From	To	MEA	MAA
§ 95.4213 RNAV ROUTE T213 IS ADDED TO READ			
LOUISVILLE, KY VORTAC #NORTHBOUND EXPECT 7000 #SOUTHBOUND EXPECT 6000	GAMKE, IN FIX	#3600	8000
GAMKE, IN FIX #NORTHBOUND EXPECT 7000 #SOUTHBOUND EXPECT 6000	RICHMOND, IN VORTAC	#2800	8000
§ 95.4215 RNAV ROUTE T215 IS ADDED TO READ			
LEXINGTON, KY VORTAC #NORTHBOUND EXPECT 6000 #SOUTHBOUND EXPECT 5000	GAMKE, IN FIX	#3000	8000
§ 95.4217 RNAV ROUTE T217 IS ADDED TO READ			
LEXINGTON, KY VORTAC #NORTHBOUND EXPECT 7000 #SOUTHBOUND EXPECT 6000	BOSTR, OH FIX	#3000	8000
BOSTR, OH FIX #NORTHBOUND EXPECT 7000 #SOUTHBOUND EXPECT 6000	HEDEN, OH FIX	#2700	8000
HEDEN, OH FIX #NORTHBOUND EXPECT 7000 #SOUTHBOUND EXPECT 6000	SPRINGFIELD, OH VOR/DME	#2800	8000
SPRINGFIELD, OH VOR/DME #NORTHBOUND EXPECT 7000 #SOUTHBOUND EXPECT 6000	BONEE, OH FIX	#2900	8000

From	To	MEA
§ 95.6001 VICTOR ROUTES—U.S. § 95.6019 VOR FEDERAL AIRWAY V19 IS ADDED TO READ		
CINCINNATI, KY VORTAC *2800–MOCA	APPLETON, OH VORTAC	*4000
§ 95.6343 VOR FEDERAL AIRWAY V343 IS AMENDED BY ADDING		
BOZEMAN, MT VOR/DME	THESE, MT FIX	8000
THESE, MT FIX	SUZZY, MT FIX	.....
E BND	.....	8300
W BND	.....	10800
SUZZY, MT FIX	EVVER, MT FIX	11000
§ 95.6536 VOR FEDERAL AIRWAY V536 IS AMENDED TO READ IN PART		
SWEDD, MT FIX *9200–MCA MENAR, MT FIX, NW BND **9100–MOCA	*MENAR, MT FIX	**9700

[FR Doc. 05–23479 Filed 11–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–001; Order No. 2006–A]

Standardization of Small Generator Interconnection Agreements and Procedures; Order on Rehearing

Issued November 22, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) grants rehearing in part, denies rehearing in part, and clarifies certain determinations in Order No. 2006. Order No. 2006 requires all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs containing standard small generator interconnection procedures and a standard small generator interconnection agreement, and to provide interconnection service under them to small generating facilities of no more than 20 megawatts.

EFFECTIVE DATE: December 30, 2005.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. Under Federal Power Act (FPA) sections 205 and 206,[1] on May 12, 2005, the Commission issued a Final Rule, Order No. 2006,[2] requiring all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce[3] to have on file standard procedures and a standard agreement for interconnecting Small Generating Facilities capable of producing no more than 20 megawatts (MW) of power (Small Generators) with their Transmission Systems.[4] Order No. 2006 requires that all public utilities subject to it modify their open access transmission tariffs (OATTs) to include the SGIP and SGIA.[5]

2. In this order, we grant rehearing in part, deny rehearing in part, and clarify certain determinations in Order No. 2006. As the Commission noted in that order, adoption of the SGIP and SGIA will reduce interconnection time and costs for Interconnection Customers and Transmission Providers, preserve reliability, increase energy supply where needed, lower wholesale prices for customers by increasing the number and types of new generation that will compete in the wholesale electricity market, facilitate development of non-polluting alternative energy sources, and help remedy undue discrimination, as FPA sections 205 and 206 require.[6] At its core, Order No. 2006 ensures that generators independent of Transmission Providers and generators affiliated with Transmission Providers are offered interconnection service on comparable terms.

II. Procedural Issues

3. The Commission received nine timely requests for rehearing or for clarification of Order No. 2006. SoCal Edison also submitted a letter to the Commission noting typographical errors it had identified in the SGIP and SGIA. Certain of those errors are included in Appendix B. AWEA[7] filed a request for rehearing on October 25, 2005. Under FPA section 313(a),[8] requests for rehearing of a Commission order were due within thirty days after issuance of Order No. 2006, *i.e.*, no later than June 13, 2005. Because the 30-day rehearing deadline is statutorily based, it cannot be extended. Therefore, we reject all requests for rehearing filed after June 13, 2005 as a matter of law.

4. Since Order No. 2006 was issued on May 12, 2005, the Commission has received a number of compliance filings by various Transmission Providers. In the course of evaluating those filings and review of the SGIP and SGIA, we have noted a number of typographical errors and minor clarifications.[9] These revisions, and those to the SGIP and SGIA ordered herein, are enumerated in Appendix B. The revised SGIP and the SGIA, containing these revisions in Microsoft Word format, will be available on the Commission's Web site, *http://www.ferc.gov.*

III. Discussion

5. In Order No. 2006, the Commission adopted the Small Generator Interconnection Procedures document (SGIP), which describes how the Interconnection Customer's Interconnection Request (*i.e.*, application) is to be evaluated. The SGIP includes three alternative procedures for evaluating a proposed Interconnection Request, based on the size of the Small Generating Facility. One is the four-step Study Process. The

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[1] 16 U.S.C. 824d and 824e (2000). Section 205(b) states that ''[n]o public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue preference or disadvantage. * * *'' In addition, section 206(a) states that ''[w]henever the Commission * * * shall find that any rate, charge, or classification demanded, observed, charged or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice or contract to be thereafter observed and in force, and shall fix the same by order.''

[2] Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 FR 34190 (Jun. 13, 2005), FERC Stats. & Regs., Regulations Preambles, Vol. III, ¶ 31,180, at 31,406–31,551 (2005).

[3] A public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the FPA. 16 U.S.C. 824(e) (2000). A non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy that condition by adopting these procedures and agreement.

The Energy Policy Act of 2005 establishes new FPA section 211A, which gives the Commission the option to require an unregulated transmitting utility to provide transmission service. Energy Policy Act of 2005, Pub. L. 109–58, § 1231, 119 Stat. 594, 955 (2005). The Commission has not yet taken action under section 211A, but it is seeking comment on this new authority in Docket No. RM05–25–000, Preventing Undue Discrimination and Preference in Transmission Services, Notice of Inquiry, 70 FR 55796 (Sep. 23, 2005), FERC Stats. & Regs. ¶ 35,553 at P 34–36 (2005).

[4] Capitalized terms used in this order have the meanings specified in the Glossaries of Terms or the text of the *pro forma* Small Generator Interconnection Procedures (SGIP) or the *pro forma* Small Generator Interconnection Agreement (SGIA). Small Generating Facility means the device for which the Interconnection Customer (the owner or operator of the Small Generating Facility) has requested interconnection. The utility with which the Small Generating Facility is interconnecting is the Transmission Provider. A Small Generating Facility is a device used for the production of electricity having a capacity of no more than 20 MW. The interconnection process begins when the Interconnection Customer submits an application for interconnection (Interconnection Request) to the Transmission Provider.

[5] The documents adopted in Order No. 2006 for inclusion in a Transmission Provider's OATT are called the SGIP and SGIA. Provisions of the SGIP are referred to as ''sections'' and those of the SGIA are referred to as ''articles.'' Comparable documents for generators larger than 20 MW in size were developed in Order No. 2003 (*see* fn. 13) and are referred to as the LGIP and LGIA.

[6] 16 U.S.C. 824d and 824e (2000).

[7] See Appendix A for a listing of petitioner acronyms.

[8] 16 U.S.C. 8251(a) (2003).

[9] In addition to typographical errors and errata, we are adding a statement in the Interconnection Request that documentation of site control must accompany the Interconnection Request, per SGIP section 1.5. We also: (1) Clarify in various SGIA articles that use the term ''Affected System'' that there may be more than one Affected System, or none; (2) clarify in SGIA article 1.3 that the purchase or delivery of power and other services that the Interconnection Customer may require will be covered under separate agreements, if any; (3) clarify in SGIA articles 1.6, 5.2.1.1, and 5.3 that there may be more than one system operator for the Transmission Provider's Transmission System; and (4) clarify in SGIA article 12.2 that the SGIA may also be amended pursuant to article 12.12. Finally, the term Good Utility Practice is used and defined in the SGIA. It is also used in the SGIP, but the definition of this term was inadvertently omitted from the Glossary of Terms in that document. We are amending the SGIP to include that definition.

four steps are the scoping meeting, the feasibility study, the system impact study, and the facilities study. The SGIP also includes a Fast Track Process that uses technical screens to evaluate a certified Small Generating Facility no larger than 2 MW and a 10 kW Inverter Process that uses the same technical screens to evaluate a certified inverter-based Small Generating Facility no larger than 10 kW.[10] These procedures are described in more detail below and are depicted in flow chart form in Appendices B, C, and D to Order No. 2006.

6. In Order No. 2006, the Commission also adopted the Small Generator Interconnection Agreement (SGIA), which is executed after the Interconnection Request has been successfully reviewed under the provisions in the SGIP. The SGIA (sometimes called the interconnection agreement or Agreement) describes the legal relationships of the Parties,[11] including who pays for equipment modifications to the Transmission Provider's electric system to accommodate the interconnection.[12]

A. Issues Related to Both the Small Generator Interconnection Procedures and the Small Generator Interconnection Agreement

7. *Disputes (SGIP Section 4.2 and SGIA Article 10)*—Order No. 2006 requires the Parties to attempt in good faith to resolve all disputes and invites them to contact the Commission's Dispute Resolution Service for assistance in mediating disputes. The provision also requires the Parties to share the cost of any neutral third parties retained to help resolve the dispute.

Rehearing Request

8. Small Generator Coalition contends that requiring the Parties to split the costs of any dispute resolution disadvantages the Interconnection Customer because the Transmission Provider is likely to have significantly more resources than does the Interconnection Customer. Instead, the neutral party providing the dispute resolution service should be permitted to assign costs to each Party and to apportion greater cost responsibilities to a Party presenting frivolous or non-substantive arguments.

Commission Conclusion

9. We are sensitive to concerns about the costs of resolving disputes, and Order No. 2006 does not mandate that the Parties use a particular process to settle their disputes. Instead, it provides alternative sources of dispute resolution services that are available to the Parties at little cost, such as the Commission's own Dispute Resolution Service, and encourages the Parties to use any state regulatory resources that may be available. By broadening the Commission's approach to dispute resolution and giving the Parties the flexibility to choose alternative dispute resolution services, Order No. 2006 gives the Parties the ability to limit costs and the problems Small Generator Coalition describes. Regarding frivolous or non-substantive arguments, the SGIA already requires the Parties to operate in good faith. Should one Party operate in bad faith by advancing frivolous arguments, the other Party may raise the issue with the Commission.

10. *Definition of Transmission Provider*—The SGIP and SGIA define ''Transmission Provider'' to include both the Transmission Provider and the Transmission Owner where they are different entities. This often occurs in RTOs or ISOs where the entity operating the Transmission System is independent of the entities that actually own the Transmission System. This is consistent with the approach taken for Large Generating Facilities in Order No. 2003.[13]

Request for Rehearing

11. MSAT asks the Commission to distinguish more clearly the roles of the Transmission Provider and the Transmission Owner. It argues that the lack of clarity is confusing and could slow down the interconnection process.

Commission Conclusion

12. The definition of the term ''Transmission Provider'' in Order No. 2006 is the same as in Order No. 2003.[14] Further defining the relationship between the Transmission Provider and the Transmission Owner would restrict unnecessarily the flexibility that independent Transmission Providers and their stakeholders now have to apportion responsibilities between the Transmission Provider and the Transmission Owner. Allowing flexibility permits the entities in each region to customize the SGIP and SGIA, under the variations permitted to independent entities, to best meet their unique needs. Thus, we deny MSAT's request for rehearing and encourage it to work with the Midwest ISO during the compliance process on apportioning responsibilities between the various entities.[15]

B. Issues Related to the Small Generator Interconnection Procedures

13. *Fast Track Process and 10 kW Inverter Process Screens (SGIP Section 2.2.1)*—SGIP section 2.2.1 specifies technical screens that are used to evaluate proposed interconnections of certified [16] Small Generating Facilities under the Fast Track Process and the 10 kW Inverter Process.[17] Section 2.2.1.2 provides that, to successfully pass the screen, the aggregated generation, including the proposed Small Generating Facility, on a radial distribution circuit shall not exceed 15 percent of the line section [18] annual peak load as most recently measured at the substation.

Rehearing Request

14. Southern Company proposes revising section 2.2.1.2 to permit measurement at the substation ''or applicable automatic sectionalizing device.'' It claims this is simply a ministerial change that permits the peak load to be measured at the automatic sectionalizing device, which may not be located at the substation.

[10] Order No. 2006 at P 5.

[11] The Parties are the Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above. SGIP Attachment 1.

[12] Order No. 2006 at P 5.

[13] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, 70 FR 37661 (Jun. 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003-C). *See also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

[14] *See* Order No. 2003 at P 909.

[15] MSAT points out that P 349 of Order No. 2006 inadvertently refers to ''Transmission Operators'' instead of ''Transmission Owners.'' MSAT is correct.

[16] Under Order No. 2006, a Small Generating Facility equipment package is considered certified if it has been submitted, tested, and listed by a nationally recognized testing and certification laboratory. SGIP Attachments 3 and 4.

[17] The Fast Track Process for evaluating an Interconnection Request for a certified Small Generating Facility no larger than 2 MW includes technical screens, a customer options meeting, and an optional supplemental review. Order No. 2006 at P 45. The 10 kW Inverter Process is available to evaluate the interconnection of a certified inverter-based generator no larger than 10 kW. The all-in-one 10 kW Inverter Process document includes a simplified application form, interconnection procedures, and a brief set of terms and conditions (akin to an interconnection agreement). Order No. 2006 at P 46 and P 394–405, Appendix D, and SGIP Attachment 5.

[18] A line section is that portion of a Transmission Provider's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line. SGIP section 2.2.1.2.

Commission Conclusion

15. SGIP section 2.2.1.2 is a critical component of the screens, which were debated at great length in the stakeholder process.[19] Southern Company's proposed revision, raised here for the first time on rehearing, could lead to case-by-case disputes as to where the measurement should be made. The resulting delays in the interconnection process could adversely affect both the Transmission Provider and the Interconnection Customer. Accordingly, we deny Southern Company's request for rehearing.

16. *Scoping Meeting (SGIP Section 3.2)*—The first step of the four-step SGIP Study Process for evaluating a proposed interconnection is the scoping meeting. SGIP section 3.2 requires the Transmission Provider and the Interconnection Customer to hold the scoping meeting within ten Business Days after the Interconnection Request is deemed complete. At the scoping meeting, the Parties discuss the proposed interconnection and review any existing studies that could aid in its evaluation. Order No. 2006 also requires that any scoping meeting between the Transmission Provider and an affiliate be announced publicly and transcribed, with the transcripts made available for a period of three years.[20]

Rehearing Request

17. Southern Company argues that the special treatment afforded an affiliate of the Transmission Provider is discriminatory because it does not apply to other competitors. This puts the affiliate at a competitive disadvantage. The Commission is treating similarly situated entities differently, according to Southern Company, and the requirement should therefore be eliminated.

Commission Conclusion

18. The treatment of affiliates in Order No. 2006 is identical to the requirement for Large Generating Facilities, which the Commission addressed in Order No. 2003–B.[21] The Commission there explained, among other things, that an affiliated Interconnection Customer and one that is not an affiliate of the Transmission Provider are not similarly situated. There is no need to address this issue further here. We deny Southern Company's request for rehearing.

19. *Study Deadlines, Study Cost Responsibility, and Restudies (SGIP Sections 3.3, 3.4, and 3.5)*—The SGIP Study Process includes three standard engineering analyses that evaluate the proposed interconnection: The feasibility study, the system impact study, and the facilities study.[22] The interconnection study agreements (SGIP Attachments 6, 7, and 8) require the Transmission Provider to complete the feasibility study within 30 Business Days of signing the feasibility study agreement, the distribution system impact study within 30 Business Days and the transmission system impact study within 45 Business Days of signing the system impact study agreement, and the facilities study within 30 Business Days of signing the facilities study agreement. The Interconnection Customer is responsible for paying the Transmission Provider's actual costs for performing these studies. The SGIP does not contain a provision for restudy should system conditions change after a study is complete.

Rehearing Requests

20. Southern Company asserts that the SGIP does not give the Transmission Provider enough time to perform the interconnection studies, especially if it must evaluate Interconnection Requests for numerous generators at one time.

21. Small Generator Coalition argues that the Interconnection Customer should pay for the feasibility study only if the study shows harm to the Transmission Provider's electric system; otherwise, the Transmission Provider should pay for the study. Without this allocation of cost responsibility, the Interconnection Customer could be subject to unneeded feasibility studies and excessive cost responsibility.

22. SoCal Edison seeks clarification that the Transmission Provider may restudy when a higher-queued Interconnection Customer drops out of the queue[23] or when system conditions change. Southern Company argues that the SGIP should allow restudy when the size of the generator or the generator's queue position changes. It notes that the LGIP permits restudy for Large Generating Facilities, and argues that the Commission has not provided a strong rationale for permitting a restudy for a 21 MW generator under the LGIP, but not for a similarly situated 19 MW generator under the SGIP. It asserts that a restudy could benefit the Interconnection Customer at times and, in any event, that the Transmission Provider should be able to perform a restudy when necessary to accurately reflect the system conditions and to maintain the safety and reliability of the electric system.

Commission Conclusion

23. Southern Company repeats the same arguments the Commission rejected in Order No. 2006. There, the Commission stated that the SGIP deadlines strike a balance between giving the Transmission Provider enough time to complete the studies and ensuring that the Small Generating Facility can be interconnected within a reasonable time.[24] We see no reason to change that position here. We also note that the deadlines were developed with both Interconnection Customer and Transmission Provider stakeholder input, and thus represent a balancing of their diverse interests. Furthermore, if a far greater than normal number of Interconnection Requests temporarily overwhelms the Transmission Provider's resources for processing Interconnection Requests, the Parties can work under SGIP section 4.1 to set a new deadline and log the reasons for the change in the records the Transmission Provider maintains under SGIP section 4.7.

24. Small Generator Coalition repeats its earlier argument that the Transmission Provider should pay for the feasibility study only if the study shows no adverse impact, and the Interconnection Customer should pay if it does. The Commission rejected this argument in Order No. 2006 and we deny this request for those same reasons.[25] To repeat, the

[19] In the Advance Notice of Proposed Rulemaking (ANOPR) issued in this proceeding, and published in the **Federal Register** on August 26, 2002 (67 FR 54749), the Commission initiated a collaborative process where members of the public, electric industry participants, and federal and state agencies (collectively, stakeholders) were invited to draft proposed generator interconnection procedures and agreement documents. The stakeholders, called Joint Commenters in Order No. 2006, filed consensus documents in response to the ANOPR and also in response to a Commission invitation for supplemental comments. See Order No. 2006 at P 16–25 for a narrative history of this proceeding.

[20] Order No. 2006 at P 184.

[21] Order No. 2003–B at P 137.

[22] The feasibility study is a preliminary technical assessment of the proposed interconnection. The system impact study is a more detailed assessment of the effect the interconnection would have on the Transmission Provider's electric system and Affected Systems. The facilities study determines what modifications to the Transmission Provider's electric system are needed, including the detailed costs and scheduled completion dates for these modifications. Order No. 2006 at P 44.

[23] Each Interconnection Request is assigned a Queue Position that is based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider. The Queue Position determines the order of performing interconnection studies, if required, and the Interconnection Customer's cost responsibility for any Upgrades to the Transmission Provider's electric system. Order No. 2006 at P 176.

[24] Order No. 2006 at P 192.

[25] *Id.* at P 187.

Interconnection Customer should pay for all interconnection studies, regardless of the conclusions reached.

25. Finally, there is no reason to reverse the prohibition in Order No. 2006 against the restudy of Small Generating Facility interconnections.[26] The very purpose of the SGIP and SGIA is to expedite interconnections of Small Generating Facilities by removing unnecessary delays wherever possible. If the SGIP timelines are respected and Small Generators are interconnected promptly, there should be no need for restudy.

26. *System Impact Study (SGIP Section 3.4)*—In Order No. 2006, the Commission ruled that the Interconnection Request should be evaluated in the system impact study based on the Small Generating Facility's maximum rated capacity because using anything less than the maximum rated capacity would not ensure that proper protective equipment is designed and installed, and the safety and reliability of the Transmission Provider's electric system could be jeopardized.

Rehearing Request

27. Small Generator Coalition argues that using the maximum rated capacity of the Small Generating Facility is appropriate for the fault study, but not for the power flow analysis.[27] This is because the Small Generating Facility usually has a dedicated load that it will serve, and it will never send the full amount of power that it is capable of generating to the Transmission Provider's electric system.

Commission Conclusion

28. The Commission examined the issue of evaluating the Small Generating Facility using less than its maximum rated capacity at great length in Order No. 2006.[28] The Commission rejected arguments made by commenters that the evaluation should be based on less that the Small Generating Facility's maximum rated capacity, including Small Generator Coalition's proposed set of tests that could be used to determine whether these kinds of configurations jeopardize safety and reliability. Small Generator Coalition does not convince us to change that decision here and we, accordingly, deny rehearing.

29. *Tender of the Interconnection Agreement (SGIP Sections 3.5 and 4.8)*—SGIP section 3.5.7 directs the Transmission Provider to present the Interconnection Customer with an executable SGIA no later than five Business Days after the facilities study is complete and the Interconnection Customer agrees to pay for the Interconnection Facilities and Upgrades[29] identified in the facilities study. Under SGIP section 4.8, the Interconnection Customer has 30 Business Days to execute and return the SGIA to the Transmission Provider.

Rehearing Request

30. SoCal Edison complains that five Business Days to prepare, review, and transmit an executable interconnection agreement to the Interconnection Customer is not enough time. According to SoCal Edison, there is no rationale for giving the Interconnection Customer six times as much time to sign and return the agreement as the Transmission Provider has to prepare it. It proposes that the Transmission Provider be given 20 Business Days to tender the executable SGIA to the Interconnection Customer.

31. SoCal Edison also complains that SGIP section 3.5.7 has no deadline for the Interconnection Customer to agree to pay for the Interconnection Facilities and Network Upgrades. It notes that the Transmission Provider may not tender the executable SGIA to the Interconnection Customer until the latter so agrees. According to SoCal Edison, the Interconnection Customer could withhold agreeing to pay for the Interconnection Facilities and Network Upgrades and keep its place in the queue indefinitely at the expense of lower-queued generators. SoCal Edison suggests that the Interconnection Customer be given 15 Business Days to (1) agree to pay for the Interconnection Facilities and Upgrades, (2) withdraw the Interconnection Request, or (3) ask the Transmission Provider to tender an unexecuted interconnection agreement with the Commission. In the alternative, the Commission should clarify that the Transmission Provider may develop consistent and nondiscriminatory internal policies to prevent stalling on the part of the Interconnection Customer.

Commission Conclusion

32. We deny SoCal Edison's request to give the Transmission Provider additional time to tender an executable SGIA to the Interconnection Customer. It offers no explanation why a Transmission Provider cannot meet the deadline. In addition, the SGIA is a standardized document that only requires Attachments 2 through 6 to be completed before it is tendered to the Interconnection Customer. The information required in those attachments is readily available, being contained in the Interconnection Request and the recently-completed interconnection studies.

33. We also decline to establish a deadline for the Interconnection Customer to agree to pay for the Interconnection Facilities and Network Upgrades, withdraw its Interconnection Request, or ask that the unexecuted SGIA be filed with the Commission. While the Interconnection Customer could purposefully withhold its agreement to pay for the facilities as SoCal Edison hypothesizes, it is in the Interconnection Customer's best interests to get its project up and running as soon as possible. However, more importantly, once the facilities study is complete and the costs of the Interconnection Facilities and Upgrades are known, the Interconnection Customer needs time to evaluate the study results and finalize any necessary financing arrangements. Nonetheless, we expect the Parties to act in good faith during this phase of the interconnection process. If either Party believes that the interconnection process is not moving forward within a reasonable time during this waiting period, it may initiate dispute resolution or file a complaint with the Commission. In addition, the Transmission Provider may file the interconnection agreement in unexecuted form with the Commission, explaining that it was unable to obtain the Interconnection Customer's agreement to pay for the Interconnection Facilities and Upgrades.

C. Issues Related to the Small Generator Interconnection Agreement

34. *Reactive Power (SGIA Article 1.8)*—SGIA article 1.8.1 requires that, unless the Transmission Provider has established different requirements that apply to all similarly situated generators in the control area on a comparable basis, the Small Generating Facility shall be designed to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging.

[26] *Id.* at P 193.

[27] The fault study (also called a short circuit analysis) and power flow analysis are performed in the course of the system impact study. SGIP Attachment 7.

[28] Order No. 2006 at P 79–86.

[29] Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility with the Transmission Provider's Transmission System. Upgrades are the required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. SGIP Attachment 1.

The requirement that Small Generating Facilities be designed to meet this reactive power requirement does not apply to wind generators.

Rehearing Requests

35. NRECA states that exempting wind generators from the SGIA's reactive power requirement inappropriately shifts the burden of preserving the reliability of the electric system to the Transmission Provider. It notes that Order No. 661 [30] imposes the same reactive power requirements on wind powered Large Generating Facilities as conventional Large Generating Facilities, if the Transmission Provider demonstrates that reactive power capability is necessary. NRECA argues that the provisions of Order No. 661 should also apply to Small Generating Facilities. Unless the SGIA is so revised, the reactive power requirement does not apply to a 19 MW wind generator subject to the SGIA, whereas a slightly larger 21 MW wind generator subject to the Order No. 661 does have such a requirement.

36. SoCal Edison also argues that wind powered Small Generating Facilities should have to supply reactive power. It argues that the Commission failed to consider (1) the aggregate reactive power effects of many wind-powered Small Generating Facilities interconnected in one area (*e.g.*, a ''wind farm'') and (2) the effect a wind powered Small Generating Facility may have on a distribution system, which consists of low voltage lines.

Commission Conclusion

37. SGIA article 1.8.1 does not endanger reliability or shift the burden of preserving the reliability of the electric system from the Interconnection Customer to the Transmission Provider. This provision only addresses whether the Small Generating Facility itself must be designed to provide reactive power within a certain band. As noted in Order No. 661, ''conventional generators inherently provide reactive power, whereas most induction-type generators used by wind plants currently can only provide reactive power through the addition of external devices.'' [31] Since conventional generators can normally provide reactive power as a matter of course, article 1.8.1 does not impose any additional requirements on them. However, since wind-powered Small Generating Facilities usually cannot provide reactive power, article 1.8.1 does not impose this additional burden on them. This is consistent with the approach taken by the Commission in Order No. 661 for Large Generating Facilities.[32]

38. The provisions of SGIA article 1.8.1 notwithstanding, the SGIP still requires the Interconnection Customer to mitigate any adverse safety and reliability effects its Small Generating Facility may have on the Transmission Provider's Transmission System. The Small Generating Facility (whether wind-powered or not) must still pass either the SGIP's Study Process or technical screens before interconnecting. If additional facilities are needed to safely interconnect the Small Generating Facility with the Transmission Provider's electric system, whether due to safety or reliability (including reactive power) reasons, the Transmission Provider shall identify them and assign costs as specified in SGIA articles 4 and 5. This clarification responds to SoCal Edison's and NRECA's concerns.

39. *Equipment Testing and Inspection (SGIA Article 2.1)*—Under SGIA article 2.1, the Interconnection Customer shall test its Small Generating Facility and Interconnection Facilities before interconnection. The Transmission Provider may, at its own expense, send qualified personnel to observe the testing.

Rehearing Request

40. Southern Company claims that the Transmission Provider must be allowed to witness the testing of the Generating Facility and Interconnection Facilities, and argues that the Interconnection Customer should reimburse the Transmission Provider for its cost of witnessing testing; otherwise, those expenses will be subsidized by the Transmission Provider's other customers.

Commission Conclusion

41. The SGIA provides that the Transmission Provider and the Interconnection Customer shall each be responsible for their own staff, equipment, and other costs associated with testing. The witnessing of testing is at the option of the Transmission Provider. While Southern Company may routinely witness such tests in its system, other Transmission Providers may review test reports at minimal cost without being actually present for the testing itself. We conclude that the witnessing of testing, if deemed necessary, is a routine responsibility of the Transmission Provider, and as such is an appropriate cost to be borne by all users of the Transmission System.[33] We deny Southern Company's request for rehearing.

42. *Authorization Required Prior to Parallel Operation (SGIA Article 2.2)*—SGIA article 2.2 requires the Interconnection Customer to follow all applicable parallel operation requirements before operating its Small Generating Facility in parallel with the Transmission Provider's Transmission System. The Transmission Provider is to list all parallel operating requirements in SGIA Attachment 5 and notify the Interconnection Customer of any changes to those requirements as soon as they are known. This provision also requires the Transmission Provider to give the Interconnection Customer written approval before the Small Generating Facility may begin parallel operations.

Rehearing Request

43. Southern Company argues that the standards for parallel operation should be contained in the SGIA. Also, the Transmission Provider should not have to authorize the Small Generating Facility to begin operations without assurance that the Interconnection Customer has actually met those requirements. Southern Company notes that SGIA article 2.2.2 requires only that the Interconnection Customer notify the Transmission Provider that it has complied with the parallel operation requirements. It argues that the Transmission Provider should be allowed to reasonably confirm for itself that all the requirements have been met before it has to authorize operations.

Commission Conclusion

44. We agree with Southern Company that all parallel operation requirements should be listed in the SGIA when practicable, and article 2.2.1 already states that the Transmission Provider ''shall use Reasonable Efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement.'' Moreover, SGIA Attachment 5 specifies that the Transmission Provider ''shall also provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the Transmission Provider's Transmission System.'' We believe that the SGIA already addresses Southern Company's concerns.

45. Southern Company also argues that having the Interconnection Customer notify the Transmission

[30] Interconnection for Wind Energy, Order No. 661, 70 FR 34993 (Jun. 16, 2005), FERC Stats. & Regs. ¶ 31,186 (2005) (Order No. 661), *reh'g pending*.

[31] Order No. 661 at n. 27.

[32] *Id.* at P 50–52.

[33] *See also* Order No. 2003–A at P 291.

Provider that its Small Generating Facility complies with the parallel operation requirements is inadequate; Southern Company wants to be able to independently confirm that the requirements have been met. We do not find that necessary. If the Transmission Provider has complied with the SGIA, Attachment 5 should contain the applicable parallel operation requirements, and they are thus clearly known to all Parties. The Interconnection Customer's statement that it has complied is sufficient. Once notified, the Transmission Provider shall not unreasonably withhold, condition, or delay authorization for the Small Generating Facility to operate in parallel.

46. *Termination (SGIA Article 3.3)*—SGIA article 3.3.3 provides that upon termination of the SGIA, the Small Generating Facility shall be disconnected from the Transmission Provider's Transmission System. It also provides that neither Party is relieved of its liabilities and obligations, owed or continuing at the time of the termination.

Rehearing Request

47. Southern Company argues that the SGIA should allow the Transmission Provider to permanently disconnect the Small Generating Facility if there is a termination. The Interconnection Customer should also be held responsible for all reasonable expenses the Transmission Provider incurs when permanently disconnecting the Small Generating Facility.

Commission Conclusion

48. SGIA article 3.3.3 already allows the Transmission Provider to permanently disconnect the Small Generating Facility upon termination. This provision also states that termination does not relieve either Party of liabilities and obligations upon termination. However, Southern Company's petition highlights an oversight in the drafting of article 3.3. Accordingly, we are including a provision, consistent with article 2.5 of the LGIA, that provides that all disconnection costs are to be borne by the terminating Party, unless the termination results from the non-terminating Party's Default of the SGIA, or the non-terminating Party otherwise is responsible for the disconnection costs under the SGIA. This provision precludes cost recovery when the Transmission Provider causes the agreement to be terminated, because in those instances it may be appropriate for the Transmission Provider to bear some or all of the costs of disconnection. This responds to Southern Company's concern.

49. *Temporary Disconnection—Reconnection (SGIA Article 3.4.6)*—SGIA article 3.4.6 requires the Parties to cooperate with one another to restore the Small Generating Facility, the Interconnection Facilities, and the Transmission Provider's Transmission System to normal operation as soon as reasonably practicable following a temporary disconnection.

Rehearing Request

50. Southern Company argues that this provision should state that the Small Generating Facility only has to be reconnected once the problem causing the disconnection has been fixed.

Commission Conclusion

51. The SGIA requires the Parties to cooperate to restore the Small Generating Facility, as well as other facilities, to normal operation as soon as reasonably practicable. We do not see the provision as ambiguous. To clarify, however, the Transmission Provider is required to reconnect the Small Generating Facility after a temporary disconnection as soon as it can be reconnected safely and reliably consistent with system conditions and Good Utility Practice.[34]

52. *Cost Responsibility (SGIA Articles 4 and 5)*—Order No. 2006 adopts the same cost responsibility policy for Small Generator interconnections as the Commission did for Large Generator interconnections in Order No. 2003. Under that policy, the costs of Interconnection Facilities and Distribution Upgrades are directly assigned to the Interconnection Customer. In addition, if the Transmission Provider is a non-independent entity, such as a vertically integrated utility, the Interconnection Customer initially funds the cost of any required Network Upgrades (*i.e.*, Upgrades to the Transmission System at or beyond the Point of Interconnection) and it is then reimbursed for this upfront payment by the Transmission Provider. However, we expect that, for most interconnections of Small Generating Facilities, there will be no Network Upgrades. This policy grants greater flexibility in assigning cost responsibility if the Transmission Provider is an independent entity such as an RTO or ISO.

Rehearing Requests

53. North Carolina Commission states that the Commission erred by requiring a non-independent Transmission Provider to ''socialize'' Network Upgrades while allowing an RTO or ISO to use participant funding. The Commission should adopt a ''but for'' policy for both independent and non-independent Transmission Providers to ensure that the costs of Upgrades and expansions that are necessary to support new loads or demands on the Transmission Provider's Transmission System are borne by those causing the Upgrade or expansion to be undertaken. It asks that participant funding, including the use of a ''but for'' approach, not be limited to only RTOs or ISOs. North Carolina Commission states that, if the Commission is concerned that the cost allocation decisions of a non-independent entity could be unfair or subjective, any unfairness or subjectivity can be cured by the opportunity for review of the allocation process and its results by an independent third party, such as the Commission, without the involvement of an RTO or ISO.

54. Southern Company raises a number of issues that the Commission has addressed in other proceedings. Specifically, Southern Company states as follows: the ''at or beyond'' test has been vacated by the D.C. Circuit Court of Appeals[35] and the Commission has failed to justify its change in policy; the Commission's cost responsibility policy results in cost socialization and thus violates the system-wide benefit test, cost causation principles and the Energy Policy Act of 1992, and it will cause inefficiencies in generator siting and transmission system expansion, contrary to Commission precedent and the Energy Policy Act of 1992; unused transmission credits should not be subject to refund after twenty years; the Interconnection Customer should receive transmission credits only when transmission service is taken from the Small Generating Facility itself; the Interconnection Customer should not receive transmission credits for tax gross-up or other tax-related payments; the Interconnection Customer should not be entitled to receive interest on the costs of Network Upgrades; the Commission's ''higher of'' policy does not prevent native load customers from subsidizing the Interconnection Customer; an Affected System[36] should

[34] SGIA article 1.5.3 already requires the Transmission Provider to construct, operate, and maintain its Transmission System and Interconnection Facilities in accordance with the SGIA and with Good Utility Practice.

[35] *Entergy Services, Inc.* v. *FERC*, 391 F.3d 1240, 1252 (D.C. Cir. 2004).

[36] An Affected System is an electric system other than the Transmission Provider's Transmission

not have to provide credits when there is no system benefit; and Order No. 2006 unlawfully discriminates against Transmission Providers and their customers that are not part of an RTO or ISO. Also, Southern Company argues that, to protect other customers and to place the Interconnection Customer appropriately at risk if the Small Generating Facility does not achieve commercial operation or retires early, the Interconnection Customer should be responsible for all operation, maintenance, and other expenses associated with the facilities that are required to accommodate the interconnection. At a minimum, the Interconnection Customer should pay the operation and maintenance expenses associated with these facilities until their costs of construction are reflected in transmission rates.

55. Small Generator Coalition asks the Commission to provide that an Interconnection Customer willing to interconnect its Small Generating Facility ahead of a higher-queued applicant may do so without paying system upgrade costs until the higher-queued applicant's interconnection actually makes the system upgrades necessary. The Final Rule should not let the Transmission Provider demand system upgrade costs from the Interconnection Customer when the interconnection is made based on a prior claim to system transfer capacity by a generator that is higher in the queue. Small Generator Coalition also asks the Commission to provide that when the facilities study identifies the Upgrades needed to interconnect the Small Generating Facility, the Transmission Provider must agree to a not-to-exceed estimate of those costs, subject if necessary to an inflation adjustment, so that the Interconnection Customer will have financial certainty for its project. This keeps the Transmission Provider from using its leverage to extract unreasonable payments when the Upgrades are not constructed until years after the actual interconnection.

56. Small Generator Coalition also says that an Interconnection Customer interconnecting its Small Generating Facility with the Transmission Provider's Distribution System should have the same protection against paying for Upgrades that benefit others that it would have if it interconnected with the Transmission System. The costs of Upgrades should be assigned based on the benefits from those Upgrades, regardless of whether the portion of the system on which the Upgrades are made is deemed to be transmission or distribution. Small Generator Coalition argues that, as with Network Upgrades, Distribution Upgrades may offer benefits to other customers or to the Transmission Provider's electric system.

57. SoCal Edison notes that, in Order No. 2003–B, the Commission held: ''In the case of an Affected System that is jointly owned, it is the responsibility of the Affected System Operator to provide the credits and seek reimbursement for any amounts that it believes it is owed by the other owners.'' [37] SoCal Edison states that it sought rehearing on this point in the Large Generator Interconnection proceeding. Although the Commission did not directly address this issue in Order No. 2006, SoCal Edison seeks clarification that the Commission did not intend that the operator of a jointly-owned Affected System must pay transmission credits for the portions of the facilities that it does not own.

Commission Conclusion

58. The Commission addressed North Carolina Commission's arguments in Order Nos. 2003 and 2003–A.[38] In the latter order, the Commission explained that it is not unduly discriminatory to let an independent Transmission Provider propose innovative cost recovery methods while requiring a non-independent Transmission Provider to continue to adhere to the Commission's traditional cost responsibility policy. This different treatment is fair because the two types of Transmission Provider are not similarly situated. As the Commission explained, when implemented by an independent Transmission Provider that does not have an incentive to discourage new generation by competitors, new cost recovery methods such as participant funding can yield efficient competitive results. However, because of their inherent subjectivity, new approaches such as participant funding could allow a non-independent Transmission Provider to frustrate the development of new generating facilities that could compete with its own.

59. The Commission addressed all of the issues raised by Southern Company in the Large Generator Interconnection proceeding and will not repeat those conclusions here.[39] We also note that the Commission recently clarified its policy on using the ''at or beyond'' test to determine cost responsibility for Interconnection Facilities and Network Upgrades.[40] Finally, the Commission addressed the recovery of operation and maintenance (O&M) and related expenses in Order Nos. 2003–A and 2006.[41] In the latter order, the Commission noted that the Transmission Provider may propose, under FPA section 205,[42] a rate to recover from the Interconnection Customer an appropriate share of O&M costs associated with Interconnection Facilities and Distribution Upgrades. However, it has long been the Commission's policy that O&M costs associated with Network Upgrades shall not be directly assigned to the Interconnection Customer, because Network Upgrades are part of the integrated transmission system from which all transmission users benefit.[43] Although Southern Company describes scenarios where native load and other transmission customers could be placed at risk for the recovery of these costs, such scenarios are unlikely. And, even if they do occur, the cost to native load and other transmission customers would be *de minimis*.

60. North Carolina Commission also contends that the Interconnection Customer is protected from unfair conduct because it has recourse to the Commission. However, as the Commission stated in Order No. 2003–A,[44] the availability of evidentiary proceedings, case-by-case adjudication of Interconnection Requests, or other procedures does not ensure that interconnections are completed in a timely manner by non-independent Transmission Providers. Administrative review of complex technical matters is costly and time-consuming. In today's competitive power market environment, allowing a Transmission Provider that is also a competitor in the wholesale power market to use the administrative process to delay competitive entry, or to propose subjective and potentially discriminatory policies, is unacceptable.

61. Small Generator Coalition seeks assurance that an Interconnection Customer willing to interconnect its Small Generating Facility ahead of a higher-queued applicant may do so without paying system upgrade costs until the higher-queued applicant's interconnection actually makes the

System that may be affected by the proposed interconnection. SGIP Attachment 1.

[37] Order No. 2003–B at P 42.

[38] Order No. 2003 at P 695–703 and Order No. 2003–A at P 587 and 691–697.

[39] *See, in general*, Order No. 2003 at P 683–750, Order No. 2003–A at P 341 and P 566–697, Order No. 2003–B at P 15–57 and P 103–105, and Order No. 2003–C at P 6–27.

[40] Nevada Power Company, Order on Rehearing, 113 FERC ¶ 61,007 (2005).

[41] *See* Order No. 2003–A at P 424 and Order No. 2006 at P 453–454.

[42] 16 U.S.C. 824d (2000); *see also* 18 CFR 35.12 (2005).

[43] Order No. 2006 at P 453.

[44] Order No. 2003–A at P 694.

system upgrades necessary. The Commission addressed this issue in Order No. 2003–A.[45] Consistent with that ruling, the procedure will operate as follows. If the lower-queued Interconnection Customer chooses an in-service date for its Small Generating Facility that is earlier than that of the higher-queued Interconnection Customer, the former must be allowed to proceed using the capacity earmarked for the latter, when possible. When the higher-queued Interconnection Customer is ready to proceed, required Network Upgrades would have to be built, and at that time the lower-queued Interconnection Customer would have to pay its share of the costs. The period during which the lower-queued Interconnection Customer receives transmission credits from the Transmission Provider also begins at the same time. However, if the higher-queued Interconnection Customer ultimately drops out of the queue, then some of the Network Upgrades would not have to be built. This would eliminate, at least in part, the need for funding by the lower-queued Interconnection Customer and for subsequent payment of transmission credits.

62. Small Generator Coalition also proposes that the Transmission Provider commit to a not-to-exceed estimate of Upgrade costs. We deny this request. A basic tenet of the Commission's policy for the recovery of interconnection costs is that the Interconnection Customer pays the actual costs of Interconnection Facilities and Distribution Upgrades and initially funds the cost of Network Upgrades. However, we recognize that postponing the construction of Upgrades, and the possibility that a generator higher in the queue could drop out, can create uncertainty for the Interconnection Customer. Therefore, as in the Large Generator Interconnection proceeding,[46] we are directing the Transmission Provider to tell the Interconnection Customer its maximum possible funding exposure when the Transmission Provider tenders the SGIA. That estimate shall include the costs of Upgrades that are reasonably allocable to the Interconnection Customer at the time the estimate is made, and the costs of any Upgrades not yet constructed that were assumed in the interconnection studies for the Interconnection Customer but are, at the time of the estimate, an obligation of an entity other than the Interconnection Customer.

63. Small Generator Coalition argues that Distribution Upgrades may offer benefits to other customers or to the Transmission Provider's electric system that should be reflected by a contribution from other customers or the Transmission Provider toward the costs of the Upgrades. We disagree for several reasons. First, as stated in Order No. 2003, distribution facilities typically deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system, as is the case for transmission facilities.[47] Second, implementing a more complicated cost allocation policy for Distribution Upgrades would only slow interconnection while providing little financial benefit to the Interconnection Customer. Third, commenters suggest no reason why Small Generating Facilities and Large Generating Facilities should be treated differently on this issue.

64. In response to SoCal Edison's request, we clarify that the operator of a jointly-owned Affected System does not have to pay credits for the portion of the facilities that it does not own. The Commission addressed this issue in Order No. 2003–C,[48] where it stated that the operator's responsibility for flowing through transmission credits and reimbursing the Interconnection Customer for its upfront payment does not extend beyond the Affected System operator's normal duties as a tariff administrator. We note, of course, that this responsibility extends only to the operator and owners of a jointly-owned system that (1) are subject to the Commission's jurisdiction and (2) have financial responsibility under their own Commission-regulated tariffs to provide transmission credits and final reimbursement to the Interconnection Customer for the upfront payments they have received.

65. *Billing and Payment Procedures and Final Accounting (SGIA Article 6.1)*—SGIA article 6.1.2 requires the Transmission Provider to give the Interconnection Customer a final accounting report of the actual construction costs of the Interconnection Facilities and Upgrades within three months of their completion.

Rehearing Request

66. SoCal Edison argues that the Transmission Provider should have at least six months (and preferably 12 months) to prepare the final accounting report because some vendors do not supply invoices until several months after the work is completed. LGIA article 12.2, in contrast, gives the Transmission Provider six months to prepare a final cost accounting for a Large Generating Facility. SoCal Edison contends that the final accounting deadline for all size projects should be the same.

Commission Conclusion

67. SGIA article 6.1 requires the Transmission Provider to bill the Interconnection Customer on a monthly basis as costs are incurred, or as otherwise agreed to by the Parties, and the Interconnection Customer has 30 calendar days to pay the bill. SoCal Edison does not claim that it cannot process vendor invoices on a monthly basis, and we see no reason why the final accounting should be especially difficult. However, we do recognize that a vendor may, infrequently, cause the final accounting report to be delayed. As with all other actions under the SGIA, we expect the Transmission Provider to use Reasonable Efforts to obtain timely invoices from its vendors. When the delay is outside the Transmission Provider's control, however, the Parties may develop a revised schedule for that portion of the final accounting that is still outstanding. Thus, there is no need to extend the deadline for submitting all final accounting reports to accommodate the occasional delay.

68. *Financial Security Arrangements (SGIA Article 6.3)*—SGIA article 6.3 requires the Interconnection Customer to provide the Transmission Provider with appropriate financial security before the Transmission Provider begins construction. Such security for payment shall be in an amount sufficient to cover the costs of constructing, designing, procuring, and installing the applicable portion of the Transmission Provider's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Transmission Provider under the SGIA during its term.

Rehearing Request

69. Southern Company requests that SGIA article 6.3 specify that the Interconnection Customer not just provide security, but maintain it for the duration of the Interconnection Agreement. Additionally, the SGIA should not require the Transmission Provider to reduce the required security until 90 days after the Transmission Provider receives payment. This, Southern Company argues, ''is necessary to reflect the commercial reality that payments have not really been 'made' to the transmission provider * * * until such time as such

[45] *Id.* at P 621–622.

[46] *Id.* at P 320.

[47] Order No. 2003 at P 697.

[48] Order No. 2003–C at P 18.

payments are no longer subject to being set aside under the Bankruptcy Code.'' [49]

Commission Conclusion

70. SGIA article 6.3.2 states that any letter of credit or surety bond provided by the Interconnection Customer ''specify a reasonable expiration date.'' Thus, Southern Company's concern that the Interconnection Customer would not have to maintain the security is misplaced, as the article requires that ''sufficient'' security be maintained for a ''reasonable'' period of time.[50] Article 6.3 requires that the security provided by the Interconnection Customer be reduced on a dollar-for-dollar basis for payment made to the Transmission Provider. The Interconnection Customer does not have to provide security over the life of the SGIA (which automatically renews itself indefinitely); instead, the Interconnection Customer need only provide security until it pays off its obligations to the Transmission Provider.[51]

71. We are also not convinced that the Transmission Provider should be able to delay reducing the Interconnection Customer's security to avoid the risk posed by a bankruptcy court deciding that a payment to the Transmission Provider was ''preferential'' or otherwise improper. The risk to the Transmission Provider is outweighed by the additional burden placed on the Interconnection Customer.

72. *Assignment (SGIA Article 7.1)*—SGIA article 7.1 allows either Party to assign the SGIA to a third party after giving the non-assigning Party notice and opportunity to object. Additionally, article 7.1.1 allows assignment without the consent of the non-assigning Party if the assignee has a higher credit rating and the legal authority and operational ability to carry out the interconnection.

Request for Rehearing

73. Southern Company proposes that the Interconnection Customer be allowed to assign the SGIA as collateral only with the written consent of the Transmission Provider. Otherwise, an assignee or purchaser in foreclosure could assume the rights under the agreement without also assuming the obligations. Southern Company also argues that without approval by the Transmission Provider, the assignee would not have to cure any existing defaults. It urges limiting assignment to ''eligible customers'' who can carry out the Interconnection Customer's obligations under the SGIA.

74. Southern Company argues that the Transmission Provider should be indemnified by the Interconnection Customer and the Interconnection Customer's assignee for any costs or expenses associated with the assignment.

75. Southern Company also requests clarification of the conditions under which the Transmission Provider must recognize foreclosure rights and assignments, including the possibility of multiple assignments. It notes that the Uniform Commercial Code does not cover such a situation. The SGIA should specify that the Transmission Provider ''not hav[e] received a contrary court order or notice of an unresolved contrary claim'' before being required to accept an assignment. It also asks that the Transmission Provider be able to stop cooperating with the assignee if the Transmission Provider receives a contrary court order or notice of unresolved claim.

76. Finally, Southern Company proposes that the SGIA require the Interconnection Customer to promptly notify the Transmission Provider of any assignment.

Commission Conclusion

77. Southern Company argues that the Interconnection Customer should obtain the Transmission Provider's consent before assigning its rights under the SGIA as security. As explained in Order No. 2003–A for Large Generating Facilities, such assignments are permitted to allow the Interconnection Customer to better secure financing because the Transmission Provider faces little to no risk from an assignment to an affiliate having an equal or superior credit rating.[52] And, Southern Company has not convinced us that the rules governing assignments of interconnection agreements should be stricter for Small Generating Facilities than for Large Generating Facilities. In addition, SGIA article 7.1 states that the assignee is responsible for meeting the same financial, credit, and insurance obligations as the Interconnection Customer. We reject Southern Company's request that assignments be limited to ''eligible customers'' because SGIA article 7.1 already requires that an assignee have the ''legal authority and operational ability'' to carry out the interconnection agreement.

78. As to Southern Company's issue of competing assignments or court orders regarding the assignment, the SGIA specifies that the laws of the state in which the Point of Interconnection is located govern, so any contractual dispute regarding foreclosure or assignment is to be settled under state contract law.[53]

79. Finally, Southern Company notes that SGIA article 7.1 does not require the assigning Party to notify the other Party of an assignment under certain circumstances. We agree that the assigning Party should notify the other Party of any assignment and are so revising SGIA article 7.1.1. This provision is also consistent with LGIA article 19.1.

80. *Insurance (SGIA Article 8)*—SGIA article 8.1 requires the Interconnection Customer to obtain and maintain enough general liability insurance to insure against all reasonably foreseeable direct liabilities, given the type of equipment being used.

Rehearing Requests

81. Southern Company argues that the Interconnection Customer should have to maintain reasonable amounts of general liability, hazard, employer's liability, and worker's compensation insurance. It notes that several states where it operates do not require that businesses maintain such types of insurance.

82. Small Generator Coalition points out that section 7.0 of the 10 kW Inverter-Based Terms and Conditions Document,[54] which requires the Parties to maintain commercially reasonable amounts of insurance, is inconsistent with Order No. 2006.[55] That order states that the Parties will follow all applicable insurance requirements imposed by the state where the Point of Interconnection is located.

Commission Conclusion

83. The SGIA's insurance requirements are sufficient to protect the interests of the Transmission Provider. General liability insurance is the broadest type of insurance and supplements any insurance that may be mandated by state law. Additionally, not all types of insurance are required for all Small Generating Facilities. For instance, some facilities may not have any employees and, thus, not require certain types of insurance such as worker's compensation. Finally, we agree that section 7.0 of the 10 kW Inverter-Based Interconnection Agreement is inconsistent with Order No. 2006, and are amending that provision accordingly.

[49] Southern Company at 56–57.

[50] *See also* Order No. 2003–B at P 125.

[51] *See* Order No. 2003 at P 592–600.

[52] *See* Order No. 2003–A at P 672–675.

[53] *See* SGIA article 12.1.

[54] The agreement is contained in Attachment 5 to the SGIP.

[55] Order No. 2006 at P 334.

84. *Generator Balancing Requirements*—The SGIA does not include a separate generator balancing service provision.

Comment

85. Southern Company argues that the SGIA should contain a generating balancing service provision. In the alternative, the Commission should clarify that the Transmission Provider may require the Interconnection Customer to enter into a generator balancing service agreement that is separate from the SGIA.

Commission Conclusion

86. We are not including a generator balancing provision in the SGIA for the reasons set forth in Order Nos. 2003–B and 2006.[56] There is no need to repeat those conclusions here. However, the Transmission Provider may include a provision for generator balancing service arrangements in individual interconnection agreements. Such provisions should be tailored to the Parties' specific standards and circumstances, and are subject to Commission approval. Regarding Southern Company's alternative request, we clarify that the Transmission Provider may incorporate an Interconnection Customer's balancing service arrangement in a separate agreement.

D. Other Significant Issues

87. *Commission Jurisdiction under the Federal Power Act*—The Commission's assertion of jurisdiction in Order No. 2006 is identical to the jurisdiction asserted in Order Nos. 2003 and 888.[57] Order No. 2006 applies to interconnections with a Transmission Provider's facilities that are subject to the Transmission Provider's OATT at the time the interconnection is requested and that are for the purpose of facilitating a jurisdictional wholesale sale of electricity.

Requests for Rehearing

88. Several petitioners[58] argue that the Commission is improperly asserting jurisdiction over ''local distribution'' facilities in violation of the FPA. They point to both *Detroit Edison*[59] and FPA section 201 for support. Con Edison and CT DPUC argue that since their states have rules for interconnecting small generators with distribution systems, there is no need for federal standards.

89. NARUC argues that it is not always clear whether a particular facility is covered by an OATT and that a Transmission Provider's accounting system may not so indicate. NARUC notes that costs for distribution facilities are generally recovered under the OATT on a rolled-in basis. It fears that this may lead the Commission to find that all of a Transmission Provider's distribution facilities are covered by the OATT. NARUC claims that merely including a facility in an OATT does not give the Commission jurisdiction over that facility.[60]

90. Con Edison asserts that Order No. 2006 impermissibly bases jurisdiction on the ''intent'' of a generator, rather than its actions. Because jurisdiction can change based on the use of a facility or the generator's intent, the Parties would not know whether Order No. 2006 applies until after the fact. Con Edison poses a hypothetical case where a generator intending to sell at wholesale interconnects with a previously state jurisdictional line under state rules. A second generator interconnecting with the same line, but not seeking to sell power at wholesale, would be obliged to interconnect under the Commission's rules. Thus, Con Edison contends, the generator seeking to sell at wholesale interconnects under state law, while the generator seeking to sell at retail would be forced to interconnect under federal law. Similarly, if the first generator decides not to sell at wholesale, the second generator would have to interconnect under state rules, even if it intends to sell at wholesale.

91. Con Edison, NARUC, NRECA, and Southern Company also assert that Order No. 2006 contradicts the ''seven factor test'' laid out in Order No. 888 for distinguishing transmission facilities from local distribution facilities. NRECA argues that jurisdiction over a wholesale transaction does not confer jurisdiction over the local distribution facility itself or over an interconnection with such a facility.

92. Southern Company argues that section FPA 201(a) limits the Commission's jurisdiction to matters ''which are not subject to regulation by the States.''[61] Since several states have promulgated rules governing interconnection with local distribution facilities, Southern Company argues that the Commission cannot do likewise.

93. Conversely, Small Generator Coalition and SoCal Edison argue that the Commission should exercise jurisdiction over all interconnections for selling power at wholesale and should not limit application of this rule to facilities covered by an OATT at the time interconnection service is requested. Small Generator Coalition argues that the Commission's jurisdiction over a wholesale sale includes jurisdiction over the interconnection necessary to facilitate the sale. It proposes that the Commission clarify that if the Transmission Provider has an OATT, all interconnections made to sell power at wholesale are subject to Commission jurisdiction, whether or not the specific facility being interconnected with is jurisdictional or not. Otherwise, Small Generator Coalition argues, the Transmission Provider has unfettered discretion to determine which distribution facilities are covered by its OATT at the time interconnection service is requested.

Commission Conclusion

94. The Commission's assertion of jurisdiction in Order No. 2006 is identical to the jurisdiction asserted in Order Nos. 2003 and 888.

There is no intent to expand the jurisdiction of the Commission in any way; if a facility is not already subject to Commission jurisdiction at the time interconnection is requested, the Final Rule will not apply. Thus, only facilities that already are subject to the Transmission Provider's OATT are covered by this rule.[62]

95. Since the Commission issued Order No. 2006 in May 2005, the third rehearing of the Large Generator Interconnection final rule, Order No. 2003–C, was issued. That order further discussed the Commission's jurisdiction over generator interconnections.[63] Because the Commission has addressed

[56] Order No. 2003–B at P 74–75 and Order No. 2006 at P 390.

[57] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities: Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. & 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS* v. *FERC*), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[58] *E.g.*, Con Edison, CT DPUC, NARUC, North Carolina Commission, NRECA, and Southern Company.

[59] *Detroit Edison* v. *FERC*, 343 F.3d 48 (D.C. Cir. 2003) (*Detroit Edison*).

[60] NARUC cites *Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459, 461 (D.C. Cir. 2005) (*Columbia*), where the court held that voluntarily including a particular facility in a tariff does not automatically give the Commission jurisdiction over that facility that it would not otherwise have.

[61] 16 U.S.C. 824(a) (2000).

[62] Order No. 2006 at P 481 (quoting Order No. 2003–A at P 700).

[63] *See* Order No. 2003–C at P 51–53.

the scope of its jurisdiction in several orders addressing interconnection, we need not repeat that discussion here. However, petitioners raise other issues for the first time that we do address here.

96. Several petitioners suggest that the Commission's exercise of jurisdiction is contrary to the seven factor test laid out in Order No. 888 to differentiate transmission facilities from local distribution facilities. Petitioners misapply the seven factor test. As the Commission has explained, ''[t]he discussion of transmission and [local] distribution classification (and the use of the seven factor test) in Order No. 888 was in the context of unbundled retail transmission service [and] determining which facilities were for the local distribution segment of unbundled retail services.'' [64] Contrary to what petitioners suggest, the seven factor test does not apply to circumstances in which the wholesale sale may trigger Commission jurisdiction over an interconnection, or is intended for application in every dispute involving the scope of federal and state jurisdiction.[65]

97. NARUC also argues that it may be unclear whether a particular facility is covered by an OATT. In addressing a similar comment in Order No. 2003–A, the Commission noted that ''in most cases, there will be no controversy about whether a facility is under the OATT [and] the Transmission Provider [shall] make this information available to the Interconnection Customer during the Scoping Meeting or earlier.'' [66] Should a disagreement arise over the proper classification of a facility, the Parties may bring the matter to the Commission's attention.[67]

98. NARUC cites *Columbia* to support its argument that a facility is not subject to Commission jurisdiction simply because it is covered by an OATT. While we agree that *Columbia* concludes that a tariff cannot confer jurisdiction that is not granted by statute,[68] this holding does not require a different conclusion on the applicability of Order No. 2006. The Commission presumes that a facility available for open access service under an OATT serves a Commission-jurisdictional transmission or delivery function. If the Interconnection Customer seeks to interconnect with a facility that is available for service under an OATT but that is not required to be under the OATT at the time the Interconnection Request is submitted, Order No. 2006 does not apply. We expect that such circumstances will be rare and leave it to the Parties to bring disagreements about the status of a particular facility to the Commission for resolution.

99. Con Edison is correct that an Interconnection Customer interconnecting its generator with an electric facility used exclusively to make retail sales, but not currently available for transmission service under an OATT, will do so under state interconnection rules. It does not matter whether the Interconnection Customer intends to sell power at wholesale or retail. However, Con Edison appears to misunderstand what would happen if the Interconnection Customer seeks to interconnect with a facility carrying both energy sold at wholesale and energy sold at retail and plans to sell power only at retail. In that case, because there is no wholesale sale involved, the interconnection would be subject to the state's rules.

100. *Qualifying Facilities*—In Order No. 2006, the Commission stated that it would exercise jurisdiction over all qualifying facilities (QFs) [69] in the same manner, regardless of size, as discussed in Order No. 2003.[70]

Requests for Rehearing

101. NARUC, supported by Con Edison, argues that the Commission's assertion of jurisdiction over a QF selling power to an entity other than the host utility is overly broad in that it extends jurisdiction over QFs selling power, at wholesale *or* retail, to someone other than the host utility. Instead, the Commission should clarify that a QF not selling at wholesale (other than to the host utility) should interconnect under state law.

Commission Conclusion

102. NARUC is correct that a QF selling at retail is not eligible to interconnect under either Order No. 2003 or Order No. 2006. Under the Public Utility Regulatory Policies Act of 1978,[71] such interconnections are governed by state law.[72]

103. *Relationship of Order No. 2006 to State Interconnection Programs*—While Order No. 2006 attempted to harmonize its provisions with existing state programs, the Commission declined to formally recognize these programs in Order No. 2006.

Rehearing Requests

104. CT DPUC, NARUC, and North Carolina Commission ask the Commission to grandfather both existing and future state-run interconnection rules. CT DPUC points to the extensive efforts in several states to develop and encourage the interconnection of small generators. It argues that Order No. 2006 could be read as superseding Connecticut's own small generator interconnection rules. NARUC and the North Carolina Commission express similar concerns and argue that Order No. 2006 will encourage forum-shopping and inefficient siting decisions. They also ask the Commission to clarify that existing interconnections accomplished under state rules are grandfathered. Finally, the Commission should grant deference to future state interconnection rules.

Commission Conclusion

105. Order No. 2006 in no way affects rules adopted by the states for the interconnection of generators with state-jurisdictional facilities. We expect that the vast majority of small generator interconnections will be with state jurisdictional facilities. The Commission encourages development of state interconnection programs, and interconnections with state jurisdictional facilities continue to be governed by state law. However, if an Interconnection Customer seeks to interconnection with a facility under federal jurisdiction, a state program cannot displace federal rules for interconnections. Furthermore, the Commission has attempted to minimize the inconstancies between federal and state interconnection rules by adopting many of the provisions suggested by NARUC and other state bodies, and encouraging the states to consider using the streamlined SGIP and SGIA for their own use. Finally, we emphasize that Order No. 2006 and this order do not affect any existing interconnection agreements, whether they were entered into under state or federal law.

106. *Creation of a Safe Harbor for Non-jurisdictional Utilities*—In Order No. 2006, the Commission did not

[64] *Ameren Services Co.*, 103 FERC ¶ 61,121 at P 26 (2003); see also Order No. 888 at 31,771, 31,783–85 and Order No. 888–A at 30,342.

[65] *TAPS* v. *FERC*, 225 F.3d at 695. (''[U]nder Order 888, when a public utility is engaged in wholesale transmission, FERC has jurisdiction regardless of the nature of the facility; but when the public utility is engaged in unbundled retail transmission, the facts and circumstances [*i.e.*, the seven factor test] will determine whether the facilities are subject to FERC or state jurisdiction.'')

[66] *See* Order No. 2003–A at P 712.

[67] *Id.*

[68] 404 F.3d at 461.

[69] A QF may be either a qualifying small power production facility or a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). 16 U.S.C. 824a–3 (2000).

[70] *See* Order No. 2003 at P 813–15.

[71] 16 U.S.C. 2601 *et seq.* (2000).

[72] *See* Order No. 2003 at P 813–14.

create a safe harbor for non-jurisdictional utilities that wish to interconnect new generation without jeopardizing their non-jurisdictional status.

Request for Rehearing

107. NRECA repeats here the same request it made in the Large Generator Interconnection proceeding that the Commission create a safe harbor to allow non-jurisdictional utilities to avoid the sometimes cumbersome process of interconnecting new generators under FPA sections 210, 211, and 212. NRECA also points out that many cooperatives are not ''transmitting utilities'' as defined in the FPA and that section 211 only applies to interconnections with ''transmitting utilities.'' Specifically, NRECA asks the Commission to clarify that a cooperative may settle a section 211 case and agree to provide wheeling services without that settlement being considered a ''voluntary'' service offering.

Commission Conclusion

108. As the Commission stated in Order No. 2006, FPA section 211 already allows a non-public utility to safeguard its non-jurisdictional status. We see no need to create a second method of doing the same thing. NRECA also asks whether a cooperative may settle a section 211 case and agree to provide wheeling services without that settlement being considered a ''voluntary'' service offering. That issue is outside the scope of this rulemaking. In this rulemaking proceeding, the Commission is acting under its FPA section 205 authority, and does not address obligations under sections 210, 211, or 212.

IV. Information Collection Statement

109. Order No. 2006 contains information collection requirements for which the Commission obtained approval from the Office of Management and Budget (OMB). The OMB Control Number for this collection of information is 1902–0203. This order denies most rehearing requests, clarifies the provisions of Order No. 2006, and grants rehearing on only three minor issues. This order does not make substantive modifications to the Commission's information collection requirements and, accordingly, OMB approval for this order is not necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

V. Document Availability

110. In addition to publishing the full text of this document in the **Federal Register**, interested persons may obtain this document from the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC. This document is also available electronically from the Commission's eLibrary system (*http://www.ferc.gov/docs-filing/elibrary.asp*) in PDF and Microsoft Word format. To access this document in eLibrary, type ''RM02–12–'' in the docket number field and specify a date range that includes this document's issuance date. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Help Line at 202–502–8222 or the Public Reference Room at 202–502–8371 Press 0, TTY 202–502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VI. Effective Date

111. Changes to Order No. 2006 made in this Order on Rehearing will become effective on December 30, 2005.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

The Appendices will not be published in the **Federal Register** or the Code of Federal Regulations.

[FR Doc. 05–23461 Filed 11–29–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJ28

Medical: Advance Health Care Planning

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA medical regulations to codify VA policy regarding advance health care planning. The final rule sets forth a mechanism for the use of written advance directives, i.e., a VA living will, a VA durable power of attorney for health care, and a State-authorized advance directive. The final rule also sets forth a mechanism for honoring verbal or non-verbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future health care.

DATES: Effective Date: December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ruth Cecire, Ph.D., Policy Analyst, Ethics Policy Service, National Center for Ethics in Health Care (10E), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; 202–501–0364 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 2, 1998 (63 FR 58677), the Department of Veterans Affairs (VA) proposed to amend its medical regulations (38 CFR part 17) to codify VA policy concerning advance health care planning. Advance health care planning provides an opportunity for patients to give guidance to their caregivers regarding their treatment preferences for the future should they become incapable of participating fully in the decision-making process. We requested comments for a 60-day period that ended January 4, 1999. We received three comments. Based on the rationale set forth in the proposed rule and this document, we are adopting the proposed rule as a final rule with the changes indicated below.

This final rule sets forth a mechanism for the use of written advance directives, i.e., a VA living will, a VA durable power of attorney for health care, and a State-authorized advance directive. The rule also sets forth a mechanism for honoring verbal or non-verbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. The advance health care planning discussion and completion of a written advance directive ideally would take place prior to a patient being admitted to care in a crisis situation. However, we recognize that this is not always the case. The mechanism for honoring the verbal and non-verbal instructions of patients in this circumstance enables such patients to communicate their preferences regarding their future health care and ensures this information will be carefully documented in the patient's health record and available to guide caregivers should the patient lose capacity. The final rule also states that