

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Standardization of Generator Interconnection) Docket No. RM02-1-000
Agreements and Procedures)**

**COMMENTS OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to the Notice of Proposed Rulemaking issued April 24, 2002 in the above-captioned proceeding,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully submits these comments on the standardization of generator interconnection agreements and generator interconnection procedures.

The NYISO is the independent body responsible for providing open access transmission service and interconnection service, maintaining transmission system reliability, and administering competitive wholesale electricity markets in New York State. The NYISO operates the transmission system facilities under its control, but it does not own or lease any of those transmission system facilities.

¹ *Standardization of ‘Generator Interconnection Agreements and Procedures*, 99 FERC ¶ 61,086 (2002) (“NOPR”).

I. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

Robert Fernandez, General Counsel and Secretary
Belinda Thornton, Director of Regulatory Affairs
Mollie Lampi, Assistant General Counsel
Elizabeth Grisaru, Senior Attorney
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303
Tel: (518) 356-6000
Fax: (518) 356-4702
Email: rfernandez@nyiso.com
bthornton@nyiso.com
mlampi@nyiso.com
egrisar@nyiso.com

J. Kennerly Davis, Jr.
Hunton & Williams
Riverfront Plaza-East Tower
951 E. Byrd Street
Richmond, VA 23219-4074
Tel: (804) 788-8559
Fax: (804) 788-8218
Email: kdavis@hunton.com

Arnold H. Quint²
Ted J. Murphy
Hunton & Williams
1900 K Street, N.W.
Washington, DC 20006-1109
Tel: (202) 955-1500
Fax: (202) 788-2201
Email: aquint@hunton.com
tmurphy@hunton.com

II. COMMENTS

A. Executive Summary

The NYISO strongly supports the Commission's initiative to address interconnection concerns and to ensure that interconnection service is offered to all customers on terms and conditions that are fully consistent with Commission precedent and policy. However, as the Commission proceeds with this important matter, the NYISO submits that it is extremely important for the rules covering interconnection procedures and agreements to effectively

² The NYISO respectfully requests a waiver of 18 C.F.R. § 385.203(b)(3) to permit service on these counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

recognize and accommodate the different institutional, structural and procedural characteristics of ISOs and RTOs that define and support the effective operation of their regional electricity markets. The continued existence of these characteristics is fully compatible with the Commission's goal of open access interconnection service.

The NYISO has already developed and implemented a comprehensive set of interconnection and interconnection cost allocation procedures that are consistent with Commission precedent and supportive of Commission policy. Necessarily, these NYISO procedures contain numerous provisions that reflect the distinctive characteristics of the NYISO as an institution, as well as the characteristics of the New York electricity markets which the NYISO operates.

The standard interconnection agreement (IA) and standard interconnection procedures (IPs) included in the proposed rule contain a number of features that would simply prove unworkable if applied to the NYISO and the New York electricity markets. In order to avoid this undesirable outcome, Commission should modify the final rule in the ways discussed below to accommodate the NYISO interconnection and interconnection cost allocation procedures already in place.

B. Discussion

1. Overview

Interconnection service is a critical aspect of open access transmission service. In order to fully realize the potential benefits of open access transmission service, interconnection service must also be offered in a way that provides for open access to the transmission system. Interconnection service must be offered in an even-handed, non-discriminatory way.

Interconnection service must support the operation and further development of competitive markets. It must support efficient investment and siting decisions by participants in those markets.

To achieve the goal of open access interconnection service, a number of issues must be resolved, and certain things assured. Transmission Providers must produce accurate interconnection studies in a timely fashion. They must use transparent system data for the interconnection and transmission studies they conduct. They must treat all interconnection customers in a comparable manner. They must determine and allocate interconnection costs in an accurate and equitable manner.

A number of ISOs and other Transmission Providers have gone a long way to identify and resolve interconnection issues in their regions. Other Transmission Providers have made less progress. The NYISO recognizes that there are still concerns and uncertainties regarding existing interconnection policies and procedures in several areas around the country. As the Commission points out in the NOPR, both interconnection project Developers and Transmission Owners have unresolved concerns about interconnection service.³

2. Established NYISO Procedures

For its part, the NYISO has worked continuously since its inception to develop and implement a comprehensive set of interconnection procedures that are fully consistent with Commission precedent and fully supportive of Commission policy. These procedures support the further development of the competitive wholesale electricity markets in New York State, and

³ See NOPR, Section II.A.

encourage the development of the new sources of electricity supply so urgently needed by the state and region.

In 2000, the NYISO worked with Market Participants to establish a detailed set of reliability impact study criteria and procedures⁴ to supplement the interconnection criteria and procedures already in the NYISO Open Access Transmission Tariff (“NYISO OATT”).⁵ In 2001, the NYISO worked with Market Participants to develop and file with the Commission a detailed set of rules and procedures to allocate responsibility for the cost of new interconnection facilities.⁶ In 2002, the NYISO filed a further tariff modification to deal explicitly with small interconnection projects rated at 10 MW or less.⁷ In each of these initiatives, the NYISO was guided by Commission precedent and policy. The NYISO was also guided by the characteristics and requirements of the New York electricity markets, and by the interconnection procedures already established by other ISOs and RTOs.⁸

3. Recognition of Acceptable Regional Differences

Given the uneven progress that has been made around the country to identify and resolve interconnection issues, and to ensure open access to interconnection service, the NYISO

⁴ See Transmission Expansion and Interconnection: System Reliability Impact Study Criteria and Procedures, Criteria for Defining a New Interconnection *and* Criteria for Defining a Material Change in a Previously Proposed Interconnection, <http://www.nyiso.com/services/planning.html>.

⁵ See the NYISO OATT, Sections 19B and 32B.

⁶ See the NYISO OATT, Attachment S.

⁷ See the NYISO Compliance Filing in Docket No. ER01-2967-005 (April 26, 2002).

⁸ See, e.g., Sections 36 and 37 of the PJM Open Access Transmission Tariff, <http://www.pjm.org/documents/agreements/oatt.html>.

recognizes the need to conform interconnection procedures to Commission precedent and policy. At the same time, the NYISO urges the Commission to provide adequate recognition of the regional practices embodied in approved ISO and RTO interconnection procedures. Many of these regional approaches are compatible with the Commission's goal of open access interconnection service.

The Commission has previously suggested that it appreciates the need for recognition of at least some regional exceptions to a standardized process. Prior to the Advance Notice of Proposed Rulemaking, and during the public meetings conducted to pursue consensus on interconnection issues, the Commission's staff suggested that ISOs and RTOs might not need to be covered by this proceeding.⁹ When it announced the interconnection initiative, the Commission stated that consideration was being given to basing the standardized interconnection agreement and procedures on those used by the Electric Reliability Council of Texas ("ERCOT").¹⁰ However, the Commission said it was considering the ERCOT model as supplemental and modified by various "best practices" based on generator interconnection agreements and procedures that have been approved by the Commission in past cases from various different regions around the country.¹¹ Throughout the public ANOPR meetings held to pursue consensus on interconnection issues, there were recurring discussions of how best to recognize and accommodate acceptable regional differences, at least those manifested by ISOs

⁹ See, e.g., Materials relating to the Discussion of Generation Interconnection at the Commission Meeting of October 11, 2001, Generation Interconnection Activities, http://www.ferc.gov/electric/gen_inter.html.

¹⁰ See *Standardizing Generator Interconnection Agreements and Procedures*, FERC ¶ 35,540 at 35,799-3 (2001) ("ANOPR").

¹¹ *Id.*

and RTOs. The interconnection agreement and interconnection procedures drafted as a result of the public ANOPR meetings both contained language designed to recognize and accommodate interconnection procedures and agreements previously filed by an ISO or RTO and accepted by the Commission.¹²

Now, in this NOPR, the Commission “proposes to adopt a standard generator interconnection agreement and standard generator interconnection procedures . . . [that will] . . . be required as amendments to the OATTs of all public utilities that own, operate or control transmission facilities under the Federal Power Act.”¹³ This formulation suggests that the Commission will apply the final rule to all ISOs and RTOs.

The Commission proposes to recognize regional differences by adopting the approach used in Order No. 888. There, the Commission identified certain specific provisions in the final rule with a bracketed expression explaining that utilities could either follow the terms of those provisions or follow any alternative course of action that was, in the words of the bracketed expression, “reasonable, generally accepted in the region, and consistently adhered to by the transmission provider.”¹⁴ Also, as an additional accommodation to acceptable regional differences, other provisions in the final rule issued by Order No. 888 were written to require

¹² See Section 31.15 of the Standard Interconnection and Operating Agreement, and Footnote 1 on page 2 of the Standard Generator Interconnection Procedures, filed in the ANOPR proceeding.

¹³ See NOPR, Section II.A.

¹⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996, FERC Stats. and Regs. ¶ 31,036, at 31,770 (1996) (“Order No. 888”).

compliance with “Good Utility Practice”. The Commission defined that concept to include “acceptable practices, methods or acts generally accepted in the region”.¹⁵

Assuming the Commission does apply the final rule to all ISOs and RTOs, the NYISO believes that the approach to regional differences used in Order No. 888 can be effectively used. That approach can be effective if the final rule defines acceptable regional differences as those prevailing in areas where an ISO or RTO operates the transmission system and administers the interconnection process. To achieve this objective, the bracketed expression used in the rule to allow for regional differences should allow for alternatives that are “reasonable, generally accepted in the region administered by the ISO or RTO, and consistently adhered to by the ISO or RTO.” Similarly, the definition of “Good Utility Practice” could embrace “acceptable practices, methods or acts generally accepted in a region administered by an ISO or RTO”. So defined, the final rule will appropriately accommodate the concept of acceptable regional differences, in accordance with the ultimate goal of open access interconnection services.

4. Comments on Specific NOPR Provisions

4.1. Interconnection Service Products (IA, Article 4)

The NOPR proposes two interconnection service products: Energy Resource Interconnection Service, and Network Resource Interconnection Service.¹⁶ Much of the thinking during the ANOPR proceeding that ultimately resulted in these two proposals was based on a physical-rights model of the transmission system. In contrast, the NYISO administers markets in

¹⁵ See Order No. 888, *Pro Forma* Open Access Transmission Tariff, Section 1.14.

¹⁶ See IA, Articles 4.11 and 4.12.

the New York Control Area that are based on a financial-rights model of the transmission system.

Under the financial-rights model, as described in the NYISO OATT, the NYISO offers firm transmission service to any customer willing to pay congestion rents. Customers not willing to pay congestion rents are offered non-firm service. Transmission service is scheduled between specified points of injection and points of delivery. A customer may fix the price of the congestion rent associated with its firm transmission service by acquiring sufficient Transmission Congestion Contracts with the same points of injection and delivery as those specified for its transmission service. Transmission Congestion Contracts are financial instruments that allow customers to hedge fluctuations in the price of transmission.¹⁷

In New York, a generator's output is determined primarily by its bid/offer subject to the security constraints of the dispatch or congestion management system. The mission of the congestion management system is to determine the least bid-cost set of locational marginal prices and ensure that the grid operates reliably. A generator has the right to reliably inject power into the network subject to the market rules. Conversely, load has the right to reliably withdraw power from the network subject to the market rules. Generators are paid the locational marginal price and load pays the locational marginal price, which reflects congestion rents, plus the embedded transmission service charge.

The NYISO model extends beyond the energy market to include the capacity market -- i.e., locational capacity requirements, ancillary service markets, and import/export transactions. Other areas have adopted a model similar to that of the NYISO for the energy market while retaining elements of the physical model for the capacity markets and import/export transactions;

¹⁷ See, generally, the NYISO OATT, Part II.

while other areas are still operating with the vertically integrated physically based view of the market. Under the financial-rights model of the transmission system, it is not necessary to distinguish between point-to-point and network transmission service. The Commission has recognized this fact in its Standard Market Design Working Paper on Standardized Transmission Service and Wholesale Electric Design, by defining a new transmission service: “Network Access Transmission Service”. For those areas like New York, only a single interconnection product is required. A single interconnection product, e.g., “Network Access Interconnection Service,” is appropriate for markets, like the New York markets, with a congestion management system based on locational marginal price and capacity requirements.¹⁸

The NYISO believes it is absolutely essential for the interconnection service offered by any Transmission Provider to be consistent with the fundamental characteristics and design of the system and markets with which the customer proposes to interconnect. Any other result would be unworkable. Therefore, the NYISO urges the Commission to identify all provisions in the final rule that define and describe interconnection service products as provisions which allow for the recognition of regional differences.

4.2. Merchant Transmission Projects

The NOPR is silent on the treatment of merchant transmission projects seeking to interconnect to the transmission system. Interconnection projects are defined explicitly and exclusively in terms of generation projects.

Such a restriction is unnecessary and undesirable. It is unnecessary because the concepts related to the interconnection process can be applied to a merchant transmission project just as

¹⁸ See the Standard Market Design Working Paper at www.FERC.gov/Electric/RTO/Mkt-Strct-comments/discussion_paper.htm (March 15, 2002).

easily as to a competitive generation project. Technical interconnection studies measure the electrical impact of the proposed facility on the existing transmission system. Each different type of proposed facility will have a different impact, but all can be measured with a common set of technical criteria and procedures.

It is also undesirable to restrict the definition of interconnection project in the manner proposed, and thereby consign merchant transmission projects to a state of regulatory uncertainty. Merchant transmission projects are an increasingly important source of competitive power supply. Nine merchant transmission projects have been proposed for the New York Control Area, totaling almost 8,000 MW.¹⁹

For all of these reasons, the NYISO interconnection process has always defined interconnection projects and project Developers in a comprehensive manner to include both generation and merchant transmission.²⁰ This approach has worked well. Its continuation is vitally important to the further development of competitive power markets in the Northeast. Therefore, the NYISO urges the Commission in the final rule either to broaden the concept of interconnection project to include merchant transmission, or at least to identify all provisions defining interconnection projects as provisions that allow for the recognition of regional differences.

4.3. Parties to the Interconnection Agreements

The stated purpose of this rulemaking is to address a range of interconnection issues that have troubled the electric industry for some time and, by resolving these issues in a

¹⁹ See List of Proposed Interconnection with New York Control Area, <http://www.nyiso.com/services/planning.html>.

²⁰ See the NYISO OATT, §§ 1.9b, 1.26a.1, and Attachment S.

comprehensive manner, to ensure the availability of truly open access interconnection service, with all of the associated technical and economic benefits. The Commission proposes to accomplish this by requiring all jurisdictional utilities to amend their OATTs to include a standard IA and a set of standard IPs.

Nothing that the Commission hopes to accomplish in this rulemaking requires that an Independent System Operator like the NYISO also sign the standard IA between the Transmission Owner and interconnecting Generator. Indeed, everything that the Commission hopes to accomplish in this rulemaking is more effectively pursued if the Independent System Operator is not a party to the standard IA.

The fundamental relationship between any Independent System Operator and any interconnection project arises from the provision of specific services. The fundamental role and responsibility of the Independent System Operator is to provide interconnection services to the interconnection project. There are feasibility, system impact and facilities studies to be performed, study and meeting schedules to be set and met, as well as interconnection costs to be calculated and allocated in accordance with Commission precedent and policy.

Throughout the process, the abiding concern of the project Developer, and the goal of the Commission, is that the Independent System Operator provide these interconnection services in a competent, objective and even-handed manner. The NYISO believes that all the concerns of any Developer, and all the concerns of the Commission, can be fully addressed and effectively dealt with through the use of tariff provisions that are wholly distinct and separate from the terms and conditions of an interconnection agreement between the Transmission Owner and interconnection project. Indeed, these matters are already being dealt with effectively by tariff

provisions that have been put in place for ISOs and RTOs around the country.²¹

In contrast to the Independent System Operator, the fundamental relationship between any Transmission Owner and any interconnection project arises from the physical interconnection of the facilities and real property that each party owns. Here the respective concerns of the Transmission Owner and project Developer focus on the safe, reliable, timely interface, and synchronization of the new project equipment and existing transmission facilities. There are engineering plans to prepare and equipment specifications to finalize. There are construction schedules to set and meet. Metering and protective equipment must be identified, purchased and installed. Maintenance responsibilities must be allocated. Field switching and tagging procedures must be set. Reciprocal rights of property access and equipment inspection must be defined. The rights, duties and obligations that must be defined arise from the physical interconnection of two property owners.

An Independent System Operator, in contrast, owns no equipment or real property related in any way to an interconnection agreement. It has no field staff to perform switching, tagging or maintenance. It has no authority to grant access to, or covenants across, the property of Transmission Owners. Indeed, an Independent System Operator has no means, or even a reason, to become involved in the property-based relationship of a Transmission Owner and interconnection project Developer. The NYISO believes that it would be confusing, disruptive

²¹ See, e.g., the NYISO OATT, Attachment S, pursuant to which the NYISO exercises effective independent decisional control over a comprehensive study process used to calculate and allocate responsibility for the cost of interconnection facilities needed for new generation and merchant transmission projects to interconnect to the New York State Transmission System. As another example, Article 9.6 of the proposed IA covers Reactive Power, which is already dealt with in the NYISO Market Administration and Control Area Services Tariff.

and counterproductive to inject an Independent System Operator into that property-based relationship.

If there is more for an Independent System Operator to do to ensure open access transmission service, it can best be accomplished by further refinement of tariff-based interconnection procedures. If project Developers and the Commission have been dissatisfied in the past with the negotiation of interconnection agreements between Developers and Transmission Owners, the Commission can use this rulemaking to accomplish two things. First, the Commission can standardize the terms of a two-party interconnection agreement between a Transmission Owner and interconnection project Developer to address the problems that have arisen in the past. Second, the Commission can modify the proposed IPs to assign to an ISO or RTO the responsibility to facilitate and mediate the interconnection agreement negotiations that take place between Transmission Owners and project Developers. The role of independent facilitator and mediator is one for which an Independent System Operator is ideally suited. Indeed, the NYISO performs this function now, on a regular basis.

If, despite all these considerations, the Commission concludes that ISOs and RTOs should also be parties to the interconnection agreements executed by Transmission Owners and project Developers, then the Commission must address the fact that the proposed IA is not suitable for that purpose.

One cannot draft a pro forma agreement of any kind without first reaching an understanding about its terms and conditions, including the number and identity of the parties to the agreement, and the rights and responsibilities of those parties. The ANOPR proceeding that produced the draft IA now proposed did not reach any such understanding. Regarding the

possible number of parties to the IA, the responsible ANOPR working group filed a draft IA, at the conclusion of that proceeding, which bore the following, significant disclaimer on the recitals page of the document:

[Unresolved Issue: Should IA be a 2 party agreement between Transmission Provider and Generator . . . or Transmission Owner and Generator . . . or 3 party agreement? The resolution of this issue will impact the entire document and every reference to [Transmission Provider/Transmission Owner] herein.] (emphasis added)

The IA proposed in this NOPR differs in a number of respects from the IA developed in the ANOPR, but not in ways that mitigate its fundamental flaws.

The IA is proposed as a three party agreement, between and among the Transmission Provider, the Transmission Owner and the Generator. The term “Transmission Provider” is defined to mean the “entity that provides Transmission Service under its Open Access Transmission Tariff.”²² In New York, the Northeast and other regions, this Transmission Provider is an ISO. However, many provisions of the proposed IA use the term Transmission Provider to cover situations that could not refer to an ISO, but could only refer to a property-owning Transmission owner responsible for physical system facilities. For example, the Transmission Provider is responsible for procuring and constructing and maintaining interconnection facilities, for testing and inspecting facilities and equipment, as well as for owning and operating metering equipment.²³ Many of the provisions of the IA are drafted as if

²² IA, Article 1.53.

²³ See IA, Articles 5-7 and 10. Also see, e.g., Article 5.14 (property transfers) and Article 23 (environmental releases).

there are just two parties to the agreement,²⁴ and other provisions refer to the “ISO” as if it were an entity different from the Transmission Provider.²⁵ Still other provisions are simply confused.²⁶

Basically, an interconnection agreement is a contract. A contract, any contract, is a set of legally binding promises created by legally effective acts of offer and acceptance. A contract represents a “meeting of the minds” of the parties to the contract, their mutual agreement to specify rights and responsibilities, and to allocate benefits and liabilities. To be legally effective, the document that records the formation of the contract must be specific and unambiguous. The document must clearly describe how each right, responsibility, benefit and liability relates to each party.

Where there are three or more parties to a contract, this process of specification and allocation must be done with particular care and precision. Each of the particular rights and responsibilities may flow between and among the individual parties in a different way. Benefits and liabilities may be measured and allocated differently for each party in the case of each particular right and responsibility.

This fundamentally important process of specification and allocation cannot take place before the parties to a contract have been identified. A pro forma interconnection agreement

²⁴ See, e.g., IA Article 2.6 (survival), Article 5.5 (work progress) and Article 5.7 (information exchange).

²⁵ See, e.g., IA Article 1.48 (definition of ISO), Article 5.1.A.(i)A (ISO clearances) and Article 9.6.2.1 (ISO notification).

²⁶ See, e.g., IA Article 2.3 (termination procedures) and Article 2.4 (termination costs).

cannot be drafted, must less finalized, before the parties to the agreement have been identified. The detailed terms and conditions of the IA in this NOPR cannot be proposed at the same time the parties to the IA are being proposed.

Whatever the Commission finally concludes about the number and identity of parties to the IA, that decision must be reached first, in this proceeding. Then, and only then, can meaningful consideration be given to the detailed terms and conditions of any draft agreement, keeping in mind the historical and appropriate focus of Independent System Operators on interconnection services, and that of Transmission Owners on interconnection equipment and related properties. When the Commission does reach a final conclusion about the number and identity of parties to the IA, then it should return the document to the working group formed during the ANOPR, or some similar group, for further consideration in light of the Commission's conclusion.

4.4. Liquidated Damages (IPs, Section 13.5)

The IPs include a proposal, made by generators during the ANOPR, that the Transmission Provider pay liquidated damages, to the interconnecting Generator, if the Transmission Provider fails to meet “any of its obligations under these Interconnection Procedures.”²⁷ The central obligation of the Transmission Provider under the proposed IPs is to perform a wide variety of technical studies for the interconnecting Generator, each within a specified period of time. Indeed, the liquidated damages proposed are to be calculated as

²⁷ IPs, § 13.5.

percentage of the “applicable study cost.”²⁸

The NYISO believes very strongly that this proposed provision for liquidated damages should be removed from the final IPs. It is especially inappropriate where the Transmission Provider is an independent ISO or RTO with no reason to disadvantage an interconnection project. The proposed procedures require the Transmission Provider to conduct a large number of different technical studies for each proposed interconnection project. There are Feasibility Studies, and re-studies of Feasibility Studies; System Impact Studies, and re-studies of System Impact Studies; and there are Facilities Studies and re-studies of Facilities Studies.²⁹ There are also Optional Studies.³⁰ A number of these studies require concurrent analysis of multiple scenarios.³¹

The Transmission Provider must conduct each of these proposed studies within a set period of time.³² While working to meet each of these deadlines, the Transmission Provider must coordinate with, and obtain essential input from, a large number of different parties. In addition to the Developer of the project being studied, there are likely to be other project Developers. In addition to the interconnecting Transmission Owner, there are likely to be other

²⁸ *Id.*

²⁹ *See* IPs, §§ 6-8.

³⁰ *See* IPs, § 10.

³¹ *See, e.g.*, IPs § 3.2 for a description of the concurrent analysis that must be performed based upon the types of interconnection service that may be requested. *See, also*, IPs § 10.2 for a discussion of the different scenarios that may have to be covered in the “reasonable” number of optional studies that can be requested by an interconnecting Generator.

³² *See, e.g.*, IPs § 7 for a description of the System Impact Study, and a discussion of the time periods allowed for the study itself, and for each re-study that may be required.

Transmission Owners. The Transmission Provider is also required to coordinate each study with Affected System Operators and to “include those results in its applicable Interconnection Study within the time frame specified in these Interconnection Procedures.”³³ None of these other parties, upon whom the Transmission Provider must depend for input and cooperation, are accountable to the Transmission Provider or effectively controlled by the Transmission Provider in any way.

Under these circumstances, with so many study participants and study-related factors beyond the control of the Transmission Provider, it would be thoroughly unjust to require the Transmission Provider to pay liquidated damages if, for example, it takes more than 45 days to complete a re-study of a Feasibility Study.³⁴

A logical, workable, equitable alternative approach already exists, as a proven part of the Commission’s existing interconnection regime. Section 19.4 of the *pro forma* OATT requires Transmission Providers to use due diligence to complete a required facilities study within a specified period of time. If the Transmission Provider is unable to do so, it is required to notify the Transmission Customer, provide an estimate of the additional time needed to complete the study, and explain why the additional time is necessary.³⁵ This approach to customer-initiated studies, combining time limits and due diligence and explanation, has worked in the past. Considering the nature of the interconnection studies to be conducted, this approach is certainly better than one which includes liquidated damages, for the reasons discussed above.

³³ IPs § 3.5.

³⁴ See IPs § 6.4.

³⁵ *Pro forma* OATT, Section 19.4.

4.5. Optional Studies (IPs, Section 10)

The NYISO urges the Commission to delete this provision from the final IPs. The proposed procedures require the Transmission Provider to conduct a large number of technical studies for each proposed interconnection project. There are Feasibility Studies, System Impact Studies, and Facilities Studies. Each of these studies must analyze the system impact of each type of interconnection service that is requested by the Developer of the project. Each of these studies must include an assessment of the impact of the proposed project on a neighboring Affected System. Also, the Transmission Provider must re-study each of these studies every time the project is re-designed, and every time any other assumed project withdraws or modifies its design.

Thus, if one assumes only two re-study reports at each step in the process, the Transmission Provider is required to produce six study reports for each project as it moves through the interconnection process. As noted, each of these studies must address a number of separate technical factors. In actual practice, the number of studies required for each interconnection project could be much larger than six, depending on the size of the interconnection application queue, the changes that occur in the queue, and the modifications that are made to the projects that are listed on the queue.³⁶

In light of the numerous studies that the Transmission Provider must perform to process proposed interconnection projects, it is unreasonable to require the Transmission Provider also to conduct a “reasonable number” of Optional Studies for each Generator simply to provide the

³⁶ There are currently 123 projects on the NYISO list of Proposed Interconnections in the New York Control Area.

Developer with a “sensitivity analysis” of the alternatives covered “solely for informational purposes.”³⁷ It will be difficult enough for the Transmission Provider to produce the studies required to process each proposed project, and to conduct re-studies when changes occur, without also requiring the Transmission Provider to analyze the impact of additional changes that the Developer may elect to make in the future. The kind of sensitivity analysis proposed for Optional Studies should be the responsibility of the project Developer and its own consultants.

4.6. Queue Position (IPs, Section 4)

The proposed procedures base queue position on the date and time that the Transmission Provider receives a valid, complete Interconnection Request, and use the queue position of a project to determine the order of performing interconnection studies and for determining the responsibility of each project for the cost of its required interconnection facilities.³⁸

The NYISO agrees that queue position can be used in a workable way to prioritize interconnection studies. The NYISO OATT currently provides that interconnection studies will be conducted according to an order determined by the application date of each project.³⁹ However, the NYISO strongly believes that queue position should not be used to determine the responsibility of a project for the cost of interconnection facilities. The NYISO and New York Market Participants have concluded that such an approach would be unworkable in New York. The NYISO urges the Commission to delete this provision from the final rule, or at least to identify the cost allocation provision as one that allows for regional differences.

³⁷ IPs, §§ 10.1 and 10.2.

³⁸ See IPs § 41.

³⁹ See the NYISO OATT, Section 19C.

If one factors in the pricing policy concept of a refund or subsequent credit to the project Developer, then the interconnection facility cost at issue is essentially the cost of a “loan” from the Developer to the connecting Transmission Owner to pay for the procurement and installation of the required interconnection facilities. The size of the “loan” to be made by the Developer depends upon the impact of its project, and the amount of capacity, or “headroom”, currently on the system and already available to accommodate that impact before additional system upgrades are required. These concepts of project impact and system headroom, combined with the principle of “first come, first served”, have supported the conventional notion that queue position can, and should, be used to determine a Developer’s right of access to existing system capacity and its responsibility for the cost of new facilities.

This conventional notion rests on the premise that “first come” as measured by queue position, will bear some logical and equitable relationship to the order in which projects may actually be “served” in the real world; that queue position will bear a meaningful relationship to the sequence in which projects actually are developed, become operational and access the grid; that the initial sequence of projects will bear a meaningful relationship to the ultimate sequence of projects.

It makes sense to allocate system capacity access and system upgrade cost on the basis of initial sequence only if (i) that initial sequence is not expected to change, or if (ii) the changes made in the initial sequence are under the control of the Transmission Provider that administers the interconnection process. To the extent that either of these conditions does not apply, if the initial queue sequence can be materially altered by factors outside the control of Transmission Provider, then a queue-based interconnection cost allocation process will quickly become very complex and very difficult to administer.

The NYISO interconnection cost allocation rules are not based on queue position.⁴⁰ Instead, interconnection facility costs are determined each year, and allocated on the basis of pro rata electrical impact among the members of a group of projects that have reached a specified point in the comprehensive New York State project permitting process.

The NYISO staff met and worked with market participants for more than a year to develop the cost allocation rules in Attachment S of the NYISO OATT.⁴¹ During those discussions, considerable attention was paid to the fact that it is the New York State permitting process that determines the sequence of project development in the state, not the NYISO interconnection application dates for the projects. The NYISO concluded that a cost allocation process based upon project application dates would be unworkably complex because that initial sequence of projects will bear no meaningful relationship to the ultimate sequence of projects that become operational and access the transmission system.

4.7. Interconnection Study Assumptions (IPs, Sections 6 and 7)

The proposed procedures define the scope of the Facility Study and System Impact Study to assume the existence of “all generating facilities . . . that . . . have a pending higher queued

⁴⁰ See the NYISO OATT, Attachment S.

⁴¹ Attachment S contains a detailed set of rules to allocate cost between and among Transmission Owners and project Developers. As noted in Section IV.I. of Attachment S, the allocation rules are fully consistent with Commission pricing policy. This is so because they deal with a prior step in the overall process. Attachment S allocates responsibility for sole use and network facilities. After the parties have met their respective responsibilities, then pricing policy deals with the issue of refunds or credits for payments that Developers have already made for network facilities. This NOPR proposes no specific cost allocation rules. Therefore, Attachment S of the NYISO OATT should not be disturbed by this proceeding.

Interconnection Request.”⁴² The NYISO urges the Commission to identify this provision in the final rule as one that allows for regional differences.

The basic purpose of an interconnection study is to measure the incremental electrical impact of the project being studied on the transmission system as it is likely to exist at the time the studied project begins commercial operation. It is highly unrealistic to assume that all the other projects listed earlier on the interconnection application queue will in fact be developed and become operational before the project being studied. Many factors can, and will, affect the actual development of each of the projects listed on any interconnection application queue. Many of the projects listed earlier than the project being studied will be cancelled. Others will become operational, but only at times long after the initial commercial operation of the project being studied.

Assuming the existence of all prior listed projects will lead to interconnection studies that overstate the incremental electrical impact of each project being studied, and thus overstate the cost of the interconnection facilities needed for each project. This will, in turn, hinder the financing of each project and discourage the deployment of competitive generation. Assuming the existence of all prior listed projects will also wastefully complicate the interconnection study process by multiplying the number of re-study reports that need to be prepared as prior listed and assumed projects cease their development and withdraw from the process.

The NYISO worked with New York Market Participants for over a year to develop a

⁴² IPs §§ 6.2 and 7.3.

detailed set of reliability impact study criteria and procedures.⁴³ Everyone involved in that effort was committed to developing a set of study criteria that included logical, realistic study assumptions that were carefully crafted to accurately reflect the characteristics of the New York power markets. It was obvious that a number of factors affect the actual development of power projects, and that it would be unrealistic to assume the existence of all prior applicants. Instead, the NYISO study criteria were drawn up to assume a more realistic subset of prior listed projects based on the development and permitting status of those projects at the time the study is performed.⁴⁴ More than thirty NYISO interconnection impact studies have been conducted using these assumptions. Not a single re-study, as those are described in the proposed procedures has been required since the NYISO study criteria and assumptions have gone into effect.

4.8. Third Parties Conducting Interconnection Studies (IPs Section 13.4)

The proposed procedures provide that the Transmission Provider can use a third party to conduct an interconnection study, but only under certain limited circumstances. The proposed use of a third party contractor is confined to specified problem situations, as when the Transmission Provider cannot complete a study within the time allowed.⁴⁵

⁴³ See Transmission Expansion and Interconnection: System Reliability Impact Study Criteria and Procedures, Criteria for Defining a New Interconnection *and* Criteria for Defining a Material Change in a Previously Proposed Interconnection, <http://www.nyiso.com/services/planning.html>.

⁴⁴ See Transmission Expansion and Interconnection: System Reliability Impact Study Criteria and Procedures, Baseline Study Assumptions, <http://www.nyiso.com/services/planning.html>.

⁴⁵ See IPs, § 13.4.

The proposed use of contractors to perform interconnection study work is much too restricted. The parties should be allowed to use contractors whenever they elect, so long as that use is consistent with the rest of the IPs and tariff. Currently, the NYISO permits interconnection study work to be performed by consultants employed by either the NYISO or the interconnection project Developer.⁴⁶ In either case, the Developer is responsible for the actual cost of the study work. In all cases, the NYISO independently evaluates the work, independently controls the study process, and independently reaches a determination about the interconnection facilities required for each proposed project.⁴⁷

This approach has worked well in New York. It has allowed the NYISO to independently and effectively process a large number of interconnections in a timely manner. All Transmission Providers with responsibility for interconnection applications should have the same flexibility to employ consultants themselves, or to receive and review studies prepared by Developers and their consultants. The NYISO therefore urges the Commission to amend this provision in the IPs to provide for such flexibility, or at least to identify this provision in the final rule as one that allows for regional differences.

4.9. Interconnection of Small Projects (IPs, Section 14)

The proposed procedures include a section dealing with the interconnection of small projects. Recognizing that small projects “generally have only a limited impact on a localized

⁴⁶ See Transmission Expansion and Interconnection: System Reliability Impact Study and Criteria and Procedures, Conducting the Study, <http://www.nyiso.com/services/planning.html>.

⁴⁷ See Transmission Expansion and Interconnection: System Reliability Impact Study Criteria and Procedures, <http://www.nyiso.com/services/planning.html>. See also the NYISO OATT, Section 19B and Attachment S.

area”, the IPs limit the scope and time span of the interconnection studies to be performed for such projects.⁴⁸

Interconnection studies should be congruent to their purpose, and to the expected impact of the project being studied. However, this does not mean that the scope and time frame for small project interconnection studies should be limited in the categorical manner proposed. In some cases, the actual system impact of the proposed project may be much more than what is normally expected. In such cases, the Transmission Provider must conduct additional analysis to determine the steps to be taken to ensure reliable interconnection.

Earlier this year, the NYISO filed a tariff amendment to deal explicitly with small interconnection projects.⁴⁹ Under these NYISO procedures, small projects are excluded from the regular NYISO interconnection study and cost allocation process based on the *rebuttable presumption* that such small projects will pose no reliability issues for the NYISO. If, however, the NYISO determines that a small project may pose reliability issues for the NYISO, then the regular NYISO interconnection study and cost allocation procedures will apply to the small project, just as if the project had a larger rating.

This NYISO approach, based on a rebuttable presumption, is designed to provide a small project with the kind of expedited processing that is usually appropriate, and at the same time provide the NYISO with the flexibility to conduct a more thorough evaluation of the project if the NYISO concludes that particular circumstances call for that. The NYISO procedures balance

⁴⁸ See IPs § 14.

⁴⁹ See the NYISO Compliance Filing in Docket No. ER01-2967-005 (April 26, 2002).

the relevant considerations more effectively than those proposed in Section 14 of the IPs. Therefore, the NYISO urges the Commission to adopt the NYISO approach, or at least to identify the provisions in the final rule that relate to small projects as provisions that allow for regional differences.

4.10. Pricing For Independent Entities

The Commission invites comment on the policy and practice of providing transmission rights or credits to generators who pay for upgrades that reduce system congestion, and how this approach might be applied to the interconnection process.⁵⁰

If the interconnection process does not include a deliverability requirement, the interconnection facilities required for a project should not be expected to reduce system congestion.⁵¹ Thus, a system of transmission rights or credits designed to compensate parties for congestion reduction cannot be applied to the interconnection process.⁵²

⁵⁰ See NOPR, Section II.F.3.

⁵¹ As Attachment S to the NYISO OATT notes, “The NYISO Minimum Interconnection Standard does not impose any deliverability test or deliverability requirement on the proposed project It is not anticipated that the installation of any interconnection facilities covered by these [cost allocation] rules will improve the deliverability of power, [or] reduce congestion.” OATT Attachment S, Section II.A.1.

⁵² See Section 19 of the NYISO OATT for a discussion of the procedures followed to compensate parties for transmission system upgrades that improve deliverability and reduce congestion.

4.11. Liability Issues

The IA includes an indemnification provision patterned after the *pro forma* OATT, but modified significantly to apply equally to all parties.⁵³ The IA does not include any of the limitations on liability discussed during the ANOPR proceedings.

Indemnification should protect the active party or parties to an agreement. In the case of interconnection, the active parties providing service are the ISO and the Transmission Owner. The ISO conducts studies. The Transmission Owner constructs facilities. They each act on behalf of the interconnection project Developer. This activity, and the need to protect it, was recognized by the indemnification provision in the *pro forma* OATT.⁵⁴ In the final rule produced by this proceeding, the Commission should follow the same approach to indemnification that was taken in the *pro forma* OATT. In addition, the Commission should include in the final rule limits on the liabilities of ISOs and Transmission Owners, for the reasons discussed during the ANOPR, and in other proceedings now pending before the Commission.⁵⁵

⁵³ IA Article 18.

⁵⁴ *See pro forma* OATT, Section 10.2.

⁵⁵ *See Midwest Independent Transmission System Operator, Inc.*, Section 205 Revisions to Open Access Transmission Tariff, Docket No. ER02-2033-000 (June 5, 2002).

cc Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01,
Tel. (202) 208-2088
Alice M. Fernandez, Director Office of Markets, Tariffs and Rates -- East Division,
Room 71-31, Tel. (202) 208-0089
Andrea Wolfman, Lead Counsel for Market Oversight and Enforcement,
Room 9E-01, Tel. (202) 208-2097
Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09,
Tel. (202) 208-2068
Stanley P. Wolf, Office of the General Counsel, Room 101-03, Tel. (202) 208-0891

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in Docket No. RM02-1-000 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (2001).

Dated at Washington, D.C. this 17th day of June, 2002.

/s/_____

Arnold H. Quint
Hunton & Williams
1900 K Street, NW
Suite 1200
Washington, DC 20006-1109
(202) 955-1500