

171 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

NTE Carolinas II, LLC  
NTE Energy, LLC

Docket No. EL20-8-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 21, 2020)

1. On November 8, 2019, NTE Carolinas II, LLC (NTE Carolinas) and NTE Energy, LLC (collectively, Petitioners) filed, pursuant to sections 206 and 306 of the Federal Power Act (FPA)<sup>1</sup> and Rules 206 and 207 of the Commission's Rules of Practice and Procedure,<sup>2</sup> a petition for declaratory order (Petition) requesting that the Commission declare that: (1) the Commission has exclusive jurisdiction to determine whether a transmission provider may terminate a large generator interconnection agreement (LGIA); (2) a transmission provider seeking to terminate a conforming LGIA must receive Commission approval to do so, utilizing the process provided by the Commission in 18 C.F.R. Part 35; and (3) a transmission provider may not announce the termination of a conforming LGIA (either on its Open-Access Same-Time Information System (OASIS) or in reports to the Commission) unless and until the Commission has approved the termination. As discussed below, we grant the Petition, in part.

**I. Background**

2. In Order No. 2001,<sup>3</sup> the Commission amended the filing requirements for public utilities under the FPA to eliminate the requirement that public utilities file short-term

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e (2018).

<sup>2</sup> 18 C.F.R. § 385.206 (2019).

<sup>3</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing*

and long-term service agreements for market-based sales of electric energy, service agreements for generally applicable services, and quarterly transaction reports summarizing their short-term sales and purchases of power at market-based rates.<sup>4</sup> As relevant here, Order No. 2001 required instead that public utilities file standard forms of service agreements for Commission approval for all cost-based transmission and power sales services offered under 18 C.F.R. Part 35 and summarize the agreements entered into under the terms of those standard forms of service (i.e., transmission tariff or umbrella services agreement) in their Electric Quarterly Reports (EQR).<sup>5</sup> Order No. 2001 also established that public utilities are not required to file a notice of cancellation or cancellation tariff sheet with the Commission for conforming agreements that “terminate by their own terms.”<sup>6</sup> As part of its elimination of the filing requirement for the termination of conforming agreements that terminate by their own terms, Order No. 2001 clarified that “[a]ll proposals to change terms of an agreement without the consent of the customer must be filed with the Commission.”<sup>7</sup>

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*requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh’g & clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008).

<sup>4</sup> Order No. 2001, 99 FERC ¶ 61,107 at P 18.

<sup>5</sup> *Id.* EQRs are the reporting mechanism the Commission uses for public utilities to fulfill their responsibility under section 205(c) of the FPA to have their rates and charges on file in a convenient form and place. 18 C.F.R. § 35.10b (2019).

<sup>6</sup> Order No. 2001, 99 FERC ¶ 61,107 at P 249.

<sup>7</sup> *Id.* Order No. 2001 also addressed a comment suggesting that the termination of conforming, unfiled service agreements that do not expire of their own terms be filed with the Commission by stating that the suggestion “assumes that there is no consent between the parties to terminate a service.” *Id.* P 249.

3. In Order No. 2003,<sup>8</sup> the Commission established the *pro forma* LGIA for interconnecting generators larger than 20 megawatts (MW).<sup>9</sup> Consistent with the public utility filing requirements established in Order No. 2001, Order No. 2003 eliminated the individual filing requirements for public utilities with standard conforming LGIAs in their transmission tariffs, requiring only that such public utilities report the execution of conforming LGIAs in their EQRs.<sup>10</sup> Also consistent with Order No. 2001, Order No. 2003-A lifted the requirement that parties to a conforming LGIA that “expires by its own terms” file a notice of termination with the Commission, allowing the public utility to instead remove the conforming LGIA from its EQR in the quarter after it terminates.<sup>11</sup> Order No. 2003-A also directed that “any other modification to a conforming agreement (including terminations caused by something other than expiration of the agreement) must be submitted to the Commission unless the interconnection customer agrees to the modification.”<sup>12</sup> In clarifying this point, Order No. 2003-A cited to the Order No. 2001 language stating that “[a]ll proposals to change the terms of an agreement without the consent of the customer must be filed with the Commission.”<sup>13</sup>

4. Article 2.3 of the Commission’s *pro forma* LGIA provides the termination procedures for conforming LGIAs. Article 2.3.2 states that, in the case of default, “[e]ither party may terminate th[e] LGIA in accordance with article 17.”<sup>14</sup> Article 2.3.3 states that, “[n]otwithstanding article[] . . . 2.3.2, no termination shall become effective

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<sup>8</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

<sup>9</sup> Order No. 2003, 104 FERC ¶ 61,103 at P 1. This order refers to LGIAs adopting the *pro forma* language verbatim as conforming LGIAs.

<sup>10</sup> *Id.* P 913. Order No. 2003 further clarified that “[t]he filing requirement for conforming agreements is now satisfied by filing the standard form of agreement and an [EQR].” *Id.*

<sup>11</sup> Order No. 2003-A, 106 FERC ¶ 61,200 at P 201.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* P 201 n.43 (citing Order No. 2001, 99 FERC ¶ 61,107 at P 249).

<sup>14</sup> *Pro forma* LGIA art. 2.3 (Termination Procedures). Article 17.1 of the Commission’s *pro forma* LGIA governs defaults.

until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.”<sup>15</sup>

## II. Petition for Declaratory Order

5. The Petitioners state that NTE Carolinas, LLC is the owner and developer of the Reidsville Energy Center (Reidsville project), an approximately 475 MW natural gas combined cycle electric generating facility to be located in Reidsville, North Carolina.<sup>16</sup> The Petitioners explain that, in early 2017, Duke Energy Carolinas, LLC (Duke) and NTE Carolinas executed a conforming LGIA governing the interconnection of the Reidsville project (Reidsville LGIA) that Duke reported to the Commission in its fourth-quarter 2017 EQR.<sup>17</sup>

6. The Petitioners state that in May 2019, more than a year after work on the Reidsville project began, NTE Carolinas opted to temporarily suspend work on the project.<sup>18</sup> According to the Petitioners, up until this point, Duke had failed to notice a glitch in its invoicing system that caused no paper or electronic invoices to be submitted to NTE Carolinas for several estimated payments.<sup>19</sup> The Petitioners explain that Duke, realizing its error, sent a series of invoices for these “missed” payments to NTE Carolinas for increasingly larger amounts of money, without making clear what Duke’s actual costs were as of the date of suspension.<sup>20</sup> The Petitioners represent that, in contravention of the LGIA, Duke refused to work constructively with NTE Carolinas to determine the actual costs Duke incurred prior to suspension and invoice NTE Carolinas for that amount.<sup>21</sup> Although NTE Carolinas agrees that it received an estimated payments schedule from Duke, NTE Carolinas contests both Duke’s assertion that it missed any payments owed and the amounts owed. Eventually, NTE Carolinas explains, over NTE Carolinas’ objection, Duke sent a declaration of default and notice of termination of the Reidsville

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<sup>15</sup> *Pro forma* LGIA art. 2.3.3.

<sup>16</sup> Petition at 4.

<sup>17</sup> *Id.* at 8-9.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 9-10.

<sup>20</sup> *Id.* at 10.

<sup>21</sup> *Id.* at 5.

LGIA to NTE Carolinas.<sup>22</sup> The Petitioners add that, following Duke's declaration of default and notice of termination, Duke publicly listed the Reidsville project as canceled on its OASIS and reported the termination of the LGIA to the Commission in an EQR.<sup>23</sup>

7. The Petitioners assert that Duke's termination of the Reidsville LGIA contravened Commission procedure for terminating an unexpired LGIA over the objections of an interconnection customer, which requires the terminating party to file a notice of termination with the Commission.<sup>24</sup> The Reidsville LGIA contains the same language as article 2.3 of the *pro forma* LGIA, described in the background above.<sup>25</sup>

8. In response to Duke's actions described above, the Petitioners seek a more generic policy determination to clarify the rights and responsibilities of parties to conforming LGIAs, rather than a finding on the facts related to their request. Specifically, the Petitioners request that the Commission declare that: (1) the Commission has exclusive jurisdiction to determine whether a transmission provider may terminate an LGIA; (2) a transmission provider seeking to terminate a conforming LGIA must receive Commission approval to do so, utilizing the process provided by the Commission in 18 C.F.R. Part 35; and (3) a transmission provider may not announce the termination of a conforming LGIA (either on its OASIS or in reports to the Commission) unless and until the Commission has approved the termination.<sup>26</sup>

9. The Petitioners contend that the Commission has exclusive jurisdiction over the review of modifications to and cancellations of filed rates and that this jurisdiction extends to interconnection agreements like LGIAs.<sup>27</sup> In support of their argument, the Petitioners cite section 205 of the FPA, which states, "no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the

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<sup>22</sup> *Id.* The Petitioners note that Duke simultaneously filed a complaint in North Carolina state court against NTE Carolinas seeking damages, which has since been removed to federal court in the Western District of North Carolina.

<sup>23</sup> Duke reported in its third-quarter 2019 EQR that the LGIA terminated on September 6, 2019, the same date as Duke's declaration of default. *Id.* at 10-11.

<sup>24</sup> *Id.* at 11.

<sup>25</sup> *See* Petition, Ex. A, § 2.3.

<sup>26</sup> Petition at 12.

<sup>27</sup> *Id.* at 13.

public.”<sup>28</sup> The Petitioners assert that the Commission has “embraced” its jurisdiction over the termination of rate schedules, tariffs, and service agreements, both by issuing regulations related to the modification or termination of such agreements and via Commission order.<sup>29</sup>

10. For their second requested declaration, the Petitioners point to article 2.3.3 of the *pro forma* LGIA, which requires the parties to comply with all “Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.”<sup>30</sup> The Petitioners claim that section 35.15 of the Commission’s regulations, which governs cancellation or termination of any jurisdictional rate schedule, tariff, or service agreement, is one such “Applicable Law and Regulation.” Section 35.15 requires that:

When a rate schedule, tariff or service agreement required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule, tariff or service agreement or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule, tariff, or service agreement . . . at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect.<sup>31</sup>

11. The Petitioners argue that section 35.15 applies here because a conforming LGIA reported in an EQR is “on file” with the Commission and does not “terminat[e] by its own terms” when an interconnection customer does not consent to termination, instead requiring a notice of termination to be filed.<sup>32</sup> The Petitioners also argue that the Commission confirmed in Order No. 2003-A that terminations of conforming LGIAs for breach of contract must be filed with the Commission.<sup>33</sup>

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<sup>28</sup> *Id.* (quoting 16 U.S.C. § 824d(d)).

<sup>29</sup> *Id.* at 13 (citing 18 C.F.R. § 35.1 (2019); *Niagara Mohawk Power Corp.*, 77 FERC ¶ 61,224, at 61,899–900 (1996)).

<sup>30</sup> *Id.* at 8, 11, 23.

<sup>31</sup> *Id.* at 15-16 (quoting 18 C.F.R. § 35.15(a) (2019)).

<sup>32</sup> *Id.* at 16-17.

<sup>33</sup> *Id.* at 16 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at P 201).

12. Regarding their final requested declaration, the Petitioners stress the need for transmission providers to post accurate information in their reports to the Commission, specifically EQRs and postings made to OASIS. The Petitioners justify the need for this broad declaration by explaining that Duke’s public termination of the Reidsville LGIA on its EQR and OASIS has caused “significant and ongoing competitive harm” to the Petitioners.<sup>34</sup> The Petitioners urge the Commission to prevent recurrence of this kind of damage by declaring that a transmission provider may only publicly announce the cancellation of a conforming LGIA after a notice of cancellation has been submitted to and approved by the Commission.<sup>35</sup>

### **III. Notice of Filing and Responsive Pleadings**

13. Notice of the Petitioners’ filing was published in the *Federal Register*, 84 Fed. Reg. 63,871 (Nov. 19, 2019), with interventions and protests due on or before December 9, 2019. The North Carolina Electric Membership Corporation, the National Rural Electric Cooperative Association, and Duke filed timely motions to intervene.

14. On December 9, 2019, Duke filed a protest. On December 26, 2019, the Petitioners filed an answer to Duke’s protest. On January 8, 2020, Duke filed an answer to the Petitioners’ answer. On January 24, 2020, the Petitioners filed a request for expedited action.

#### **A. Duke’s Protest**

15. Duke agrees that the Commission should address the merits of the Petition to ensure that, in the future, there is no doubt that termination according to the plain language of a termination provision of an unfiled, conforming LGIA is permitted without filing a notice of termination with the Commission.<sup>36</sup> Duke argues that the Commission has special expertise in LGIA matters and that, because the contractual provisions here are boilerplate LGIA provisions, there is a need for uniformity of interpretation of LGIA provisions “across the industry.”<sup>37</sup> Duke adds that Commission guidance on this topic

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<sup>34</sup> *Id.* at 19.

<sup>35</sup> *Id.*

<sup>36</sup> Protest at 4-6.

<sup>37</sup> *Id.* at 4-5.

will help prevent future LGIA cancellation issues that could affect the entire interconnection queue, as well as the transmission provider.<sup>38</sup>

16. Duke argues that the Commission should reject the Petitioners' first requested declaration as overbroad. According to Duke, the Commission exercised its exclusive jurisdiction when it drafted and approved the *pro forma* LGIA termination provision.<sup>39</sup> Duke also opposes the Petitioners' first requested declaration based on Duke's belief that the request is motivated by the Petitioners' misconception that Duke, by initiating a separate claim for damages in state court, has asked a state court to determine whether the rates contained in the Reidsville LGIA are just and reasonable.<sup>40</sup> Duke rebuts this argument, stating that its right to collect payments due under the LGIA is independent of its right to terminate the LGIA.<sup>41</sup>

17. Duke argues that the Commission should reject the Petitioners' second requested declaration because it is incorrect as a matter of law. Duke disagrees with the Petitioners' assertion that Duke failed to follow Commission procedure for terminating the Reidsville LGIA. Duke cites the Reidsville LGIA's default and termination provisions and argues that it appropriately terminated the Reidsville LGIA pursuant to those terms based on the Petitioners' breach of the payment obligation and subsequent failure to cure.<sup>42</sup> Duke contends that the phrase "Applicable Laws and Regulations applicable to such termination," as stated in article 2.3.3 of the *pro forma* LGIA, recognizes that which laws and regulations apply could differ from termination to termination, and that there are instances in which no termination filing is required.<sup>43</sup> Although Duke agrees with the Petitioners that "Applicable Laws and Regulations applicable to such termination" includes section 35.15 of the Commission's regulations, Duke interprets the provision differently. Duke contends that, pursuant to section 35.1 of the Commission's regulations, conforming agreements like the Reidsville LGIA are not required to be on file and therefore section 35.15 does not apply.<sup>44</sup> Duke also provides its analysis of case law finding that section 35.15 does not apply to the termination of market-based rate

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<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.* at 25.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 14.

<sup>43</sup> *Id.* at 15-16.

<sup>44</sup> *Id.* at 17 (citing 18 C.F.R. § 35.1).

agreements not required to be on file with the Commission.<sup>45</sup> Duke adds that section 35.15 also does not apply because the Reidsville LGIA terminated by its own terms when the Petitioners failed to cure their default.

18. Duke disagrees with the Petitioners' interpretation of Order No. 2003-A. Referencing the case law Duke cites to support its arguments regarding section 35.15, Duke argues that Order No. 2003-A must be harmonized with the "surrounding body of case law," not read as contrary to it.<sup>46</sup> Duke argues that the Commission has utilized its discretion to instruct public utilities that some contracts shall not be filed but are instead to be reported through EQRs, and the termination of those agreements is valid without a notice of termination filing.<sup>47</sup> Duke adds that the Petitioners' reading of Order No. 2003-A would inappropriately limit the meaning of "expiration" as used therein to mean only a contract that has "ended by its own terms."<sup>48</sup>

19. Dukes argues that the Commission should reject the Petitioners' third requested declaration because it is incorrect as a matter of law.<sup>49</sup> Duke agrees that a transmission provider should not knowingly announce that an LGIA has been terminated before it has been terminated, but argues that granting the Petitioners' request—requiring a transmission provider to receive Commission approval before posting the termination of a conforming LGIA terminated for breach of contract to its EQR or on its OASIS—would create a new rule contrary to the existing termination provisions in the Commission's *pro forma* LGIA.<sup>50</sup>

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<sup>45</sup> *Id.* at 2-3, 17-20 (citing *S. Co. Energy Mktg., L.P.*, 84 FERC ¶ 61,199, at 61,986 (1998), *reh'g denied*, 86 FERC ¶ 61,131, at 61,457 (1999), *aff'd sub nom Power Co. of Am., L.P. v. FERC*, 245 F.3d 839 (D.C. Cir. 2001); *City of Santa Clara v. Enron Power Mktg., Inc.*, 110 FERC ¶ 61,281, at PP 29, 30 (*Santa Clara*), *order on reh'g*, 112 FERC ¶ 61,280 (2005); *Vt. Pub. Power Supply Auth. v. PG&E Energy Trading Power, L.P.*, 104 FERC ¶ 61,185, at P 19 (2003)).

<sup>46</sup> Protest at 23.

<sup>47</sup> *Id.* at 24 (citing *Santa Clara*, 110 FERC ¶ 61,281 at P 28 n.24).

<sup>48</sup> *Id.* at 22.

<sup>49</sup> *Id.* at 26.

<sup>50</sup> *Id.* at 27.

**B. The Petitioners' Answer**

20. In response to Duke, the Petitioners first argue that article 2.3.3 of the *pro forma* LGIA should not be interpreted to mean that the laws and regulations applicable to terminations could differ from termination to termination. Rather, the Petitioners contend that article 2.3.3 requires precisely what its plain language states—that a notice of termination be filed with the Commission for all LGIA terminations. The Petitioners contend that Duke's interpretation of article 2.3.3 inappropriately relieves transmission providers from having to meet their obligation to file notices of termination when seeking to terminate conforming LGIAs and is “rooted in a misconception about the simplified filing process the Commission has provided for the initial filing of conforming LGIAs.”<sup>51</sup>

21. With regard to Duke's interpretation of section 35.15 of the Commission's regulations, the Petitioners assert that, for public utilities with standard forms of agreements in their tariffs, the filing requirements of section 205 of the FPA are satisfied by the standard forms of agreements and by the electronic filing of EQRs.<sup>52</sup> According to the Petitioners, so long as a transmission provider has a standard form of LGIA filed with the Commission, listing conforming LGIAs in its EQR satisfies the Commission's filing requirement for section 35.15. The Petitioners furthermore disagree with Duke's interpretation of section 35.1 of the Commission's regulations.<sup>53</sup> The Petitioners argue that section 35.1 means only that individual filings of conforming LGIAs are not required and stress that the regulation has no bearing on whether the conforming LGIA should be deemed to be on file with the Commission.<sup>54</sup> The Petitioners warn that a contrary interpretation would allow transmission providers to unilaterally terminate conforming LGIAs without opportunity for customer objection or regulatory oversight.<sup>55</sup>

22. The Petitioners state that Duke misapprehends what it means for a conforming LGIA to “terminat[e] by [its] own terms,” as applied by section 35.15 and Order Nos. 2001, 2003, and 2003-A.<sup>56</sup> The Petitioners dispute Duke's assertion that termination pursuant to a contractual right amounts to a termination by its own terms and does not require Commission approval. The Petitioners maintain that Order

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<sup>51</sup> Petitioners Answer at 7.

<sup>52</sup> *Id.* at 8-9.

<sup>53</sup> *Id.* at 9.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 10-12.

<sup>56</sup> *Id.*

No. 2001 requires that a notice of termination need not be filed only when an agreement has expired and when the interconnection customer consents to the termination.<sup>57</sup> The Petitioners also claim that Order Nos. 2003 and 2003-A clearly establish that “termination by its own terms” refers only to expiring conforming LGIAs.<sup>58</sup>

**C. Duke’s Answer**

23. Starting with the Petitioners’ argument concerning Commission oversight of the termination of conforming LGIAs, Duke argues that the Commission already exercised regulatory oversight and considered customer objections when it approved the *pro forma* LGIA and again when it accepted Duke’s standard form of LGIA in Duke’s tariff.<sup>59</sup> Duke adds that the Petitioners have harmed other customers in Duke’s interconnection queue by creating uncertainty as to whether the Petitioners remain in the queue and urges the Commission to address the merits of the Petition and clarify the rights of those customers.<sup>60</sup>

24. Duke also claims that the Petitioners provided no evidence or basis for concluding that the phrase “Applicable Laws and Regulations” should be read as the Petitioners suggest.<sup>61</sup> Moreover, Duke asserts that there is no basis within the regulatory text of section 35.15 to support the Petitioners’ interpretation.<sup>62</sup> Duke maintains that the Petitioners mischaracterize the meaning of Order No. 2001 by interpreting the phrase “terminate by its own terms” to mean “expire” and insists that the regulatory reach of “terminate by its own terms” is broader than the Petitioners claim. Finally, Duke states that if the Petitioners wanted to challenge an imbalance in the Commission requirements for filing of notices of termination, it should have done so when the Commission enacted those regulations.<sup>63</sup>

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<sup>57</sup> *Id.* at 12, 3.

<sup>58</sup> *Id.* at 11 n.35.

<sup>59</sup> Duke Answer at 2-3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.* at 4-5.

<sup>63</sup> *Id.* at 13.

#### IV. Discussion

##### A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We accept Duke's and the Petitioners' answers because they have provided information that assisted us in our decision-making process.

##### B. Commission Determination

27. As discussed below, we grant the Petition, in part. Rule 207(a)(2) of the Commission's Rules of Practice and Procedure provides that a "person must file a petition when seeking . . . [a] declaratory order or rule to terminate a controversy or remove uncertainty."<sup>64</sup> Under this standard, we find that it is a proper exercise of our discretion to issue a declaratory order in this proceeding to remove uncertainty regarding the termination provisions in the Commission's *pro forma* LGIA. In issuing this declaratory order, we seek to promote regulatory certainty and a uniform interpretation of this aspect of the *pro forma* LGIA for all public utilities subject to the Commission's jurisdiction.<sup>65</sup> As requested, we do not address the merits of any breach of contract claim concerning the Reidsville LGIA, but rather grant the Petition, in part, by confirming the Commission's exclusive jurisdiction over the termination of conforming LGIAs, clarifying a transmission provider's responsibility to file a notice of termination with the Commission when terminating a conforming LGIA over an interconnection customer's objection, and providing guidance on EQR and OASIS postings, as discussed below.<sup>66</sup>

28. First, we grant the Petition with regard to the Petitioners' first requested declaration and declare that the Commission has exclusive jurisdiction to determine whether a transmission provider may terminate an LGIA. As explained when the Commission established the *pro forma* LGIA in Order No. 2003, the Commission's

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<sup>64</sup> 18 C.F.R. § 385.207(a)(2) (2019).

<sup>65</sup> See, e.g., *S. Cal. Edison Co.*, 151 FERC ¶ 61,273, at P 24 (2015) (issuing a declaratory order concerning the limitation on damages provisions contained in the *pro forma* LGIA).

<sup>66</sup> See *id.* (declining to address the merits of any breach of contract claim).

exclusive jurisdiction over the standard form LGIA in a transmission provider's open access transmission tariff derives from the Commission's authority to remedy undue discrimination and preferences under sections 205 and 206 of the FPA.<sup>67</sup> The proper termination of such agreements likewise falls squarely within the Commission's exclusive jurisdiction. Although Duke opposes this requested declaration on the basis that the request is overbroad, Duke does not dispute the Commission's exclusive jurisdiction.

29. As for the Petitioners' second requested declaration—that a transmission provider seeking to terminate an LGIA must receive Commission approval to do so, utilizing the process provided by the Commission in 18 C.F.R. Part 35—we grant the Petition, in part. Specifically, we find, based on the requirements of Order No. 2001, as applied to the *pro forma* LGIA adopted in Order No. 2003 and its progeny, that a transmission provider seeking to terminate a conforming LGIA over an interconnection customer's objection must receive Commission approval to do so. The Petitioners and Duke focus on the “Applicable Laws and Regulations” to which article 2.3.3 of the *pro forma* LGIA refers. Although they argue extensively about whether section 35.15 of the Commission's regulations is an “Applicable Law and Regulation” that applies to the termination of conforming LGIAs, we find that Order No. 2003-A controls. When interpreting two agency regulations, “the specific governs the general.”<sup>68</sup> Consistent with this principle, the Commission's findings in Order No. 2003-A that apply the filing requirements of Order No. 2001 to the *pro forma* LGIA, in particular, are the relevant requirements that dictate when a filing is required to terminate a conforming LGIA, rather than the more general section 35.15 of the Commission's regulations.

30. In particular, Order No. 2003-A confirmed that Order No. 2001 “eliminated the requirement that parties to a conforming agreement that expires by its own terms file a notice of cancellation or a cancelled tariff sheet.”<sup>69</sup> Order No. 2003-A added that “any other modification to a conforming agreement (including terminations caused by something other than expiration of the agreement) must be submitted to the Commission unless the interconnection customer agrees to the modification.”<sup>70</sup> In clarifying this point, Order No. 2003-A cited to Order No. 2001 language stating that “[a]ll proposals to change the terms of an agreement without the consent of the customer must be filed with

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<sup>67</sup> Order No. 2003, 104 FERC ¶ 61,103 at P 4.

<sup>68</sup> See, e.g., *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007).

<sup>69</sup> Order No. 2003-A, 106 FERC ¶ 61,220 at P 201.

<sup>70</sup> *Id.*

the Commission.”<sup>71</sup> Pursuant to Order No. 2003-A, the contested termination of a conforming LGIA for breach of contract is a “termination caused by something other than expiration of the agreement” and accordingly must be submitted to the Commission.<sup>72</sup> By the same token, a conforming LGIA only terminates by its own terms if: (1) all parties consent to the termination; or (2) the LGIA is not renewed before the expiration date listed in the agreement. We therefore grant the Petition, in part, and declare that, based on the requirements of Order No. 2001, as applied to the *pro forma* LGIA in Order No. 2003 and its progeny, a transmission provider seeking to terminate a conforming LGIA over an interconnection customer’s objection must receive Commission approval to do so.

31. Finally, with regard to the Petitioners’ third requested declaration, we confirm that a transmission provider may not knowingly post inaccurate information either on its OASIS or in reports to the Commission.<sup>73</sup> Consistent with our above determination that a transmission provider seeking to terminate a conforming LGIA over an interconnection customer’s objection must receive Commission approval to do so, we grant this aspect of the Petition and declare that a transmission provider may not announce the termination of a conforming LGIA over an interconnection customer’s objection (either on its OASIS or in reports to the Commission) unless and until the Commission has approved the termination.

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<sup>71</sup> *Id.* P 201 n.43 (citing Order No. 2001, 99 FERC ¶ 61,107 at P 249).

<sup>72</sup> Order No. 2003-A, 106 FERC ¶ 61,220 at P 201.

<sup>73</sup> 16 U.S.C. § 824u (“No entity . . . shall willfully and knowingly report any information relating to . . . the availability of transmission capacity, which [] the . . . entity knew to be false at the time of reporting, to a Federal Agency with intent to fraudulently affect the data being compiled by the Federal agency.”); 18 C.F.R. § 385.2005(a)(2)(ii) (2019) (“The signature on a filing constitutes a certificate that: . . . (ii) [t]he contents are true as stated, to the best knowledge and belief of the signer . . .”).

The Commission orders:

The Petition is hereby granted, in part, as discussed in the body of the order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.