

On April 26, 2004, the Filing Parties submitted additional compliance documents in their respective proceedings in response to our Order No. 2003 order on rehearing (Order No. 2003-A).⁴

2. In Order No. 2003, we required all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement governing the interconnection of their facilities with Large Generators. To accomplish this objective, we adopted standard Large Generator Interconnection Procedures (*pro forma* LGIP) and a Large Generator Interconnection Agreement (*pro forma* LGIA) applicable to all public utilities subject to our jurisdiction. However, we also noted that in the case of an independent transmission provider, namely, a regional transmission organization (RTO) or an independent system operator (ISO), we would consider variations from our *pro forma* requirements based on our recognition that an RTO or ISO has different operating characteristics, depending on its size and location, and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant.⁵

3. In compliance with these directives, NEPOOL states that it has included in its filing proposed amendments to the NEPOOL OATT relating to the PTF. NEPOOL also proposes to retain a number of its existing procedures governing the interconnection of new generators to the NEPOOL grid, which NEPOOL seeks to justify under the

³ As discussed below, the New England wholesale electricity market is administered under a bifurcated tariff structure. ISO New England administers a regional tariff for service over Pool Transmission Facilities (PTF), which are high voltage facilities that serve a region-wide function; and each Transmission Owner administers an individual Local OATT for service over facilities in their respective service territories that are lower voltage lines or radials performing a primarily local function (non-PTF). As such, both NEPOOL and the Transmission Owners administer jurisdictional open access transmission tariffs (OATTs) and thus both are subject to the requirements of Order No. 2003, as they relate to their respective OATTs.

⁴ Order No. 2003-A, while affirming the legal and policy conclusions on which Order No. 2003 is based, also modified, in part, various *pro forma* provisions adopted by the Commission in Order No. 2003.

⁵ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827. In Order No. 2003-A, we reaffirmed these determinations, including the legal and policy conclusions on which Order No. 2003 is based. We also provided a number of clarifications regarding, among other things, pricing matters, cost recovery, an interconnection service options.

Commission's independent entity variation standard. The Transmission Owners, in their compliance filing, propose corollary revisions to their Local OATTs relating to NEPOOL's non-PTF, but fail to support these proposed revisions on a basis that could be applied to a non-independent entity.

4. For the reasons discussed below, we will accept NEPOOL's compliance filings, subject to conditions, to become effective on the date of this order, and will reject the Transmission Owners' compliance filings. We will consider NEPOOL's submittals under our independent entity variation standard. In doing so, we will approve NEPOOL's proposed retention of a number of its existing rules and policies, including NEPOOL's Minimum Interconnection Standard and its existing cost allocation provisions under Schedule 11 and Schedule 12 of the NEPOOL OATT. However, we will reject NEPOOL's proposal to broaden the term "Large Generating Facility" to include facilities having a generating capacity of more than 5 megawatts. For the reasons discussed below, projects involving 20 megawatts of capacity or less are beyond the scope of this proceeding.

5. Finally, we will reject the Transmission Owners' proposed variations as unjustified. As non-independent entities, the Transmission Owners have neither asked for nor demonstrated that the variations they seek are consistent with or superior to the *pro forma* LGIP and LGIA. We also note that the Transmission Owners have never complied with the requirement in our Compliance Procedures Order that they make a "ministerial" filing of the Commission's *pro forma* provisions. Accordingly we will direct the Transmission Owners to make such a ministerial filing within 15 days of the date of issuance of this order. Should the Transmission Owners seek any variations from the *pro forma* provisions, they may do so in a new filing and either: (i) explain why the proposed variations are consistent with or superior to our Order No. 2003 standards; (ii) agree to transfer to ISO New England, or its successor RTO, control over the significant aspects of the Local OATT interconnection process, including the performance of all interconnection studies and cost determinations applicable to system upgrades; or (iii) as to any individual Transmission Owner variations based on a regional reliability standard, support such variations by reference to the specific regional reliability standard relied upon.

I. Background

A. Existing PTF Interconnection Procedures Under The NEPOOL OATT

6. Prior to 1998, generators interconnecting to the NEPOOL PTF were required to be "fully integrated" with the regional grid; they were required to demonstrate that their capacity could reach the aggregate load throughout New England under both normal and high volume transfer conditions. As such, interconnections to the NEPOOL grid were

subject to a “deliverability” requirement. However, because generators seeking interconnection access were willing, in some cases, to accept existing transmission constraints and thus gain some access to the NEPOOL grid without necessarily reaching the system’s aggregate load (or paying for the upgrades required to do so), the Full Integration Standard came under attack. Ultimately, the Full Integration Standard was replaced, in 1998, by the Minimum Interconnection Standard.⁶ Under the Minimum Interconnection Standard, an interconnection applicant is required to demonstrate that the interconnection of its unit to the NEPOOL PTF will not degrade the existing transfer capability of the PTF and non-PTF. If this test is satisfied, the interconnected generator gains full market rights. For example, it becomes eligible to receive installed capacity payments (ICAP) as an ICAP supplier and to participate in the operating reserves market.

7. The allocation of the cost of a transmission upgrade needed for a PTF interconnection is addressed by Schedule 11 of the NEPOOL OATT.⁷ NEPOOL’s cost allocation methodology under Schedule 11 requires the Interconnection Customer to bear all costs of sole use, direct assignment facilities as well as all costs for Network Upgrades. In addition, the Interconnection Customer is required to pay all annual costs, including federal and state income taxes, operations, maintenance, administrative and general expenses, annual property taxes, and other related costs allocable to the direct assignment facilities and Network Upgrades, subject to a market compensation mechanism for transmission upgrades that increase the transfer capability of the PTF. If the System Operator determines that a generator interconnection-related upgrade needed to meet the Minimum Interconnection Standard provides benefits to the system as a whole, the upgrade costs are rolled into the system-wide rate.⁸

⁶ See *Champion International Corporation and Bucksport Energy, L.L.C. v. ISO New England, Inc., New England Power Pool and Central Maine Power Company*, 85 FERC ¶ 61,142 (1998); *New England Power Pool*, 85 FERC ¶ 61,141 (1998).

⁷ Schedule 11 was initially accepted by the Commission in *New England Power Pool*, 85 FERC ¶ 61,141 (1998), *order on reh’g*, 87 FERC ¶ 61,043 (1999). Schedule 11’s cost allocation methodology was upheld by the Commission in *New England Power Pool*, 95 FERC ¶ 61,383 (2001) and *New England Power Pool*, 91 FERC ¶ 61,311, *order on reh’g*, 95 FERC ¶ 61,384 (2001).

⁸ Issues relating to this cost allocation methodology were most recently addressed by the Commission in a December 18, 2003 Order issued in *New England Power Pool and ISO New England, Inc., et al.*, 105 FERC ¶ 61,300 (2003).

8. In addition to Network Upgrades, the NEPOOL OATT also provides for Elective Upgrades and Reliability Upgrades. An Interconnection Customer requesting an Elective Transmission Upgrade may demonstrate that the upgrades associated with its interconnection will increase the transfer capability on the system, increase reliability, or reduce Congestion Costs. If the Elective Transmission Upgrade increases transfer capability on the PTF, it is eligible for a Qualified Upgrade Award. A Reliability Upgrade qualifies for rolled-in rate treatment.

9. The NEPOOL OATT does not address other matters relating to the generator's interconnection to the PTF (*e.g.*, security and deposit provisions). Instead, each of the Transmission Owners that comprise NEPOOL is responsible for negotiating an interconnection agreement with the generator if a requested interconnection involves the Transmission Owner's PTF facilities.

B. Non-PTF Interconnections Under the Local OATTs

10. Under the existing interconnection standards for non-PTF interconnections, the Transmission Owner is primarily responsible for processing interconnection requests. Specifically, the Transmission Owner receives the interconnection request, conducts the preliminary review, conducts the scoping meeting, System Impact Study, Facilities Study, estimates all costs (including security and deposit), and performs construction. However, ISO New England is responsible for transmission review, maintaining the queue, and working in cooperation with the Transmission Owner in providing the System Impact Study to determine the interconnection and upgrades necessary to avoid adverse impact to the system. The interconnection agreement is between the Transmission Owner and the customer only. Interconnections to the non-PTF are currently performed under the Minimum Interconnection Standard. Cost allocation for non-PTF interconnections is determined under Schedule 11 of the NEPOOL OATT.⁹

C. NEPOOL's Compliance Proposal

11. NEPOOL states that while it has attempted to retain, in its compliance filings, as much of the structure and substance of the Order No. 2003 and Order No. 2003-A *pro forma* requirements as practicable, ISO New England's status as an Independent Transmission Provider and the evolution of the New England markets require a number of conforming changes and the retention of many of NEPOOL's existing policies. NEPOOL states, for example, that variations from the *pro forma* LGIP and LGIA are required in order to recognize the distinction between NEPOOL's PTF and non-PTF

⁹ See P 7, *supra*.

facilities, while additional variations are warranted consistent with the NEPOOL market design, which relies on a system of financial rights rather than physical transmission rights.

12. Under NEPOOL's proposal, ISO New England would be responsible for the interconnection process over the PTF and would perform the required studies, coordinate with the Interconnecting Transmission Owner and Affected Party, as deemed appropriate by ISO New England, and negotiate the agreements. NEPOOL states that it has omitted from its proposed LGIP and LGIA provisions that are already addressed under the NEPOOL OATT, the Restated NEPOOL Agreement, or the NEPOOL System Rules. In addition, NEPOOL states that it has left in place its existing provisions in Schedule 11 of the NEPOOL OATT and Market Rule 1 relating to transmission service charges, transmission upgrade cost allocation, and the market compensation mechanism for transmission upgrades that increase the transfer capability of the PTF. In addition, NEPOOL proposes to apply its proposed LGIP and LGIA to interconnecting generators that exceed 5 megawatts, based on its assertion that this proposed variation would be consistent with NEPOOL's existing practices.¹⁰

13. NEPOOL states that its compliance filings leave open the question of whether the two alternative interconnection services set forth in Order No. 2003 should be offered under the NEPOOL OATT, or whether, conversely, the NEPOOL OATT should provide for a single service, *i.e.*, NEPOOL's currently effective Minimum Interconnection Standard.¹¹ Finally, NEPOOL states that the revisions proposed in its compliance filings are designed to be consistent with ISO New England's successor status as an RTO.¹²

¹⁰ See NEPOOL Planning Procedures 5-1, section 2.3.

¹¹ As explained more fully below, the NEPOOL stakeholder process undertaken in Docket No. ER03-563-030, *et al.*, to address resource adequacy and the revision of NEPOOL's existing ICAP regime was still underway when NEPOOL's compliance filing in response to Order No. 2003 became due on January 20, 2004. ISO New England later proposed a Locational ICAP (LICAP) mechanism in lieu of a region-wide deliverability requirement. See *Devon Power LLC, et al.*, 107 FERC ¶ 61,240 (2004) (LICAP Order).

¹² On March 24, 2004, we granted RTO status to RTO New England, subject to the fulfillment of certain requirements and established hearing procedures. See *ISO New England, Inc., et al.*, 106 FERC ¶ 61,280 (2004) (RTO New England Order), *reh'g pending*.

D. Transmission Owners' Compliance Proposals

14. The Transmission Owners propose a standardized LGIP and LGIA applicable to each Transmission Owner under its Local OATT. They state that these procedures would govern non-PTF interconnections and would be generally consistent with NEPOOL's proposed variations.¹³ In addition, some Transmission Owners are also proposing certain individual variations to these documents concerning certain reliability or stability requirements unique to their facilities.

15. The Transmission Owners propose to give ISO New England an expanded role over non-PTF interconnections. They state that many of these proposed changes will make the interconnection study and contracting process more seamless under NEPOOL's current bifurcated tariff structure, whether a proposed generating unit seeks a PTF or non-PTF interconnection. For example, the Transmission Owners state that all interconnection requests would be submitted to ISO New England, which would be responsible for determining whether the interconnection would be made to the PTF or non-PTF and maintaining the interconnection request queue. Under the Transmission Owners' proposal, if the determination is made that the interconnection would be to the non-PTF, the Transmission Owners would retain significant authority that includes the authority to perform the required studies, determine the costs of construction, negotiate the interconnection agreement, and seek revisions pursuant to section 205 regarding both the LGIP and LGIA.

16. The Transmission Owners also propose that the two *pro forma* interconnection services be adopted, but in a manner that would permit continued ICAP payments for both services until transitional issues are resolved. Specifically, the Transmission Owners propose that the Minimum Interconnection Service be adopted in place of the *pro forma* Energy Resource Interconnection Service, while NEPOOL's existing provisions relating to Elective Upgrades be adopted in place of the enhanced *pro forma* service, *i.e.*, the Network Resource Interconnection Service.

II. Notice of Filings and Responsive Pleadings

17. Notices of the Filing Parties' submittals were published in the *Federal Register*, with interventions, comments and protests due on or before February 10, 2004 (in response to the Filing Parties' Order No. 2003 submittals) and on May 17, 2004 (in response to the Filing Parties' Order No. 2003-A submittals).¹⁴

¹³ The Transmission Owners, in their filings, simply incorporate by reference the descriptions of, and justifications for, NEPOOL's proposed regional variations.

¹⁴ 69 Fed. Reg. 5,530, 26,583 and 26,584 (2004).

18. Notices of intervention and motions to intervene were timely filed, in Docket Nos. ER04-433-000 and ER04-433-001, by ISO New England, the Transmission Owners, the Maine Public Utilities Commission (Maine Commission); Pinpoint Power, LLC (Pinpoint); Duke Energy North America, LLC and Duke Energy Trading and marketing, L.L.C. (Duke); National Grid USA (National Grid); American National Power, Inc. (ANP); NEPOOL Industrial Customer Coalition (NICC); Calpine Eastern Corporation and Calpine Energy Services, L.P. (Calpine); TransEnergie U.S. Ltd and Cross-Sound Cable Company, LLC (TransEnergie); Constellation Generation Group (Constellation); the Mirant Parties (Mirant); the NRG Companies (NRG); United Illuminated Company (UI); and the Industrial Energy Consumer Group (IECG). Comments and/or protests were filed by ISO New England, the Transmission Owners, the Maine Commission, Duke, National Grid, ANP, Calpine, TransEnergie, Constellation, UI, and IECG.

19. Motions to intervene were timely filed, in Docket Nos. ER0-432-000 and ER04-432-001, by NEPOOL, ISO New England, Pinpoint, ANP, Constellation, and Duke. In addition, comments and/or protests were filed by ISO New England, ANP, and Duke.¹⁵

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁶ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Rule 213(a) of the Commission's Rules of Practice and Procedure¹⁷ prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept ISO New England's, the Transmission Owners' and National Grid's answers because they have provided information that assisted us in our decision-making process.

21. Finally, ANP filed a motion requesting that we consolidate NEPOOL's filing in Docket No. ER04-433-000, with the Transmission Owners' filing in Docket No. ER04-432-000. We will deny ANP's motion to consolidate proceedings. While we are

¹⁵ On February 25, 2004, answers were filed in the NEPOOL proceeding by ISO New England and National Grid, and in the Transmission Owner proceeding by the Transmission Owners.

¹⁶ 18 C.F.R. § 385.214 (2004).

¹⁷ *Id.* at § 385.213(a)(2).

addressing both NEPOOL's filing and the Transmission Owners' filing in the context of this order, we are not establishing an evidentiary hearing regarding these filings. As such, there would be no benefit to be gained by consolidating these proceedings.

B. Standard of Review

22. NEPOOL seeks approval for its proposed variations from the *pro forma* LGIP and LGIA under our "independent entity" standard of review. In Order No. 2003, we held that we would allow flexibility for variations from the *pro forma* LGIP and LGIA in those regions where an independent entity, *i.e.*, an RTO or an ISO, operates the regional transmission system. We stated that this treatment would be appropriate because RTOs and ISOs have different operating characteristics than non-independent entities and are less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant.¹⁸

23. By contrast, the Transmission Owners acknowledge that they are not independent entities.¹⁹ Nonetheless, they seek approval for their proposed variations from the *pro forma* LGIP and LGIA under what they call our "regional differences" standard of review. However, there is no general "regional differences" standard for variations under Order No. 2003. In Order No. 2003, we stated that we would allow variations based on regional differences only for existing regional reliability requirements. We stated that "[b]ecause we seek greater standardization of interconnection terms and conditions, we are not permitting a non-independent Transmission Provider to use the regional differences justification in the absence of established regional reliability standards."²⁰ We stated that the only non-reliability variations we would allow for non-independent entities would be those that are "consistent with or superior to" the *pro forma* LGIA/LGIP.²¹

24. Thus, we will reject the Transmission Owners' request that their proposed variations be considered under what they call our "regional differences" standard of review because the proposed variations at issue here, including Local OATT provisions addressing cost allocation issues (*e.g.*, LGIA Article 11) and service options (*e.g.*, LGIP

¹⁸ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827.

¹⁹ *See* Transmission Owners' Order No. 2003 filing, Transmittal Sheet at p. 9, n. 6.

²⁰ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 824.

²¹ *Id.* at P 825.

section 3.2), do not appear to be based on regional reliability requirements.²² Accordingly, the Transmission Owners' proposed variations must be considered under our "consistent with or superior to" standard.

D. Large Generator Interconnection Procedures (LGIP)

25. We will accept NEPOOL's proposed LGIP and the regional variations included therein, subject to the conditions discussed below. NEPOOL's proposed variations are generally acceptable, given the operational authority it has delegated to ISO New England and the full independence that will be achieved under the parties' proposed RTO framework. NEPOOL is hereby directed to make a compliance filing within 45 days of the date of this order consistent with our rulings below.

26. The Transmission Owners, by contrast, are not currently independent entities, nor will they operate as independent entities under the RTO framework conditionally authorized by the Commission in Docket No. RT04-2-000. Moreover, the Transmission Owners have not even attempted to justify their proposed variations as being consistent with or superior to the *pro forma* LGIP. In addition, the Transmission Owners' proposed individual variations under their respective Local OATTs have also not been supported. Specifically, these claimed individual variations have not been tied to any existing reliability standards followed by NERC or its regional councils. Accordingly, we will reject the Transmission Owners' proposed LGIP and the conforming regional variations included in their submittals.

27. As required by our Compliance Procedures Order, the Transmission Owners' Local OATTs were deemed revised to include the *pro forma* LGIP as of January 20, 2004, subject to a ministerial filing to be made by the Transmission Provider.²³ Consistent with these procedures, we will direct the Transmission Owners to make their respective ministerial filings within 15 days of the date of issuance of this order. Should the Transmission Owners seek to implement any variations in these requirements, they may do so in a new filing and either: (i) explain why the proposed variations are

²² By contrast, a regional reliability variation may be appropriate with respect to the proposed variations requested by the Transmission Owners on an individual basis. As noted above, the Transmission Owners proposing these variations claim that these proposed variations concern reliability matters. However, as we find below, the Transmission Owners have failed to cite the reliability requirements they purport to be adopting or otherwise support their proposed regional variations on reliability grounds. Accordingly, we are also rejecting, without prejudice, these proposed variations.

²³ See Compliance Procedures Order, 106 FERC ¶ 61,009 at P 2.

consistent with or superior to our Order No. 2003 standards; (ii) agree to transfer to ISO New England, or its successor RTO, control over the significant aspects of the Local OATT interconnection process, including the performance of all interconnection studies and cost determinations applicable to system upgrades;²⁴ or (iii) as to any individual Transmission Owner variations based on a regional reliability standard, support such variations by reference to the specific regional reliability standard relied upon.

1. Definitions (LGIP, Section 1)

28. The *pro forma* LGIP and LGIA have a common set of definitions. In its compliance filings, NEPOOL seeks to revise several of these definitions. We will accept these proposed revisions to the *pro forma* definitions, in part, subject to the conditions set forth below.

a. Adverse System Impact

29. NEPOOL proposes to modify the *pro forma* definition of “Adverse System Impact,” to provide as follows: “Adverse System Impact shall mean any significant negative effects on the stability, reliability or operating characteristics of the electric system.”²⁵ However, NEPOOL fails to address either the need for its proposed variation, or its anticipated application. Accordingly, we will reject NEPOOL’s proposed variation, but will do so without prejudice. NEPOOL, if it so chooses, may propose and attempt to support this revision in a future filing.

²⁴ We note that the Transmission Owners, in their filing, proposed to retain significant authority over the generator interconnection process for lower voltage facilities under their individual Local OATTs, contrary to the treatment sought by the transmission owners in PJM and the New York ISO who have relinquished to the independent entities operating in their respective markets the authority for interconnections over all transmission facilities, including those facilities over which the individual transmission owners may retain a degree of operational control. *See* PJM Interconnection, L.L.C., 108 FERC ¶ 61,025 (2004) (PJM Interconnection Order); New York Independent System Operator, *et. al.*, 108 FERC ¶ 61,159 (2004) (NYISO Interconnection Order).

²⁵ The *pro forma* documents, by contrast, state that the term “Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.”

b. Large Generating Facility

30. NEPOOL proposes to revise the defined term “Large Generating Facility” to mean a Generating Facility having a Generating Facility Capacity of more than 5 megawatts (in place of the 20 megawatt threshold set forth in the *pro forma* documents).²⁶ NEPOOL explains that ISO New England has found that, in some instances, proposed interconnections of 20 megawatts or less may have a serious adverse impact on the PTF. NEPOOL further states that its proposed revision is consistent with the NEPOOL Planning Procedures.

31. We will reject NEPOOL’s proposed variation. In Order No. 2003, we limited the application of the LGIP and LGIA to Generating Facilities capable of producing more than 20 megawatts of power. In addition, we are in the process, now, in Docket No. RM02-12-000, of establishing additional procedures applicable to small generators. Accordingly, until these procedures become effective, the Filing Parties may, if they so choose, file individual small generator interconnection requests for consideration under the LGIP and LGIA.

c. Queue

32. NEPOOL proposes to define the term “Queue” (a term not defined in the *pro forma* documents)²⁷ to mean “the list maintained by System Operator that contains, in the order received by System Operator, each request in the Control Area for interconnection, Elective Transmission Upgrades, Merchant Transmission Facility or transmission service.” ISO New England comments that NEPOOL’s proposed definition should further clarify that, with respect to transmission service, it includes only requests for regional service and, in the area of Elective Transmission Upgrades, only requests for upgrades to the PTF. ISO New England asserts that the queue does not include interconnection requests to MEPCO or other non-PTF external ties. We will reject the proposed variation as unnecessary. The System Operator’s obligations with respect to maintaining the queue are unambiguous under our *pro forma* requirements.

²⁶ NEPOOL proposes a corollary revision to the term “Small Generating Facility” to mean a Generating Facility having a Generating Facility Capacity of no more than 5 megawatts.

²⁷ The term “Queue Position,” however, is a defined term in the *pro forma* documents (“Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.”).

d. Reasonable Efforts

33. NEPOOL proposes to modify the term “Reasonable Efforts” with respect to an action required to be attempted or taken by a Party under the LGIA by, among other things, deleting the requirement that a Party’s efforts under the LGIA be “otherwise substantially equivalent to those a Party would use to protect its own interests.” As revised in NEPOOL’s submittal, “Reasonable Efforts” would refer only to “efforts that are timely and consistent with Good Utility Practice.”

34. We will reject NEPOOL’s proposed variation. In Order No. 2003-A, we addressed intervenors’ argument that our “Reasonable Efforts” standard should not include a requirement that the Transmission Provider apply to another Party’s interests the same standard it would apply to the interests of its own shareholders or its customers. Intervenors argued, in particular, that the Commission should exclude from its definition a “substantially equivalent” requirement, *i.e.*, the identical language now sought to be excluded by NEPOOL. However, in Order No. 2003-A, we rejected this argument (and will do so here), because the “substantially equivalent” standard restates the fundamental requirement of comparable service which independent entities as well as non-independent entities must meet.²⁸

4. Interconnection Requests (LGIP, Section 3.1)

35. Section 3.1 of the *pro forma* LGIP requires the Interconnection Customer, among other things, to submit its Interconnection Request “in the form of Appendix I to this LGIP” and requires a refundable deposit of \$10,000. NEPOOL proposes to adopt these requirements in its submittal, without modification. ISO New England claims that while Section 3.1 makes the initial deposit refundable, section 3.3.1 (Initiating an Interconnection Request) suggests that the deposit is non-refundable if site control is not demonstrated within a specified period. We will deny as unnecessary the clarification requested by ISO New England. In fact, the condition to this refund allowance was expressly addressed by the Commission in Order No. 2003.²⁹

5. Interconnection Services (LGIP, Section 3.2)

36. The *pro forma* LGIP, at section 3.2, gives the Interconnection Customer the option of choosing between one of two alternative services: (i) an Energy Resource Interconnection Service -- a basic or minimal service that allows the Interconnection

²⁸ See Order No. 2003-A, 106 FERC ¶ 61,220 at P 83.

²⁹ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at p 94.

Customer to connect its Generating Facility to the Transmission System and (in the case of a bid-based market) to place bids; and (ii) a Network Resource Interconnection Service—an enhanced service that contemplates the acquisition of full market rights (*e.g.*, ICAP payments), conditioned on the Interconnection Customer's paying for any Network Upgrades that may be required for its requested interconnection.³⁰

37. The Transmission Owners, in their comments responding to NEPOOL's compliance filing, request that NEPOOL be required to include the two *pro forma* services on an interim basis, but to do so in a way that would: (i) extend ICAP eligibility to both interconnection services; and (ii) retain the Minimum Interconnection Standard in place of the *pro forma* Energy Resource Interconnection Service. The Transmission Owners propose that NEPOOL's existing provisions for Elective Upgrades be retained in place of the *pro forma* Network Resource Interconnection Service.

38. ISO New England urges the Commission to retain the Minimum Interconnection Standard without using the terminology associated with the two *pro forma* services, as the Transmission Owners propose. ISO New England asserts that the Transmission Owners' proposal would invite confusion and create traps for the unwary. ISO New England also supports retention of the Minimum Interconnection Standard because it has resulted in equal treatment of new and incumbent generators and has brought a substantial number of new generators on line. ISO New England further states that if a generator wishes to interconnect at a higher standard, it may do so, currently, as an Elective Transmission Upgrade.³¹

39. Several intervenors take issue with these assertions. National Grid and Constellation, for example, argue that NEPOOL's existing single Minimum Interconnection Standard is inadequate because it has failed to ensure that the new capacity being brought on line in New England can be delivered to areas where it is

³⁰ In Order No. 2003, we found that in order to qualify as a Network Resource, the Interconnection Customer must demonstrate that its unit would be sufficiently integrated into the regional network to ensure that all network resources can satisfy the aggregate load in a control area, consistent with reliability requirements and generation capacity requirements. *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 769.

³¹ *See* NEPOOL OATT at Section 50.2.

needed most.³² National Grid also disputes that the Minimum Interconnection Standard is discriminatory, since it forces customers to pay for reliability benefits that are not provided by some generators receiving ICAP payments (or, at a minimum, allows some generators to receive ICAP payments for reliability benefits actually provided by other generators). Accordingly, National Grid and Constellation support the adoption of the two *pro forma* services, without variation.

40. UI also agrees that the Minimum Interconnection Standard is inconsistent with a region-wide ICAP market. However, UI believes that a LICAP mechanism, if implemented in a proper manner, would be an appropriate transition mechanism until the necessary transmission upgrades can be built to provide enhanced regional deliverability.³³

41. The Maine Commission, Duke, Calpine, IECG, and ANP argue against adopting the dual interconnection standard, at this time, pending development of a more comprehensive revised resource adequacy regime for New England. These intervenors assert that the Minimum Interconnection Standard should be retained in any event, because it provides a number of benefits for the region. The Maine Commission notes, in particular, that the Minimum Interconnection Standard is appropriate in a bid-based competitive market, like NEPOOL's, where market forces will determine where generation will be sited. Finally, intervenors submit that if the two *pro forma* services are adopted for New England, grandfathering and other transition issues must be addressed.

42. We will accept NEPOOL's filing with respect to the interconnection services that it currently offers, subject to a further compliance filing as discussed below. New England's Minimum Interconnection Standard offers interconnection customers market benefits that are equivalent to NRIS while requiring minimal upgrade obligations more similar to those required by ERIS. In addition, as ISO-NE notes, any generator has available to it the option under the current tariff to interconnect through the use of Elective Transmission Upgrades.

³² National Grid adds that while, under the Minimum Interconnection Standard, generators automatically become eligible to receive ICAP payments (because these generators should be compensated for the reliability benefits attributable to the availability of their capacity to serve customers on the system), an ICAP resource that cannot be delivered provides no reliability benefit.

³³ UI also points out that a locational ICAP mechanism would allow differentiation in the measurement of reliability between zones and provide more accurate price signals.

43. Currently, generators that interconnect under the MIS are eligible to sell their capacity as a qualified ICAP resource. Commenters raise the issue of whether generators interconnecting under the MIS should continue to be eligible to sell ICAP. We are concerned that it may not be just and reasonable for a generator in one location to sell its capacity as an ICAP resource to, and receive ICAP payments from, a load in another location if the generator's output is not deliverable to the load that buys the ICAP capacity. Therefore, we will require ISO-NE to file, no later than September 1, 2005 for implementation on January 1, 2006, a mechanism that will ensure generators meet an intra-zonal deliverability test in order to qualify as an ICAP resource. We intend that this mechanism would complement the LICAP market by addressing the issue of deliverability within LICAP zones—an issue not addressed by the current LICAP proposal.

44. We take no issue with the statement by ISO-NE that the Minimum Interconnection Standard has resulted in a substantial amount of new generation. However, as other commenters state, much of this generation was not constructed where it is most needed. Because of a lack of investment in the New England transmission infrastructure, this generation is not deliverable to load in all regions of New England, and in some instances, to all load within the generator's local region. While the proposed LICAP market is intended to address some of these issues, particularly inter-zonal deliverability through the use of Capacity Transfer Rights, the Commission believes that deliverability must be addressed at the zonal level in the context of generator interconnections.

45. Subsequent to this filing, on March 1, 2004, ISO New England (after a NEPOOL stakeholder process) proposed to implement a LICAP mechanism in Docket No. ER03-563-030, *et al.*, in lieu of a region-wide deliverability requirement. In the LICAP Order, the Commission set for hearing certain issues and deferred the implementation of the LICAP mechanism until January 1, 2006. Even though that proceeding is still underway, the Commission believes that the issue of deliverability must still be addressed within the context of generator interconnection framework; otherwise, new resources will continue to be eligible to receive ICAP payments that are intended to meet resource obligations in zones to which they cannot deliver.

46. In the LICAP Order, we accepted, subject to condition and the outcome of a hearing, the basic concepts of a LICAP mechanism. The purpose of this mechanism would be to ensure that new generation can both technically and economically serve pockets of high demand and be compensated for doing so in form of LICAP payments. In conditionally approving this mechanism, we held that the New England transmission grid is not now physically capable of supporting a single, region-wide deliverability requirement.³⁴

³⁴ See Devon Power Order, 107 FERC ¶ 61,240 at P 60.

47. The existing New England transmission grid is not developed enough to allow the output from every generator to be deliverable to every load in New England. Indeed, the transmission grid may not even be developed enough to allow the output from every generator within a LICAP zone to be deliverable to every load in the zone. We are sympathetic to National Grid's concern that such sales of capacity may result in customers paying for reliability benefits that are not provided by some generators receiving ICAP payments. The LICAP mechanism to be implemented by January 1, 2006 would address this concern at least in part for ICAP sales between a generator and a load located in different LICAP zones, since the mechanism would limit such sales in light of the applicable transmission limits. However, after LICAP implementation, our concern may not be addressed for ICAP sales between a generator and a load located in the same LICAP zone, to the extent that transmission constraints within the region prevent all generation in the zone from being deliverable to all loads in the zone.

48. Within the RTO/ISO context, deliverability need not mean that a generator's output must be reach all load within the footprint of the RTO/ISO. Given this, we direct ISO-NE to discuss how best to define zonal deliverability within the capabilities of the existing New England transmission system with the goal of implementing one or more deliverability-based interconnection services. ISO-NE should determine the conditions that must be satisfied in order for a generator to qualify for ICAP. Therefore, to ensure that the proposed LICAP mechanism functions as planned, we direct ISO-NE or its successor to file no later than September 1, 2005, revisions to its tariff that offer interconnection customers an option for meeting a zonal deliverability requirement that has higher interconnection obligations than that of the MIS.³⁵

49. We expect that this filing will address whether or not the ISO should limit the amount of ICAP capacity that may be sold by a generator to load within its LICAP zone to reflect the available transmission transfer capability between the generator and load, after recognizing the claims of other generators and loads on the transmission transfer capability in making ICAP purchases and sales. The ISO should also address whether the claims of others on transmission transfer capability would require assigning rights to transmission transfer capability for purposes of making ICAP purchases and sales. The capacity transfer rights (CTRs) between LICAP zones, included in ISO-NE's filed

³⁵ We realize that there are issues in the LICAP proceeding that may need to be resolved before a deliverability test could be put in place. These issues include the definition of the LICAP zones and the determination of the amount of capacity that could be transferred between zones. The LICAP Order directed the presiding judge to issue an initial decision on or before June 1, 2005. The Commission is also addressing LICAP zonal issues in Dockets ER04-563-038 and EL04-102-002.

LICAP mechanism, is one type of such transmission right. However, ISO-NE's LICAP mechanism does not include assignment of transmission rights within a LICAP region. Thus, to the extent that transmission constraints prevent all generation within a zone from being deliverable to all loads within the zone, the rights to use the zone's transmission capacity for ICAP sales to loads within the zone may need to be limited and may need to be assigned to parties. Additionally, the filing should address whether zonal deliverability is a prerequisite for qualifying as an ICAP resource in other LICAP zones. As a result, ISO-NE must address in its filing whether new generators built in the future should be required to pay for sufficient upgrades to be deliverable to all loads within the zone in order to sell ICAP capacity, as well as how transmission rights for purposes of qualifying for as an ICAP resource should be assigned to new and existing generation resources. In addition, ISO-NE must address which interconnection service or services would need to be elected in order to ensure a generator's deliverability within its local zone.

50. We will allow NEPOOL to retain the existing Minimum Interconnection Standard, subject to revisions discussed in this order, as one service option available to generators in the interconnection process. However, we will direct ISO-NE to evaluate deliverability in accordance with the above discussion. The goal of this evaluation is to determine whether one or more interconnection service options that would satisfy a deliverability test should be offered to generators and should be required in order for a generator to qualify as an ICAP resource. This disposition is consistent with the PJM Interconnection Order and the NYISO Interconnection Order, where we accepted the existing single interconnection service in compliance with Order No. 2003 under the independent entity variation.

6. In-Service Date (LGIP, Section 3.3.1)

51. Section 3.3.1 of the *pro forma* LGIP provides that the expected In-Service Date of the Interconnecting Facility "shall be no more than the process window for the regional expansion planning period, . . . not to exceed seven years from the date the Interconnection Request is received . . . unless the Interconnection Customer demonstrates that engineering, permitting and construction of the [facility] will take longer than the regional expansion planning period."

52. NEPOOL proposes to modify this requirement by substituting the term “Initial Synchronization Date” for the *pro forma* term “In-Service Date,”³⁶ both in section 3.3.1 and in other relevant sections of the LGIP.³⁷ In addition, NEPOOL proposes to reduce the *pro forma* seven year allowance to five years. NEPOOL also proposes to delete the following *pro forma* language from section 3.3.1: “The In-Service Date may succeed the date the Interconnection Request is received by the Transmission Provider by a period up to ten years, or longer, where the Interconnection Customer and Transmission Provider agree, such agreement not to be unreasonably withheld.”

53. We will accept, in part, NEPOOL’s proposed changes. First, we will accept NEPOOL’s term “Initial Synchronization Date” in place of the term “In-Service Date,” given the use of the former term in the NEPOOL OATT. However, we will not accept NEPOOL’s proposal to limit the Initial Synchronization Date to five years from the date the Interconnection Request is received (versus the *pro forma* allowance of seven years) or to strike the concluding clause set forth in our *pro forma* provision, concerning the rights of the parties to agree to an additional extension (“up to ten years, or longer where the Interconnection Customer and Transmission Provider agree”).

54. In Order No. 2003-A, we rejected a request for rehearing asserting that our ten year allowance was unreasonably long. We held, to the contrary, that our allowance fairly balanced the advantages for some plant types of a longer period and the advantages for the Transmission Provider in a narrower allowance.³⁸ NEPOOL, in its submittals, has not addressed the how this requirement may be inappropriate for the New England region, or otherwise justified its proposed variation. Accordingly, we will reject this proposed variation, but will do so without prejudice. NEPOOL, if it so chooses, may address this proposal further in a future filing.

³⁶ “Initial Synchronization Date” is a defined term under the *pro forma* documents.

³⁷ *See, e.g.*, proposed sections 3.4 (“System Operator shall also post any known deviations in the Large Generating Facilities’ Initial Synchronization Date.”) and 9 (“The [Engineering and Procurement] Agreement is an optional procedure and it will not alter the Interconnection Customer’s Queue Position or Initial Synchronization Date.”).

³⁸ *See* Order No. 2003-A, 106 FERC ¶ 61,220 at P 100.

7. Queue Position (LGIP, Section 4.1)

55. The *pro forma* LGIP provides, at section 4.1, that the Interconnection Customer's Queue Position will determine the order in which the Transmission Provider would perform any Interconnection Studies that are required. In Order No. 2003, we noted that this Queue Position will also determine cost responsibility for the facilities necessary to accommodate the Interconnection Request.

56. In Order No. 2003-A, we clarified the meaning of this provision as it relates to certain upgrade cost allocations. Specifically, we stated that in the case of "clustering" (*i.e.*, the study of Interconnection Requests in combination with other requests), other factors may be considered in the allocation of costs to the Interconnection Customers – including unit size and contribution to the faults on the existing transmission facilities.³⁹ We clarified that the Transmission Provider may allocate the cost of the common upgrades for clustered Interconnection Requests and that Queue Position would have no bearing on cost allocation for clustered Interconnection Requests.⁴⁰

57. In its Order No. 2003-A compliance filing, NEPOOL states that it has modified its submittals, consistent with these clarifications. However, NEPOOL states that it has also added language to clarify that the clustered cost allocations would not begin until provisions to allocate such costs have been established in its OATT. NEPOOL explains that this proposed clarification will ensure that established procedures are in place before ISO New England allocates costs for clustered studies.

58. We will accept NEPOOL's proposed provision, subject to conditions. Specifically, we agree that clustered cost allocation provisions must be established in the NEPOOL OATT before ISO New England will be permitted to consider interconnection requests on a clustered basis. Accordingly, we will accept NEPOOL's proposed provision, subject to the submission of a cost allocation proposal in NEPOOL's compliance filing.

8. Material Modifications (LGIP, Section 4.4.2)

59. The *pro forma* LGIP, at section 4.4.2, specifies certain permitted modifications to any information provided in the Interconnection Request that are not material modifications, prior to the return of the executed Interconnection Facility Study Agreement. NEPOOL proposes to delete this provision, in part, based on its position that

³⁹ Clustering is addressed in the LGIP at section 4.2.

⁴⁰ Order No. 2003-A, 106 FERC ¶ 61,220 at P 120.

the modifications at issue (*i.e.*, an additional 15 percent decrease of electrical output, in megawatts, or large generator technical facility technology and transformer impedances) are material modifications in the context of the New England markets. However, NEPOOL has failed to address the basis for this proposed revision. Accordingly, we will reject NEPOOL's proposed variation, but will do so without prejudice. NEPOOL, if it so chooses, may address this provision in a future filing.

9. Commercial Operation Date (LGIP, Section 4.4.5)

60. The *pro forma* LGIP, at section 4.4.5, provides that extensions of less than three cumulative years in the commercial operations date of the Large Generating Facility to which the interconnection request relates are not material. NEPOOL proposes to limit this allowance to two cumulative years. We will deny the proposed revision. In Order 2003-A, we denied a request to classify a three-year extension as a material modification.⁴¹ Shortening this cut-off allowance further to only two years would be inconsistent with our ruling and has not otherwise been justified by NEPOOL.

10. Deposits for Interconnection Studies (LGIP, Section 6.1, *et al.*)

61. The *pro forma* LGIP addresses, in various sections, the Interconnection Customer's obligation to make certain deposits for the performance of Interconnection Studies.⁴² NEPOOL proposes to modify sections 6.1 and 10.1 to require the Interconnection Customer to provide a deposit equal to the estimated full cost of the study. NEPOOL also proposes to modify section 7.2 to require either the deposit requirement set forth in proposed sections 6.1 and 10.1, or in the alternative (if allowed by the System Operator in the exercise of its reasonable discretion), monthly billing covering the full cost of the study. In addition, NEPOOL proposes to modify section 8.1 to require the greater of \$100,000 or the estimated full cost of the study, or in the alternative (if allowed by the System Operator in the exercise of its reasonable discretion), monthly billing covering the full cost of the study.

⁴¹ Order No. 2003-A, 106 FERC ¶ 61,220 at P 134.

⁴² See LGIP, section 6.1 (Interconnection Feasibility Study Agreement – requiring a \$10,000 deposit); section 7.2 (Execution of Interconnection System Impact Study Agreement – requiring a \$50,000 deposit); section 8.1 (Interconnection Facilities Study Agreement – requiring the greater of \$100,000 or the Interconnection Customer's portion of the estimated monthly cost of conducting the Interconnecting Facilities Study); and Section 10.1 (Optional Interconnection Study Agreement – requiring a \$10,000 deposit).

62. NEPOOL asserts that these requirements are appropriate, given ISO New England's involvement in the studies at issue and given ISO New England's proven track record of accurately estimating the full cost of these studies. NEPOOL also notes that requiring advance payment for the full cost of these studies is justified, given the significant, higher than average cost of performing these studies in New England.

63. ISO New England generally supports these proposed revisions, but seeks clarifications. ISO New England asserts, for example, that under proposed section 3.1, the initial deposit of \$10,000 (made in conjunction with the Interconnection Request) is to be applied toward the cost of an Interconnection Feasibility Study, or toward the cost of the Interconnection System Impact Study if the Interconnection Customer elects not to pursue the Interconnection Feasibility Study as a separate study. ISO New England states, however, that it is unclear whether the section 6.1 deposit would be required in addition to: (i) the \$10,000 deposit referenced in sections 3.1 and 3.3.1 as part of the Interconnection Request; and (ii) the \$10,000 "additional" deposit referenced in section 3.3.1 for site control. ISO New England states that if these section 3 deposits are added to the deposits required by Section 6, it would appear that the deposit required in section 6.1 should be specified to be the full cost of the study, as estimated by the System Operator (and as specified in the Interconnection Feasibility Study Agreement, or System Impact Study) less the deposit(s) provided as per section 3.1.

64. We will reject NEPOOL's proposed variations relating to an Interconnection Customer's obligations to provide deposits equal to the estimated full cost of the studies. In fact, under NEPOOL's existing procedures, the System Operator is already authorized to collect the actual costs of Interconnection Studies on a monthly basis, as these costs are incurred. ISO New England, moreover, retains a cash working capital reserve intended to cover this very contingency. Finally, with respect to ISO New England's requests, we clarify that the deposit amounts at issue are cumulative, *i.e.*, the section 3 deposits may not be added to the deposits required by section 6.

11. Tender (LGIP, Section 11.1)

65. The *pro forma* LGIP provides, at section 11.1, that when the Transmission Provider issues the draft Interconnection Facilities Study report, it shall tender to the Interconnection Customer a draft interconnection agreement and draft appendices completed to the extent practicable. In Order No. 2003-A, however, we found that comments on the draft Interconnection Facilities Study report must not be due on the same day that completed draft appendices are tendered. Accordingly, we amended this requirement to give the Interconnection Customer an additional 30 days after the comments are submitted to tender the completed appendices.⁴³

⁴³ Order No. 2003-A, 106 FERC ¶ 61,220 at P 178.

66. NEPOOL proposes to require that the Interconnection Customer “execute and return the completed draft appendices within thirty (30) Calendar Days.” This language, however, fails to account for the comment period adopted in Order No. 2003-A and has not otherwise been justified by NEPOOL. Accordingly, we direct NEPOOL to incorporate the following additional language following “Calendar Days”: “after comments are submitted.”

12. Execution and Filing of the LGIA (LGIP, Section 11.3)

67. The *pro forma* LGIP, at section 11.3, addresses the execution and filing of the LGIA. NEPOOL proposes to follow these *pro forma* guidelines, subject to the proposed modification that the System Operator and the Interconnecting Transmission Owner be given joint responsibility for filing the LGIA with the Commission.⁴⁴ With respect to the parties’ section 205 filing rights, NEPOOL explains that section 11.3 and a related provision in Article 30.11 of NEPOOL’s proposed LGIA are not intended to revise the parties’ existing filing rights under the NEPOOL OATT, except to the extent that the System Operator would be given joint filing rights with respect to the individual LGIAs.⁴⁵ NEPOOL also states that its submittals are not intended to address the Transmission Owners’ section 205 filing rights, as proposed in connection with the establishment of RTO New England.

68. The Transmission Owners generally support NEPOOL’s characterization of the issues concerning the parties’ respective section 205 filing rights. However, they seek clarification regarding Article 30.11 of the LGIA, which they contend could be misconstrued to address the issue of whether the Transmission Owners, or NEPOOL, has

⁴⁴ In Order No. 2003, we noted that in the case of an RTO or ISO, where the Transmission Provider is not the Transmission Owner, the RTO or ISO’s compliance filing may propose a modified provision reflecting the parties’ respective rights and obligations in the region. We expressly contemplated the use of three party agreements entered into by the Interconnection Customer, the Transmission Provider and the Transmission Owner. *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 909.

⁴⁵ As proposed by NEPOOL, Article 30.11 provides that “Schedule 22 of the [NEPOOL OATT, embodying the LGIP and LGIA] may be modified in accordance with the procedures for amendments contained in the Restated NEPOOL Agreement, or successor documents.”

section 205 filing rights to modify the NEPOOL OATT. The Transmission Owners request clarification that NEPOOL's submittals do not modify the Transmission Owners' existing section 205 filing rights.

69. In addition, the Transmission Owners assert that section 11.3, as proposed by NEPOOL is unclear as to who has the authority under section 205 to file a specific LGIA, especially where there is a dispute over its terms and conditions. The Transmission Owners assert that NEPOOL's proposed language specifies only that the LGIA will be submitted by the "System Operator in conjunction with the Interconnecting Transmission Owner." The Transmission Owners propose to enumerate the parties' respective rights in greater detail by adopting, in section 11.3, the provision addressing these issues, as agreed to by ISO New England and the Transmission Owners for the RTO New England in Docket No. RT04-2-000, *et al.*⁴⁶

70. We will accept NEPOOL's proposed provisions, subject to conditions. First, we will grant the Transmission Owners' requested clarification. The LGIP, at section 11.3, and the LGIA, at Article 30.11, do not modify the Transmission Owners' existing section 205 filing rights, except to the extent that ISO New England, as the System Operator, will have filing rights under the individual LGIAs. In addition, we will accept the Transmission Owners' proposal to incorporate into the LGIP the allocation of filing rights provision (section 2.05(a)(ii) as set forth in the Transmission Operating Agreement), subject to our orders in the RTO New England proceeding.⁴⁷

13. Confidentiality (LGIP, Section 13.1)

71. Section 13.1 of the *pro forma* LGIP (and a corresponding provision in Article 22 of the LGIA) defines confidential information, provides procedures for the release of confidential information, and sets forth guidelines regarding how confidential

⁴⁶ See section 2.05(a)(ii) of the Transmission Operating Agreement, submitted by ISO New England and the Transmission Owners in Docket No. RT04-2-000, *et al.* This provision was accepted by the Commission, subject to conditions, in the RTO New England Order. See 106 FERC ¶ 61,280 at PP 71-78.

⁴⁷ In the RTO New England Order, we accept the Transmission Operating Agreement, subject to conditions. We noted that the Transmission Operating Agreement was unclear as to whether its applied to generator interconnections with both PTF facilities and non-PTF facilities. We clarified that they must apply to both. We also stated that if the Transmission Owners were seeking to reserve filing rights for the pricing policy that would apply to generator interconnections, such a reservation would be inconsistent with Order No. 2003. See 106 FERC ¶ 61,280 at PP 77-78.

information should be treated when it is requested by the Commission. NEPOOL proposes to revise this provision (and the corresponding provision set forth in its proposed LGIA) to reflect the comprehensive procedures for exchanging information in New England pursuant to the NEPOOL Information Policy.⁴⁸ In addition, NEPOOL proposes the following proviso applicable to the confidentiality requirements included in *pro forma* section 13.1: “Nothing herein shall waive rights and obligations of System Operator, Interconnecting Transmission Owner, Affected Parties or Interconnection Customer with respect to separate confidentiality agreements/requirements.”

72. We will accept NEPOOL’s proposed variations as they relate to the NEPOOL Information Policy. However, NEPOOL’s proposed use of separate confidentiality agreements has not been justified. Accordingly, we will reject this proposed variation, but will do so without prejudice. NEPOOL, if it so chooses, may address this proposed variation in a future filing.

D. Large Generator Interconnection Agreement (LGIA)

73. We will accept NEPOOL’s proposed LGIA and the *pro forma* variations included therein, subject to the conditions discussed below. NEPOOL’s proposed variations are generally acceptable given the operational authority it has delegated to ISO New England and the full independence that will be achieved under the parties’ proposed RTO framework. NEPOOL is hereby directed to make a compliance filing within 45 days of the date of this order consistent with our rulings below.

74. For the reasons noted above, we will reject the Transmission Owners’ proposed LGIA.⁴⁹ The Transmission Owners’ Local OATTs were deemed revised to include the *pro forma* LGIA as of January 20, 2004, subject to a ministerial filing to be made by the Transmission Provider.⁵⁰ Consistent with these procedures, we will direct the Transmission Owners to make their respective ministerial filings within 15 days of the date of issuance of this order. Should the Transmission Owners seek to implement any variations in these requirements, they may do so in a new filing and either: (i) explain why the proposed variations are consistent with or superior to our Order No. 2003 standards; (ii) agree to transfer to ISO New England, or its successor RTO, control over the significant aspects of Local OATT interconnection process, including the

⁴⁸ The NEPOOL Information Policy has been adopted by the NEPOOL Participants Committee and is available to the public on ISO New England’s website.

⁴⁹ *See* P. 25, *supra*.

⁵⁰ *See* Compliance Procedures Order, 106 FERC ¶ 61,009 at P 2.

performance of all interconnection studies and cost determinations applicable to system upgrades; or (iii) as to any individual Transmission Owner variations based on a regional reliability standard, support such variations by reference to the specific regional reliability standard relied upon.

1. Definitions (LGIA, Article 1)

75. As previously noted at section III.C.1 of this order, the *pro forma* LGIA and LGIP have a common set of definitions. Accordingly, we will require NEPOOL to conform Article I of its LGIA to our rulings above regarding Section I of the LGIP.

2. Written Notice (LGIA, Article 2.3.1)

76. The *pro forma* LGIA provides, at Article 2.3.1, that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider ninety Calendar Days advance written notice. In Order No. 2003-A, we further clarified that the Interconnection Customer and the Transmission Provider should receive comparable treatment for terminating the interconnection agreement after the Generating Facility permanently ceases operation. We noted that allowing the Transmission Provider to terminate the interconnection agreement upon permanent closure of the Generating Facility is reasonable because it would prevent the LGIA from continuing in perpetuity.⁵¹ Accordingly, we revised Article 2.3.1 to state that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider 90 Calendar Days written notice, or by the Transmission Provider notifying the Commission after the Generating Facility permanently ceases Commercial Operation.

77. NEPOOL states that it has generally conformed section 2.3.1 to the requirements of Order No. 2003-A. However, NEPOOL proposes to use the term “retires” in place of “ceases Commercial Operation.” NEPOOL explains that “retirement” is the term currently used in section 50 of the NEPOOL OATT. In addition, NEPOOL proposes the following proviso regarding the right of an Interconnection Customer to terminate the LGIA: “provided that if a generator exercises its right to terminate on ninety (90) Calendar Days, any reconnection would be treated as a new interconnection request.”

78. We will accept NEPOOL’s proposed variation, with only a minor modification. First, we will accept NEPOOL’s proposed use of the term “retires,” which is consistent with Order No. 2003-A and NEPOOL’s existing procedures. We will also accept

⁵¹ Order No. 2003-A, 106 FERC ¶ 61,220 at P 197.

NEPOOL's proposed proviso, but will require NEPOOL to use the "Interconnection Customer" in place of the term "generator," in order to be consistent with the *pro forma* documents.

3. Private Letter Rulings (LGIA, Article 5.17.5)

79. The *pro forma* LGIA, at Article 5.17.5, provides that at the Interconnection Customer's request and expense, the Transmission Provider must file with the Internal Revenue Service (IRS) a request for a Private Letter Ruling as to whether any property transferred or sums paid or to be paid by the Interconnection Customer to the Transmission Provider under the LGIA will be subject to federal income taxation. In Order No. 2003, we held that the security payment provided by the Interconnection Customer to the Interconnecting Transmission Owner would be refunded upon the issuance of a Private Letter Ruling finding that such sums are not taxable. However, in Order No. 2003-A, we granted rehearing on this issue. We held that the Interconnection Customer's security payment should not be refunded under these circumstances, because the Private Letter Ruling would not reduce the risk to the Transmission Provider that the IRS will change its policy in a manner that makes the payments at issue taxable or that a subsequent taxable event will occur.⁵²

80. ANP argues that this refund requirement should be maintained, consistent with the Commission's initial finding set forth in Order No. 2003. However, NEPOOL's proposal, as reflected in its Order No. 2003-A submittal, is consistent with our policy, as clarified in Order No. 2003-A, and is therefore accepted.

4. Transmission Provider Obligations (LGIA, Article 9.3, *et al.*)

81. The *pro forma* LGIA, at Articles 9.3, 23.1, and 24, imposes certain obligations on the Transmission Provider. NEPOOL, in its filing, proposes to clarify these obligations given the existing delegations of authority as between ISO New England and the Transmission Owners. As such, NEPOOL proposes, where appropriate, to use the terms "System Operator" to specify ISO New England and/or the "Interconnecting Transmission Owner" in place of the *pro forma* term "Transmission Provider." ISO New England objects to these proposed clarifications, noting that in certain instances, NEPOOL's proposed LGIA would impose inappropriate obligations on ISO New England relating to the individual Transmission Owner's facilities because ISO New England does not own or directly control these facilities

⁵² Order No. 2003-A, 106 FERC ¶ 61,220 at PP 344 and 357.

82. We will accept NEPOOL's proposed variations. Article 9.3 of the PTF LGIA obligates parties to operate and maintain the Interconnection Facilities in accordance with the LGIA. ISO New England plays an operational dispatch role in connection with these facilities, would be responsible for performing Interconnection Studies, and as the System Operator, would be responsible for maintaining a measure of operational control over the regional transmission facilities. We also agree that LGIA Articles 23.1 and 24 should retain the inclusion of the term System Operator. Article 23.1 permits parties to notify other parties of the release of hazardous substances "*which may reasonably be expected to affect the other parties.*" In this context, ISO New England should be notified of the release of a hazardous substance when it could reasonably be expected to affect the regional transmission system. Likewise, Article 24 governs the sharing of updated information used in the various interconnection Feasibility and Facilities studies for the purpose of determining system-wide impacts. ISO New England also serves an important function with respect to these matters.

5. Transmission Costs and Credits (LGIA, Article 11)

83. The *pro forma* LGIA, at Article 11.3, requires the Interconnection Customer to pay for a Network Upgrade, while Article 11.4 provides that the Interconnection Customer will receive refunds on a dollar-for-dollar basis through credits against its bills for transmission services taken with respect to the Generating Facility, unless the Transmission Provider chooses to pay for the Network Upgrades.

84. In lieu of these *pro forma* pricing provisions, NEPOOL proposes to leave intact NEPOOL's existing provisions relating to transmission service charges, transmission upgrade cost allocation, and the market compensation mechanism for transmission upgrades that increase the transfer capability of the PTF.⁵³ NEPOOL explains that under the current NEPOOL arrangements, generators do not pay for transmission service, so there are no transmission charges against which the credit contemplated by the *pro forma* LGIA could be applied. NEPOOL also states that the NEPOOL OATT already has a Commission-approved transmission cost allocation mechanism, including provisions that specifically apply to the costs of Generator Interconnection Related Upgrades. NEPOOL notes that these provisions are contained in Schedules 11 and 12 of the NEPOOL OATT and argues that they were established after lengthy litigation that need not (and should not) be revisited in this proceeding. In addition, NEPOOL states that NEPOOL Market Rule 1 separately provides compensation (in the form of Qualified Upgrade Awards) to generators and others whose upgrades increase the transfer capability of the PTF.

⁵³ NEPOOL's existing cost allocation provisions are summarized in Section I(A), above.

85. We will accept NEPOOL's proposal to use its currently effective cost allocations provisions in lieu of the *pro forma* provisions. In Order No. 2003, we stated that we would permit independent entities to adopt their own pricing approach, where appropriate. This flexibility is warranted here, given the existing Commission-approved provisions NEPOOL proposes to retain, which we find acceptable under Order Nos. 2003 and 2003-A, and the interplay of these provisions with NEPOOL's Commission-approved market design.

6. Indemnification (LGIA, Article 18)

86. The *pro forma* LGIA, at Article 18, addresses the obligation of each Party to the LGIA to indemnify the other Party for third party losses attributable to the other Party's acts or omissions under the LGIA, except in cases of gross negligence or intentional wrongdoing. NEPOOL proposes to make this provision subject to the Interim ISO Agreement, or any succeeding document governing the System Operator's administration of the Tariff.

87. ISO New England, in its comments, proposes additional clarifying language acknowledging the fact that ISO New England does not administer the Transmission Owners' Local Tariffs.⁵⁴ In addition, the Transmission Owners also refer to the potential applicability of a "succeeding RTO Tariff," which, as proposed in Docket No. RT04-2-000, addresses indemnification.⁵⁵ We will accept NEPOOL's proposed variation, subject to the additional clarifications proposed by ISO New England and the Transmission Owners. We will require NEPOOL to make conforming changes in its compliance filing.

E. Miscellaneous

88. TransEnergie requests clarification that a new generator will not be permitted to obtain a point of interconnection to the merchant transmission facilities operated by its affiliate, Cross-Sound Cable Company, LLC (CSC LLC) under ISO New England's provisions for generator interconnections. Specifically, TransEnergie requests clarification that a market-based rate transmission owner such as CSC LLC does not have an obligation to grant an interconnection and thus to expand its facilities if asked to do so pursuant to an Interconnection Request, because CSC LLC is not a "Transmission Owner" under the NEPOOL OATT.

⁵⁴ They agree that the Article 18 preamble should refer to the "NEPOOL Tariff."

⁵⁵ The Transmission Owners include these revisions in their Order No. 2003-A compliance filing.

89. We so clarify. In an order issued by the Commission in 2002, we accepted Schedule 18, section 7 of the NEPOOL OATT, which provides, among other things, that “[Merchant Transmission Facility] Provider status under the [NEPOOL OATT] shall not impose an obligation to build transmission facilities on the [Merchant Transmission Facility] Provider.”⁵⁶ Thus, CSC LLC is not a Transmission Owner under the NEPOOL OATT and is not required by the NEPOOL OATT to build transmission facilities. Any interconnection that would require CSC LLC to build transmission facilities is not required by the NEPOOL OATT.

The Commission orders:

(A) NEPOOL’s filings in Docket Nos. ER04-433-000 and ER04-433-001 are hereby accepted, subject to conditions, to become effective on the date of this order, as discussed in the body of this order.

(B) NEPOOL is hereby directed to make a compliance filing within 45 days of the date of this order, as discussed in the body of this order.

(C) The Transmission Owners’ filings in Docket Nos. ER04-432-000 and ER04-432-001 are hereby rejected, as discussed in the body of this order.

(D) The Transmission Owners are hereby directed to make a ministerial filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁵⁶ New England Power Pool, 100 FERC ¶ 61,259 (2002).