

## **40.16 Forfeiture of Security/ Future Cost Responsibility**

### **40.16.1 Forfeiture of Security**

40.16.1.1 With the exception of the requirement in Section 40.15.2.9 that cash and Security shall be surrendered back to the issuing Interconnection Customer in connection with another Interconnection Customer's Security Posting Default, once an Interconnection Customer has accepted a Project Cost Allocation(s) or Revised Project Cost Allocation(s) in the Final Decision Round of the Final Decision Period or Additional SDU Study Decision Period, as the case may be, and paid cash or posted Security for that amount, such cash payment and Security shall be irrevocable and shall be subject to forfeiture as provided herein in the event that the Interconnection Customer that paid cash or posted the Security subsequently terminates or abandons development of its Project. Any additional cash or Security subsequently provided by an Interconnection Customer in response to a Cost Estimate Update required for the extension of its project's Commercial Operation Date pursuant to Section 40.6.3.5.3 shall also be irrevocable and subject to the Security forfeiture requirements in this Section 40.16.1.

40.16.1.1.1 For a Projects that accepted a Project Cost Allocation(s) or Revised Project Cost Allocation(s) in the Final Decision Round of the Final Decision Period for a Class Year Study or Additional SDU Study Decision Period completed prior to May 2, 2024, any cash and Security previously posted on a terminated Project will be subject to forfeiture to the extent necessary to defray the cost of the System Upgrade Facilities and System Deliverability Upgrades required for the Projects included in the Annual Transmission Reliability Assessment, Class Year Deliverability Study, or Additional SDU Study, as applicable, but only as described in Section 40.16 and its applicable subsections of this Attachment HH. If a Project's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Section

40.16.1.1.1 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner or Affected Transmission Owner, as applicable, to defray the costs of the affected upgrade, Interconnection Customer shall negotiate in good faith with the Connecting Transmission Owner or Affected Transmission Owner, as applicable, to replace the Security with cash or an alternative form of security that can be readily drawn on by the Connecting Transmission Owner or Affected Transmission Owner, as applicable, up to the amount required to satisfy Interconnection Customer's Security obligations, including defraying the costs of the affected upgrade. Connecting Transmission Owner or Affected Transmission Owner, as applicable, shall only be responsible for using Interconnection Customer's Security to defray the costs of an affected upgrade to the extent the Interconnection Customer has provided cash or Security in a form that the Connecting Transmission Owner or Affected Transmission Owner, as applicable, can readily draw on to defray such costs. Any additional cash or Security subsequently provided by an Interconnection Customer in response to a Cost Estimate Update required for the extension of its project's Commercial Operation Date pursuant to Section 40.6.3.5.3.3 shall also be irrevocable and subject to the Security forfeiture requirements in this Section 40.16.1.

40.16.1.1.2 For Projects that accepted a Project Cost Allocation(s) or Revised Project Cost Allocation(s) in the Final Decision Round of the Final Decision Period for a Class Year Study, Cluster Study or Additional SDU Study Decision Period after May 2, 2024, any cash and Security previously posted on a terminated Project will be subject to forfeiture to the extent necessary to defray the cost of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or Network Upgrade Facilities required for other projects evaluated in a Class Year Study, Cluster Study

under this Attachment HH, or in a study performed under OATT Section 3.7, OATT Section 3.9, or Attachment P to the OATT, the base cases of which included the Interconnection Customer's Project and its associated Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades, as applicable, as determined by the ISO upon withdrawal of the Interconnection Customer's Project, but only as described in Section 40.16.3 below. If a Project's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Section 40.16.1.1.2 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner or Affected Transmission Owner, as applicable, to defray the costs of the affected upgrade, Interconnection Customer shall negotiate in good faith with the Connecting Transmission Owner or Affected Transmission Owner, as applicable, to replace the Security with cash or an alternative form of security that can be readily drawn on by the Connecting Transmission Owner or Affected Transmission Owner, as applicable, up to the amount required to satisfy Interconnection Customer's Security obligations, including defraying the costs of the affected upgrade. Connecting Transmission Owner or Affected Transmission Owner, as applicable, shall only be responsible for using Interconnection Customer's Security to defray the costs of an affected upgrade to the extent the Interconnection Customer has provided cash or Security in a form that the Connecting Transmission Owner or Affected Transmission Owner, as applicable, can readily draw on to defray such costs. Any additional cash or Security subsequently provided by an Interconnection Customer in response to a Cost Estimate Update required for the extension of its project's Commercial Operation Date pursuant to Section 40.6.3.5.3.3 shall also be irrevocable and subject to the Security forfeiture requirements in this Section 40.16.1.1.2.

40.16.1.1.3 For Small Generating Facilities that (i) accepted its Small Generating Facility cost allocation for the System Upgrade Facilities identified in the facilities study report pursuant to Section 32.3.5.7.1 of Attachment Z to the ISO OATT, (ii) agreed as a condition for obtaining an extension of its Small Generating Facility's Commercial Operation Date pursuant to Section 40.6.3.5.3 for its cash or security provided to the Connecting Transmission Owner or Affected Transmission Owner, as applicable, for its System Upgrade Facilities to be subject to these forfeiture requirements; or (iii) accepted a Project Cost Allocation(s) or Revised Project Cost Allocation(s) in the Final Decision Round of the Final Decision Period for a Class Year Study, Cluster Study or Additional SDU Study Decision Period after May 2, 2024, any cash and Security previously posted on a terminated Project will be subject to forfeiture to the extent necessary to defray the cost of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or Network Upgrade Facilities required for other projects evaluated in a Class Year Study, Cluster Study under this Attachment HH, or in a study performed under OATT Section 3.7, OATT Section 3.9, or Attachment P to the OATT, the base cases of which included the Interconnection Customer's Project and its associated Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades, as applicable, as determined by the ISO upon withdrawal of the Interconnection Customer's Project, but only as described in Section 40.16.3 below. If a Project's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Section 40.16.1.1.3 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner or Affected Transmission Owner, as applicable, to defray the costs of the affected upgrade, Interconnection Customer shall negotiate in good faith with the Connecting Transmission Owner or Affected Transmission

Owner, as applicable, to replace the Security with cash or an alternative form of security that can be readily drawn on by the Connecting Transmission Owner or Affected Transmission Owner, as applicable, up to the amount required to satisfy Interconnection Customer's Security obligations, including defraying the costs of the affected upgrade. Connecting Transmission Owner or Affected Transmission Owner, as applicable, shall only be responsible for using Interconnection Customer's Security to defray the costs of an affected upgrade to the extent the Interconnection Customer has provided cash or Security in a form that the Connecting Transmission Owner or Affected Transmission Owner, as applicable, can readily draw on to defray such costs. Any additional cash or Security subsequently provided by an Interconnection Customer in response to a Cost Estimate Update required for the extension of its project's Commercial Operation Date pursuant to Section 40.6.3.4 shall also be irrevocable and subject to the Security forfeiture requirements in this Section 40.16.1.1.2.

40.16.1.2 Security for Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades constructed by the Interconnection Customer (*i.e.*, facilities for which the Interconnection Customer elects the option to build or constructs with the agreement of the Connecting Transmission Owner or Affected Transmission Owner) shall be reduced after discrete portions of the facilities have been completed, such reductions to be based on cost estimates from the Cluster Study, subject to: (i) review by the Connecting Transmission Owner or Affected Transmission Owner with which Security is posted, (ii) transfer of ownership to the Connecting Transmission Owner or Affected Transmission Owner, as applicable of all subject property, free and clear of any liens, and (iii) transfer of title and any transferable equipment warranties reasonably

acceptable to the Connecting Transmission Owner or Affected Transmission Owner with which Security is posted.

40.16.1.3 For Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades constructed by the Connecting Transmission Owner or Affected Transmission Owner, Security shall be reduced after discrete portions of the facilities have been completed by the Transmission Owner and paid for by the Interconnection Customer, on a dollar-for-dollar basis for payments made to the Connecting Transmission Owner or Affected Transmission Owner pursuant to an E&P Agreement or Standard Interconnection Agreement, subject to the Connecting Transmission Owner's or Affected Transmission Owner's review and approval.

#### **40.16.2 No Interconnection Customer Responsibility for Future Upgrades**

Once an Interconnection Customer has posted Security for its share of the Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, and System Upgrade Facilities required for its project, and paid cash or posted Security for its share of the System Deliverability Upgrades required for its project, then, except as provided in Section 40.16.3 of these rules, that Interconnection Customer has no further responsibility for the cost of additional Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades that may be required in the future.

40.16.2.1 The Interconnection Agreement will reflect the Interconnection Customer's responsibility for the cost of new Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades, as that responsibility has been determined in accordance with these rules.

40.16.2.2 The cost of those additional Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades needed for future interconnection projects will be shared between future Interconnection Customers and Transmission Owners, and allocated among future Interconnection Customers, in accordance with the rules.

### **40.16.3 Interconnection Customer's Future Cost Responsibility**

Once an Interconnection Customer, (i) for a Class Year Project or Cluster Study Project, has accepted a Project Cost Allocation or Revised Project Cost Allocation, as the case may be, in the Final Decision Round of the Final Decision Period or Additional SDU Study Decision Period, as applicable, and paid cash or posted Security for that amount, (ii) for a Small Generating Facility, has accepted its cost allocation and paid cash or posted security pursuant to Section 32.3.5.7 of Attachment Z to the OATT, or (iii) has accepted revised costs estimates identified in a Cost Estimate Update and provided cash or posted Security in the revised amount in accordance with Section 40.6.3.5.3.3, then the accepted figure caps the Interconnection Customer's maximum potential responsibility for the cost of Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, and System Deliverability Upgrades required for its Project, except as discussed below.

40.16.3.1 If: (i) the portion of the Highway System Deliverability Upgrades required to make the Interconnection Customer's generator, Class Year Transmission Project, or Cluster Study Transmission Project deliverable is less than 90% of the total size of the Highway System Deliverability Upgrade identified for the Interconnection Customer's Project, and (ii) Interconnection Customer elects to commit to pay for its proportionate share of the Highway System Deliverability

Upgrade by posting Security instead of paying cash, then the Interconnection Customer's allocated cost of the Highway System Deliverability Upgrade will be increased during the period of construction deferral by application of a construction inflation adjustment, as discussed in Section 40.13.12.2 of these rules. When deferred construction of the Highway System Deliverability Upgrade commences, the Interconnection Customer will be responsible for actual costs in excess of the secured amount only when the excess results from changes to the operating characteristics of the Interconnection Customer's Project. If the portion of the System Deliverability Upgrades for a Highway System Deliverability Upgrade required to make one or more generators or Class Year Transmission Projects, or Cluster Study Transmission Projects deliverable is ninety percent (90%) or more of the total size (measured in MW) of the System Deliverability Upgrades, construction is not deferred, and those Interconnection Customer will be responsible for actual costs in excess of the secured amount in accordance with the rules in Sections 40.16.3.2 and 40.16.3.4 of this Attachment HH.

40.16.3.2 If the actual cost of the Interconnection Customer's share of required Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, or System Deliverability Upgrades is less than the agreed-to and secured amount, the Interconnection Customer is responsible only for the actual cost figure.

40.16.3.3 If the actual cost of the Interconnection Customer's share of required Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades,

System Upgrade Facilities, or System Deliverability Upgrades would be greater than the agreed-to and secured amount because other Projects have been expanded, accelerated, otherwise modified, or terminated, including Transmission Projects evaluated pursuant to Attachment P to the ISO OATT and their required upgrades, as identified pursuant to Attachment P to the ISO OATT, then the Interconnection Customer is responsible only for the agreed-to and secured amount for its Project. The additional cost is covered by the Interconnection Customers of the modified Projects, in accordance with these cost allocation rules, or by the drawing on the cash that has been paid and the Security that has been posted for terminated Projects, depending on the factors that caused the additional cost. Forfeitable cash and Security will be drawn on only as needed for this purpose, and only to the extent that the terminated Project associated with that Security has caused additional cost.

40.16.3.4 If the actual cost of the Interconnection Customer's share of required Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, or System Deliverability Upgrades is greater than the agreed-to and secured amount because of circumstances that are not within the control of the Connecting Transmission Owner or Affected Transmission Owner(s) (such as, for example: (i) changes to the design or operating characteristics of the Project that impact the scope or cost of related Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities, or System Deliverability Upgrades; (ii) any costs that were not within the scope of the Class Year Study, Cluster Study, or Additional SDU

Study, as applicable, that subsequently become known as part of the final construction design, including costs related to detailed design studies such as electro-magnetic transient analyses and subsynchronous resonance analyses; or (iii) cost escalation of materials or labor, or changes in the commercial availability of physical components required for construction), the cost cap shall be adjusted by any such amount, and the Interconnection Customer or the Load Serving Entity will pay the additional costs to the Connecting Transmission Owner or Affected Transmission Owner(s) as such costs are incurred by each of them. However, to the extent that some or all of the excess cost is due to factors within the control of the Connecting Transmission Owner or the Affected Transmission Owner(s) (such as, for example, additional construction man-hours due to Connecting Transmission Owner or the Affected Transmission Owner(s) management, or correcting equipment scope deficiencies due to Connecting Transmission Owner or the Affected Transmission Owner(s) oversights), then that portion of the excess cost will be borne by the Connecting Transmission Owner or the Affected Transmission Owner(s). Disputes between the Interconnection Customer and the Connecting Transmission Owner or Affected Transmission Owner concerning costs in excess of the agreed-to and secured amount will be resolved by the parties in accordance with the terms and conditions of the applicable interconnection or construction agreement.