

155 FERC ¶ 61,113  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

New York Independent System Operator, Inc.  
Niagara Mohawk Power Corporation

Docket No. ER16-975-000

ORDER REJECTING NOTICE OF TERMINATION

(Issued April 29, 2016)

1. On February 19, 2016, as amended on March 2, 2016,<sup>1</sup> pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> New York Independent System Operator, Inc. (NYISO) and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) (collectively, Parties) filed a proposed notice of termination of the Small Generator Interconnection Agreement (Agreement) among NYISO, National Grid, and Green Power Energy LLC (Green Power).<sup>3</sup> As discussed below, we reject Parties' proposed notice of termination.

**I. Background**

2. Green Power's Cody Road Project (Project) is a 10 MW wind facility to be located in Madison County, New York. The Project will interconnect to National Grid's transmission system. NYISO initiated its Small Generator Interconnection Procedures for the Project in 2005. On August 20, 2009, NYISO, National Grid, and Green Power executed the Agreement for the Project.

3. Parties note that the Project has not been built and, according to the original Agreement schedule, the Project was to be in commercial operation by October 2010.

<sup>1</sup> An amended notice of termination was submitted because Green Power Energy LLC had not been served with a copy of the February 19, 2016 filing.

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> The Agreement is designated as Service Agreement No. 1483 under the NYISO Open Access Transmission Tariff (OATT). *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER09-1693-000 (October, 13, 2009) (delegated letter order).

Parties state that they and Green Power mutually agreed to extend the commercial operation date three times, with the third extension being to December 2013. Parties also state that, after Green Power failed to meet this date, Green Power submitted a request to NYISO for further extension of the commercial operation date to December 2014, and NYISO denied this request and removed the Project from its interconnection queue.<sup>4</sup>

4. Subsequently, on April 30, 2014, the Commission issued an order granting Green Power's request for a waiver of the commercial operation date requirements of Attachments X (Standard Large Facility Interconnection Procedures) and Z (Small Generator Interconnection Procedures) in the NYISO OATT, extending the commercial operation date to July 30, 2015 and directing NYISO to restore Green Power's position in the interconnection queue.<sup>5</sup> Parties state that, on July 30, 2015, NYISO granted Green Power an additional extension of the commercial operation date from July 2015 to July 2016.

## **II. Notice of Termination**

5. Parties state that they filed the proposed notice of termination of the Agreement because Green Power failed to pay its invoices and is in default under the Agreement. Parties state that, on September 14, 2015, National Grid invoiced Green Power for \$253,641.51 in costs under the Agreement.<sup>6</sup> Parties assert that Green Power failed to pay this invoice within 30 calendar days after receiving the invoice, as required by Article 6.1.1 of the Agreement. Parties state that, in accordance with Article 7.6.1 of the Agreement, National Grid gave written notice to Green Power, by a letter dated November 16, 2015, concerning Green Power's breach of the Agreement (November 16 Notice).<sup>7</sup> Parties explain that the November 16 Notice stated that if Green Power did not cure the breach within the 60 calendar-day period required by Article 7.6.1 of the Agreement,<sup>8</sup> the non-defaulting parties would be entitled to exercise all remedies for the

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<sup>4</sup> Parties February 19, 2016 Filing at 2.

<sup>5</sup> *Green Power Energy LLC*, 147 FERC ¶ 61,084 (2014).

<sup>6</sup> In addition, Parties assert that Green Power failed to pay invoices submitted in October 2015 for the amount of \$46,446.73 in principal owed, and in November 2015 for the amount of \$22,793.89 in principal owed. Parties state that National Grid gave additional written notice of breach to Green Power concerning these overdue amounts.

<sup>7</sup> Article 7.6.1 provides, in relevant part: "Upon a Breach, the non-Breaching Party shall give written notice of such Breach to the Breaching Party. Except as provided in article 7.6.2, the Breaching Party shall have 60 calendar days from receipt of the Breach Notice within which to cure such Breach. . . and, if cured within such time, the Breach specified in such notice shall cease to exist."

breach as provided for or contemplated in the Agreement, including, without limitation, termination of the Agreement.

6. Parties state that Green Power neither responded nor paid the total overdue amount referenced in the November 16 Notice within the 60 calendar-day period required by Article 7.6.1 of the Agreement and is, therefore, in breach of the Agreement. Parties state that, in accordance with Article 7.6.2 of the Agreement, on February 1, 2016, they sent a letter to Green Power in which Parties provided written notice to Green Power of its default, and Parties' termination of the Agreement.<sup>9</sup> Parties state that, although not required to do so, National Grid indicated that it would not file to terminate the Agreement if Green Power fully cured its breach by February 18, 2016, and they note that Green Power failed to do so.<sup>10</sup> Parties assert that, because of Green Power's default of the Agreement, Parties have the right, under Articles 3.3<sup>11</sup> and 7.6.2, to terminate the Agreement upon the Commission's acceptance of this notice of termination for filing. Parties state that, under Article 3.3 of the Agreement, a notice of termination of the Agreement will not become effective until the Commission accepts the notice of termination filing.<sup>12</sup>

7. Parties explain that the Commission's precedent supports acceptance of a notice of termination of an agreement if the applicant demonstrates that the proposed termination is not unjust, unreasonable, unduly discrimination or preferential, or if it is consistent with the public interest.<sup>13</sup> Parties assert that Green Power's default of its payment obligations under the Agreement meets that standard.<sup>14</sup>

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<sup>8</sup> *Supra* note 7.

<sup>9</sup> Section 7.6.2 states, in relevant part: "If a Breach is not cured as provided in this article, . . . a Default shall exist and the non-defaulting Parties acting together shall thereafter have the right to terminate this Agreement, in accordance with article 3.3 hereof, by written notice to the Defaulting Party at any time until cure occurs . . . ."

<sup>10</sup> Parties February 19, 2016 Filing at 5.

<sup>11</sup> Article 3.3 states that: "No termination shall become effective 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 Agreement (if required), which notice has been accepted for filing by FERC."

<sup>12</sup> Parties February 19, 2016 Filing at 3.

<sup>13</sup> *Id.* at 3 & n.8 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,198, at P 28 (2014) (finding that Commission precedent supports acceptance of a notice of termination if the applicant demonstrates that the proposed termination is not unjust, unreasonable, unduly discriminatory, or preferential, or if it is consistent with the

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

8. Notice of Parties' February 19, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 9846 (2016), with interventions and protests due on or before March 11, 2016. Notice of Parties' March 2, 2016 amended filing was published in the *Federal Register*, 81 Fed. Reg. 12,726 (2016), with interventions and protests due on or before March 16, 2016.

9. On March 16, 2016, Green Power filed a timely motion to intervene and protest. On March 31, 2016, National Grid filed an answer. On April 1, 2016, NYISO submitted an answer in the form of comments.<sup>15</sup> On April 8, 2016, Green Power filed an answer to National Grid's and NYISO's answers.

#### **A. Green Power Protest**

10. Green Power states that, on March 3, 2016, it paid \$254,328.45 to National Grid to cure its breach referenced in the November 16 Notice concerning its September 2015 invoice. Green Power further states that, on March 16, 2016, it paid the remaining balance of approximately \$69,000, plus interest, that was due under the Agreement for the work described in the October and November 2015 invoices. As no amount remains due, Green Power argues that no breach exists under the Agreement. Therefore, Green Power contends that the Parties' request to terminate the Agreement is moot, and the Commission should reject the notice of termination of the Agreement, consistent with the Commission's precedent.<sup>16</sup>

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public interest)).

<sup>14</sup> *Id.* at 5 n.15 (citing, e.g., *Pacific Gas and Elec. Co.*, 146 FERC ¶ 61,120 (2014) (accepting notice of termination of generator interconnection agreement due to default of interconnection customer in failing to provide financial security as required by that agreement)).

<sup>15</sup> Although styled as comments, we treat NYISO's submission as an answer. We evaluate a pleading based on its substance, rather than its style or form. *See, e.g., Stowers Oil & Gas Co., et al. v. N. Natural Gas Co., Div. of Internorth, Inc.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) ("Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.").

<sup>16</sup> Green Power Protest at 3 & n.3 (citing *Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,008 (2011) (*Lakeswind I*), order on reh'g, 141 FERC ¶ 61,097, at P 34 (2012) (rejecting notice of termination filing, finding no projects would be harmed by Lakeswind's extension of its milestones, and Lakeswind made good faith efforts to cure its breach, including payment of security for transmission owner interconnection facilities sufficient to satisfy the transmission owner)).

11. Green Power argues that the Commission's *Lakeswind I* precedent demonstrates that it is unjust and unreasonable, and not consistent with the public interest, to terminate an interconnection agreement where the customer has resolved its breach of the agreement, even after a notice of termination is filed with the Commission.<sup>17</sup> Green Power also argues that Article 7.6.2 of the Agreement allows the non-defaulting parties to terminate the Agreement "until cure occurs." For these reasons, Green Power asserts that Parties no longer have the right to terminate the Agreement.

12. Furthermore, Green Power asserts that the Commission should reject the notice of termination, because Parties failed to demonstrate that termination of the Agreement is not unjust, unreasonable, unduly discriminatory, or preferential or otherwise unlawful, or is in the public interest. Green Power contends that it would be unjust and unreasonable to terminate the Agreement for a breach that it has cured and, under these circumstances, it would be contrary to the public interest to terminate the interconnection agreement for a wind farm, like Green Power, that is proceeding to commercial operation. In this regard, Green Power states that it is continuing to work diligently on the Project, noting that it was a winning bidder for New York State's Renewable Portfolio Standard program and has an executed contract with the New York State Energy Research and Development Authority for renewable energy certificates.<sup>18</sup> Green Power also states that it has executed a hedge agreement with a power broker, and a turbine supply agreement and balance of plant contract for the Project's construction.<sup>19</sup>

13. While the Parties note the ongoing delays in the Project's development, Green Power asserts that the Project's prior development history is irrelevant to the issues before the Commission in the notice of termination.<sup>20</sup> Green Power also explains that its payment of the 2015 invoices was delayed due to "serious negotiations" with two potential investors. According to Green Power, it continually informed National Grid about the negotiations and, on February 18, 2016, in response to National Grid's demand for payment of the 2015 invoices, Green Power requested until March 3, 2016 to make payment to provide time for an expected project financing to close.<sup>21</sup> Green Power also asserts that while it was making a good faith effort to secure additional funding and provide the required payment, National Grid did not respond to Green Power's message regarding the proposed March 3, 2016 payment.

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<sup>17</sup> *Id.* at 3-4.

<sup>18</sup> *Id.* at 5.

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

<sup>20</sup> *Id.* at 2-3.

<sup>21</sup> *Id.* at 6.

14. In addition, Green Power notes that the work that National Grid performed, as detailed in the 2015 invoices, resulted in total costs that were well in excess of what it anticipated spending to achieve the amount of progress that has occurred under the Agreement.<sup>22</sup> Green Power explains that it simply did not anticipate such costs overruns by National Grid to occur.

**B. National Grid and NYISO Answers**

15. National Grid asserts that the Commission should accept the notice of termination because Green Power has repeatedly failed, and continues to fail, to satisfy its obligations under the Agreement to timely pay its invoices. National Grid states that, although the Green Power paid its 2015 invoices after Parties filed the notice of termination with the Commission, Green Power failed to pay those invoices within the 30 days required by Article 6.1.1 of the Agreement, it failed to cure the breach within the 60-day period required by Article 7.6.1 of the Agreement, and it failed to respond to the November 16 Notice of breach.<sup>23</sup> In addition, National Grid states that, on February 11, 2016, it issued invoices to Green Power for additional costs totaling \$170,165.85, and Green Power has failed to make payment by the March 12, 2016 due date.<sup>24</sup> While Green Power has now paid in full the amounts that were due under the 2015 invoices, National Grid states that, given Green Power's pattern of behavior, National Grid has no confidence that Green Power will make payments in the future.<sup>25</sup>

16. While Green Power relies on *Lakeswind I* to argue that it is not just and reasonable, and not consistent with the public interest, to terminate an interconnection agreement where the customer resolved its breach, even once a notice of termination has been filed,<sup>26</sup> National Grid argues that, in reality, the Commission decides whether to accept a notice of termination based on the particular circumstances in each case, rather than applying a blanket rule in all cases.<sup>27</sup> It therefore argues that the *Lakeswind I* does not dictate that the Commission automatically reject a notice of termination if the customer has resolved its breach. Furthermore, National Grid points out that Green

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<sup>22</sup> *Id.* at 5.

<sup>23</sup> National Grid Answer at 4.

<sup>24</sup> *Id.* Parties note that the February 2016 invoices were not included in the notice of termination filing because Green Power had until the March 12, 2016 due date to pay them without being in breach of the Agreement. *Id.* at 4 n.6.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> *Id.* at 5.

Power has failed to pay its February 2016 invoices, and thus has not resolved its breach of the Agreement.

17. National Grid also asserts that Green Power's attempts to explain its failure to pay the 2015 invoices are without merit. National Grid notes that Green Power argues that it did not anticipate that National Grid's actual costs would be higher than its estimates.<sup>28</sup> National Grid points out that the Agreement obligates Green Power to timely pay invoices for all actual costs, not just estimates of costs, and Green Power has not disputed those actual costs.<sup>29</sup> National Grid also emphasizes that the Agreement obligates Green Power to pay the actual costs of interconnection facilities, as well as distribution upgrades and system upgrades,<sup>30</sup> and all of the invoices included actual costs for interconnection facilities and system upgrade facilities. National Grid further contends that the Agreement made clear that the actual costs of system upgrade facilities could be significantly greater than the actual costs of the interconnection facilities.<sup>31</sup>

18. National Grid argues that, contrary to Green Power's assertions, the long development history of the Project is directly relevant to the Commission's consideration of whether to accept the notice of termination, noting Green Power's repeated extensions on its commercial operation date. Moreover, National Grid asserts that, given Green Power's lack of material progress, National Grid does not believe that the Project can achieve commercial operation in the next four months.<sup>32</sup>

19. National Grid argues that the Commission's acceptance of the notice of termination is appropriate not only to address Green Power's repeated breach of its contractual obligations, but also to end the years-long cycle of Green Power failing to take the steps necessary to achieve the milestones in its Agreement.<sup>33</sup> National Grid also argues that the resulting extensions are now harming generators lower in the NYISO

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<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 5-6.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> *Id.* at 6 & n.12 (stating that while the total estimated cost of interconnection facilities under the Agreement is \$320,400, the total estimated cost of system upgrade facilities under the Agreement is \$6,674,000).

<sup>32</sup> *Id.* at 8.

<sup>33</sup> National Grid notes that the repeated extensions of the commercial operation date have prevented Parties from successfully negotiating with Green Power to amend the Agreement to reflect updated and achievable milestones dates, including, but not limited to, the commercial operation date. *Id.* at 8 n.15.

interconnection queue, and the Project presents uncertainty to other projects in the interconnection queue because it is uncertain whether the Project will become a reality, and if so, when.<sup>34</sup>

20. National Grid asserts that a Commission decision not to accept the notice of termination would likely mean that NYISO, National Grid, and the Commission would have to continue to address recurring issues regarding the Project in the future. Parties request that, in the event the Commission issues such a decision, the Commission should direct Green Power to file, every three months, a report documenting its progress toward meeting the milestones set forth in the Agreement and achieving commercial operation for the Project.<sup>35</sup>

21. NYISO states that it shares National Grid's concerns regarding Green Power's breach of the Agreement, and it submits that termination of the Agreement is warranted.<sup>36</sup> It notes that Green Power's failure to pay its invoices is undisputed, and that non-payment of invoices is a breach of the Agreement and, unless cured, results in default under the Agreement. NYISO therefore asserts that National Grid and NYISO were within their rights to terminate the Agreement in accordance with Article 3.3 of the Agreement.

22. NYISO also states that the current commercial operation date of July 2016 does not appear feasible, and Green Power has yet to demonstrate progress that would permit NYISO to grant another extension of commercial operation date.<sup>37</sup> NYISO notes that termination of the Agreement does not preclude the Green Power project from moving forward, because Green Power is free to submit a new interconnection request in the event the Commission grants the requested termination. NYISO states that the time within which the requisite interconnection studies can be completed under a new interconnection request is largely driven by Green Power. NYISO also notes that NYISO's Small Generator Interconnection Procedures provide flexibility in the study process and even allow the initial Interconnection Feasibility Study to be waived upon agreement of all the parties.<sup>38</sup>

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<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> NYISO Answer at 2.

<sup>37</sup> NYISO states that, under its OATT, Green Power must demonstrate (via an officer certification) that it has made reasonable progress against milestones set forth in the Agreement, in order to obtain further extensions of the commercial operation date. *Id.* at 3 n.4.

<sup>38</sup> *Id.* at 3.



**C. Green Power Answer**

23. Green Power argues that the sole basis for the proposed notice of termination is the payment of the 2015 invoices.<sup>39</sup> Green Power states that National Grid's answer acknowledges that the 2015 invoices have been paid in full, and, as such, no invoices cited in the proposed notice of termination remain outstanding. Green Power therefore asserts that the Commission should reject the notice of termination consistent with its *Lakeswind I* precedent.<sup>40</sup>

24. Green Power disagrees with National Grid's contention that Green Power's recurring development delays should provide additional support for the Commission to accept the notice of termination. Green Power points out that these delays were addressed by the mutual agreement of Green Power, National Grid and NYISO, and should have no bearing on Green Power's current efforts to develop the Project.<sup>41</sup> Additionally, Green Power asserts that National Grid's argument that it does not expect Green Power to make timely payments on future invoices should be dismissed because National Grid is essentially seeking a prospective relief. In particular, Green Power argues that the Commission should reject the request for relief based on speculation regarding future events, consistent with the Commission's decision in *Merricourt Power Partners, LLC*.<sup>42</sup>

25. Green Power also argues that the Commission should reject National Grid's request that the Commission accept the notice of termination based on Green Power's non-payment of the February 2016 invoices, because the February 2016 invoices are beyond the scope of this notice of termination. Green Power argues that, under Article 7.6.2 of the Agreement, default does not occur until the applicable cure period under the Agreement has expired, and the cure period for paying the amounts under the February 2016 invoices has not yet expired; therefore, any relief to National Grid based on these invoices is premature.<sup>43</sup> Green Power also notes that it has disputed a portion of the amounts National Grid claims are due under the February 2016 invoices. Green Power

<sup>39</sup> Green Power Answer at 2-3 (citing Parties February 19, 2016 Filing at 4-5).

<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> *Id.* at 3 (citing *Merricourt Power Partners, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,082 (2015)). Green Power explains that, in *Merricourt Power Partners, LLC*, the Commission denied as premature an interconnection customer's complaint to extend a commercial operation date that was approaching, but had not yet passed. *Id.*

<sup>43</sup> *Id.* at 5.

states that, on April 7, 2016, it sent National Grid an email disputing payment in the amount of \$123,633.27 as constituting a request for double payment.<sup>44</sup> Green Power states that it has agreed to pay the remaining amounts owing under the February 2016 invoices, and to place \$123,633.27 in escrow.<sup>45</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), Green Power's timely, unopposed motion to intervene serves to make it a party to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers by National Grid, NYISO, and Green Power because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

28. As discussed below, we find that Green Power has cured its breach and default under the Agreement by paying its 2015 invoices to National Grid and, at this time, Green Power still has the contractual right under the Agreement to cure its failure to timely pay the February 2016 invoices. We therefore reject Parties' proposed notice of termination.

29. As to the 2015 invoices, it is undisputed that Green Power has now paid those invoices. Nonetheless, National Grid argues that the Commission should accept the notice of termination because Green Power failed to cure the breach within the 60-day period required by Article 7.6.1 of the Agreement.<sup>46</sup> National Grid's interpretation, however, ignores other relevant provisions of the Agreement that govern the circumstances raised by this proceeding. Specifically, Articles 7.6.2 and 3.3 of the Agreement define the scope of National Grid's and NYISO's rights to terminate the Agreement based on the 2015 invoices. Article 7.6.2 provides, in relevant part, that:

If a Breach is not cured as provided in this article, . . . a Default shall exist and the non-defaulting Parties acting together shall thereafter have the right to terminate

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Supra* note 7.

this Agreement, *in accordance with article 3.3 hereof*, by written notice to the Defaulting Party *at any time until cure occurs . . . .*<sup>47</sup>

Article 3.3 states that:

No termination shall become effective 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 Agreement (if required), *which notice has been accepted for filing by FERC.*<sup>48</sup>

Therefore, according to Articles 7.6.2 and 3.3 of the Agreement, National Grid and NYISO have the right to terminate the Agreement until Green Power cures its breach of the Agreement and the notice of termination filing does not become effective until accepted by the Commission. As noted above, Green Power cured the breach of the Agreement by paying the 2015 invoices while the notice of termination filing was still pending before us; therefore, we find that, in accordance with the terms of Articles 7.6.2 and 3.3 of the Agreement, National Grid and NYISO no longer have the right to terminate the Agreement based on the 2015 invoices.<sup>49</sup>

30. As to the February 2016 invoices, even if Green Power is in breach of the Agreement due to its failure to timely pay those invoices, Green Power has the contractual right, under Article 7.6.1 of the Agreement, to cure this breach within 60 calendar days from Green Power's receipt of the breach notice.<sup>50</sup> National Grid did not state whether it sent Green Power a breach notice with respect to Green Power's non-payment of the February 2016 invoices, which was due March 12, 2016. However, even if Green Power immediately sent Green Power a notice of breach on March 13, 2016, Green Power would have a contractual right, until May 12, 2016, to cure that breach. Accordingly, the proposed notice of termination is premature with respect to the February 2016 invoices.<sup>51</sup>

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<sup>47</sup> Agreement, Article 7.6.2 (emphasis added).

<sup>48</sup> Agreement, Article 3.3 (emphasis added).

<sup>49</sup> We note that while the Parties and Green Power dispute the applicability of *Lakeswind I* to this case, our finding here rests upon specific language in the Agreement, not the Commission's discussion in *Lakeswind I*. Also, notably, the Commission in *Lakeswind I* expressly limited its finding there to the circumstances in that case. *Lakeswind I*, 137 FERC ¶ 61,008 at P 30 (stating "based on the circumstances presented in this case, it would not be just and reasonable to terminate the GIA . . ."), *order on reh'g*, 141 FERC ¶ 61,097 at P 33 (stating "[a]s the Commission indicated in [*Lakeswind I*], the outcome in this proceeding is limited to the particular facts presented here.").

<sup>50</sup> *Supra* note 7.

31. We need not address the effect, if any, on the Agreement due to the delays in Green Power's commercial operation date, because we find that, under the Agreement, Green Power has cured its breach and default on the 2015 invoices and that it has a remaining contractual right to cure its breach of the 2016 invoices.<sup>52</sup> Our finding here is without prejudice to a new request to terminate the Agreement and remove the Project from the interconnection queue based on additional information or changed circumstances.

32. We emphasize that Article 10.3 of this Agreement states that any party may contact the Commission's Dispute Resolution Service for assistance in resolving a dispute.<sup>53</sup> We encourage the Parties and Green Power to consider the Commission's Dispute Resolution Service to assist them in resolving their disputes under the Agreement.

The Commission orders:

The notice of termination is hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>51</sup> In its answer, Green Power asserts its willingness to pay the February 2016 invoices, and to place a disputed amount from the February 2016 invoices in escrow.

<sup>52</sup> In any case, the Parties point to no provision in the Agreement indicating that a pattern of late payments alone provides a sufficient basis for termination.

<sup>53</sup> Article 10.3 of the Agreement states that if a dispute has not been resolved within two business days after receipt of the notice of dispute, any party may contact the Commission's Dispute Resolution Service for assistance in resolving the dispute. *See supra* note 3.

