

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc. Docket Nos. ER06-311-000
New York Transmission Owners ER06-311-001

ORDER ON SMALL GENERATOR
INTERCONNECTION COMPLIANCE FILINGS

(Issued February 20, 2007)

1. The New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs)¹ (collectively, Joint Filing Parties) have submitted, in compliance with Order Nos. 2006, 2006-A, and 2006-B,² proposed variations from the *pro forma* Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA). In this order, we accept in part, and reject in part, the Joint Filing Parties' proposed modifications, and direct certain changes, as discussed below.

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 (LIPA); and the New York Power Authority (NYPA).

² *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*, (U.S.C.A., D.C. Circuit, Docket Nos. 06-1018, *et al.*).

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) for interconnecting new sources of electricity that are no larger than 20 MW. This continued the process of standardizing the terms and conditions of interconnection service for Interconnection Customers begun in Order No. 2003.³ The *pro forma* SGIP and *pro forma* SGIA reduce the interconnection time and costs for Interconnection Customers and Transmission Providers, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and types of new generation that will compete in the wholesale electricity market, facilitate development of non-polluting alternative energy sources, and help remedy undue discrimination, as sections 205 and 206 of the Federal Power Act (FPA)⁴ require.⁵

3. In Order No. 2006-A, the Commission modified portions of Order No. 2006. Specifically, the Commission added a provision requiring the terminating Party to bear all disconnection costs, unless the termination is the result of the non-terminating Party's default of the SGIA or the non-terminating Party otherwise is responsible for the disconnection costs under the SGIA. The Commission also included a provision to require the assigning Party to notify the other Party of any assignment. Order No. 2006-A also modified section 7.0 of the 10kW Inverter-Based Interconnection Agreement to reflect the insurance requirements for small generator interconnections.

4. In Order No. 2006-B, the Commission adopted several *pro forma* SGIA provisions into the *pro forma* SGIP study agreements to include standard legal terms and conditions. Specifically, the Commission included provisions on governing law, amendment, third-party beneficiaries, waiver, multiple counterparts, partnership, severability, subcontractors, and reservation of rights in the study agreements. Further, the Commission clarified that *pro forma* SGIP section 4, dealing with matters such as dispute

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, No. 04-1148, 2007 U.S. App. LEXIS 626 (D.C. Cir. Jan. 12, 2007). Capitalized terms in this order have the meaning specified in the Glossaries of Terms or the text of Order Nos. 2003 and 2006.

⁴ 16 U.S.C. §§ 824d, 824e (2000).

⁵ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 1.

resolution, confidentiality, record retention, among other matters, applies to the interconnection study process.

5. In Order No. 2006, as it had in Order No. 2003, the Commission permitted Independent System Operators (ISO) to seek “independent entity variations” from the final rules in their *pro forma* provisions.⁶ The Commission thus allowed ISOs to propose variations from the Commission’s *pro forma* interconnection procedures and agreements based on regional needs.

II. Compliance Filings

6. On December 8, 2005, the Joint Filing Parties submitted a compliance filing in response to Order Nos. 2006 and 2006-A. The Joint Filing Parties propose revisions to NYISO’s OATT to incorporate the SGIP and SGIA as Attachment Z and requested variations under the independent entity standard.

7. The Commission stated that if it had not acted on the Independent Transmission Provider’s compliance filings with Order Nos. 2006 or 2006-A at the time Order No. 2006-B was issued, an Independent Transmission Provider should amend its pending filing to reflect the directives of Order No. 2006-B.⁷ NYISO falls into this category.

8. On August 21, 2006, the NYTOs filed a motion for extension of time until October 27, 2006, to submit a joint filing with NYISO to comply with Order No. 2006-B. The Commission granted the extension of time. On October 27, 2006, the Joint Filing Parties submitted their joint compliance filing in response to Order No. 2006-B as an amendment to their pending joint filing to comply with Order Nos. 2006 and 2006-A.

9. In their Order Nos. 2006 and 2006-A compliance filing, the Joint Filing Parties proposed certain modifications, characterized as “independent entity variations,” to the Commission’s *pro forma* SGIP and *pro forma* SGIA based on regional differences or current NYISO practices, or to conform to NYISO OATT definitions and terminology.

10. Subsequently, in their Order No. 2006-B compliance filing, the Joint Filing Parties proposed additional variations relating to matters that were addressed in Order No. 2006-B. The Joint Filing Parties state that all of the proposed modifications to the Commission’s *pro forma* SGIP and SGIA relate to regional terminology and the number of parties involved. The Joint Filing Parties state that their proposed variations are

⁶ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827; Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 549.

⁷ Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 at P 9.

necessary to ensure that the standard legal terms and conditions in each study agreement are consistent and uniform for all Interconnection Requests processed in New York.

11. In their December 8, 2005 filing, the Joint Filing Parties request that the tariff sheets filed in compliance with Order No. 2006 become effective upon action by the Commission, and that the tariff sheets filed in compliance with Order No. 2006-A become effective on December 30, 2005. In their October 27, 2006 filing, the Joint Filing Parties request that the tariff sheets filed in compliance with Order No. 2006-B become effective upon action by the Commission.

12. The Joint Filing Parties also included a summary of proposed changes to the *pro forma* SGIP and *pro forma* SGIA in their December 8, 2005 filing, as Attachments VII and VIII, respectively, which the Joint Filing Parties state account for certain established New York practices. For example, in Attachment VII the Joint Filing Parties state that proposed modifications further describe the applicability of the SGIP. Additionally, they state in Attachment VIII that proposed modifications clarify the scope and limitations of the SGIA.

III. Notice of Filing and Responsive Pleadings

13. Notice of the filing in Docket No. ER06-311-000 was published in the *Federal Register*, 70 Fed. Reg. 76,804 (2005), with interventions and protests due on or before December 29, 2005. Notice of the filing in Docket No. ER06-311-001 was published in the *Federal Register*, 71 Fed. Reg. 65,485 (2006), with interventions and protests due on or before November 17, 2006. No interventions or protests were filed.

IV. Discussion

A. The Standard for Review

14. As was noted, Order No. 2006 permits an ISO to seek “independent entity variations” from the final rule’s pricing and non-pricing provisions. The Commission stated that this is a balanced approach that recognizes that an ISO (or a Regional Transmission Organization or RTO) has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than is a Transmission Provider that is a market participant. Under this standard, the Commission affords an ISO greater flexibility to customize its interconnection procedures and agreements than a non-independent Transmission Provider because an ISO does not own generation, and thus lacks the incentive to discriminate in favor of certain generation or to obstruct access to the grid by independent generators. Nonetheless, when an ISO is the filing entity, as is the case here, the Commission will review the proposed variations to

ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.⁸ Such review would include, as here, all proposed “independent entity variations” to reflect regional differences or current ISO practices, or to conform to the ISO’s OATT definitions and terminology. Even where the Transmission Provider is an independent entity, it must still justify its variations in light of the Commission’s *pro forma* SGIP/SGIA.⁹

15. The Commission will accept most of the proposed independent entity variations requested by the Joint Filing Parties. The Commission finds that the Joint Filing Parties have sufficiently demonstrated that most of the proposed independent entity variations are necessary based on NYISO’s regional needs or conform to the NYISO OATT definitions and terminology. However, as discussed below, the Joint Filing Parties have not made a sufficient demonstration that certain of the proposed variations meet the independent entity standard. Of the Joint Filing Parties’ proposed variations, the following issues are discussed herein: (1) split responsibilities between NYISO and the interconnecting Transmission Owner; (2) submission of processing fee or deposit; (3) dispute resolution costs; (4) revisions to *pro forma* interconnection studies timelines; (5) establishment of additional timelines concerning Interconnection Requests submitted prior to the effective date of the *pro forma* SGIP, supplemental review, and agreement to pay for Interconnection Facilities and Distribution Upgrades; (6) establishment of new provisions relating to supplemental review costs, general provisions, withdrawal of Interconnection Requests, and subcontracting; (7) unexplained deletion of *pro forma* provisions; (8) inspection costs; (9) signatories to the interconnection agreements; (10) affected systems; (11) insurance; and (12) SGIP study agreements.

16. Further, with respect to provisions modified or added to NYISO’s *pro forma* SGIP/SGIA solely to conform to NYISO’s *pro forma* Large Generator Interconnection Procedures (LGIP) and/or Large Generator Interconnection Agreement (LGIA), we note that the *pro forma* SGIP/SGIA are intended to be shorter and less complex than the *pro forma* LGIP /LGIA. 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. The Commission further stated that, unless expressly changed by Order No. 2006, the Commission’s existing interconnection precedent and Order No. 2003 should be used as guidance for interpretation and implementation of Order No. 2006.¹⁰

⁸ *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (2004), *order on reh’g*, 110 FERC ¶ 61,099 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,270, at P 29 (2006).

⁹ *See id.* at P 16.

¹⁰ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 59.

B. Ministerial Changes

17. In their proposed definition of “Applicable Reliability Standards” in the Glossary of Terms (proposed SGIP Appendix 1 and proposed SGIA Attachment 1), in the last sentence of that definition, the Joint Filing Parties refer to “Applicable Reliability Requirements” instead of “Applicable Reliability Standards.” However, they did not explain or justify that variation. Accordingly, we direct the Joint Filing Parties to replace “Applicable Reliability Requirements” with “Applicable Reliability Standards” in the definition of Applicable Reliability Standards.

18. The Joint Filing Parties have deleted *pro forma* SGIA article 5.2.2 in its entirety and have replaced it with the following sentence: “Pending the outcome of the Attachment S cost allocation process,¹¹ the Interconnection Customer may elect to proceed with the interconnection if its Small Generating Facility in accordance with Section 5.3.5 of the SGIP.” The word “if” should be “of,” and we direct the Joint Filing Parties to correct the typographical error accordingly.

C. Split Responsibilities between NYISO and the Interconnecting Transmission Owner

19. In Order No. 2003-A, the Commission clarified that, for a non-independent Transmission Owner belonging to a RTO or ISO, the RTO’s or ISO’s Commission-approved standards and procedures would govern all interconnections with facilities under the operational control of the RTO or ISO.¹² This clarification also applies to Order No. 2006, because the Commission stated that its existing interconnection precedent and Order No. 2003 should be used as guidance for interpretation and implementation of Order No. 2006.¹³

20. The Joint Filing Parties propose to divide responsibility for the small generator interconnection process between NYISO and the Transmission Owners. They propose that NYISO have administrative control over the interconnection process, which includes processing Interconnection Requests, managing the interconnection queue, participating in dispute resolution, authorizing parallel operation of the New York State Transmission

¹¹ Under NYISO’s OATT, interconnection studies are conducted on a “class year” basis, with all Interconnection Requests received within a given time period studied together on a clustered basis. Attachment S of NYISO’s OATT governs the assignment of interconnection costs to each member of the class year.

¹² Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 52.

¹³ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 59.

System, and taking the lead on cost allocation. They also propose that NYISO perform the interconnection studies for interconnections to the New York State Transmission System. However, the Joint Filing Parties propose that, in accordance with established New York practice, the Transmission Owners have lead responsibility on small generator interconnection study work for interconnections to distribution facilities, including taking the lead on technical work needed for fast track evaluations, interconnection studies for interconnections to the Distribution System, and authorizing parallel operation with the Distribution System.

Commission Conclusion

21. The Commission is not persuaded that the proposed independent entity variation to split the responsibility for conducting the studies on proposed small generator interconnections meets the independent entity standard, or that it will add clarity to the generator interconnection process. The Commission continues to believe that an ISO/RTO should have control over the interconnection process and that the tariff should reflect such control. The interconnection process is predicated on an independent review of the Interconnection Request by the ISO/RTO and a level of participation by the ISO/RTO that alleviates concerns that a Transmission Owner will behave in a discriminatory fashion. Splitting these responsibilities between the ISO/RTO and the Transmission Owners could significantly undermine the safeguards that the Commission expects to be in place in an ISO/RTO system.¹⁴ Only interconnections to facilities that are not subject to a Commission-jurisdictional OATT may be governed by a Transmission Owner's interconnection process and procedures. We therefore reject the Joint Filing Parties' proposal to split responsibilities between NYISO and the NYTOs for distribution facilities under a Commission-jurisdictional OATT.

D. Submission of Processing Fee or Deposit

22. The Commission's *pro forma* SGIP section 1.3 provides that the Interconnection Customer must submit its Interconnection Request, together with the processing fee or deposit, to the Transmission Provider.

23. The Joint Filing Parties propose that the processing fee or deposit be submitted to the Transmission Owner for interconnections to the Distribution System and to NYISO for interconnections to the New York State Transmission System.

¹⁴ *ISO New England, Inc.*, 115 FERC ¶ 61,050, at P 53 (2006).

Commission Conclusion

24. As stated above, the Commission finds that an ISO/RTO should have exclusive control over the interconnection process. Since collecting processing fees and deposits is part of the interconnection process to facilities jurisdictional to this Commission, we find that processing fees and deposits should be submitted solely to NYISO. We therefore reject the Joint Filing Parties' proposal to split the responsibilities between NYISO and the Transmission Owners for submitting processing fees or deposits for distribution facilities under a Commission-jurisdictional OATT.

E. Dispute Resolution Costs

25. The Commission's *pro forma* SGIP section 4.2.5 and *pro forma* SGIA article 10.5 require each Party to be responsible for one half of any costs paid to neutral third parties to resolve disputes arising out of the interconnection process.

26. The Joint Filing Parties propose in SGIP section 4.2.5 that each Party be responsible for its own costs. However, in SGIA article 10.5, they propose that each Party be responsible for one third of any costs.

Commission Conclusion

27. There is a discrepancy between the Joint Filing Parties' proposed treatment of the payments for dispute resolution costs in SGIP section 4.2.5 and SGIA article 10.5. We reject the proposed variations in SGIP section 4.2.5 and SGIA article 10.5 because the Joint Filing Parties have not shown why a deviation from the *pro forma* SGIP/SGIA meets the independent entity standard.

F. Revisions to Pro Forma Interconnection Studies Timelines

28. The Commission's *pro forma* SGIP section 3.4.3 requires the Transmission Provider to send the Interconnection Customer, within five Business Days, a transmission system impact study agreement if the feasibility study or the distribution system impact study show a potential for adverse impacts on the transmission system.

29. The Joint Filing Parties propose in SGIP section 3.4.3 to increase the timeframe from five Business Days to 15 Business Days to send a transmission system impact study agreement to the Interconnection Customer if the feasibility study or the distribution system impact study shows a potential for adverse system impacts. They state that these studies typically take longer to complete than the required *pro forma* timelines.

30. The Commission's *pro forma* SGIP Attachment 7, section 7.0, provides that all Affected Systems must be afforded an opportunity to review and comment on a system impact study that covers potential adverse impacts on their electric systems.
31. The Joint Filing Parties propose in SGIP Attachment 7, section 7.0, to establish a specific time period of 10 Business Days for Affected Systems to review and comment on a system impact study that covers potential adverse impacts on their electric systems.
32. The Commission's *pro forma* SGIP Attachment 7, section 9.0, provides that, if a distribution system impact study is required, it must be completed and the results transmitted to the Interconnection Customer within 30 Business Days after the distribution system impact study agreement is signed by the parties. If a transmission system impact study is required, it must be completed and the results transmitted within 45 Business Days after the transmission system impact study agreement is signed by the parties, or in accordance with the Transmission Provider's queuing procedures.
33. The Joint Filing Parties propose that *pro forma* SGIP Attachment 7, section 9.0 apply only to Interconnection Requests no larger than two MW. They further propose that, for Interconnection Requests greater than two MW, the distribution system impact study and the transmission system impact study (if required) be completed and the results transmitted to the Interconnection Customer within 60 Business Days after the distribution/transmission system impact study agreement is signed.
34. The Commission's *pro forma* SGIP Attachment 8, section 7.0, provides that if Upgrades are required, the facilities study must be completed within 45 Business Days of receipt of the facilities study agreement. If no Upgrades are required, the facilities are limited to Interconnection Facilities and the facilities study must be completed within 30 Business Days.
35. The Joint Filing Parties propose in SGIP Attachment 8, section 7.0, that, except to the extent required by the NYISO OATT Attachment S cost allocation process, the facilities study be completed within 30 Business Days after the facilities agreement is signed for Interconnection Requests no larger than two MW and no later than 60 Business Days after the facilities agreement is signed for Interconnection Requests greater than two MW.
36. The Commission's *pro forma* SGIP Attachment 8, section 8.0, provides that the facilities study must be completed and the facilities study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a facilities study.

37. The Joint Filing Parties propose in SGIP Attachment 8, section 8.0, that the facilities study be prepared and promptly transmitted to the Interconnection Customer rather than within the required 30 Business Days. They state that the system impact study and the facilities study typically take longer than the *pro forma* timelines and the proposed changes reflect the historic experience of the NYTOs.

Commission Conclusion

38. The Commission finds that the Joint Filing Parties have not shown that their proposal to extend the deadlines for the system impact and facilities studies meets the independent entity standard. For example, the Joint Filing Parties do not indicate how often they use their existing flexibility to extend the current deadlines. Thus, the Commission is unconvinced that the *pro forma* deadlines are insufficient to meet the requirements of the NYISO and NYTOs. As stated before, the Commission finds that the SGIP *pro forma* deadlines strike an appropriate balance between allowing sufficient time to complete the studies and ensuring that Small Generating Facilities can be interconnected within a reasonable time.¹⁵ The Joint Filing Parties have not shown that it frequently takes them more time to complete the studies.

G. Establishment of Additional Timeframes

a. Interconnection Requests Submitted Prior to the Effective Date of the *Pro forma* SGIP

39. The Commission's *pro forma* SGIP section 1.7 provides that nothing in the SGIP affects an Interconnection Customer's Queue Position assigned before the effective date of the *pro forma* SGIA. The section requires the Parties to complete work on any interconnection study agreement executed prior to the effective date of the *pro forma* SGIP in accordance with the terms and conditions of that interconnection study agreement. Any new studies or other additional work will be completed pursuant to the *pro forma* SGIP.

40. The Joint Filing Parties propose in SGIP section 1.7 that, if an interconnection agreement has not been filed with the Commission within 60 Business Days of the effective date of the SGIP, the Interconnection Customer may request NYISO to assign a Queue Position to Interconnection Requests submitted to Transmission Owners prior to the effective date of the SGIP. The Joint Filing Parties propose that the Queue Position will be based on the date and time of the original Interconnection Request submitted to

¹⁵ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 192.

the Transmission Owner. The Joint Filing Parties state that these modifications are intended to incorporate projects into NYISO's existing unified queue.

Commission Conclusion

41. The Joint Filing Parties appear to propose a correlation between assigning a Queue Position when the interconnection agreement has not been filed with the Commission and assigning a Queue Position based on the date and time of receipt of the original Interconnection Request. The Joint Filing Parties also appear to establish a timeframe for assigning a Queue Position if the interconnection agreement has not been filed with the Commission within 60 Business Days of the effective date of the SGIP. We clarify that, in the *pro forma* SGIP, Queue Positions are not based on when the interconnection agreement is filed with the Commission, but rather on the date and time of receipt of the valid Interconnection Request. If an Interconnection Request is deemed invalid solely because of a lack of required information, then once the required information is provided, the Queue Position would be based on the date the Interconnection Request was originally made. We therefore reject the Joint Filing Parties' proposed variations in SGIP section 1.7.

b. Supplemental Review

42. The Commission's *pro forma* SGIP section 2.4.1 provides that, within 10 Business Days following receipt of the deposit for a supplemental review, the Transmission Provider is required to determine if the Small Generating Facility can be interconnected safely and reliably. *Pro forma* SGIP section 2.4.1.2 requires the Transmission Provider to forward an executable interconnection agreement to the Interconnection Customer within five Business Days after confirmation that the Interconnection Customer has agreed to make the necessary changes at the Interconnection Customer's cost.

43. The Joint Filing Parties propose in SGIP section 2.4.1.2 to establish a timeframe that would require the Interconnection Customer to provide written confirmation to the Transmission Owner within 30 Business Days of receiving notice that modifications to the Small Generating Facility are required. The Commission's *pro forma* SGIP has no deadline.

Commission Conclusion

44. We reject the Joint Filing Parties' variation, in SGIP section 2.4.1.2, to establish a deadline for the Interconnection Customer to provide written confirmation to the Transmission Owner, since they have not shown why a deadline is needed.

c. **Agreement to Pay for Interconnection Facilities and Distribution Upgrades**

45. The Commission's *pro forma* SGIP section 3.5.7 directs the Transmission Provider to present the Interconnection Customer with an executable SGIA no later than five Business Days after the facilities study is complete and the Interconnection Customer agrees to pay for the Interconnection Facilities and Upgrades identified in the facilities study.

46. The Joint Filing Parties propose in SGIP section 3.5.7 to establish a timeframe of 30 Business Days of receipt of the facilities study results for the Interconnection Customer to agree to pay for the Interconnection Facilities and Distribution Upgrades. If the Interconnection Customer fails to agree within this timeframe, the Interconnection Request will be deemed withdrawn.

Commission Conclusion

47. We reject the Joint Filing Parties' proposal to establish a deadline for the Interconnection Customer to agree to pay for the Interconnection Facilities and Distribution Facilities. We previously addressed this issue in Order No. 2006-A.¹⁶ There, the Commission stated that it expects the Parties to act in good faith during this phase of the interconnection process. If either Party believes that the interconnection process is not moving forward within a reasonable time during this waiting period, it may initiate dispute resolution or file a complaint with the Commission. In addition, the Transmission Provider may file an unexecuted interconnection agreement with the Commission, explaining that it was unable to obtain the Interconnection Customer's agreement to pay for the Interconnection Facilities and Distribution Upgrades.¹⁷ We find that these remedies are adequate and thus reject the Joint Filing Parties' proposal.

H. Establishment of New Provisions

a. **Supplemental Review Costs**

48. The Joint Filing Parties propose to establish a new SGIP section 2.4.1.5, which provides that the Transmission Owner and NYISO are not obligated to execute an interconnection agreement with the Interconnection Customer, or to conduct Interconnection Studies for that Interconnection Customer, until the Interconnection Customer has fully reimbursed them for their supplemental review costs.

¹⁶ Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 at P 33.

¹⁷*Id.*

b. General Provisions

49. The Joint Filing Parties propose in SGIP section 3.1.3, among other things, that except for facilities studies conducted in accordance with Attachment S of NYISO's OATT, the interconnection studies conducted under NYISO's proposed SGIP should consider distribution facilities potentially affected by the Interconnection Request and the Base Case. If the interconnection studies do not consider distribution facilities potentially affected by the Interconnection Request and Base Case on the date the studies commence, the Joint Filing Parties propose that all generating and merchant transmission facilities shall not have a Queue Position, but rather shall have an executed interconnection agreement or shall request that an unexecuted interconnection agreement be filed with the Commission.

c. Withdrawal of Interconnection Requests

50. The Joint Filing Parties propose to establish a new SGIP section 4.11, titled "Withdrawal," to govern the process for withdrawals of Interconnection Requests. They state that the new provision clarifies that a withdrawal will result in the loss of the Interconnection Customer's Queue Position, and they provide details of the process in the event an Interconnection Customer disputes the withdrawal. They note that this provision is similar to that accepted in NYISO's LGIP.

d. Subcontracting

51. The Joint Filing Parties propose to establish a new SGIP section 4.12, titled "Subcontracting," to clarify that NYISO or the Transmission Owners may use subcontractors in order to perform their obligations under the SGIP. They note that this provision is also similar to that accepted in NYISO's Large Generating Interconnection Procedures.

Commission Conclusion

52. We are not convinced that the proposed variations under SGIP section 2.4.1.5 meet the independent entity standard, since, in most cases, similar provisions are already in the *pro forma* SGIP and *pro forma* SGIA. For example, *pro forma* SGIP section 2.4 already requires the Interconnection Customer to pay a deposit for the supplemental review with the balance of these costs due to the Transmission Provider, or NYISO in this case, within 20 Business Days of receipt of the invoice. Furthermore, *pro forma* SGIP section 2.4.1.1 requires the Transmission Provider to forward an executable interconnection agreement to the Interconnection Customer within five Business Days if the Small Generating Facility can be determined to be interconnected safely and reliably.

Once the Interconnection Customer agrees to pay for any Upgrades called for in the supplemental review, the Parties execute the SGIA.¹⁸

53. In addition, we are not convinced that the proposed variation under SGIP section 4.11 is necessary, since *pro forma* SGIP sections 1.3, 1.4, and 4.8 already establish situations in which the Interconnection Request is deemed withdrawn. Likewise, with respect to the proposed variation under SGIP section 4.12, provisions addressing subcontracting are already included in the *pro forma* feasibility and system impact study agreements in section 20.0 and facilities study agreement in section 18.0.

54. Furthermore, as stated above, while the Commission's existing interconnection precedent and Order No. 2003 should be used as guidance for interpretation and implementation of Order No. 2006,¹⁹ the Commission intended the *pro forma* SGIP/SGIA to be shorter and less complex than the *pro forma* LGIP/LGIA where possible. We therefore reject the Joint Filing Parties' proposed addition of SGIP sections 2.4.1.5, 4.11, and 4.12.

55. With respect to the Joint Filing Parties' proposed SGIP section 3.1.3, we find it 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. Accordingly, we reject this proposed variation.

I. Unexplained Deletion of *Pro forma* Provisions

56. The Joint Filing Parties have deleted without explanation several provisions throughout their proposed SGIP and SGIA. Specifically, the following have been deleted: *pro forma* SGIP sections 3.4.4 and 3.4.5 and *pro forma* SGIA articles 5.4 and 7.5.

Commission Conclusion

57. We reject the deletion of these provisions, since the Joint Filing Parties have neither explained nor justified these deviations from the *pro forma* SGIP and *pro forma* SGIA. The Commission directs the Joint Filing Parties to add these provisions back into their SGIP and SGIA.

¹⁸ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 45.

¹⁹ *Id.* at P 59.

J. Inspection Costs

58. The Commission's *pro forma* SGIA article 2.3 provides the Transmission Provider with the right to access the Interconnection Customer's premises to inspect the interconnection and observe the commissioning of the Small Generating Facility. *Pro forma* SGIA article 2.3.3 further provides that each Party is responsible for its own costs associated with access rights.

59. The Joint Filing Parties do not object to the cost responsibility generally; however, they propose in SGIA article 2.3.3 that the Interconnection Customer be responsible for costs of the Transmission Owner or NYISO to inspect the facility prior to parallel operation in instances following an identified violation of the requirements of the SGIA or any restart of operation.

Commission Conclusion

60. The ability of an access-granting party to charge another party seeking to inspect its facilities was rejected in Order No. 2003-A.²⁰ The Joint Filing Parties proposed such an inspection charge in their Order Nos. 2003 and 2003-A compliance filing, and the Commission reiterated its rejection of this charge.²¹ Here, the Joint Filing Parties attempt to require the Interconnection Customer to pay inspection costs prior to parallel operation when the SGIA has been violated or at the restart of operation. The Joint Filing Parties do not justify this deviation from the *pro forma* SGIA. Therefore, we likewise reject the proposed variation in inspection costs responsibilities.

K. Signatories to the Interconnection Agreement

61. As in Order No. 2003, Order No. 2006 requires a three-party agreement in areas where the Transmission Provider and Transmission Owner are different entities.²²

62. The Joint Filing Parties propose that the interconnection agreement be a three-party agreement among NYISO, the Interconnection Customer, and Transmission Owner for all small generating facilities larger than two MW, but a two-party agreement between the Interconnection Customer and the Transmission Owner when the facility is two MW or smaller and for the 10 kW Inverter-Based facilities.

²⁰ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 291.

²¹ *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at P 81-83 (2004) (Order No. 2003 Joint Compliance Order).

²² Order No 2003, FERC Stats. & Regs. ¶ 31,146 at P 909; Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at P 350.

Commission Conclusion

63. We reject the Joint Filing Parties' proposal to establish a two-party agreement between the Interconnection Customer and the Transmission Owner when the facility is two MW or smaller and for the 10 kW Inverter-Based facilities. While the Commission recognizes that two-party interconnection agreements previously have been the norm for the industry when there is no ISO, the involvement of the Interconnection Customer, the Transmission Owner, and the ISO is necessary. NYISO plays a necessary role as an independent entity in the interconnection of generators to its transmission system. Because NYISO is charged with maintaining the reliability of the transmission grid, a three-party interconnection agreement is warranted to clearly delineate the rights and obligations of all Parties involved in the interconnection.

L. Affected Systems

64. The Commission's *pro forma* SGIP section 3.4.7 provides, among other things, that Affected Systems must participate in interconnection studies and provide all information necessary to prepare the study. Further, *pro forma* SGIP section 4.9 requires, among other things, that the Transmission Provider coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System Operators and, if possible, include those results in its interconnection study within the timeframe specified in the *pro forma* SGIP.

65. The Joint Filing Parties propose in SGIP section 3.4.7 that Affected Systems' involvement with the studies be limited. Specifically, they eliminate the requirement that Affected Systems participate in the interconnection study process. They further propose 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.

Commission Conclusion

66. We reject the Joint Filing Parties' proposal to limit the Affected Systems' involvement to only providing information necessary to prepare the studies. Prohibiting the Affected System from participating in the studies could lead to reliability or other problems not only on the New York State transmission and distribution systems but also on the transmission and distribution lines of the Affected Systems. Furthermore, modifications may be necessary that might impact the Affected Systems. Therefore, the

Transmission Provider, or NYISO as is the case here, must allow any Affected System to participate in the process when conducting Interconnection Studies.²³

67. The Commission finds that the *pro forma* SGIP deadlines as established in Order No. 2006 allow sufficient time to complete the interconnection process and rejects the Joint Filing Parties' attempt to coordinate the studies in a "timely" manner only if required by Good Utility Practice. If the Affected System declines to work with NYISO, or fails to provide information in a timely manner, NYISO may proceed with the interconnection process without taking into account the information that could have been provided by the Affected System.²⁴ We therefore reject the Joint Filing Parties' proposed variations in SGIP sections 3.4.7 and 4.9.

M. Insurance

68. The Commission's *pro forma* SGIA article 8.1 provides that there must be enough insurance to insure against all reasonably foreseeable direct liabilities, given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made.²⁵ It also provides that the Interconnection Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility.

69. While the Joint Filing Parties propose in SGIA article 8.1 that the amount of insurance be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generator being insured, in accordance with Order No. 2006, they also propose that the general liability insurance supplement any other insurance required by New York State. The Joint Filing Parties have made corresponding changes to the "Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10 kW." In addition, they have established Attachment 7 to their proposed SGIA, which will specify the insurance coverage for the agreement.

Commission Conclusion

70. The Joint Filing Parties have neither explained in what circumstances New York State would require additional insurance nor the amount of the supplemental insurance. We therefore reject the Joint Filing Parties' proposed supplemental insurance requirement.

²³ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 121.

²⁴ *Id.*

²⁵ Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 330-33.

N. SGIP Study Agreements

71. In Order No. 2006-B, the Commission directed that several standard legal terms and conditions from the *pro forma* SGIA be added to the *pro forma* SGIP study agreements to clarify each Party's legal rights under the study agreements and to minimize disputes. Specifically, provisions on governing law, amendment, third party beneficiaries, waiver, multiple counterparts, partnership, severability, subcontractors, and reservation of rights were included in the study agreements.

72. The Joint Filing Parties have proposed to add several other provisions from the *pro forma* SGIA to the *pro forma* SGIP study agreements. These proposed provisions cover matters that deal with accuracy of information, disclaimer of warranty, force majeure, limitation of liability, indemnification, term and termination, survival, successors and assigns, due authorization, independent contractor status, and subcontractors as third party beneficiaries.

73. The Joint Filing Parties state that the proposed modifications to the study agreements reflect the regional terminology and number of parties involved. They also argue that such modifications maintain the uniformity of the comparable provisions found in all the interconnection study agreements used in New York for large projects and small projects. The Joint Filing Parties also state that certain provisions they propose to be added to the study agreements were the same as those previously accepted by the Commission for NYISO's LGIP.

Commission Conclusion

74. We reject the Joint Filing Parties' proposed sections 13.0 through 14.8 of both the feasibility and system impact study agreements, and sections 11.0 through 12.18 of the facilities study agreement adding the provisions discussed above. While the Joint Filing Parties state that their aim is to maintain uniformity and consistency between the LGIP/LGIA and the SGIP/SGIA, we reiterate that Order No. 2006 was intended to result in procedures and agreements that are shorter and less complex where possible. The Joint Filing Parties have not met their burden of justifying the proposed deviation from the *pro forma* study agreements. Although we allow regional flexibility to independent entities, blanket statements that a variation is necessary to continue current practices or is consistent with the current OATT are not sufficient.

O. Request for Waiver

75. The Joint Filing Parties note that the Commission agreed with them that it would be counterproductive to implement interconnection procedures throughout the New York Control Area to handle the relatively small number (if any) of Interconnection Requests

filed between the effective date of Order No. 2003 and the date in which the Commission accepted the Order No. 2003 joint compliance filing.²⁶ The Joint Filing Parties suggest that the same reasoning should apply here. They point out that in Order No. 2003-A, one of the overriding goals is to establish “a single, uniformly applicable set of procedures and agreements to govern the process of interconnection Large Generators to a Transmission Provider’s Transmission System.”²⁷ The Joint Filing Parties state that it would not benefit consumers or market participants to require that the various Transmission Owners go through the motions of adopting Order Nos. 2006 and 2006-A compliance filings only to remove them upon acceptance of the Order No. 2006-B filing.

76. For these reasons, the Joint Filing Parties request that, to the extent necessary, the Commission waive any requirements that would otherwise prevent the New York Transmission Owners from continuing to use their existing interconnection procedures and agreements for small generators until the Commission acts on this filing.

Commission Conclusion

77. Order No. 2006 recognizes that not all Public Utilities are likely to receive interconnection requests, and the burden of complying with Order No. 2006 may outweigh the benefits to consumers.²⁸ While this logic usually has been applied to smaller Transmission Providers, it also applies here.²⁹ When we have granted waiver in the past, the Commission has stated that the waiver would last until such time as the Public Utility receives a request for interconnection service.³⁰ Therefore, the Commission will grant the Joint Filing Parties a waiver if they have not received any requests for interconnection to facilities they control for the period between December 30, 2005, and the issuance date of this order. If NYISO or a Transmission Owner has received such a request, it must apply the *pro forma* SGIP and SGIA in Order Nos. 2006, 2006-A, and 2006-B to any requests for small generator interconnection.

²⁶ See December 8, 2005 Transmittal at 7 (citing Order No. 2003 Joint Compliance Order, 108 FERC ¶ 61,159 at P 123).

²⁷ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 2; *see also* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 11.

²⁸ See, e.g., *Inland Power & Light Co.*, 107 FERC ¶ 61,054 (2004).

²⁹ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 830.

³⁰ *Id.* P 830-31.

P. Effective Date

78. The Joint Filing Parties request that the tariff sheets filed in compliance with Order No. 2006 become effective upon action by the Commission, and those tariff sheets filed in compliance with Order No. 2006-A become effective on December 30, 2005. In their October 27, 2006 filing, the Joint Filing Parties request that the tariff sheets filed in compliance with Order No. 2006-B become effective upon action by the Commission.

Commission Conclusion

79. We reject the Joint Filing Parties' proposal that their tariff sheets filed in compliance with Order Nos. 2006 and 2006-B become effective upon action by the Commission, because Order No. 2006 became effective on August 12, 2005, and Order No. 2006-B became effective on August 28, 2006. We accept their proposed December 30, 2005 effective date for the tariff sheets filed in compliance with Order No. 2006-A, which is the effective date of that order.

The Commission orders:

(A) The Joint Filing Parties' proposed modifications to the *pro forma* SGIP and *pro forma* SGIA are hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) The Joint Filing Parties' proposed effective date, December 30, 2005, for the tariff sheets in compliance with Order No. 2006-A is hereby accepted.

(C) The Joint Filing Parties' proposed effective dates for the tariff sheets in compliance with Order Nos. 2006 and 2006-B are hereby rejected, as discussed in the body of this order. The tariff sheets filed in compliance with Order No. 2006 are effective as of August 12, 2005, and the tariff sheets filed in compliance with Order No. 2006-B are effective as of August 28, 2006.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary