

191 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

Idaho Power Company

Docket No. ER25-2077-000

ORDER ACCEPTING NOTICE OF TERMINATION

(Issued June 27, 2025)

1. On April 28, 2025, pursuant to section 205 of the Federal Power Act¹ and part 35 of the Commission's regulations,² Idaho Power Company (Idaho Power) filed a notice of termination of a Large Generator Interconnection Agreement (LGIA)³ between Idaho Power and Cat Creek Energy, LLC (Cat Creek) for Cat Creek's Energy Project No. 530 (Project). As discussed below, we accept the notice of cancellation terminating the LGIA, effective April 22, 2025, as requested.

I. Background

2. As Idaho Power explains, Idaho Power and Cat Creek entered into the LGIA on October 12, 2021.⁴ The milestones for the LGIA are set forth in Appendix B to the LGIA, which states that the construction schedule will only be valid if Cat Creek provides construction funding, or arrangements acceptable to Idaho Power's Credit Department, no later than 40 days following execution of the LGIA, in the amount of \$145,103,200.⁵

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2024).

³ Transmittal, Ex. 1 (LGIA). Idaho Power states that the LGIA is a conforming agreement filed and identified as Service Agreement #488 in Idaho Power's Electric Quarterly Report. Transmittal at 1 n.3 (citing *NTE Carolinas II, LLC*, 171 FERC ¶ 61,128, at P 30 (2020)).

⁴ *Id.* at Ex. 1 (LGIA).

⁵ LGIA app. B.

3. The LGIA also sets forth terms and conditions regarding breach, default, and termination. As relevant here, Article 2.3.2 of the LGIA provides that either party may terminate the LGIA in accordance with Article 17.⁶ Article 17.1 of the LGIA provides that, upon a breach, the non-breaching party must give written notice of the breach to the breaching party. The breaching party then has 30 calendar days from receipt of the default notice to cure the breach, and, if the breach is not capable of cure within 30 calendar days, the breaching party must “continuously and diligently” cure the breach within 90 calendar days from receipt of the default notice.⁷ Article 17.2 of the LGIA states that “if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this LGIA.”⁸

II. Notice of Termination

4. Idaho Power states that, after entering into the LGIA on October 12, 2021, Cat Creek had 40 days (i.e., until on November 22, 2021) to provide the \$145,103,200 in required construction funding under Appendix B. Idaho Power states that on December 3, 2021, Cat Creek submitted a cash deposit in the amount of \$250,000.

5. Idaho Power states that, on January 21, 2022, it issued a notice of breach to Cat Creek for failing to fund (or make acceptable arrangements with Idaho Power’s Credit Department) the remaining amount of the construction funding due under the LGIA. Idaho Power states that, on February 4, 2022, Cat Creek acknowledged Idaho Power’s notice of breach and indicated that “Cat Creek does not contest Idaho Power’s declaration of a Breach and is working expeditiously to cure the Breach.”⁹

6. Idaho Power states that, on February 18, 2022, it sent Cat Creek a final notice of default in accordance with Article 17.1 of the LGIA. Idaho Power asserts that, per the notice of default, Cat Creek had until the close of the business day on April 21, 2022, to cure its breach or the LGIA would terminate. Idaho Power states that on April 21, 2022, it received notice from Cat Creek that it was suspending the LGIA pursuant to LGIA Article 5.16. Idaho Power states that it advised Cat Creek that the LGIA must resume within 3 years of the date of suspension (i.e., April 21, 2025), or the LGIA would terminate. Idaho Power further states that it advised Cat Creek that when the suspension

⁶ *Id.* at art. 2.3.

⁷ *Id.* at art. 17.1.

⁸ *Id.* at art. 17.2.

⁹ Transmittal at 3 (quoting Ex. 3 (Suspension of Work on Cat Creek Energy Project No. 530 dated February 4, 2022)).

lifted, the Project would resume in exactly the same position as the day it went into suspension, including the breach and cure period.¹⁰

7. Idaho Power states that on April 14, 2025, the parties met at the request of Cat Creek to discuss unsuspending the Project. Idaho Power states that during these discussions it explained that whenever the Project unsuspending, Cat Creek would need to cure its breach by 5:00 p.m. (Mountain Time) that same day.¹¹ Idaho Power asserts that on April 21, 2025, Cat Creek requested to come out of suspension.¹² Idaho Power states that it issued a notice of termination to Cat Creek after close of business on the same day, indicating that the LGIA had terminated because Cat Creek did not cure its breach.¹³ Idaho Power explains that it received a letter from Cat Creek that it was disputing the termination, but Idaho Power is not aware of a just cause for dispute.¹⁴

8. Idaho Power requests the termination of the LGIA be made effective April 22, 2025, the day following the date the LGIA was terminated.¹⁵

III. Notice of Filing and Interventions

9. Notice of Idaho Power's April 28, 2025, filing was published in the *Federal Register*, 90 Fed. Reg. 18977 (May 5, 2025), with interventions and protests due on or before May 19, 2025. On May 7, 2025, Cat Creek filed a protest (First Protest). On May 16, 2025, Cat Creek filed another protest (Second Protest). On May 21, Cat Creek filed another protest (Third Protest) (collectively, Cat Creek's Protests). On May 21, 2025, Idaho Power filed an answer.

A. Cat Creek's Protests

10. In its First Protest, Cat Creek asks the Commission to reject the notice of termination and to order Idaho Power to "enter into good faith negotiations to address the absurdity of a "~\$145,000,000 upfront upgrade payment" that "exclusively" benefits Idaho

¹⁰ *Id.* (citing Ex. 6 (Acknowledgment of Suspension dated April 21, 2022)).

¹¹ *Id.* at 3-4 (citing Ex. 7 (Unsuspending Meeting Summary dated April 15, 2025)).

¹² *Id.* at 4 (citing Ex. 8 (LGIA #530 Out of Suspension dated April 21, 2025)).

¹³ *Id.* (citing Ex. 9 (Notice of Termination dated April 21, 2025)).

¹⁴ *Id.* (citing Ex. 10 (Confirmation of Termination dated April 24, 2025)).

¹⁵ *Id.* at 2-4.

Power.¹⁶ Cat Creek states that in addition to objecting to the timing and the initial payment demand that led to termination of the LGIA, its objections include (1) the absence of Order No. 845¹⁷ provisions within the LGIA; (2) the absence of modifications to the LGIA that would incorporate the new Idaho Power interconnection rules; and (3) the failure of Idaho Power to adjust the upgrade payment required under the LGIA after investigation by Cat Creek that later priority date queue customers are benefitting financially from the LGIA's required remuneration.¹⁸

11. Cat Creek states that it placed the LGIA into suspension because “no rational entity” would transfer approximately \$145,000,000 in upfront capital, with no schedule, expectation, or contract of compensation in return. Cat Creek declares that common business practice would include payment of reasonable costs but defer further payments. Cat Creek states that it expressed its willingness to find an equitable solution at the time of placing the LGIA into suspension, but Idaho Power rejected this proposal. Cat Creek further contends that, in a meeting on April 14, 2025 between Idaho Power, Cat Creek, and Cat Creek's “credit entity,” Cat Creek countered with a process which would protect Idaho Power's interests and allow Cat Creek to fully comply with the interconnection rules. Cat Creek states that it offered to issue a \$20,000,000 irrevocable letter of credit, but Idaho Power immediately rejected the offer. Cat Creek adds that it told Idaho Power that Cat Creek's insurance and bonding underwriter was willing to work out a higher bonding amount, but Idaho Power refused to engage with the underwriters because “they did not know who these folks were.”¹⁹

12. Cat Creek further argues that the LGIA provides critical infrastructure, the majority of which benefits not only later priority date queue customers, but also the existing load and supply on the transmission system control area.²⁰

13. Additionally, Cat Creek states that the LGIA should benefit from new interconnection rules implemented by Idaho Power on March 1, 2025, particularly the requirement of only an initial 20% deposit payment as opposed to 100% of designated upgrade costs. Cat Creek argues that Idaho Power should have notified Cat Creek of this

¹⁶ Cat Creek First Protest at 1.

¹⁷ *Reform of Generator Interconnection Procs. & Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

¹⁸ Cat Creek First Protest at 1.

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 3-4.

material change during the April 14, 2025 conference call. Cat Creek asserts that the LGIA lacks key provisions directed by Order No. 845, such as revising the definition of “generating facility” to include storage devices, failing to explore opportunities to avoid the construction and cost of unnecessary interconnection facilities and transmission upgrades, and failing to include provisions for refunds after the transmission upgrades are in place or to allow the interconnection customer to elect the facilities itself.²¹

14. Cat Creek states that the LGIA should also benefit from cost adjustments for later priority queue date projects that are already online or in construction. Cat Creek argues that it is required to pay for improvements that, without the LGIA, these queue positions would be forced to pay.²² Finally, Cat Creek asserts that Idaho Power is biased against Cat Creek.²³

15. In its Second Protest, Cat Creek largely reiterates its prior arguments that the LGIA provided no schedule, expectation, or contract of compensation that the \$145,000,000 upgrade payment would be refunded to Cat Creek in a reasonable timeframe.²⁴ Cat Creek further asserts that Idaho Power was premature in demanding the \$145,000,000, because Article 11.5 of the LGIA articulates that the major activities of “commencement of the procurement, installation, or construction” under the LGIA is at least 30 months. Finally, Cat Creek contends that the LGIA should benefit from new interconnection rules implemented by Idaho Power in its Order No. 2023²⁵ compliance filing, and that failure to do so shows Idaho Power’s inherent bias against Cat Creek.²⁶

16. In its Third Protest, Cat Creek argues that Idaho Power made contract termination a *fait accompli* by refusing to engage with Cat Creek or otherwise resume negotiations prior to the suspension’s expiration.²⁷ Cat Creek asserts that after its bonding underwriters contacted Idaho Power on April 17, 2025, Idaho Power refused to recognize

²¹ *Id.* at 4-5.

²² *Id.* at 6.

²³ *Id.* at 7.

²⁴ Cat Creek Second Protest at 1-2.

²⁵ *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054, *order on reh’g*, 185 FERC ¶ 61,063 (2023), *order on reh’g*, Order No. 2023-A, 186 FERC ¶ 61,199, *errata notice*, 188 FERC ¶ 61,134 (2024).

²⁶ Cat Creek Second Protest at 4.

²⁷ Cat Creek Third Protest at 2-3.

Cat Creek's insurance agent as legitimate.²⁸ Cat Creek states that it also contacted the Dispute Resolution Service at the Commission, but Idaho Power declined to participate due to "the same bias" that led Idaho Power to impose an "impossible upfront burden" in the first place.²⁹ Cat Creek further argues that "adjusting" the LGIA to comply with new rules and regulations will alleviate resource adequacy concerns.³⁰

B. Idaho Power's Answer

17. Idaho Power states that the issue presented is simple: Cat Creek breached the terms of the LGIA, which was fully executed on October 12, 2021 and conformed to Idaho Power's *pro forma* LGIA under the pre-Order No. 2023 and post-Order No. 845 serial process. Idaho Power contends that the terms of the LGIA required Cat Creek to provide a \$145,103,200 deposit for the construction of network upgrades and interconnection facilities within 40 days of the LGIA's execution, which Cat Creek failed to do. Idaho Power states that when Cat Creek did not meet this deadline, the LGIA was placed into suspension according to its terms, and Cat Creek again failed to timely cure its breach during the intervening three years.³¹

18. Idaho Power asserts that Cat Creek's First Protest does not contest its breach of the LGIA and, while Cat Creek takes issue with the LGIA's requirements, Cat Creek cannot rewrite a valid and duly executed contract by breaching its terms. Idaho Power contends that Cat Creek's Second Protest inaccurately describes section 11.5 of the LGIA, as the "30 month" figure cited by Cat Creek is the date by which Idaho Power is required to have "Procured/Received" all long lead materials for interconnection. Idaho Power asserts that the 30-month period begins upon receipt of Cat Creek's construction funds, and Cat Creek's funding was due within 40 days of the LGIA's execution.³²

19. Idaho Power further states that although Cat Creek asks to shift to a "pay-as-you-go" approach to funding the significant upgrades required to interconnect its generating facility, this does not conform with the terms agreed to in the LGIA. Idaho Power asserts that, while Cat Creek notes that the parties executed another LGIA with a different milestone payment plan, this other LGIA does not control the terms of the LGIA for this

²⁸ *Id.* at 5.

²⁹ *Id.* at 4.

³⁰ *Id.* at 6.

³¹ Idaho Power Answer at 1-2.

³² *Id.* at 3-4.

Project.³³ Idaho Power also explains that while it did receive a request for more time from Cat Creek's underwriter due to the complexity in securing surety support, Idaho Power followed up with Cat Creek because the underwriter is not an authorized person or representative for the Project.³⁴

20. Next, Idaho Power argues that the LGIA complies with the serial interconnection process. In response to Cat Creek's assertion that the Project provides benefits for later queued customers without Cat Creek receiving any benefits itself, Idaho Power notes that Article 11.4.1 of the LGIA provides such relief in the form of transmission credits in the amount of network upgrade costs it paid. To the extent that Cat Creek fears that it would not be refunded pursuant to Article 11.4.1 in a reasonable timeframe, Idaho Power argues that this requirement is part of Idaho Power's pre-Order No. 2023 *pro forma* LGIA.³⁵ Moreover, Idaho Power argues that the fact that other customers may derive benefits from the LGIA is typical for network upgrades.³⁶

21. Regarding Cat Creek's objections that the network upgrades would be owned by Idaho Power, Idaho Power responds by stating that Article 11.3 of the LGIA mandates that Idaho Power, as the transmission provider, has ownership over the facilities, consistent with the terms of the *pro forma* LGIA. Idaho Power declares that Cat Creek's complaints with the LGIA and the allocation of costs under the serial queue process cannot be remedied under the LGIA, and states that Cat Creek could enter the post-Order No. 2023 cluster study process.³⁷

22. Idaho Power contends that Cat Creek's filing also contains substantial misstatements. Idaho Power argues that, contrary to Cat Creek's claims, the LGIA did incorporate the requirements of Order No. 845. Idaho Power argues that Cat Creek is conflating the terms of Order No. 845 and Order No. 2023. Idaho Power further disputes Cat Creek's contention that the request for expedited consideration was meant to harm Cat Creek, stating that the request was made due to Cat Creek's failure to comply with the terms of the LGIA, which will adversely affect Idaho Power's first cluster study under the Order No. 2023 process.³⁸

³³ *Id.* at 4-5.

³⁴ *Id.* at 4-5, n.22.

³⁵ *Id.* at 6 (citing Cat Creek Second Protest at 6).

³⁶ *Id.* at 5-6.

³⁷ *Id.* at 7-8.

³⁸ *Id.* at 8-9.

23. Idaho Power disagrees with Cat Creek's allegation that it failed to engage with Cat Creek prior to the end of the suspension. Idaho Power argues that Cat Creek waited until its last day to cure the breach when entering suspension in 2022, leaving Cat Creek with a very short timeline to cure in 2025. Further, Idaho Power disputes Cat Creek's assertion that Idaho Power was averse to discussions during suspension; Idaho Power insists that it was willing to engage, recognizing the LGIA would be on a tight timeframe. Finally, Idaho Power states that the email evidence cited by Cat Creek demonstrates that the parties did confer prior to Cat Creek exiting suspension, but Cat Creek attempted to renegotiate material terms of the executed LGIA.³⁹

IV. Discussion

A. Procedural Matters

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Idaho Power's answer because it has provided information that assisted us in our decision-making process.⁴⁰

B. Substantive Matters

25. We accept Idaho Power's notice of termination terminating the LGIA, effective April 22, 2025, as requested. We find good cause to grant Idaho Power's request for waiver of the Commission's 60-day prior notice requirement to allow Idaho Power's requested effective date because, as noted above, Article 17.2 of the LGIA states that if a breach is not cured, the non-breaching party has "the right to declare a Default and terminate this LGIA by written notice," which was provided by Cat Creek on April 21, 2025.⁴¹

³⁹ *Id.*

⁴⁰ Entities that filed comments and/or protests but did not file a notice of intervention or motion to intervene are not parties to this proceeding. *See* 18 C.F.R. § 385.211(a)(2) (2024) ("The filing of a protest does not make the protestant a party to the proceeding. The protestant must intervene under Rule 214 to become a party."). Cat Creek filed multiple protests but did not file a motion to intervene. Although we do not grant party status to Cat Creek, we address its pleadings in this order.

⁴¹ 18 C.F.R. § 35.11 (2024); *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *see Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,175, at P 29 (2023) ("We find good cause to grant MISO's request for waiver of the Commission's 60-day prior notice requirement to allow MISO's requested

26. We find that the notice of termination is just and reasonable and not unduly discriminatory or preferential. Specifically, we find that Cat Creek breached the terms of the LGIA by failing to submit required payments on time and failed to cure its breach upon exiting suspension, as discussed below.

27. Appendix B to the LGIA provides that the construction schedule “will only be valid, *upon receipt of funding* from Interconnection Customer no later than 40 days following the execution of the LGIA.”⁴² The first milestone listed provides that “40 days following execution of the LGIA” Idaho Power must “receive” Notice to Proceed and construction funding or arrangements acceptable to” Idaho Power must be “made with [Idaho Power’s] Credit Department.” Appendix A to the LGIA further provides that Cat Creek’s total funding responsibility is \$145,103,200, and again reiterates that this estimated cost “is required to be paid in full by the Interconnection Customer, or other arrangements acceptable to [Idaho Power] are made with [Idaho Power’s] Credit Department, prior to [Idaho Power] commencing construction on the project.”⁴³

28. Cat Creek does not contest that it failed to pay the full \$145,103,200 figure or make acceptable arrangements with Idaho Power’s Credit Department, providing instead a \$250,000 deposit. Under Articles 2.3.2 and 17.1 of the LGIA, Cat Creek had 90 calendar days following the date of Idaho Power’s initial notice of breach (i.e., January 21, 2022) to cure the breach. Even though the LGIA went into suspension on April 21, 2022, which was the last day before the LGIA would terminate for failure to cure, Cat Creek was advised that “the cure period associated with the notice of breach will resume in exactly the same position as when the notice to suspend was received.”⁴⁴ Accordingly, we find that Cat Creek was obligated to cure the breach the same day the suspension was lifted (i.e., April 21, 2025). We further find that because Cat Creek failed to cure its breach by the April 21, 2025 deadline, Idaho Power acted within its rights under Article 17.2 of the LGIA to terminate the contract by providing written notice, which Idaho Power provided on April 21, 2025.

29. We are not persuaded by Cat Creek’s argument that it was not given an opportunity to cure its breach due to lack of communication from Idaho Power. We find that Idaho Power

effective date because, as noted above, section 2.3.3 of the Agreement states that the notice of termination shall become effective upon the date that NextEra receives the notice, which was November 9, 2022.”).

⁴² LGIA app. B (emphasis added).

⁴³ *Id.* at app. A, § 5 (Estimated Costs).

⁴⁴ Transmittal, Ex. 4 (Notice of Default dated Feb. 18, 2022), Ex. 5 (Acknowledgment of Suspension dated April 21, 2022) (same).

followed the requirements of Article 17.1 of the LGIA by allowing Cat Creek the opportunity to cure, which it failed to do so within the timeframe required by the LGIA.

30. We find the various arguments raised in Cat Creek's Protests unavailing. To the extent that Cat Creek deems its payment responsibility unfair or evidence of bias, Cat Creek has cited no authority that would obligate Idaho Power to renegotiate this LGIA requirement years after the agreement was signed and executed. The LGIA imposed binding obligations on the parties,⁴⁵ and any modification of the contract would require "mutual agreement" by the parties.⁴⁶

31. Additionally, the LGIA, executed on October 12, 2021, is an agreement that conforms to Idaho Power's then-effective *pro forma* LGIA, which was approved by the Commission, with the serial interconnection process that aligns with the rules set forth in Order No. 845.⁴⁷ Idaho Power is not obligated to reopen and renegotiate the LGIA with Cat Creek to reflect subsequent changes from its Order No. 2023 compliance.

The Commission orders:

Idaho Power's notice of termination is hereby accepted, as discussed in the body of this order, effective April 22, 2025, as requested.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

⁴⁵ LGIA, art. 28.1.2 ("This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms"), art. 30.1 ("This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.").

⁴⁶ *Id.* at art. 30.10 ("The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties.").

⁴⁷ *Idaho Power Co.*, Docket No. ER19-1936-002 (Oct. 7, 2020) (delegated order).

Document Content(s)

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