

UNITED STATES OF AMERICA 119 FERC ¶ 61,333
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellingshoff.

New York Independent System Operator, Inc. Docket Nos. ER06-311-002
New York Transmission Owners ER06-311-003

ORDER GRANTING REHEARING IN PART AND DENYING REHEARING IN
PART AND ACCEPTING COMPLIANCE FILING

(Issued June 29, 2007)

1. On March 22, 2007, the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs)¹ (collectively, Joint Filing Parties) filed a request for rehearing of the Commission's February 20, 2007 Order in this proceeding.² In the *February Order*, the Commission rejected certain modifications to the *pro forma* Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA) proposed by the Joint Filing Parties pursuant to Order Nos. 2006, 2006-A, and 2006-B.³ In a separate filing also made on March 22, 2007, the Joint Filing Parties submitted a compliance filing pursuant to the Commission's directive in the *February Order*. In this order, we grant in part and deny in part the Joint Filing

¹ The NYTOs are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Long Island Power Authority; and the New York Power Authority.

² *New York Independent System Operator, Inc.*, 118 FERC ¶ 61,130 (2007) (*February Order*).

³ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *clarified*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consolidated Edison Co. of New York, Inc., et al. v. FERC*, Nos. 06-1018, *et al.* (U.S.C.A., D.C. Circuit).

Parties' request for rehearing, clarify aspects of the *February Order*, and accept the compliance filing, subject to further modifications, as discussed below.

I. Background

2. In Order No. 2006, the Commission required all public utilities to adopt a *pro forma* SGIP and *pro forma* SGIA as part of their Open Access Transmission Tariff (OATT). In Order Nos. 2006-A and 2006-B, the Commission directed utilities to include additional *pro forma* provisions in their OATTs, and clarified and modified certain sections of Order No. 2006. In directing utilities to adopt the changes prescribed in Order No. 2006, the Commission permitted Independent System Operators (ISOs) to seek "independent entity variations" from the final rules in their *pro forma* provisions.⁴ The Commission thus allowed ISOs to propose variations from the Commission's *pro forma* interconnection procedures and agreements based on regional needs.

3. The Joint Filing Parties submitted a compliance filing in response to Order Nos. 2006 and 2006-A on December 8, 2005 (December 2005 filing), and a compliance filing in response to Order No. 2006-B on October 27, 2006 (October 2006 filing). In these compliance filings, the Joint Filing Parties proposed to incorporate the SGIP and SGIA as Attachment Z to NYISO's OATT, and requested variations under the independent entity standard.

4. In the *February Order*, the Commission rejected certain variations requested by the Joint Filing Parties, finding that the Joint Filing Parties failed to demonstrate that those variations met the independent entity standard. The Commission also directed the Joint Filing Parties to revise the tariff sheets filed in compliance with Order No. 2006 to reflect an effective date of August 12, 2005, and the tariff sheets filed in compliance with Order No. 2006-B to reflect an effective date of August 28, 2006.⁵ Finally, the *February Order* directed the Joint Filing Parties to submit a compliance filing within 30 days from the issuance of the order.⁶

5. On March 22, 2007, the Joint Filing Parties filed a request for rehearing of the *February Order* and a compliance filing revising NYISO's SGIP and SGIA in accordance with the *February Order*. Relevant here, the Joint Filing Parties request rehearing or clarification related to: (1) the effective dates of Order Nos. 2006, 2006-A and 2006-B and NYTOs' existing small generator interconnection procedures; (2) queue

⁴ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 549.

⁵ *February Order*, 118 FERC ¶ 61,130 at Ordering Paragraph (C).

⁶ *Id.* at Ordering Paragraph (D).

position; (3) cost allocation; (4) dispute resolution costs; and (5) the participation of Affected Systems.

II. Notice of Filing

6. Notice of the Joint Filing Parties' March 22, 2007 compliance filing was published in the *Federal Register*,⁷ with interventions and comments due on or before April 12, 2007. No interventions or comments were filed.

III. Discussion

A. Requests for Rehearing and Clarification

1. Effective Dates and Waiver

7. In the December 2005 filing, the Joint Filing Parties requested that the Commission make the tariff sheets filed in compliance with Order No. 2006 effective upon the Commission's action, and the tariff sheets filed in compliance with Order No. 2006-A effective on December 30, 2005. In the October 2006 filing, the Joint Filing Parties requested that the Commission make the tariff sheets filed in compliance with Order No. 2006-B effective upon the Commission's action.

8. In the *February Order*, the Commission granted the Joint Filing Parties a December 30, 2005 effective date for the tariff sheets filed in compliance with Order No. 2006-A, but rejected the Joint Filing Parties' request that the tariff sheets filed in compliance with Order Nos. 2006 and 2006-B become effective upon the date of the Commission's action. Instead, the Commission directed the Joint Filing Parties to revise the tariff sheets filed in compliance with Order No. 2006 to reflect an effective date of August 12, 2005, and the tariff sheets filed in compliance with Order No. 2006-B to reflect an effective date of August 28, 2006.

9. In their request for rehearing, the Joint Filing Parties argue that the Commission erred by requiring three different retroactive effective dates for the Joint Filing Parties' Order Nos. 2006, 2006-A and 2006-B compliance filings. In the Joint Filing Parties' view, the *February Order* is inconsistent with Order No. 2006, which states that an ISO's existing Commission-approved interconnection procedures will remain in effect until the Commission acts on the ISO's compliance filing.⁸ Consequently, the Joint Filing Parties request an effective date of February 20, 2007 for all of the compliance filings.

⁷ 72 Fed. Reg. 15,681 (2007)

⁸ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 545.

10. The Joint Filing Parties further claim that if the Commission does not grant rehearing on this issue, the small generation projects processed or completed between the effective date of Order No. 2006 and February 20, 2007 will be adversely affected. The Joint Filing Parties also argue that the Commission's decision in the *February Order* is inconsistent with Order No. 2006-B, which allowed independent entities to amend their pending Order Nos. 2006 and 2006-A compliance filing to incorporate the new provisions (or request variation) from the *pro forma* SGIP and SGIA.⁹

11. In connection with the effective date, the Joint Filing Parties argue that the Commission erred in rejecting the Joint Filing Parties' request for waiver to allow the NYTOs' existing small generator interconnection procedures and agreements to remain in effect from August 8, 2005 (the effective date of Order No. 2006) to February 20, 2007. The Joint Filing Parties claim that it would be wasteful and disruptive to the New York interconnection process and would place an unfair burden on small generator developers to retroactively impose Order Nos. 2006, 2006-A, and 2006-B effective dates on small generator projects that have progressed between August 12, 2005 and February 20, 2007.

12. The Joint Filing Parties argue that a denial of both a prospective effective date and a waiver for the NYTOs is inconsistent with, and renders moot, *pro forma* SGIP section 1.1.3, which provides for a 60-day transition period after the effective date of the procedures. The Joint Filing Parties ask that the Commission clarify that the transition period remains in effect for qualifying projects.

Commission Determination

13. We grant rehearing of the effective dates for the Joint Filing Parties' Order Nos. 2006, 2006-A and 2006-B compliance filings. Upon further consideration, we find that requiring the three different retroactive effective dates is inconsistent with Order No. 2006. Accordingly, we direct the Joint Filing Parties to file amended tariff sheets to reflect an effective date of February 20, 2007.

14. While we grant rehearing, we note that we disagree with the Joint Parties' contention that the *February Order* was inconsistent with Order No. 2006-B, which allowed independent entities to amend their pending Order Nos. 2006 and 2006-A compliance filing to include the requirements of Order No. 2006-B. The NYTOs filed a motion for extension of time until October 27, 2006 to submit a joint compliance filing with NYISO. The Commission granted the extension on August 23, 2006. Subsequently, the Joint Filing Parties submitted an amendment on October 27, 2006 to comply with Order No. 2006-B. Thus, the Commission allowed the Joint Filing Parties to amend their filing as directed in Order No. 2006-B.

⁹ Order No. 2006-B, FERC Stats. & Regs. ¶31,221 at P 9.

15. Finally, we grant the Joint Filing Parties' request for waiver and clarify that neither Order Nos. 2006, 2006-A, nor 2006-B applies to those qualifying projects already interconnected or approved for interconnection prior to the 60 Business Day transition period in SGIP section 1.1.3.

2. Queue Position

16. In the December 2005 filing, the Joint Filing Parties proposed SGIP section 3.1.3, which states:

Except with respect to facilities studies conducted in accordance with Attachment S of the NYISO OATT, the Interconnection Studies conducted under these procedures shall consider the distribution facilities potentially affected by the Interconnection Request, and the Base Case and, if not already included in the Base Case, all generating and merchant transmission facilities (and with respect to (iii), any identified Upgrades) that, on the date the study is commenced: (i) are directly interconnected to the New York State Transmission System or distribution facilities, (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request, (iii) have a pending higher queued Interconnection Request, and (iv) have no queue position but have executed an interconnection agreement or requested that an unexecuted interconnection agreement be filed with FERC.¹⁰

In the *February Order*, the Commission rejected proposed SGIP section 3.1.3. The Commission found that it was "impossible to have either an executed or unexecuted interconnection agreement and not have a Queue Position, since a Queue Position is assigned upon receipt of the Interconnection Request,"¹¹ as proposed in clause (iv) of SGIP section 3.1.3.

17. In their request for rehearing, the Joint Filing Parties argue that the Commission erred in rejecting SGIP section 3.1.3. The Joint Filing Parties state that section 3.1.3 was intended to establish standardized specifications that define the transmission, distribution, and generation facilities required to be modeled in each Interconnection Study performed under the SGIP. The Joint Filing Parties state that the proposed SGIP section 3.1.3 will help significantly to expedite the standardized processing of Interconnection Requests, while reducing the potential for disputes and ensuring consistent treatment of Interconnection Requests.

¹⁰ Joint Filing Parties' Request for Rehearing at 13.

¹¹ *February Order*, 118 FERC ¶ 61,130 at P 55.

18. The Joint Filing Parties state that the purpose of clause (iv) relates to the need in New York to transition small generator projects from multiple Transmission Owner queues to the unified procedures and agreements administered by NYISO. The Joint Filing Parties further explain that the transitional purpose of clause (iv) is to include Interconnection Requests in the system to be analyzed if they have an interconnection agreement with a Transmission Owner, but have not been constructed and actually interconnected.

19. The Joint Filing Parties maintain that it is not “impossible” for at least some Interconnection Requests to have an interconnection agreement with a New York Transmission Owner, not be part of the NYISO study queue, but still not be interconnected or constructed. Under these circumstances, the Joint Filing Parties maintain that these projects are included in the existing system modeled for the next Interconnection Study, even if they are not in the NYISO study queue. The Joint Filing Parties ask the Commission to reevaluate section 3.1.3 in light of the instant explanation.

20. The Joint Filing Parties also note that the proposed SGIP section 3.1.3 is patterned closely after the detailed definition of the existing system included as Attachment X in NYISO’s *pro forma* Large Generator Interconnection Procedures (LGIP).

Commission Determination

21. We deny rehearing of our rejection of the proposed independent entity variation to SGIP section 3.1.3. The Joint Filing Parties assert that clause (iv) relates to the need to transition small generator projects from multiple Transmission Owner queues to NYISO’s queue. The Commission recognizes that grandfathered interconnection agreements with a Transmission Owner may not be part of the NYISO study queue, and still not be interconnected or constructed. While we understand the Joint Filing Parties’ attempt to define the technical criteria and base case modeling for the interconnection studies, we find that proposed SGIP section 3.1.3, and particularly clause (iv), is unclear and confusing. Accordingly, we reject the proposed SGIP section 3.1.3 without prejudice to the Joint Filing Parties filing a proposal that fully supports and clearly defines the technical criteria and base case modeling for the interconnection studies. The Joint Filing Parties may make a separate section 205 filing that proposes this rejected revision.

22. With respect to the provision being patterned closely to NYISO’s *pro forma* LGIP, the Commission has stated that the *pro forma* SGIP/SGIA are intended to be shorter and less complex than the *pro forma* large generator interconnection procedures and agreement. Thus, a Transmission Provider cannot justify a variation from our *pro forma* small generator provisions simply on the grounds that the variation has been approved for its large generator *pro forma* documents.¹²

¹² *Id.* at P 16.

3. Cost Allocation

23. In the December 2005 filing, the Joint Filing Parties proposed to delete SGIA article 5.4, Rights Under Other Agreements, without explanation. Accordingly, the Commission rejected the proposal in the *February Order*.

24. In their request for rehearing, the Joint Filing Parties argue that the proposed deletion of SGIA article 5.4 is reasonable in light of NYISO's existing rules regarding interconnection cost allocation. The Joint Filing Parties argue that it did offer an explanation to support the deletion, which it based on the interconnection cost allocation rules contained in Attachment S, "Rules to Allocate Cost Responsibility for the Costs of New Interconnection Facilities," to the NYISO OATT. The Joint Filing Parties maintain that firm transmission rights, capacity rights, and transmission credits have no applicability in the New York Control Area.

Commission Determination

25. We grant rehearing of the deletion of SGIA article 5.4. Upon further consideration, we agree with the Joint Filing Parties. Deleting SGIA article 5.4 is consistent with NYISO's cost allocation rules in Attachment S. Accordingly, we direct the Joint Filing Parties to delete SGIA article 5.4.

4. Dispute Resolution

26. The December 2005 filing proposed a discrepancy in the treatment of payments for dispute resolution costs. In SGIP section 4.2.5, the Joint Filing Parties proposed that each Party be responsible for its own costs. However, in SGIA article 10.5, the Joint Filing Parties proposed that each Party be responsible for one-third of any costs. In the *February Order*, the Commission noted the discrepancy and rejected the proposed revisions to SGIP section 4.2.5 and SGIA article 10.5.

27. In their request for rehearing, the Joint Filing Parties state that the discrepancy was the unintended result of a drafting error, and claim that they intended to propose the same variation in both SGIP section 4.2.5 and SGIA article 10.5 that each Party be responsible for one-third of any costs. The Joint Filing Parties request that the Commission clarify that the Joint Filing Parties should correct the discrepancy and do so in a manner that makes sense in light of the fact that in New York the interconnection process, and disputes arising out of that process, will involve three parties instead of two.

Commission Determination

28. We grant rehearing and acknowledge that the payment for dispute resolution costs for the New York interconnection process would involve three parties. As such, we

direct the Joint Filing Parties to file revised tariff sheets to reflect that each party will be responsible for one-third of any costs paid to neutral third parties.

5. Affected Systems

29. In the December 2005 filing, the Joint Filing Parties proposed in SGIP section 3.4.7 that Affected Systems' involvement with the interconnection studies be limited. Specifically, the Joint Filing Parties eliminated the requirement that Affected Systems participate in the interconnection study process. In addition, the Joint Filing Parties also proposed deleting a sentence they thought to be confusing because it referred to Interconnection Customer's contacts and project coordination work with multiple transmission entities. The Joint Filing Parties further proposed in SGIP section 4.9 that, "to the extent required by Good Utility Practice," NYISO will coordinate the studies in a timely manner with Affected System Operators and Affected Systems to allow for potential input.

30. In the *February Order*, the Commission rejected the proposed independent entity variation to SGIP section 3.4.7, finding that prohibiting the Affected Systems from participating in the studies could lead to reliability or other problems on transmission and distribution systems.

31. In their request for rehearing, the Joint Filing Parties request clarification that the rejection of proposed SGIP section 3.4.7 only pertained to the variation relating to Affected Systems and not to other proposed deletions in SGIP section 3.4.7.

Commission Determination

32. We clarify that the Commission rejected only the independent entity variation concerning the participation of the Affected Systems in the *February Order*.

B. Compliance Filing

33. On March 22, 2007, the Joint Filing Parties submitted a compliance filing as required by the Commission in the *February Order*. In addition, the Joint Filing Parties have made additional minor revisions to the proposed SGIA consistent with NYISO's three-party interconnection process.

Commission Determination

34. We accept the Joint Filing Parties' proposed compliance filing, subject to the modifications as discussed above. We direct the Joint Filing Parties to submit revised tariff sheets with an effective date of February 20, 2007, reflecting the changes discussed above, within 30 days of the date of this order.

The Commission orders:

(A) The Joint Filing Parties' request for rehearing of the *February Order* is hereby granted in part and denied in part, as discussed in the body of this order.

(B) The Joint Filing Parties' compliance filing is hereby accepted subject to the modifications as discussed in the body of this order.

(C) The Joint Filing Parties are hereby directed to submit a compliance filing, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.