for liquidated damages only if the Transmission Provider so agrees.” Order No. 2003-A, para. 269. The Commission decided that it was “unnecessary to create a special accommodation for public power utilities on this issue,” noting that non-public utilities “may still decline to accept a construction schedule that includes liquidated damages.” *Id.* NIPPC believes that BPA should restore the *pro forma* language providing Liquidated Damages to the Alternate Option.

Section 5.3 Liquidated Damages

BPA should restore Section 5.3 of the *pro forma* LGIA. BPA can avoid Liquidated Damages by declining to construct a Network Upgrade. Interconnection Customers will have the straightforward option of constructing Network Upgrades themselves under the Option to Build, or trusting that BPA actually will construct Network Upgrades by dates designated by the Interconnection Customer and accepted by BPA.

Section 11.3 Network Upgrades and Distribution Upgrades

BPA’s proposed Section 11.3 is worded in a confusing manner, and the changes proposed are unnecessary. BPA apparently intends to both require that Interconnection Customers fund Network Upgrades, and deny them Transmission Credits. If that is BPA’s intent, the proposed changes, possibly made for the sake of emphasis, are unnecessary and confusing. It is sufficient to state, as the *pro forma* LGIA does, that unless BPA funds the capital cost of Network Upgrades, Network Upgrades “shall be solely funded by the Interconnection Customer.”

Section 11.4 Transmission Credits

BPA’s proposal to deny Transmission Credits for Interconnection Customer funded Network Upgrades is unduly discriminatory, and it violates every objective the Commission set for the LGIA and LGIP. Denial of transmission credits imposes “and” pricing. BPA will charge the Interconnection Customer once for a transmission service BPA will provide under its Open Access Transmission Tariff, and BPA will charge a Transmission Customer again for use of the same Network Upgrades. The Commission has emphatically stated that a Transmission Provider may charge the higher of the incremental cost of new facilities or its embedded rate, but not the sum of the capital cost of new facilities *and* its embedded cost of transmission facilities.¹

¹ “Entergy argues that its direct assignment of the costs of these facilities to Duke does not violate the Commission’s pricing policies because the charges will not be reassessed in the future and are not assessed as part of the transmission rates Entergy charges to Duke. This argument misses the point, however. The Commission prohibits “and” pricing because it improperly charges

An Interconnection Customer's cost of funding BPA Network Upgrades will be recovered in its power price. The Transmission Customer that purchases the power from the Interconnection Customer also will pay BPA for transmission service that uses the Network Upgrades. As a result, the Transmission Customer ultimately pays twice for the same service: once for Network Upgrade costs in its power bill, and then for BPA Transmission Service. The outcome is exactly the same as "and" pricing prohibited by the Commission.

BPA's proposal is not consistent with the Commission's objectives in adopting Order No. 2003. Generation adequacy is an important part of reliability, and burdening Interconnection Customers with Network Upgrade costs, without refund, simply adds costs to new generation and makes it more difficult to finance and sell the capability of new generation. Denial of Transmission Credits for Network Upgrades is unlikely to increase the energy supply, or improve competition by increasing the number or the variety of new generation from alternative and renewable energy sources.

BPA's denial of Transmission Credits will encourage developers of Generating Facilities to interconnect with Puget Sound Energy's, Portland General Electric's, PacifiCorp's, Avista's, Idaho Power's, or Northwestern's Transmission System in order to receive Transmission Credits. Because BPA has said that it will offer transmission credits for its Transmission Customer-funded network upgrades, there will be no disadvantage to a Generating Facility in interconnecting with a public utility's Transmission System. However, that will not produce sound, one-utility planning for the Pacific Northwest's transmission systems. To avoid distorted siting and interconnection decisions, BPA should restore Transmission Credits for Network Upgrade costs.

Section 30.11 Reservation of Rights

Although it is clear why BPA removed references to Sections 205 and 206 of the Federal Power Act, BPA should have retained *pro forma* LGIA provisions permitting it to amend the LGIA and to file its amended LGIA "under other applicable provisions of the Federal Power Act," and permit an Interconnection Customer to participate fully in any Commission proceedings. Elimination of

the *same customer* twice for *use of the grid* (the entire price of these grid upgrade costs (through direct assignment) and a portion of all other grid costs (through a transmission rate)), not as Entergy argues, because it collects twice for the specific upgrade at issue. The facilities at issue are network facilities, and the cost of these facilities cannot be directly assigned to Duke. While Commission policy allows the transmission provider to charge a transmission rate that is the higher of an incremental or a rolled-in rate, an incremental rate is not the same as direct assignment." *Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, and Duke Energy North America, LLC (Complainants) v. Entergy Services, Inc. and Entergy Operating Companies (Respondents)*, 102 FERC ¶61,068, fn. 25 (2003) (emphasis in original.)

these provisions goes beyond what is necessary to distinguish BPA from public utilities.

NIPPC hopes that BPA will carefully consider its comments. NIPPC has focused on the small number of policy issues NIPPC believes go to the fundamental fairness of BPA's proposed deviations from the *pro forma* LGIP and LGIA. NIPPC is and will be an important part of a successful regional power system, and NIPPC expects to have a significant role in meeting regional utilities' increasing demands for power. NIPPC's objectives are the same as the Commission's, and NIPPC wants BPA's transmission policies to assure an efficient and reliable power supply, without undue discrimination.