



February 23, 2007

VIA HAND DELIVERY

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ISO New England Inc.; Docket Nos. RM02-12-002, ER07-87-____
Order No. 2006-B Supplemental Compliance Filing for New England

Dear Secretary Salas:

Pursuant to Rule 1907 of the Federal Regulatory Commission's ("FERC" or "Commission")¹ Rules of Practice and Procedure, 18 C.F.R. § 385.1907 (2006), ISO New England Inc. (the "ISO") and the New England Participating Transmission Owners ("PTOs") (collectively, the "Filing Parties") submit an original and five (5) copies of this transmittal letter and proposed amendments to supplement the previously proposed amendments to the ISO OATT filed in compliance with the Commission's requirements established pursuant to *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006-B, on October 27, 2006, in the above-referenced dockets (hereinafter, "Supplemental Filing").²

I. BACKGROUND

A. Order No. 2006-B Compliance Filing

On July 20, 2006, the Commission issued Order No. 2006-B further revising the Commission's *pro forma* Small Generator Interconnection Procedures ("SGIP") and Small

¹ Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff ("ISO Tariff"), including the Open Access Transmission Tariff ("ISO OATT"), which is Section II of the ISO Tariff.

² *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006-B, 116 FERC ¶ 61,046 (2006) ("Order No. 2006-B").

Generator Interconnection Agreement (“SGIA”) established in Order Nos. 2006 and 2006-A.³ Specifically, Order No. 2006-B required certain changes to the various *pro forma* SGIP study agreements in response to Southern California Edison’s Request for Clarification of Order No. 2006-A regarding the inclusion of miscellaneous boilerplate contract provisions in the study agreements.

On October 27, 2006, in the above-referenced docket, the Filing Parties, joined by Maine Electric Power Company (“MEPCO”), and the New England Power Pool (“NEPOOL”) Participants Committee (collectively, the “Initial Filing Parties”) submitted proposed amendments to modify Schedule 23 of the ISO OATT,⁴ in response to Order No. 2006-B (“Order No. 2006-B Compliance Filing”). Schedule 23 of the ISO OATT contains the *pro forma* SGIP and SGIA, as modified under the Commission’s “independent entity variation” standard (set forth in Order No. 2003⁵).

In January, 2007, the Commission staff (“Staff” or “Commission Staff”) contacted ISO counsel with a series of questions related to certain variations to the *pro forma* study agreements language in Order No. 2006-B previously proposed by the Initial Filing Parties. The Commission Staff requested that a supplemental filing be made reflecting the changes recommended by the Staff or providing additional explanation for why such changes are not warranted.

B. Process for Developing this Supplemental Filing

Under Section 11.5 of the Participants Agreement, if a compliance filing must be made within a timeframe which does not allow for the entire stakeholder process, the ISO must consult with the Chair or Vice Chair of the Participants Committee or the Vice Chair of the appropriate Technical Committee on appropriate procedures for receiving Governance Participant input

³ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 111 FERC ¶ 61,220 (2005) (“Order No. 2006”), *reh’g order*, Order No. 2006-A, 113 FERC ¶ 61,195 (2005) (“Order No. 2006-A”).

⁴ The Filing Parties initially filed Schedule 23 of the ISO OATT in response to the Commission’s Order No. 2006 and Order No. 2006-A on November 10, 2005 and February 15, 2006, in Docket No. ER06-191-000. On April 14, 2006, the Commission issued an Order accepting in part and rejecting in part certain proposed variations to the Commission’s *pro forma* SGIP and SGIA. *See ISO New England Inc.*, 115 FERC ¶ 61,050 (2006) (“April 14 Order”). On May 15, 2006, as amended on June 1, 2006, and supplemented on October 23, 2006, the Filing Parties submitted a filing in compliance with the Commission’s April 14 Order, in Docket No. ER06-191 (“April 14 Compliance Filing”). The April 14 Compliance Filing is pending before the Commission for consideration.

⁵ Order No. 2003 allows an RTO or ISO to seek “independent entity variations” and “recognizes 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.” Order No. 2003 at P 827. Therefore, Order No. 2003 allows the RTO or ISO “greater flexibility to customize its interconnection procedures and agreements to fit regional needs.” *Id.* *See also* Order No. 2006 at P 179 (“[T]he independent entity variation [is] available to RTOs and ISOs under this Final Rule”). *See also New York Independent System Operator, Inc.*, 118 FERC ¶ 61.130 at P 14 (2007) (“Order No. 2006 permits an ISO to seek ‘independent entity variations’ from the final rule’s pricing and non-pricing provisions. . . . Under this standard, the Commission affords an ISO greater flexibility to customize its interconnection procedures and agreements than a non-independent Transmission Provider.”)

under the circumstances. Accordingly, the ISO made the appropriate consultations and this Supplemental Filing reflects the feedback received.

II. SUPPLEMENTAL FILING

This Supplemental Filing addresses the variations previously proposed by the Initial Filing Parties to the *pro forma* concerning the following provisions in the SGIP Feasibility Study Agreement (“FSA”), System Impact Study Agreement (“SIS”), and Facilities Study Agreement (“FACSA”):

- (1) Articles 13.6 in FSA and SIS, and 11.6 FACSA (Governing Law, Regulatory Authority, and Rules);
- (2) Articles 13.12 in FSA and SIS, and 11.12 in FACSA (Waiver);
- (3) Articles 13.11 in FSA and SIS, and 11.11 in FACSA (No Partnership);
- (4) Articles 13.7 in FSA and SIS, and 11.7 in FACSA (Severability); and
- (5) Articles 13.4 in FSA and SIS, and 11.4 in FACSA (No Third-Party Beneficiaries).

The Commission Staff’s concerns with respect to each of these provisions are described below along with supplemental information from the Filing Parties and proposed modifications to Schedule 23, as appropriate.

A. Governing Law, Regulatory Authority and Rules

With regard to the “Governing Law”, the Order No. 2006-B Compliance Filing proposed to amend the Commission’s *pro forma* language as follows:

Governing Law. ~~The validity, interpretation and enforcement of~~ This Agreement ~~and each of its provisions shall be governed by and construed in accordance with the laws of the state of _____ (where the Point of Interconnection is located), Commonwealth of Massachusetts without regard to its conflicts of law principles any choice of laws provisions.~~ This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.⁶

The Commission Staff expressed concerns with the deletion of the “Point of Interconnection” language.

The Filing Parties submitted this proposed modification to the *pro forma* language for several reasons. First, the modifications achieve the Commission’s objective of standardizing small generator interconnection procedures, while reflecting the regional variations that are appropriate for New England under the independent entity variation standard.

⁶ See ISO Tariff Sheet Nos. 5224, 5233, 5243.

The establishment of a single venue for the governing law of the study agreements promotes consistency among the separate study agreements contained in the SGIP as well as with the study agreements that are already in place under the LGIP.⁷ This is especially important because, as happens from time-to-time, the designation of a generator is switched from small to large. Consistency among the small generator and large generator study agreement provisions avoids confusion, which, in turn, contributes to the efficient functioning of the New England RTO as contemplated by Order No. 2000.⁸

Second, the establishment of a single venue avoids the additional cost to the ISO of multiple legal expertise in the various states, particularly, in light of the flexibility provided to Interconnection Customers to change a Point of Interconnection at the conclusion of certain generation interconnection studies, as provided in the SGIP (and corresponding provisions in the LGIP).

Finally, the Filing Parties note that the above-described issues with the *pro forma* language have the potential of reducing the ISO's capacity to function efficiently and smoothly and impeding its role as administrator of the New England energy markets and operator of the New England bulk power system. This result would be inconsistent with the main thrust of Order No. 2000, particularly, that the public interest is best served when a regional transmission organization is able to run efficiently and smoothly.⁹

B. Waiver

The Order No. 2006-B Compliance Filing proposed to amend the Commission's *pro forma* language, in relevant part, as follows:

No Implied Waivers. The failure of a Party to this Agreement to insist, on any occasion, upon or enforce strict performance of any of the provisions of this Agreement shall will not be construed as considered a waiver or relinquishment to of any extent of such Party's right to insist or rely on any such provision obligation, rights, and remedies in that or any other instance; rather, the same shall be and remain in full force and effector duty of, or imposed upon, such Party.¹⁰

The Commission Staff expressed concerns with this language, stating that it does not capture the concepts of "obligation" and "duty" and thus, the language proposed is not parallel or equivalent to the Commission's *pro forma* language. Moreover, the Commission Staff stated

⁷ The relevant sections of the LGIP are FSA Sec. 7.12, SIS Sec. 7.12, and FACSA Sec. 6.12. The LGIP was approved in *ISO New England, Inc., et al.*, 110 FERC ¶ 61,335 at P 28.

⁸ See Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 30,993, 30,999, 31,015 (1999).

⁹ See *Id.*

¹⁰ See ISO Tariff Sheet Nos. 5224, 5234, 5243.

that the proposed language seems to refer to one Party, whereas the *pro forma* language addresses all Parties.

The Filing Parties believe that the previously proposed variations to the Waiver language meet the independent entity variation standard and make this provision more legally sound. Specifically, the *pro forma* language does not appear to be legally sound because a Party cannot waive an obligation or duty imposed upon it, otherwise this would not be an obligation or duty.¹¹ A Party may waive its rights, including an obligation it has imposed on another Party via contract, but may not waive any contractual obligations imposed upon it.¹² The previously proposed language has the advantage of being legally sound and, at the same time, being clearer and broader by encompassing “rights” and “remedies,” both in the particular instance and in “any other instance.”

In addition, the previously proposed amendments to the Commission’s *pro forma* language, match the Commission-approved language for the LGIP study agreements thereby promoting consistency and efficiency as discussed in the previous section.

Finally, upon further review of Staff’s concern about the previously proposed language being applicable to only one Party, the Filing Parties respectfully disagree and believe that the previously proposed language addresses all Parties to the study agreements.

C. No Partnership, Severability, and No Third-Party Beneficiaries

The Commission Staff raised concerns with the variations previously proposed in the SGIP study agreements’ Articles related to “No Partnership”, “Severability” and “No Third-Party Beneficiaries”. The previously proposed variations are detailed in the Table included in the Order No. 2006-B Compliance Filing.¹³

With regard to the “No Partnership” provision, the Commission Staff questioned whether the concept of “Independent Contractor” covered the agency concepts embodied in the *pro forma* language. To address the Staff’s concerns with the previously proposed variation, the Filing Parties propose to revise Articles 13.11 in the FSA and SIS and 11.11 in the FACSA to replace the previously proposed variation with the Commission’s *pro forma* language, which provides:

¹¹ See BLACK’S LAW DICTIONARY 1104 (8th ed. 2004) (An obligation is a “formal, binding . . . acknowledgment of a liability”); John Salmond, *Jurisprudence* 460 (Glanville L. Willimas ed., 10th ed. 1947) (“An obligation is the . . . bond of legal necessity. . . . [L]ooked at from the point of view of the person bound, it is a duty”); WEBSTER’S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE (2nd ed. 1980) (An obligation is a “duty by which one person (the obligor) is legally bound”).

¹² See BLACK’S LAW DICTIONARY 1611 (8th ed. 2004) (A waiver is “the voluntary relinquishment or abandonment . . . of a legal *right* or *advantage*”) (emphasis added); E. Allan Farnsworth, *Contracts* § 8.5, at 561 (3d ed. 1999) (Waiver is often understood as “the relinquishment of a *right* and the termination of the *reciprocal* duty”) (emphasis added); WEBSTER’S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE (2nd ed. 1980) (A Waiver is the act of “relinquishing voluntarily, a *right*, *claim*, [or] *privilege*”) (emphasis added).

¹³ Order No. 2006-B Compliance Filing at 6, 8-9.

No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.¹⁴

In addition, the Commission Staff also raised concerns with regard to the previously proposed language for the “Severability” provision in the SGIP study agreements. To address the Staff’s concerns with the previously proposed variations, the Filing Parties propose to revise Articles 13.7 in FSA and SIS, and 11.7 in the FACSA to replace the previously proposed variation with the Commission’s *pro forma* language, which provides:

Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority: (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of this Agreement shall remain in full force and effect.¹⁵

Finally, with regard to the “No Third-Party Beneficiary” provision, the Commission Staff noted that the language previously proposed by the Initial Filing Parties was missing the word “not” from the phrase “shall be deemed”. Upon further review of Articles 13.4 in the FSA and SIS, and 11.4 in the FACSA, the Filing Parties concur with the Commission Staff and propose to revise the previously proposed language to incorporate the requested change. The Articles have thus been revised to read, in relevant part: “the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection Study shall not be deemed third party beneficiaries of Section 13.2 and 13.3.”¹⁶

III. ADDITIONAL SUPPORTING INFORMATION

The Filing Parties submit the following materials and documents in support of this filing:

- This transmittal letter;
- Clean revised sheets of the SGIP reflecting the supplemental Order No. 2006-B compliance modifications to be effected by this filing (Attachment 1);

¹⁴ See ISO Tariff Sheet Nos. 5488A, 5499, 5508.

¹⁵ See ISO Tariff Sheet Nos. 5488, 5498A, 5507A.

¹⁶ See ISO Tariff Sheet Nos. 5487, 5498, 5507.

- Revised sheets blacklined against the version of the SGIP that was filed as part of the Order No. 2006-B Compliance Filing (Attachment 2); and
- A list of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont to which a paper copy of this filing has been sent (Attachment 3).¹⁷

The Filing Parties request that the Commission accept this filing in compliance with Order No. 2006-B.

IV. COMMUNICATIONS

Correspondence and communications regarding this filing should be addressed to:

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¹⁷ Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at http://www.iso-ne.com/regulatory/ferc/nepool/gov_prtcpts_eserved.pdf.

The Honorable Magalie Roman Salas

February 23, 2007

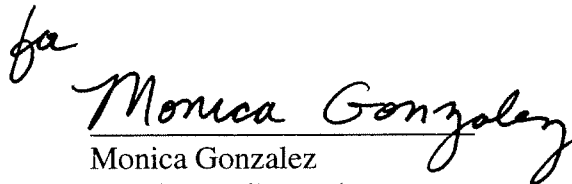
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V. CONCLUSION

The Filing Parties respectfully request Commission acceptance of the independent entity variations proposed in the Order No. 2006-B Compliance Filing as supplemented in today's transmittal as compliant with the requirements of Order No. 2006-B.

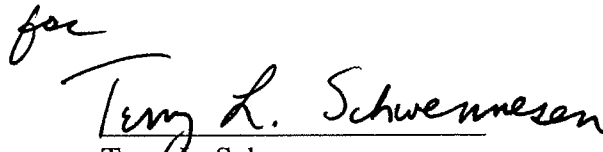
Please acknowledge receipt of this filing by date stamping the enclosed extra copy of this filing and returning it to our courier.

Respectfully submitted,

for


Monica Gonzalez
Regulatory Counsel
ISO New England Inc.
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Holyoke, MA 01040
(413) 535-4178

Counsel for ISO New England Inc.

for


Terry L. Schwennesen
Assistant General Counsel
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25 Research Drive
Westborough, MA 01582
(508) 389-2692

On behalf of the New England Participating
Transmission Owners

Attachment 1

diminish an Interconnection Customer's obligations under the Indemnification section below.

- 13.3.3 Indemnification. Interconnection Customer shall at all times indemnify, defend, and save harmless System Operator and the Interconnecting Transmission Owner and their respective directors, officers, members, employees and agents from any and all damages, losses, claims and liabilities ("Losses") by or to third parties arising out of or resulting from the performance by System Operator or Interconnecting Transmission Owner under this Agreement, any bankruptcy filings made by the Interconnection Customer, or the actions or omissions of the Interconnection Customer in connection with this Agreement, except in the case of System Operator, to the extent such Losses arise from the gross negligence or willful misconduct by System Operator or its directors, officers, members, employees or agents, and, in the case of Interconnecting Transmission Owner, to the extent such Losses arise from the gross negligence or willful misconduct by Interconnecting Transmission Owner or its directors, officers, members, employees or agents. The amount of any indemnity payment hereunder shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified party in respect of the indemnified action, claim, demand, cost, damage or liability. The obligations of Interconnection Customer to indemnify System Operator and Interconnecting Transmission Owner shall be several, and not joint or joint and several. The liability provisions of the Transmission Operating Agreement ("TOA") or other applicable operating agreements shall apply to the relationship between the System Operator and the Interconnecting Transmission Owner.
- 13.4 Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns. Notwithstanding the foregoing, and without limitation of Sections 13.2 and 13.3 of this Agreement, the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection Feasibility Study shall not be deemed third party beneficiaries of Sections 13.2 and 13.3.
- 13.5 Term and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 13.5, shall continue

in effect for a term of one year or until the Interconnection Feasibility Study is completed. This Agreement shall automatically terminate upon the withdrawal of Interconnection Request under Section 1.8 of the SGIP. The System Operator or the Interconnecting Transmission Owner may terminate this Agreement fifteen (15) days after providing written notice to the Interconnection Customer that it has breached one of its obligations hereunder, if the breach has not been cured within such fifteen (15) day period.

- 13.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any choice of laws provisions. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 13.7 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority: (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of this Agreement shall remain in full force and effect.
- 13.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 13.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing and signed by the Parties hereto.
- 13.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.

- 13.11 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 13.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect. Any waiver at any time by any Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the System Operator and the Interconnecting Transmission Owner. Any waiver of this Agreement shall, if requested, be provided in writing.

Transmission Owner or its directors, officers, members, employees or agents. The amount of any indemnity payment hereunder shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified party in respect of the indemnified action, claim, demand, cost, damage or liability. The obligations of Interconnection Customer to indemnify System Operator and Interconnecting Transmission Owner shall be several, and not joint or joint and several. The liability provisions of the Transmission Operating Agreement (“TOA”) or other applicable operating agreements shall apply to the relationship between the System Operator and the Interconnecting Transmission Owner.

- 13.4 Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns. Notwithstanding the foregoing, and without limitation of Sections 13.2 and 13.3 of this Agreement, the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection System Impact Study shall not be deemed third party beneficiaries of Sections 13.2 and 13.3.
- 13.5 Term and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 13.5, shall continue in effect for a term of one year or until the Interconnection System Impact Study is completed. This Agreement shall automatically terminate upon the withdrawal of Interconnection Request under Section 1.8 of the SGIP. The System Operator or the Interconnecting Transmission Owner may terminate this Agreement fifteen (15) days after providing written notice to the Interconnection Customer that it has breached one of its obligations hereunder, if the breach has not been cured within such fifteen (15) day period.

- 13.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any choice of laws provisions. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 13.7 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority: (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of this Agreement shall remain in full force and effect.

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- 13.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 13.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing and signed by the Parties hereto.
- 13.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 13.11 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 13.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect. Any waiver at any time by any Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the System Operator and the Interconnecting Transmission Owner. Any waiver of this Agreement shall, if requested, be provided in writing.

(including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified party in respect of the indemnified action, claim, demand, cost, damage or liability. The obligations of Interconnection Customer to indemnify System Operator and Interconnecting Transmission Owner shall be several, and not joint or joint and several. The liability provisions of the Transmission Operating Agreement (“TOA”) or other applicable operating agreements shall apply to the relationship between the System Operator and the Interconnecting Transmission Owner.

- 11.4 **Third-Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns. Notwithstanding the foregoing, and without limitation of Sections 11.2 and 11.3 of this Agreement, the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection Facilities Study shall not be deemed third party beneficiaries of Sections 11.2 and 11.3.
- 11.5 **Term and Termination.** This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 11.5, shall continue in effect for a term of one year or until the Interconnection Facilities Study is completed. This Agreement shall automatically terminate upon the withdrawal of Interconnection Request under Section 1.8 of the SGIP. The System Operator or the Interconnecting Transmission Owner may terminate this Agreement fifteen (15) days after providing written notice to the Interconnection Customer that it has breached one of its obligations hereunder, if the breach has not been cured within such fifteen (15) day period.

- 11.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any choice of laws provisions. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 11.7 **Severability.** If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority: (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of this Agreement shall remain in full force and effect.
- 11.8 **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.

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- 11.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing and signed by the Parties hereto.
- 11.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 11.11 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 11.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect. Any waiver at any time by any Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the System Operator and the Interconnecting Transmission Owner. Any waiver of this Agreement shall, if requested, be provided in writing.

Attachment 2

diminish an Interconnection Customer's obligations under the Indemnification section below.

13.3.3 Indemnification. Interconnection Customer shall at all times indemnify, defend, and save harmless System Operator and the Interconnecting Transmission Owner and their respective directors, officers, members, employees and agents from any and all damages, losses, claims and liabilities ("Losses") by or to third parties arising out of or resulting from the performance by System Operator or Interconnecting Transmission Owner under this Agreement, any bankruptcy filings made by the Interconnection Customer, or the actions or omissions of the Interconnection Customer in connection with this Agreement, except in the case of System Operator, to the extent such Losses arise from the gross negligence or willful misconduct by System Operator or its directors, officers, members, employees or agents, and, in the case of Interconnecting Transmission Owner, to the extent such Losses arise from the gross negligence or willful misconduct by Interconnecting Transmission Owner or its directors, officers, members, employees or agents. The amount of any indemnity payment hereunder shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified party in respect of the indemnified action, claim, demand, cost, damage or liability. The obligations of Interconnection Customer to indemnify System Operator and Interconnecting Transmission Owner shall be several, and not joint or joint and several. The liability provisions of the Transmission Operating Agreement ("TOA") or other applicable operating agreements shall apply to the relationship between the System Operator and the Interconnecting Transmission Owner.

13.4 Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns. Notwithstanding the foregoing, and without limitation of Sections 13.2 and 13.3 of this Agreement, the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection Feasibility Study shall not be deemed third party beneficiaries of Sections 13.2 and 13.3.

13.5 Term and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 13.5, shall continue

in effect for a term of one year or until the Interconnection Feasibility Study is completed. This Agreement shall automatically terminate upon the withdrawal of Interconnection Request under Section 1.8 of the SGIP. The System Operator or the Interconnecting Transmission Owner may terminate this Agreement fifteen (15) days after providing written notice to the Interconnection Customer that it has breached one of its obligations hereunder, if the breach has not been cured within such fifteen (15) day period.

- 13.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any choice of laws provisions. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 13.7 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority: (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of this Agreement shall remain in full force and effect. ~~In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.~~
- 13.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 13.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing and signed by the Parties hereto.
- 13.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.

- 13.11 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. ~~Independent Contractor. Each of the Parties shall at all times be deemed to be an independent contractor of the other Parties, and none of its employees or the employees of its subcontractors shall be considered to be employees of the other Parties as a result of this Agreement. Except as specifically provided under the TOA, or as otherwise provided in writing among two or more of the Parties, none of the Parties shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party.~~
- 13.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect. Any waiver at any time by any Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the System Operator and the Interconnecting Transmission Owner. Any waiver of this Agreement shall, if requested, be provided in writing.

Transmission Owner or its directors, officers, members, employees or agents. The amount of any indemnity payment hereunder shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified party in respect of the indemnified action, claim, demand, cost, damage or liability. The obligations of Interconnection Customer to indemnify System Operator and Interconnecting Transmission Owner shall be several, and not joint or joint and several. The liability provisions of the Transmission Operating Agreement (“TOA”) or other applicable operating agreements shall apply to the relationship between the System Operator and the Interconnecting Transmission Owner.

- 13.4 Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns. Notwithstanding the foregoing, and without limitation of Sections 13.2 and 13.3 of this Agreement, the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection System Impact Study shall not be deemed third party beneficiaries of Sections 13.2 and 13.3.
- 13.5 Term and Termination. This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 13.5, shall continue in effect for a term of one year or until the Interconnection System Impact Study is completed. This Agreement shall automatically terminate upon the withdrawal of Interconnection Request under Section 1.8 of the SGIP. The System Operator or the Interconnecting Transmission Owner may terminate this Agreement fifteen (15) days after providing written notice to the Interconnection Customer that it has breached one of its obligations hereunder, if the breach has not been cured within such fifteen (15) day period.

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(including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified party in respect of the indemnified action, claim, demand, cost, damage or liability. The obligations of Interconnection Customer to indemnify System Operator and Interconnecting Transmission Owner shall be several, and not joint or joint and several. The liability provisions of the Transmission Operating Agreement (“TOA”) or other applicable operating agreements shall apply to the relationship between the System Operator and the Interconnecting Transmission Owner.

- 11.4 **Third-Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns. Notwithstanding the foregoing, and without limitation of Sections 11.2 and 11.3 of this Agreement, the Parties agree that subcontractor consultants hired by them to conduct, participate in, or review, or to assist in the conducting, participating in, or reviewing of, an Interconnection Facilities Study shall not be deemed third party beneficiaries of Sections 11.2 and 11.3.
- 11.5 **Term and Termination.** This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 11.5, shall continue in effect for a term of one year or until the Interconnection Facilities Study is completed. This Agreement shall automatically terminate upon the withdrawal of Interconnection Request under Section 1.8 of the SGIP. The System Operator or the Interconnecting Transmission Owner may terminate this Agreement fifteen (15) days after providing written notice to the Interconnection Customer that it has breached one of its obligations hereunder, if the breach has not been cured within such fifteen (15) day period.

- 11.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any choice of laws provisions. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 11.7 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority; (1) such portion or provision shall be deemed separate and independent; (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling; and (3) the remainder of this Agreement shall remain in full force and effect. ~~In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.~~
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- 11.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing and signed by the Parties hereto.
- 11.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 11.11 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. ~~Independent Contractor. Each of the Parties shall at all times be deemed to be an independent contractor of the other Parties, and none of its employees or the employees of its subcontractors shall be considered to be employees of the other Parties as a result of this Agreement. Except as specifically provided under the TOA, or as otherwise provided in writing among two or more of the Parties, none of the Parties shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party.~~
- 11.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect. Any waiver at any time by any Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the System Operator and the Interconnecting Transmission Owner. Any waiver of this Agreement shall, if requested, be provided in writing.

Attachment 3

**New England Governors
and Utility Regulatory
and Related Agencies**

January 9, 2007

Connecticut

The Honorable M. Jodi Rell
State Capitol
210 Capitol Ave.
Hartford, CT 06106

Connecticut Department of Public Utility Control
10 Franklin Square
New Britain, CT 06051-2605

Maine

The Honorable John E. Baldacci
One State House Station
Rm. 236
Augusta, ME 04333-0001

Maine Public Utilities Commission
State House, Station 18
242 State Street
Augusta, ME 04333-0018

Massachusetts

The Honorable Deval Patrick
Office of the Governor
Rm. 360 State House
Boston, MA 02133

Massachusetts Department of Telecommunications
and Energy
One South Station
Boston, MA 02110

New Hampshire

The Honorable John H. Lynch
State House
25 Capitol Street
Concord, NH 03301

New Hampshire Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, NH 03301-2429

Rhode Island

The Honorable Donald L. Carcieri
State House Room 115
Providence, RI 02903

Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Vermont

The Honorable James H. Douglas
109 State Street, Pavilion
Montpelier, VT 05609

Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

**New England Governors
and Utility Regulatory
and Related Agencies**

January 9, 2007

Anne C. George, President
New England Conference of
Public Utilities Commissioners, Inc.
c/o Connecticut Department of Public
Utility Control
10 Franklin Square
New Britain, CT 06051-2605

William M. Nugent
Executive Director
New England Conference of
Public Utilities Commissioners, Inc.
500 U.S. Route 1, Suite 21C
Yarmouth, ME 04096

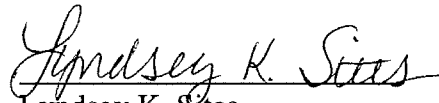
Harvey L. Reiter, Esq.
Counsel for New England Conference
of Public Utilities Commissioners, Inc.
c/o Stinson Morrison Hecker LLP
1150 18th Street, NW, Suite 800
Washington, DC 20036-3816

Power Planning Committee
New England Governors' Conference, Inc.
76 Summer Street, 2nd Floor
Boston, MA 02110-1226

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 23rd day of February, 2007.



Lyndsey K. Sites

Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, D.C. 20005
(202) 661-7618