

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.

ISO New England Inc.

Docket Nos. ER07-87-000
ER07-87-001

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF REVISIONS

(Issued June 21, 2007)

1. ISO New England Inc. (ISO-NE), the New England Participating Transmission Owners (PTOs),¹ Maine Electric Power Company (Maine Electric), and the New England Power Pool (NEPOOL) Participants Committee (collectively, Filing Parties) submitted,

¹ The New England Participating Transmission Owners are the New England transmission owners that are parties to the Transmission Operating Agreement with ISO-NE and include: Bangor Hydro-Electric Company; Town of Braintree Electric Light Department; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company and Canal Electric Company; Central Maine Power Company; Central Vermont Public Service Corporation; Connecticut Municipal Electric Energy Cooperative; The City of Holyoke Gas and Electric Department; Florida Power & Light Company – New England Division; Green Mountain Power Corporation; Massachusetts Municipal Wholesale Electric Company; New England Power Company d/b/a National Grid; New Hampshire Electric Cooperative, Inc.; Northeast Utilities Service Company on behalf of its affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire; Holyoke Power and Electric Company and Holyoke Water Power Company; Taunton Municipal Lighting Plant; Town of Norwood Municipal Light Department; Town of Reading Municipal Light Department; The United Illuminating Company; Unitil Energy Systems, Inc.; and Fitchburg Gas and Electric Light Company; Vermont Electric Cooperative, Inc.; Vermont Electric Power Company, Inc.; Vermont Public Power Supply Authority and Vermont Transco, LLC.

in compliance with the Commission's Order No. 2006-B,² proposed variations from the Commission's *pro forma* Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA). The Filing Parties later filed an amendment to clarify the reasons for some of the variations. This order accepts in part and rejects in part the proposed tariff revisions, for the reasons discussed below.

I. Background

2. Order No. 2006-B, which revised the Commission's *pro forma* SGIP and SGIA established in Order Nos. 2006 and 2006-A,³ adopted several *pro forma* SGIA provisions into the *pro forma* SGIP study agreements. These provisions are 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 resolution, confidentiality, and record retention, applies to the interconnection study process. In addition, Order No. 2006-B corrected the SGIA Table of Contents to include certain articles.

3. In Order No. 2006, as it had in Order No. 2003,⁴ the Commission permitted Independent System Operators (ISO) to seek "independent entity variations" from the final rules in their *pro forma* provisions.⁵

² *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consolidated Edison Co. of New York, Inc. v. FERC*, No. 06-1018 *et al.* (D.C. Cir. Apr. 3, 2007).

³ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consolidated Edison Co. of New York, Inc. v. FERC*, No. 06-1018 *et al.* (D.C. Cir. Apr. 3, 2007).

⁴ *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, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Assoc. of Regulatory Util. Comm'rs v. FERC*, No. 04-1148 (D.C. Cir. Jan. 12, 2007).

⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827; Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 549.

II. Compliance Filings

4. On October 27, 2006, the Filing Parties submitted a compliance filing in which they proposed several variations in Schedule 23 of ISO-NE's Open Access Transmission Tariff (OATT) from the *pro forma* SGIP study agreements. While most of the proposal includes language that mirrors the Commission's *pro forma* SGIP study agreements, there are some variations that differ from the *pro forma* SGIP study agreements, but generally keep the same meaning. Some of the proposed variations also change the references to the parties to the agreement to reflect the three-party structure of the interconnection agreements.

5. On February 23, 2007, the Filing Parties submitted a supplemental filing to further explain their proposed variations from the *pro forma* SGIP study agreements relating to the following provisions: "Governing Law," "No Third-Party Beneficiaries," "Waiver," "No Partnership," and "Severability."

III. Notices of Filing, Interventions, and Protests

6. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 65,483 (2006), with interventions, comments and protests due on or before November 20, 2006. None was filed.

7. Notice of the supplemental filing was published in the *Federal Register*, 72 Fed. Reg. 10,202 (2007), with interventions, comments and protests due on or before February 28, 2007. None was filed.

IV. Discussion

8. As noted above, Order No. 2006 permits an ISO to seek "independent entity variations" from the final rule. The Commission stated that this is a balanced approach that recognizes that an ISO (or a Regional Transmission Organization) 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.⁶ It is not a sufficient justification to say that a variation conforms to current ISO practices or 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.⁷

9. The Filing Parties provide several reasons for the proposed variations. They state that the variations are minimal, that the variations are being proposed for the sake of consistency with the existing three-party agreement structure of the SGIA, and that the variations ensure that there is no inadvertent conflict with the Commission-approved Transmission Operating Agreement (TOA) with the PTOs.

10. The Commission will accept all but one of the variations as being justified under the independent entity variation standard. Specifically, we find that the proposed variations to the SGIP study agreements entitled: "Amendment," "No Third-Party Beneficiaries," "Waiver," "Multiple Counterparts," "No Partnership," "Severability," "Subcontractors," and "Reservation of Rights," have been sufficiently supported.

11. However, the Filing Parties have not shown that their proposed governing law provision meets the independent entity standard, and we will reject it, as discussed below. The Filing Parties are directed to file revised tariff sheets within 30 days of the date of this order consistent with the Commission's findings herein.

12. The Filing Parties propose not to adopt the statement in the Commission's *pro forma* that the governing law is that of the state "where the point of interconnection is located." They propose that the laws of "the Commonwealth of Massachusetts" be the governing law for the SGIP and SGIA. The Filing Parties state that the variation is appropriate under the independent entity variation standard because it establishes a single venue of governing law for the study agreements. They further state that having a single venue will allow them to avoid the additional cost of having multiple legal expertise in the various states. Also, the Filing Parties state that this issue with the *pro forma* language could reduce their capacity to function efficiently and smoothly and would be inconsistent with the public interest goals of Order No. 2000.⁸

⁶ *PJM Interconnection, LLC*, 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).

⁷ *PJM Interconnection, LLC*, 108 FERC ¶ 61,025 at P 16.

⁸ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

13. We are not convinced that this proposed variation meets the independent entity variation standard. A choice of law provision not related to the point of interconnection would be unfair to the generator, who should not have to know a particular state's law simply because that is where the ISO is located. The Filing Parties have not shown that their interest in convenience should override the laws and interests of the state in which the point of interconnection is located. Therefore, we reject the Filing Parties' proposal to designate Massachusetts law as the governing law for their SGIP and SGIA.

The Commission orders:

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

(B) The Filing Parties are directed to submit a compliance filing, consistent with the Commission's findings, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.