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Contents

Federal Register

Vol. 68, No. 160

Tuesday, August 19, 2003

Agency for Toxic Substances and Disease Registry
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49779

Agriculture Department
See Farm Service Agency
See Forest Service

Census Bureau
NOTICES
Meetings:
Census Advisory Committees, 49760

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49779–49781

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Nevada, 49759
Texas, 49759
Washington, 49759

Coast Guard
RULES
Ports and waterways safety:
Cleveland Harbor, OH; 2003 Gravity Games; regulated navigation area, 49704–49706
NOTICES
Meetings:
Great Lakes Pilotage Advisory Committee, 49787

Commerce Department
See Census Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49759–49760

Customs and Border Protection Bureau
NOTICES
Country of origin determinations:
Fiber optic cable products, 49788–49791

Defense Department
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Coordination of benefits between TRICARE and the Department of Veterans Affairs, 49732–49733
NOTICES
Environmental statements; availability, etc.:
Pulsed Fast Neutron Analysis Cargo Inspection System Test Facility, Ysleta Port of Entry Commercial Cargo Facility, El Paso TX, 49761–49762

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
Proposed 2003 aggregate; correction, 49843

Education Department
NOTICES
Meetings:
Federal Interagency Coordinating Council, 49762

Employee Benefits Security Administration
NOTICES
Employee benefit plans; individual exemptions:
Northwest Airlines, 49792–49808

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Sempra Energy Solutions, 49762–49763

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania, 49706–49707
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49763–49773

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Farm credit system:
Farm management and agricultural trust; comment request, 49773–49774

Farm Service Agency
PROPOSED RULES
Program regulations:
Guaranteed farm loan program, 49723–49726

Federal Aviation Administration
RULES
Airworthiness directives:
EXTRA Flugzeugbau GmbH, 49688–49690
McDonnell Douglas, 49686–49688
Pratt & Whitney Canada; correction, 49686
Class E airspace, 49690–49692
PROPOSED RULES
Class E airspace, 49727–49728
NOTICES
Airport noise compatibility program:
Noise exposure maps—
Toledo Express Airport, OH, 49837–49838

Federal Communications Commission
RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Public switched telephone network voice grade access definition, 49707
Universal services; definition, 49707–49712
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49774–49775

Federal Emergency Management Agency
NOTICES
Meetings:
Emergency Medical Services Federal Interagency Committee, 49788
Radiological Emergency Preparedness:
Preparation and planning, 49783–49785

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Generator interconnection agreements and procedures; standardization, 49845–49972
PROPOSED RULES
Electric utilities (Federal Power Act):
Small generator interconnection agreements and procedures; standardization, 49973–50014

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Adams and Denver Counties, CO, 49839

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
National Customs Brokers and Forwarders Association of America, Inc., 49775–49776
Sinotrans Container Lines Co., Ltd., 49776

Federal Motor Carrier Safety Administration
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Safety permits, 49737–49756

Federal Railroad Administration
RULES
Railroad locomotive safety standards:
Headlights and auxiliary lights, 49713–49717
NOTICES
Exemption petitions, etc.:
Long Island Rail Road, 49839–49840
Yreka Western Railroad Co., 49840
Traffic control systems; discontinuance or modification:
Burlington Northern & Santa Fe Railway Co., 49840–49841

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49776–49777
Banks and bank holding companies:
Change in bank control, 49777
Formations, acquisitions, and mergers, 49777

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Adams and Denver Counties, CO, 49839

Fish and Wildlife Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Wildlife; 2004-2005; subsistence taking, 49734–49737
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 50015–50038

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Estadiol Benzoate, 49703–49704
NOTICES
Reports and guidance documents; availability, etc.:
Mammography Quality Standards Act final regulations policy modifications and additions guidance help system, 49781–49782

Forest Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Wildlife; 2004-2005; subsistence taking, 49734–49737

General Services Administration
NOTICES
Federal travel:
Colorado, New York, Texas, and Utah; maximum per diem rates, 49778

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49778
Reports and guidance documents; availability, etc.:
National origin discrimination as it affects limited English proficient persons; prohibition; policy guidance to Federal financial assistance recipients
Correction, 49843

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency
See Transportation Security Administration

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
PROPOSED RULES
Procedure and administration:
Levy; property exemptions, 49729–49732

International Trade Commission
NOTICES
Import investigations:
Economywide Simulation Modeling: Technical Analysis of the Free Trade Area of the Americas, 49791–49792

Polyvinyl alcohol from—
Various countries, 49792

Justice Department
See Drug Enforcement Administration

Labor Department
See Employee Benefits Security Administration
See Veterans Employment and Training Service

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Future air bags designed to create less risk of serious injuries for small women and young children, etc; petition denied, 49756–49758
NOTICES
Motor vehicle safety standards:
Defect and noncompliance—
Tire safety information; correction, 49841
Motor vehicle safety standards; exemption petitions, etc.:
Freightliner LLC, 49841–49842

National Institutes of Health
NOTICES
Meetings:
National Center on Minority Health and Health Disparities, 49782
National Institute of Environmental Health Sciences, 49782–49783
National Library of Medicine, 49783
Recombinant DNA Advisory Committee, 49783
Scientific Review Center, 49785–49788
Total knee replacement; public conference, 49786–49787

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast skate, 49693–49703
West Coast States and Western Pacific fisheries—
Queets River to Cape Falcon, OR; recreational fishery, 49721–49722
PROPOSED RULES
Meetings:
New England Fishery Management Council, 49758
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Islander East Pipeline Co., L.L.C., 49760–49761

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 49809–49810

Nuclear Regulatory Commission
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; revised list, 49683–49686
PROPOSED RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; revised list, 49726–49727
NOTICES
Decommissioning plans; sites:
Mallinckrodt Inc., St. Louis, MO, 49810–49811
Meetings:
Reactor Safeguards Advisory Committee, 49811–49812
Meetings; Sunshine Act, 49812
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 49812–49825

Office of United States Trade Representative
See Trade Representative, Office of United States

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 49825–49826
Chicago Board Options Exchange, Inc., 49826–49828
Chicago Stock Exchange, Inc., 49828–49829
International Securities Exchange, Inc., 49829–49830
Pacific Exchange, Inc., 49830–49833
Philadelphia Stock Exchange, Inc., 49833–49836

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49836–49837

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 49842

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Tariff-rate quota amount determinations:
Raw cane sugar, refined sugar and sugar-containing products, 49837

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Procedural regulations:
Chamorro Standard Time Zone; establishment, 49712–49713

Transportation Security Administration
RULES
Organization, functions, and authority delegations:
Agency transition to Homeland Security, 49718–49721

Treasury Department
See Internal Revenue Service

Veterans Employment and Training Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49809

Separate Parts In This Issue

Part II
Energy Department, Federal Energy Regulatory Commission, 49845–49972

Part III
Energy Department, Federal Energy Regulatory Commission, 49973–50014

Part IV
Interior Department, Fish and Wildlife Service, 50015–50038

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
762.....49723
10 CFR
72.....49683
Proposed Rules:
72.....49726
14 CFR
39 (3 documents) 49686, 49688
71 (2 documents) 49690, 49691
Proposed Rules:
71.....49727
15 CFR
902.....49693
18 CFR
35.....49846
Proposed Rules:
35.....49974
21 CFR
510.....49703
522.....49703
26 CFR
Proposed Rules:
301.....49729
32 CFR
Proposed Rules:
199.....49732
33 CFR
165.....49704
36 CFR
Proposed Rules:
242.....49734
40 CFR
52.....49706
47 CFR
54 (2 documents) 49707
49 CFR
71.....49712
229.....49713
1500.....49718
1502.....49718
1503.....49718
1510.....49718
1511.....49718
1540.....49718
1542.....49718
1544.....49718
1546.....49718
1548.....49718
1550.....49718
Proposed Rules:
385.....49737
390.....49737
397.....49737
571.....49756
50 CFR
648.....49693
660.....49721
Proposed Rules:
20.....50016
100.....49734
648.....49758

Rules and Regulations

Federal Register
Vol. 68, No. 160
Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH26

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc. (TN) Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1004. Amendment No. 5 will add another dry shielded canister (DSC), designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask under a general license.

DATES: The final rule is effective November 3, 2003, unless significant adverse comments are received by September 18, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH26) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@ nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML031820427.

CoC Number 1004, the revised Technical Specifications (TS), the underlying SER for Amendment No. 5, and the Environmental Assessment (EA), are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that

approved the Standardized NUHOMS®–24P and –52B cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1004. Amendment No. 3 added the –61BT DSC to the system.

Discussion

On June 29, 2001, the certificate holder (Transnuclear, Inc.) submitted an application to the NRC to amend CoC No. 1004 to add another dry shielded canister, designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor (PWR) assemblies with or without Burnable Poison Rod Assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask. No other changes to the Standardized NUHOMS®–24P, –52B, and –61BT cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS®–24P, –52B, and –61BT cask system design listing in § 72.214 by adding Amendment No. 5 to CoC No. 1004. The particular TS which are changed are identified in the NRC Staff's SER for Amendment No. 5.

The amended Standardized NUHOMS®–24P, –52B, and –61BT cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment Number 5 and adding Model Number NUHOMS®–32PT.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on November 3, 2003. However, if the NRC receives significant adverse comments by September 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by September 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS®–24P, –52B, and –61BT cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS®–24P, –52B, and –61BT cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to add another dry shielded canister, designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized

NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 PWR assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to Part 72 that approved the Standardized NUHOMS®–24P and –52B cask system design by adding it to the list of NRC-approved cask designs in § 72.214. Amendment No. 3 added the –61BT DSC to the system. On June 29, 2001, Transnuclear, Inc., submitted an application to the NRC to amend CoC No. 1004 to permit a Part 72 licensee to add another DSC, designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 PWR assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, and NUHOMS®–32PT.

* * * * *

Dated at Rockville, Maryland, this 1st day of August, 2003.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 03–21148 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–34–AD; Amendment 39–13257; AD 2003–16–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–16–04 that applies to Pratt & Whitney Canada (PWC) engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines that was published in the **Federal Register** on August 6, 2003. Certain engine models were incorrectly included in the preamble section, under Summary and Supplementary Information, and in the regulatory section under Applicability. In addition, airplanes on which these engines are installed were incorrectly included in the regulatory section, under Applicability. This document corrects these items. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc 03–19840, that applies to Pratt & Whitney Canada (PWC) engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines, was published in the **Federal Register** on August 6, 2003 (68 FR 46441). The following corrections are needed:

On page 46441, in the third column, in the preamble section, under **SUMMARY**, in the first paragraph, in the first, second, third, and fourth lines, ''PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines'' is corrected to read ''PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines''.

On page 46441, in the third column, in the preamble section, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the ninth, tenth, eleventh, and twelfth lines, ''PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines'' is corrected to read '' PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines''.

§ 39.13 [Corrected]

■ On page 46442, in the third column, in the regulatory section, under Applicability, in the first paragraph, in the seventh, eighth, and ninth lines, ''PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines.'' is corrected to read ''PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines.''.

■ On page 46442, in the third column, in the regulatory section, under Applicability, in the first paragraph, in the sixteenth, seventeenth, and eighteenth lines, ''EMB–120; Fairchild Dornier 328, Fokker 50 and 60; Ilyushin IL–114–100; BAE Systems (Operations) Ltd. ATP; and XIAN MA–60.'' is corrected to read ''EMB–120; Fairchild Dornier 328, Fokker 50; and BAE Sysems (Operations) Ltd. ATP.''.

Issued in Burlington, MA, on August 13, 2003.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21153 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–325–AD; Amendment 39–13274; AD 2003–17–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model 717–200 airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). This action is necessary to detect and correct fatigue cracking of certain safe-life structure and certain PSEs, which could adversely affect the structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A

(D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model 717–200 airplanes was published in the **Federal Register** on June 4, 2003 (68 FR 33418). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997), July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 133 Model 717–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,020, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significnat regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria fo the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–01 McDonnell Douglas: Amendment 39–13274. Docket 2001–NM–325–AD.

Applicability: All Model 717–200 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain safe-life structure and certain principal structural elements, which could adversely affect the structural integrity of the airplane; accomplish the following:

Revising Airworthiness Limitations Section

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspection intervals or removal times may be approved for the safe-life limited parts specified in Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Report No. MDC–96K9063, Revision 3, dated August 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 23, 2003.

Issued in Renton, Washington, on August 11, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20833 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–14–AD; Amendment 39–13275; AD 2003–17–02]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300/200, EA–300L, and EA–300S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300/200, EA–300L, and EA–300S airplanes. This AD requires you to inspect the fuel selector valve for leakage and the wing for structural damage and correct any damage or leakage. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct fuel leakage in the wings, which could lead to structural damage of the wings and possible reduced structural margins. Reduced structural margins could lead to eventual structural failure.

DATES: This AD becomes effective on October 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 10, 2003.

ADDRESSES: You may get the service information referenced in this AD from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hunxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all EXTRA Models EA–300/200, EA–300L, and EA–300S airplanes. The LBA reports several occurrences where the fuel selector valve did not operate correctly. When the wing tanks are selected, the acro/center tank is not completely shut-off. The result is fuel draining into the wing tanks that must be empty for aerobatics. This failure of the fuel selector valve to correctly operate is caused by the deterioration of the ''O''-ring in the valve.

What is the potential impact if FAA took no action? Aerobatic operation with fuel in the wings could lead to structural damage of the wings and possibly reduced structural margins. Reduced structural margins could lead to eventual structural failure.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300/200, EA–300L, and EA–300S airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 2, 2003 (68 FR 23427). The NPRM proposed to require you to inspect the fuel selector valve for leakage and the wing for structural damage and correct any damage or leakage.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Condition Only Evident in Airplanes With Installed Long-Range Fuel Tanks

What is the commenter's concern? One commenter states that the condition is only evident in airplanes with long-range fuel tanks installed because of the unique physical configuration of the tanks and does not affect the fuel selector valve. Further, the problem does not exist on the affected airplane model that does not have selectable tanks. The commenter also states that there have been no known structural failures; only a few fuel leaks and paint cracks. The FAA infers that the commenter wants the NPRM withdrawn. Further, we infer that if the AD is issued, the commenter wants the AD to apply only to airplanes with long-range fuel tanks installed.

What is FAA's response to the concern? The FAA disagrees that the NPRM should be withdrawn or that the AD should apply only to airplanes with long-range fuel tanks installed. While FAA agrees that the structural cracks have only been found on some airplanes with long-range fuel tanks installed, FAA has determined that the condition should be addressed on all airplanes listed on the German AD that are type certificated for operation in the United States. The leaking fuel selector is not the main problem; the primary concern is the consequent structural damage done by the presence of fuel in the wing tanks that must be empty during aerobatics.

We are not changing the final rule AD action as a result of this comment.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 184 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection of the fuel selector valve:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	Not Applicable	$240	$240 × 184 = $44,160

We estimate the following costs to accomplish any necessary valve repair that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
5 workhours × $60 per hour = $300	$122.50	$422.50

We estimate the following costs to accomplish the external inspection of the wings:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	Not applicable	$60	$60 × 184 = $11,040

We are unable to estimate the costs to accomplish any necessary wing repair that would be required based on the results of this inspection. EXTRA will evaluate the damage of each affected airplane and develop an appropriate repair scheme.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **''ADDRESSES''**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–17–02 Extra Flugzeugbau GmbH: Amendment 39–13275; Docket No. 2003–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models EA–300/200, EA–300L, and EA–300S airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fuel leakage in the wings, which could lead to structural damage of the wings and possible reduced structural margins. Reduced structural margins could lead to eventual structural failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes, inspect the fuel selector valve for leakage.	Within the next 100 hours time-in-service (TIS) after October 10, 2003 (the effective date of this AD), unless already accomplished.	In accordance with EXTRA Flugzeugbau GmbH Service Letter No. 300–09–02, Issue: A, dated September 19, 2002, and the applicable airplane maintenance manual.
(2) For all affected airplanes, if any leakage is found during the inspection required by this AD, repair the damage.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with the applicable airplane maintenance manual.
(3) For all affected airplanes, inspect the external wing for structural damage: (i) Cracks (ii) Delamination (iii) Fuel leakage	Within the next 100 hours time-in-service (TIS) after October 10, 2003 (the effective date of this AD), unless already accomplished.	In accordance with the applicable airplane maintenance manual.
(4) For all affected airplanes, if any cracks, delamination, or fuel leakage is found during the inspection required by this AD, accomplish the following: (i) obtain a repair scheme from the manufacturer; (ii) incorporate this repair scheme; and (iii) accomplish any follow-up actions as directed by the FAA.	Prior to further flight after the inspection required in paragraph (d)(3) of this AD, unless already accomplished.	In accordance with a repair scheme obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. Obtain this repair scheme through the FAA at the address specified in paragraph (e) of this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with EXTRA Flugzeugbau GmbH Service Letter No. 300–09–02, Issue: A, dated September 19, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on October 10, 2003.

Issued in Kansas City, Missouri, on August 11, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20832 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15720; Airspace Docket No. 03–ACE–62]

Modification of Class E Airspace; Maryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Maryville Memorial Airport, Maryville, MO, has been renamed Northwest Missouri Regional Airport. An examination of controlled airspace for Maryville, MO indicates it does not comply with criteria set forth in FAA Orders. This action corrects the discrepancies by modifying the Maryville, MO Class E airspace area, replaces ''Maryville Memorial Airport'' in the legal description of Maryville, MO Class E airspace area with ''Northwest Missouri Regional Airport'' and brings the legal description into compliance with FAA Orders.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before September 29, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15720/Airspace Docket No. 03–ACE–62, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Maryville, MO. It replaces ''Maryville Memorial Municipal Airport,'' the former name of the airport, with ''Northwest Missouri Regional Airport,'' the new name of the airport, in the legal description. A review of controlled airspace at Maryville, MO indicates 700 feet Above Ground Level (AGL) airspace required for diverse departures, as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters, for Northwest Missouri Regional Airport does not comply with the Order. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a

mile. The area is enlarged to conform to the criteria in FAA Order 7400.2E. This action also expands the northwest extension of the Maryville, MO Class E airspace area an additional 2.6 miles to provide appropriate controlled airspace for aircraft executing the NDB or Global Positioning System (GPS) Runway (RWY) 14 Standard Instrument Approach Procedure (SIAP) to Northwest Missouri Regional Airport. It also modifies this extension by defining it with the 334° bearing from the Emville NDB versus the current 333° bearing. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15720/Airspace Docket No. 03–ACE–62.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Maryville, MO

Maryville, Northwest Missouri Regional Airport, MO
(Lat. 40°21′09″ N., long. 94°54′56″ W.)
Emville NDB
(Lat. 40°20′54″ N., long. 94°54′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Northwest Missouri Regional Airport and within 2.6 miles each side of the 334° bearing from the Emville NDB extending from the 6.5-mile radius of the airport to 10 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO on August 1, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21079 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15724; Airspace Docket No. 03–ACE–66]

Modification of Class E Airspace; Centerville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Centerville, IA. A review of controlled airspace for Centerville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. The area is enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before October 2, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW.,

Washington, DC 20590–0001. You must identify the docket number FAA–2003–15724/Airspace Docket No. 03–ACE–66, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dog.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Centerville, IA. An examination of controlled airspace for Centerville Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment brings the legal description of the Centerville, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15724/Airspace Docket No. 03–ACE–66.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Centerville, IA

Centerville Municipal Airport, IA
(Lat. 40°41′02″ N., long. 92°54′00″ W.)

Centerville NDB
(Lat. 40°41′14″ N., 92°54′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Centerville Municipal Airport and within 2.6 miles each of the 164° bearing from the Centerville NDB extending from the 6.5-mile radius to 7.4 miles southeast of the airport and within 2.6 miles each side of the 319° bearing from the Centerville NDB extending from the 6.5-mile radius northwest of the airport.

* * * * *

Issued in Kansas City, MO, on July 31, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21076 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 030519127–3190–02; I.D. 042403A]

RIN 0648–AO10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex (Skate) Fisheries; Skate Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in the Skate Fishery Management Plan (FMP). These regulations implement the following measures: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit. This final rule also implements other measures for administration and enforcement. The intended effect of this final rule is to implement permanent management measures for the Northeast (NE) skate fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of skate resources. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: This rule is effective September 18, 2003.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS), as prepared by the New England Fishery Management Council (Council), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 28, 2003. A notice of availability for the FMP invited comments on the approvability of the FMP. The comment period ending date was June 30, 2003.

Details concerning the justification for and development of the FMP and the implementing regulations were provided in the preamble to the proposed rule (68 FR 33432, June 4, 2003) and are not repeated here.

Status of Stock Complex

There are no direct estimates of biomass available for the seven individual skate species in the complex, so biomass indices from the NMFS Northeast Fisheries Science Center (NEFSC) trawl surveys have been used to characterize stock size. More specifically, for each species in the complex, information on the weight of the catch per tow (kg/tow) from the most representative trawl survey series over the longest possible time span was assembled. The data in the selected series were then used to characterize the distribution of biomass over the examined time period. Finally, candidate reference points were selected from the distribution so as to provide proxies for biomass targets that have a high probability of correctly characterizing the stock level that produces maximum sustainable yield (MSY).

For the aggregate skate complex, the NEFSC spring survey index of biomass was relatively constant from 1968 to 1980, then increased significantly to peak levels in the mid to late 1980s. The biomass of large-sized skates (barndoor, winter, and thorny) has declined steadily since the mid–1980s, while the recent increase in aggregate skate biomass has been attributed to an increase in little skates.

Overfishing Definitions

Overfishing definitions are provided for each of the seven skate species in the complex, in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) of 1996. Additional background information relating to difficulties in determining overfishing definitions for the skate stocks is contained in the proposed rule and is not repeated here.

Winter and Thorny Skates

Winter and thorny skates are considered to be in an overfished condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 20 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

Smooth and Clearnose Skates

Smooth and clearnose skates are considered to be in an condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

Barndoor Skate

Barndoor skate is considered to be in an overfished condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the mean weight per tow observed in the autumn trawl survey from 1963–1966 (currently 0.81 kg/tow). Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey

mean weight per tow declines for 3 consecutive years.

Little Skate

Little skate is considered to be in an overfished condition when the 3–year moving average of the spring mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the spring trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the spring survey mean weight per tow declines by 20 percent or more, or when the spring survey mean weight per tow declines for 3 consecutive years.

Rosette Skate

Rosette skate is considered to be in an overfished condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 60 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

These overfishing definitions incorporate the biomass targets and thresholds that were developed at SAW 30. The FMP contains additional discussion of the rationale for the biomass reference points for each skate species.

Optimum Yield (OY)

The following OY specifications for each species in the NE skate complex are based on the management measures that the Council included in the FMP. Consistent with the NSGs, the Council intends that OY cannot exceed MSY or the allowable portion of MSY necessary to be consistent with the MSY-based control rule. As better fishery information becomes available, these OY specifications may be revised and/or refined. Additional background information relating to difficulties in determining MSY and OY for the skate stocks are contained in the proposed rule and is not repeated here.

Winter Skate

Because fishery data are lacking, there is currently no time series of catch or landings of winter skate on which to base an absolute specification of OY. The OY for winter skate is therefore defined as the amount of winter skates that are harvested legally under the provisions of the FMP and the yield that results from the management measures in other fisheries, to the extent that these measures further impact (and likely reduce) the harvest of winter skates.

Little Skate

Since abundance of the little skate resource has increased considerably over a time period that coincides with the operation of the bait fishery, it can be assumed that the resource is being harvested at an F that is below FMSY. The OY for little skate is therefore defined as the amount of little skates that are harvested for bait legally under the provisions of the FMP.

Smooth, Thorny, and Barndoor Skates

The interaction of skate fishing and multispecies fishing suggests that even more benefits will be afforded to smooth, thorny, and barndoor skates as fishing effort is reduced further in the NE multispecies fishery. Moreover, the year-round groundfish closed areas in the GOM, as they are currently defined, provide a great deal of protection to smooth, thorny, and barndoor skates. Because barndoor and thorny skates are currently in an condition, the Council is proposing management action to rebuild these resources to their long-term sustainable level. Smooth skate is not overfished, but it has not yet rebuilt to its long-term biomass target. Therefore, to be as precautionary as possible, the Council set the OY for smooth, thorny, and barndoor skates at zero.

Clearnose and Rosette Skates

Since abundance of clearnose and rosette skates have increased considerably over a time period and in an area that coincides with the operation of many fisheries, it can be assumed that the resources are being harvested at an F that is below FMSY. Therefore, the OY for clearnose and rosette skates is defined as the amount of clearnose and rosette skates that are harvested legally under the provisions of the FMP.

Management Area

The boundaries of the management area, also called the management unit, are limited to the waters north of 35° 15.3' N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and the seaward extent of the U.S. Exclusive Economic Zone (EEZ) in the east. These boundaries for the management unit are consistent with other relevant NE FMPs.

Fishing Year

The skate fishing year is the same as the NE multispecies fishing year, currently May 1 April 30. If the NE multispecies fishing year changes in the future, the skate fishing year would change automatically to remain consistent with the NE multispecies fishing year.

Essential Fish Habitat (EFH)

Relative abundance data are used to identify EFH for the seven species of skates. EFH for skates includes those areas of the inshore and offshore waters (out to the offshore U.S. boundary of the EEZ), as described in section 4.6.2 of the FMP.

The range of the fishing activity under the FMP occurs across the designated EFH of 11 species managed by the New England, Mid-Atlantic, and South Atlantic Fishery Management Councils. As discussed in section 6.2.9.2 of the FMP, no adverse impacts relative to the baseline conditions established under Amendments 11 and 12 to the NE Multispecies FMP are expected on the EFH of these species and no further mitigation is practicable or necessary. Potential impacts to EFH associated with the skate fishery are expected to remain essentially the same as a result of this action. The FMP measures designed to protect barndoor, thorny, and smooth skates under the incidental catch skate wing fishery, and to control fishing effort in the directed skate wing fishery, are unlikely to change the overall fishing effort in the region that is attributed primarily to the NE Multispecies FMP.

Permitting Requirements

The owners of any commercial vessel who intend to fish for, catch, possess, transport, land, sell, trade, or barter skates in or from the skate management unit are required to obtain an annual Federal skate permit (open-access).

Dealers who purchase or receive skates or skate parts from any vessel are required to obtain a Federal dealer permit on an annual basis. Skates harvested from the skate management unit may only be sold to federally permitted dealers.

Operators of vessels issued a Federal skate vessel permit are required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery does not need to reapply, since there is no qualification or test for this permit.

Vessel and Dealer Reporting Requirements

Vessels holding skate permits, and dealers authorized to purchase skates, are required to report species-level information on skates in existing Vessel

Trip Reports. Vessels holding Federal permits (regardless of the fishery) are required to report skate discards by size category only (i.e., large and small skates).

Skate Wing Possession Restrictions

The retention and landing of skate wings is limited to 10,000 lb (4,536 kg) per trip of less than or equal to 24 hours duration (and a limit of one trip per day) and 20,000 lb (9,072 kg) per trip exceeding 24 hours. The days-at-sea (DAS) call-in programs (groundfish, scallop, and monkfish) will be used to determine whether a vessel's trip is less than or greater than 24 hours.

By discouraging large-scale directed fishing for skate wings, the possession limit is expected to reduce overall fishing mortality on winter skates. However, the benefits of a wing possession limit include not only fishing mortality reductions for winter skate, but also long-term benefits to the wing species if the possession limit can discourage expansion of the fishery and/or an influx of new entrants into the fishery.

Bait-only Letter of Authorization (LOA)

This measure allows vessel owners and operators that fish for skates as bait, only, to be exempt from the wing possession limits, provided they obtain an LOA from the Regional Administrator. Vessel owners/operators that fish for a combination of bait and wings and vessels that do not obtain the LOA are subject to the wing possession limits.

Skate Possession Prohibitions

Barndoor and thorny skates are in an overfished condition, so, in addition to the benefits that are likely to accrue to these species as a result of the NE multispecies regulations (closed areas, DAS reductions, mesh increases), this action prohibits the possession of thorny skates and barndoor skates on all vessels fishing from, and all dealers who purchase skates caught in, the EEZ portion of the Skate Management Unit. Although no longer considered to be in an overfished condition, the smooth skate resource is depleted and still well below its target biomass level. Therefore, in addition to the benefits that are likely to accrue to this species as a result of the NE multispecies regulations, this action prohibits the possession of smooth skates in the GOM RMA to conserve the smooth skate resource and promote the rebuilding of its biomass to target levels.

Annual Monitoring and Framework Adjustment Measures

The skate fishery will be monitored on at least an annual basis starting one year after the implementation of the FMP. The status of the resource and the fishery will be reviewed by the Council, its Skate Oversight Committee and Advisory Panel, and the Skate PDT. The Council will prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. If the Council determines that an adjustment to the measures is needed, it will implement either a framework adjustment or an amendment to the FMP.

The framework adjustment process is similar to that used in other NE Region fisheries. This process allows changes to measures below, as appropriate, to be made to the FMP or regulations in a timely manner, without going through the plan amendment process. The framework adjustment process may not be appropriate when it is determined that a proposed change would not be within the scope of the FMP, or the amendment process would be better suited to implement the proposed change. The framework process provides opportunity for public comment to supplement the public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act. The management measures and/or changes to them that could be implemented and adjusted through the framework process include the following: (1) Skate permitting and reporting requirements; (2) overfishing definitions and related targets and thresholds; (3) prohibitions on possession and/or landing of individual skate species; (4) skate possession limits; (5) skate closed areas (and consideration of exempted gears and fisheries); (6) seasonal skate fishery restrictions and specifications; (7) target TACs for individual skate species; (8) hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries; (9) establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons; (10) onboard observer requirements; (11) gear modifications, requirements, restrictions, and/or prohibitions; (12) minimum and/or maximum sizes for skates; (13) adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP; (14) measures to address protected species issues, if necessary; (15) description and identification of EFH; (16) description and identification of habitat areas of particular concern; (17) measures to protect EFH; (18) adjustments and or/resetting of the ''baseline'' of management measures in other fisheries; (19) OY and/or MSY specifications; and (20) any other measures contained in the FMP.

Baseline Trigger and Review

The FMP identifies and characterizes a ''baseline'' of management measures in other fisheries that provide conservation benefits to skate species. The FMP also establishes a process for reviewing changes to the management measures included in this baseline, particularly changes that make the existing measures less restrictive. This approach allows adjustments to management measures in other fisheries while ensuring that skate rebuilding is not compromised. The baseline measures and review process are described in detail in the FMP and Classification section of this rule.

The baseline review is intended to address potential significant impacts to skate mortality. Total skate mortality will be considered, including mortality resulting in increased directed fishing effort on skates and mortality resulting from the bycatch of skates. Therefore, this approach addresses National Standard 9, as considerations of bycatch and bycatch mortality are incorporated into the assessment of whether or not changes to the baseline measures will result in significant changes to skate mortality.

The lack of fishery-specific data precludes a quantitative assessment of the impacts of current baseline measures on skates and is likely to preclude such an assessment of the impacts of changes to these measures, at least in the near future. Over time, as data are collected through the FMP permit and reporting requirements, increased observer coverage, study fleets, and efforts to collect better information in other fisheries, the Skate PDT's ability to quantify the impacts of management measures on skates should improve greatly. However, qualitative assessments must suffice in the short-term, as quantitative assessments cannot be completed at this time.

This final rule also revises the definitions of ''Council,'' and ''Fishing year,'' to reflect the approval of the FMP, and establishes new definitions for ''NE skate complex (skates),'' and ''Skate Management Unit.''

Comments and Responses

The deadlines for receiving comments on the FMP and proposed rule were June 30, 2003, and July 7, 2003, respectively. Five comment letters were received on the FMP and proposed rule prior to the close of the comment periods.

Comment 1: One commenter recommended that the FMP include additional requirements for vessel strike avoidance, as well as marine trash and debris elimination and awareness similar to those that are imposed upon the offshore gas and oil industry by the U.S. Minerals Management Service.

Response: Magnuson-Stevens Act provisions are being implemented under the FMP to prevent overfishing of the skate fisheries. This rule implements the measures that are required to meet the goals and objectives of the FMP. While NOAA Fisheries acknowledges the importance of these issues raised by the commenter, this rule is not the proper mechanism to address vessel strike avoidance, or marine trash/debris elimination and awareness requirements.

Comment 2: Two commenters requested that NMFS reduce the wing fishery possession limits by 50 percent.

Response: The Council proposed 3 initial alternatives regarding a wing fishery possession limit: 10,000 lb (4,536 kg) per trip; 20,000 lb (9,072 kg) per trip; and 30,000 lb (13,608 kg) per trip. For the purposes of public hearings on the draft FMP, the Council proposed a 20,000–lb (9,072–kg) per trip possession limit for all vessels participating in the wing fishery. During public hearings, the Council received testimony that the proposed possession limit may have been too high. The Council also received testimony that two types of vessels actively participate in the wing fishery: Vessels that make frequent fishing trips of less than 24 hours in duration (''day boats''), and vessels that make extended fishing trips lasting multiple days (''trip boats''). The Council considered this testimony and proposed that the wing possession limit be reduced to 10,000 lb (4,536 kg) for vessels making fishing trips 24 hours or less in duration, and remain at 20,000 lb (9,072 kg) for vessels making fishing trips more than 24 hours in duration. The analysis in the FMP supports the Council's recommendation that these wing possession limits provide sufficient conservation benefit for skates.

Comment 3: One commenter expressed concern that the measures proposed in the FMP will not be sufficient to protect and rebuild skate species.

Response: NMFS disagrees that the measures in the Skate FMP will not be sufficient to protect and rebuild skates. Several very restrictive management measures are being implemented under this FMP: The possession of barndoor and thorny skates is completely prohibited, as is the possession of smooth skates in the GOM RMA; and possession limits have been established in the skate wing fishery where none previously existed, restricting the amount of skate wings that may legally be landed on any fishing trip. The FMP recognizes that most conservation and management of the skate resources will come from the management measures and controls on fishing effort implemented for the fisheries that harvest skates incidental to their normal fishing operations--the NE multispecies, scallop, and monkfish fisheries. The FMP implements a formal review process to ensure that future proposed changes to the management measures implemented in these fisheries do not threaten the conservation of skates or undermine the skate rebuilding programs implemented under the FMP.

Comment 4: One commenter expressed concern that the FMP fails to propose clear mechanisms to avoid and minimize skate bycatch and discard mortality.

Response: NMFS disagrees that the FMP fails to adequately address bycatch. Prohibitions on possession of the three most depleted skate species are being implemented through this final rule as are controls on the harvest of skates for the wing fishery. In addition, these three prohibited species of skates are considered bycatch species of both the wing fishery, which catches primarily winter skates, and the bait fishery, which catches primarily little skates. The prohibition is intended to eliminate landings of these three species, and also to encourage fishermen to return any barndoor, thorny, or smooth skates to the sea as soon as possible. By prohibiting possession, as opposed to prohibiting landing or sale only, there is an incentive to return skates to the sea as quickly as possible. The quicker skates are returned to the sea, the better their expected chance of survival remains.

Unfortunately, there remains a distinct lack of data regarding bycatch rates and discard mortality of skates, so there is no way to determine what those rates are, or to conclude that the existing rates are too high. The reporting requirements included in the FMP will provide previously unavailable species-level catch data, discard data by size class of skate, and detailed catch and discard data as a result of study fleets. This information, once available, will provide a mechanism for the Council and NMFS to evaluate bycatch and discard mortality rates and to determine whether alternative and/or additional action is necessary. In the meantime, the FMP's prohibition on possessing certain skate species and the wing possession limits, in concert with measures in the Northeast Multispecies FMP (e.g., closure of areas to gear capable of catching groundfish and, by extension, skates), will offer the best overall protection to skates and serve to minimize to the extent practicable, and avoid potential bycatch of those species of skates that are incidental catch in the primary skate fisheries (i.e., the wing and bait fisheries).

Changes From the Proposed Rule

In § 648.321, paragraph (a)(1) is revised to refer the reader to the appropriate section: § 648.321(b) instead of § 648.312(b).

In § 648.7, paragraph (a)(1)(iii) is revised to refer the reader to the appropriate paragraph of this section: (a)(1)(i) instead of paragraph (i).

In § 648.14(ee), the language describing possession of whole skates less than the specified maximum size is clarified to characterize lobster vessels that possess skate for bait as the receiving vessel in a transfer at sea while being exempt from Federal permitting requirements for skates. Lobster vessels are responsible for ensuring that the skates they receive and possess on board from the Skate Management Unit are not the prohibited species specified at § 648.322(c). An additional prohibition, § 648.13(gg), is added to further clarify this point regarding lobster vessels that are exempt from the skate permitting requirements, where previously § 648.13(ff)(7) and (8) referred to vessels holding only valid Federal skate permits.

In § 648.6, paragraph (a)(1) is revised to include skates as species for which persons receiving aboard vessels for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit.

In § 648.320, paragraph (a)(3) is revised to include language requiring the Council to take action, if such action is required, under the skate rebuilding program identified in section 4.5.6 of the FMP. This change is intended to clarify the FMP review and monitoring procedures.

NOAA codifies its OMB control numbers for information collection in 15 CFR part 902. Part 902 collects and

displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0481 for § 648.13, and OMB control number 0648–0480 for § 648.322. Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP implemented by this rule is necessary for the conservation and management of the NE skate fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an FEIS for this FMP; a notice of availability was published on May 23, 2003 (68 FR 28213). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent practicable, all possible social and economic adverse effects while minimizing risks to the resource and its environment; and will have significant positive effects on the skate fisheries resource relative to the no action alternative.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (*see* **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused exclusively on conservation of the skate resources, without reference to the analysis contained in the IRFA. For a summary of the comments received, refer to the section above titled ''Comments and Responses.''

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The number of small entities to which the rule applies is the same as that identified in the IRFA. The measures for addressing management of the NE skate fisheries could affect any commercial vessel holding an active Federal NE fishing permit. Data from the NE permit application database show that 4,828 vessels are currently permitted to fish in Federal waters, with 1,722 vessels permitted to fish for NE multispecies, monkfish, and/or sea scallops. Of these vessels, the Council considered the economic impacts on 775 vessels that have reported landings of skate or skate parts at least once in the last 3 years. These 895 vessels are considered the universe of vessels most likely to be directly affected by the proposed action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The projected reporting, recordkeeping, and other compliance requirements to which this rule will apply were identified in the IFRA and remain the same. A description of the projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here. No professional skills are necessary for preparation of the reports or records specified above.

Steps Taken to Minimize Economic Impacts on Small Entities Prohibitions for Barndoor, Thorny, and Smooth Skates

This rule establishes prohibitions on the possession of barndoor and thorny skates throughout the Skate Management Unit, and a prohibition on the possession of smooth skate throughout the GOM RMA. The potential economic impacts of these measures are described in detail in the IRFA and IRFA summary contained in the Classification section of the proposed rule. Results of the analysis indicate that there will be minimal negative economic impact to affected vessels as a result of these measures. The FMP also considered alternatives to prohibit the landing and/or sale of these three species of skates, rather than prohibitions on possession. Because all of these alternatives would result in an inability of vessels to sell any catch of barndoor, thorny, or smooth skates, and of dealers to purchase these species, there are no substantive differences between landing, sale, and possession prohibitions relative to the expected economic impacts on small entities. The no action alternative would have resulted in no prohibitions on the possession, landing, and/or sale of these three skate species. Because there would have been no action taken to restrict the ability of small entities to derive revenue from the catch of barndoor, thorny, or smooth skates, the adverse economic impacts associated with these prohibitions would have been mitigated. This alternative was not selected, however, because it would have been inconsistent with the objectives of the FMP to protect overfished species of skates, prevent overfishing on skates, rebuild depleted species of skates, and minimize bycatch and discard mortality rates for skates. This alternative also would not have complied with National Standard 1 of the Magnuson-Stevens Act, which requires that action be taken to prevent overfishing and rebuild overfished stocks.

Possession Limit for Skate Wing Fishery

This rule establishes a skate wing possession limit of 10,000 lb (4,536 kg) per day and 20,000 lb (9,072 kg) per trip. The potential economic impacts of this measure are described in the IRFA and are not repeated here. The Council considered three additional options for a wing possession limit--10,000 lb (4,536 kg) for all fishing trips, 20,000 lb (9,072 kg) for all fishing trips, and 30,000 lb (13,608 kg) for all fishing trips--as well as the option to take no action regarding a wing possession limit.

The option to restrict possession of skate wings to 10,000 lb (4,536 kg) per fishing trip would have resulted in more significant adverse economic impacts on small entities than the action being implemented. The options to restrict possession of skate wings to either 20,000 lb (9,072 kg) or 30,000 lb (13,608 kg) per fishing trip would have been expected to result in less significant economic impacts on small entities than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here. These options were not selected, however, because they would

not have provided sufficient conservation benefit to winter skates (the primary target of the wing fishery) to be fully consistent with the objectives of the FMP, which include to ''reduce fishing mortality on winter skate.'' Winter skate, although not overfished, is not yet fully rebuilt, and the Magnuson-Stevens Act requires that conservation measures be implemented to reduce fishing mortality on species under these conditions.

The no action alternative, to implement no restrictions on the possession of winter skate wings, would have minimized, to the greatest extent, the potential adverse economic impacts on small entities associated with this action by allowing fishing vessels to land and sell as much skate wings as was possible, given their vessel and fishing operations. However, for the same reasons described above for the 20,000–lb (9,072–kg) and 30,000–lb (13,608–kg) options, this alternative was not selected due to inconsistencies with the objectives of the FMP and the requirements of the Magnuson-Stevens Act.

Skate Wing Possession Limit Exemption Program

This rule implements a provision to allow vessels that fish for skates as bait only to obtain an LOA from NMFS to be exempt from the skate wing possession limits, but requires these vessels to land skates smaller than 23 inches (58.42 cm) total length in whole condition. This measure is not expected to have economic impacts on small entities because the majority of the skates caught (> 90 percent) in the bait fishery are little skates that reach maturity at less than 19.7 inches (50 cm). In addition, as described in the IRFA, this measure is not expected to have an adverse economic impact on small entities, as it relieves a restriction (i.e., vessels would not have to abide by the skate wing possession limits) that would otherwise constrain fishing-related revenues. The only alternative to this measure considered by the Council was the no action alternative to not implement the LOA program. This would have resulted in adverse economic impacts because bait-only vessels would have been subject to the potentially restrictive skate wing possession limit.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of NE Federal commercial fishing vessel or dealer permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (*see* **ADDRESSES**) and at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

This final rule contains nine collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

Vessel trip reports, OMB control number 0648–0212 (8 minutes per response for a new respondent, an additional 3 minutes per response for skate permit holders already completing a vessel trip report for other fisheries, and 1 minute per response for all other permit holders reporting discards of skates by size class).

Dealer purchase reports, OMB control number 0648–0229 (1 additional minute/response for species identification).

Vessel permits, OMB control number 0648–0202 (15 minutes/response for an initial permit, and 1 minute/response for existing permit holders).

Dealer permits, OMB control number 0648–0202 (5 minutes/response for an initial permit, and 1 minute/response for existing permit holders).

Operator permits, OMB control number 0648–0202 (60 minutes/response).

Observer deployments, OMB control number 0648–0202 (2 minutes/response).

Bait-only fishing exemption notification, OMB control number 0648–0480 (2 minutes/response to enroll or withdraw from exemption).

Bait transfer-at-sea documentation, OMB control number 0648–0481 (2 minutes/response to prepare).

Send comments on these or any other aspects of the collection of information to NMFS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 14, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR chapter IX, part 902, and 50 CFR chapter VI, part 648, are amended as follows:

PART— 902 NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entry for 648.13, and adding an entry for 648.322, in numerical order, to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
648.13	–0391 and –0481
648.322	–0480
* * * *	*

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). * * *

* * * * *

■ 3. In § 648.2, the definitions of ''Council'', ''Fishing year'', and ''Skate'' are revised, and new definitions for ''NE skate complex (skates)'' and ''Skate Management Unit'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

* * * * *

Fishing year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea*(little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate Management Unit means an area of the Atlantic Ocean from 35° 15.3' N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

* * * * *

■ 4. In § 648.4, paragraph (a)(14) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

■ 5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) * * * Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

■ 6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies, skates, and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies, skates, and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

■ 7. In 648.7, paragraphs (a)(1)(iii) and (b)(1)(iii) are added, and the last sentence of paragraph (b)(1)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(a) * * *

(1) * * *

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NOAA Fisheries will provide dealers with a skate species identification guide.

* * * * *

(b) * * *

(1) * * *

(i) * * * With the exception of those vessel owners or operators fishing under

a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (i.e., less than 23 inches (58.42 cm), total length) or ''large'' (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

* * * * *

■ 8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

* * * * *

■ 9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

■ 10. In § 648.13, paragraph (h) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of 1 year from the date of the transfer, a copy of said documentation.

■ 11. In § 648.14, paragraphs (x)(13), (ee),(ff), and (gg) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(13) *Skates.* All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.

* * * * *

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of whole skates as bait only less than the maximum size specified at § 648.322(b)(2) and in accordance with § 648.322(c).

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and

landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92, for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(gg) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.2.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

■ 12. In § 648.80, paragraphs (b)(5)(i)(C) and (b)(6)(i)(D) are added and paragraphs (b)(5) introductory text, (b)(5)(i)(A), (b)(6) introductory text, (b)(6)(i)(A), and (h)(2)(i)(8) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish and skate regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * *

(A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section, the monkfish regulations, as applicable under §§ 648.91 through 648.94, and the skate regulations, as applicable under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * *

(A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent by weight of all other species on board.

■ 13. Subpart O is added to read as follows:

Subpart O—Management Measures for the NE Skate Complex Fisheries

Sec.

648.320 Skate FMP review and monitoring.
648.321 Framework adjustment process.
648.322 Skate possession and landing restrictions.

Subpart O—Management Measures for the NE Skate Complex Fisheries

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review.* The Council, its Skate Plan Development Team (), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated

survey indices and the FMP's overfishing.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council will monitor the trawl survey index as a proxy for stock biomass. As long as the 3–year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3–year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council is required to take management action to ensure that stock rebuilding will continue to target levels.

(b) *Biennial review*. The Skate shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate. The SAFE shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review*—(1) *Baseline review process*. If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or that may change one or more of the baseline measures such that the change is likely to have an effect on the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures*. The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) NE Multispecies year-round closed areas (§ 648.81);

(ii) NE Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§ 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

§ 648.321 Framework adjustment process.

(a) *Adjustment process*. To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses*. In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.321(b). The Council will publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation*. After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish

only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting;

(2) Skate overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;

(9) Establishing a mechanism for TAC set-asides to mitigate , conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) Adjustments and or/resetting of the ''baseline'' of management measures in other, described in § 648.320(c);

(19) OY and/or MSY specifications; and

(20) Any other measures contained in the FMP.

(c) Emergency action. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

§ 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 1 month.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.(2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[FR Doc. 03–21205 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Injectable or Implantable Dosage Form New Animal Drugs; Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by PR Pharmaceuticals, Inc. The NADAs provide for subcutaneous injection, in the ear only, of a suspension implant of estradiol benzoate microspheres for increased rate of weight gain in suckling beef calves, and for increased rate of weight gain and improved feed efficiency in steers and heifers fed in confinement for slaughter.

DATES: This rule is effective August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524, filed NADA 141–040 that provides for use of CELERIN (estradiol benzoate), microspheres for constitution into a suspension, by subcutaneous injection in the ear only for increased rate of weight gain and improved feed efficiency in steers and heifers fed in confinement for slaughter. PR Pharmaceuticals, Inc., also filed NADA 141–041 that provides for use of CELERIN C (estradiol benzoate), also microspheres for constitution, by subcutaneous injection in the ear only for increased rate of weight gain in suckling beef calves. The NADAs are approved as of June 25, 2003, and the regulations are amended in 21 CFR part 522 by adding new § 522.841 to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In addition, PR Pharmaceuticals, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii),

summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(ii)), these approvals qualify for 3 years of marketing exclusivity beginning June 25, 2003.

The agency has determined under 21 CFR 25.33(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for ''PR Pharmaceuticals, Inc.'' and in the table in paragraph (c)(2) by numerically adding an entry for ''067210'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524.	067210
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
067210	PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524.
* *	* * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Section 522.841 is added to read as follows:

§ 522.841 Estradiol benzoate.

(a) *Specifications.* The product consists of a vial of estradiol benzoate microspheres and a vial of diluent.

(1) Each milliliter (mL) of constituted suspension contains 10 milligrams (mg) estradiol benzoate.

(2) Each mL of constituted suspension contains 20 mg estradiol benzoate.

(b) *Sponsor.* See No. 067210 in § 510.600(c) of this chapter.

(c) *Tolerances.* See § 556.240 of this chapter.

(d) *Conditions of use.* It is used by subcutaneous injection as follows:

(1) *Suckling beef calves*—(i) *Amount.* 10 mg; 1 mL of the product described in paragraph (a)(1) of this section.

(ii) *Indications for use.* For increased rate of weight gain.

(iii) *Limitations.* For subcutaneous injection in the ear only. Do not use in calves intended for reproduction or calves less than 30 days old. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) *Steers fed in confinement for slaughter*—(i) *Amount*—(A) 20 mg; 1 mL of the product described in paragraph (a)(2) of this section for use in paragraph (d)(2)(ii)(A) of this section.

(B) 10 mg; 0.5 mL of the product described in paragraph (a)(2) of this section for use in paragraph (d)(2)(ii)(B) of this section.

(ii) *Indications for use*—(A) For improved feed efficiency.

(B) For increased rate of weight gain.

(iii) *Limitations.* For subcutaneous injection in the ear only. The use of 20 mg (1 mL) in steers does not provide additional rate of gain improvement over 10 mg (0.5 mL). Do not use in calves intended for reproduction or calves less than 30 days old. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(3) *Heifers fed in confinement for slaughter*—(i) *Amount.* One mL (20 mg) of product described in paragraph (a)(2) of this section.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(iii) *Limitations.* For subcutaneous injection in the ear only. Do not use in calves intended for reproduction or calves less than 30 days old. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: July 25, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–21113 Filed 8–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–258]

RIN 1625–AE11

Regulated Navigation Area; 2003 Gravity Games, Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary Regulated Navigation Area (RNA) during the 2003 Gravity Games in the Port of Cleveland, Ohio. This regulation is necessary to manage vessel traffic in a portion of Cleveland Harbor. This regulation is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: This rule is effective from 12 p.m. on Saturday, September 6, 2003 until 12 p.m. on Monday, September 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD09–03–258 and are available for inspection or copying at Coast Guard MSO Cleveland

between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, Chief, Port Operations Department, Coast Guard MSO Cleveland at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

During the 2003 Gravity Games, the Wakeboard Competition will take place in Cleveland Harbor north of Voinovich Park. A regulated navigation area (RNA) will be established inside Cleveland's break wall to protect competitors and course obstacles (jumps, rails, etc.) from excessive speed and wakes, and to prevent interference with the competition.

Discussion of Rule

The RNA will be established from 12 p.m. on Saturday, September 6, 2003 until 12 p.m. on Monday, September 15, 2003. The RNA will encompass Cleveland Harbor, between Dock 28 of Cleveland Port Authority and the western edge of Burke Lake Front Airport, to include the Rock and Roll Museum Inner Harbor. No vessel shall exceed 5 mph nor produce a wake within the RNA. Any vessel within the RNA shall not pass within 50 feet of a moored obstacle. Any vessel within the RNA shall not enter the Rock and Roll Museum inner harbor. Any vessel within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft. No vessel shall transit the RNA during the Wakeboard Competition without permission from the Patrol Commander.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination was based on the actual location of the RNA within the waterways, since vessels can transit north of the harbor break wall to reach the Main Entrance Channel or easternmost entrance channel. Vessels will also be allowed to transit through the RNA with permission from the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the RNA.

This RNA would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass north of the break wall, outside the RNA, during the competitions. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, commercial traffic may be allowed to pass through the RNA under Coast Guard escort with the permission of the Patrol Commander. Before the effective period, the Coast Guard will issue maritime advisories to users who might be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous similar events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES**).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule under Commandant Instruction M16475.1C, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under Figure 2–1, paragraph 35(a) of the Instruction, from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09–258 to read as follows:

§ 165.T09–258 Regulated Navigation Area; 2003 Gravity Games, Cleveland, Ohio.

(a) *Regulated navigation area.* All waters of Cleveland Harbor, including the Inner Harbor, encompassed by a line starting at 41°30′49″ N, 081°41′37″ W (northwest corner of Burke Lakefront Airport); then northwest to 41°31′02″ N, 081°41′49″ W; then southwesterly following the break wall to 41°30′41″ N, 081°42′26″ W; then southeasterly to 41°30′27″ N, 081°42′13″ W (extending directly across the harbor from the northwestern corner of Dock 28 of the Cleveland Port Authority to the break wall); then following the contours of the waterfront back to the point of origin including all portions of the Rock and Roll Museum inner harbor. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective period.* This section will be in effect from 12 p.m. EST on Saturday, September 6, 2003 through 12 p.m. EST on Monday, September 15, 2003.

(c) *Special regulations.* (1) Vessels within the regulated navigation area (RNA) shall not exceed 5 miles per hour or shall proceed at no-wake speed, which ever is slower; and maintain headway conditions permitting.

(2) Vessels within the RNA shall not pass within 50 feet of a moored obstacle.

(3) Vessels within the RNA shall not enter the Rock and Roll Museum inner harbor.

(4) Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(5) No vessel shall transit the RNA during the Wakeboard Competition without permission from the Patrol Commander.

(6) Permission to deviate from the above rules must be obtained from the Captain of the Port or the Patrol Commander via VHF/FM radio, Channel 6 or by telephone at (216) 937–0111.

Dated: August 8, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–21086 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 124–4079a; FRL–7545–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Withdrawal of Direct Final Rule; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to our receipt of adverse written public comments, EPA is withdrawing the direct final rule to approve Pennsylvania's section 111(d) plan for the Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills. In the direct final rule published on June 24, 2003 (68 FR 37421), EPA stated that if we received adverse written public comment by July 24, 2003, the rule would be withdrawn and would not take effect. EPA subsequently received a letter of adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on June 24, 2003 (68 FR 37449). EPA will not institute a second comment period on this action.

DATE: The Direct final rule is withdrawn as of August 19, 2003.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, via mail at: Air Quality Analysis Branch, Mail Code 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or via telephone at: (215) 814–2190; or via e-mail at: *topsale.jim@epa.gov.*

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Accordingly, the addition of §§ 62.9635, 62.9636, and 62.9637 is withdrawn as of August 19, 2003.

Dated: August 11, 2003.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. 03–21053 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, FCC 03–170]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission denies the petitions for reconsideration of the Fourth Order on Reconsideration filed by North Dakota Public Service Commission, South Dakota Public Utilities Commission and Washington Utilities and Transportation Commission. Petitioners sought to redefine the definition of voice grade access to the public switched telephone network (PSTN) as 300 to 3,500 Hertz.

FOR FURTHER INFORMATION CONTACT: Elizabeth Yockus, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, 67 FR 41862 (6/20/02) in CC Docket No. 96–45 released on July 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554.

I. Introduction

The Commission found that in the *Universal Service First Report and Order*, 67 FR 41862 (6/20/02), voice grade access to the PSTN should occur within the frequency range of 500 Hertz and 4,000 Hertz. In the *Fourth Order on Reconsideration*, 67 FR 70702 (November 26, 2002), the Commission reconsidered this definition because it found it would require ETCs to comply with a voice grade access standard more exacting than current industry standards. The Commission redefined the minimum bandwidth for voice grade access as 300 to 3,000 Hertz.

II. Discussion

1. The Commission denies the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by North Dakota Public Service Commission, South Dakota Public Utilities Commission and Washington Utilities and Transportation Commission. As noted in the companion order released on July 14, 2003, in this docket, the Federal-State Joint Board on Universal Service expressly sought comment on this issue in this proceeding and recommended that the Commission not modify its standard for voice grade access. Moreover, no commenter in this proceeding submitted arguments in favor of modifying this definition. Accordingly, we retain the existing definition of voice grade access to the PSTN and deny the petitions for reconsideration of the *Fourth Order on Reconsideration.*

III. Ordering Clauses

2. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this order on reconsideration is adopted.

3. Pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by the North Dakota Public Service Commission, South Dakota Public Utilities Commission, and the Washington Utilities and Transportation Commission are denied.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21164 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, FCC 03–170]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts the Federal-State Joint Board on Universal Service (Joint Board) recommendation to retain the existing list of services supported by federal universal service. The Commission agrees with the Joint Board that, with the possible exception of equal access, no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended (''Act'') or should be added to the list of core services.

DATES: Effective September 18, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Yockus, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Order on Reconsideration in CC Docket No. 96–45 released on July 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Commission adopts the Federal-State Joint Board on Universal Service (Joint Board) recommendation to retain the existing list of services supported by federal universal service. The Commission agrees with the Joint Board that, with the possible exception of equal access, no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended (''Act'') or should be added to the list of core services. The Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services and made no recommendation regarding this service. Because critical arguments in favor of adding equal access are related to the eligible telecommunications carrier (ETC) process and calculation of support for competitive ETCs, both of which are within the scope of the *Portability Proceeding,* 68 FR 10429 (March 5, 2003), the Commission makes no decision regarding equal access at this time.

II. Discussion

2. The Commission adopts the Joint Board's recommendation to retain the existing list of services supported by universal service. The Commission also agrees with the Joint Board's general conclusion that no new service satisfies the statutory criteria contained in

section 254(c) and that the public interest would not be served by expanding the list of supported services at this time. The Commission agrees with the Joint Board that the current list of supported services strikes the right balance between ensuring the availability of fundamental telecommunications services to all Americans and maintaining a sustainable universal service fund. In its *Recommended Decision,* the Joint Board discussed several specific services and proposals—advanced or high-speed services, unlimited local usage, soft dial tone or warm line services, prepaid calling plans, payphone lines, Braille TTY and two line voice carry over, N11 codes, toll or expanded area service, modifying voice grade access bandwidth, transport costs, rural wireless ETC category, and technical and service quality. The Joint Board was unable to reach agreement, however, on whether to recommend including equal access in the list of core services. The Commission makes no decision regarding equal access at this time and will address it in the context of the *Portability Proceeding,* 68 FR 10429 (March 5, 2003).

A. Advanced or High-Speed Services

3. Consistent with the Joint Board's *Recommended Decision,* the Commission declines to expand the definition of supported services to include advanced or high-speed services at this time. Although the Commission agrees with commenters, such as the National Telecommunications Cooperative (NTCA) and Valor Communications, that broadband services are becoming increasingly important for consumers in all regions of the nation, we also agree with the Joint Board and the vast majority of commenters that high-speed and advanced services currently do not meet the Act's criteria for inclusion on the list of supported services.

4. Like the Joint Board, the Commission recognizes that high-speed and advanced services may enable subscribers to access Internet resources used for educational, public health, or public safety purposes. At this time, however, the Commission does not find that advanced or high-speed services are essential to reaching these resources. The Commission agrees with the Joint Board and most commenters that although advanced and high speed services are useful for educational, public health and public safety purposes, they are not essential for these purposes as set out by section 254(c).

5. Although telecommunications carriers increasingly are deploying infrastructure capable of providing advanced and high-speed services, the Commission agrees with the Joint Board and commenters that advanced services are not subscribed to by a substantial majority of residential consumers. In fact, the Commission's own data shows that as of December 31, 2002, there were approximately 17.4 million high-speed lines serving residential and small business subscribers, which represents 16 percent of all U.S. households. Additionally, according to another study, only 56.5 percent of all households as of September 2001 had computers and could even benefit from advanced service offerings. Furthermore, the Florida Public Service Commission (PSC) states that there were 18.6 million broadband subscribers at the end of 2002 and, assuming all of these subscribers are residential, this would represent only 17 percent of American households.

6. In addition, comments in response to the *Notice of Proposed Rulemaking,* 68 FR 12020 (March 13, 2003), like those in response to the Joint Board's *Public Notice,* 66 FR 46461 (September 5, 2001), suggest that adding advanced or high-speed services to the definition of supported services would be contrary to the public interest due to the high cost of requiring the deployment of such services. If advanced or high-speed services were added to the list of supported services, it could drastically increase the financial burden placed on carriers and, ultimately, consumers because all eligible telecommunications carriers would be required to offer such services in order to receive support. The Commission agrees with the Joint Board that the public interest would not be served by substantially increasing the support burden by expanding the definition of universal service to include these services.

7. Moreover, the Commission agrees with the Joint Board that adding advanced or high-speed services to the list could jeopardize support currently provided to some carriers. While many small rural carriers have made significant progress in deploying broadband infrastructure, they do not yet offer advanced or high speed services ubiquitously throughout their service area. This would reduce the number of providers eligible for universal service support and might reduce consumer choice in rural and high-cost areas.

8. Although the Commission concludes that advanced or high-speed services do not satisfy the statutory criteria necessary for inclusion in the definition of supported services at this time, the Commission maintains its commitment to ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services. Indeed, section 254(b) of the Act provides that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on several principles, including the ability to access advanced telecommunications and information services in all regions of the nation. Accordingly, the Commission continues to support the Commission's prior conclusion that ''our universal service policies should not inadvertently create barriers to the provision or access to advanced services, and * * * that our current universal service system does not create such barriers.'' Thus, even though advanced services are not directly supported by federal universal service, ''[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services.'' The Commission recognizes that the network is an integrated facility that may be used to provide both supported and non-supported services. The Commission believe that the our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.

B. Unlimited Local Usage

9. The Commission adopts the Joint Board recommendation that unlimited local usage should not be added to the list of supported services. The Commission agrees with the Joint Board and the vast majority of the commenters that unlimited local usage is not essential to education, public health or public safety. The Commission also agrees with the Joint Board that adding it to the list would not serve the public interest because it could hinder states' ability to require local metered pricing for local service. As the Joint Board noted, states may require or encourage local metered service because it may, for example, encourage subscribership among low-income or low-volume users. Adding a national local usage requirement, however, would preclude this type of experimentation by the states. The Commission agrees with AT&T that states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances. Finally, the Commission note that the Joint Board found the record to be inadequate to determine whether adoption of such a

requirement would provide a competitive advantage to wireline carriers, due to the different cost structures of wireless and wireline technologies. No party provided additional information to address this issue in response to the *Notice of Proposed Rulemaking.* Accordingly, the Commission concurs with the Joint Board's recommendation regarding unlimited local usage.

10. The Commission is not persuaded by comments filed by the National Association of State Utility Consumer Advocates (NASUCA) and the Montana Universal Service Task Force (MUST) that unlimited local usage should be added to the list. NASUCA and MUST assert unlimited local usage should be included in the definition of supported services simply because it is widely available and subscribed to by a majority of residential consumers when offered. They believe that concerns regarding the competitive neutrality of such a requirement should not outweigh the fact that it is provided to many, if not most, residential consumers. Both parties, however, fail to consider all of the statutory criteria. MUST does not consider, much less rebut, the Joint Board's finding that unlimited local usage is not essential to education, public health and public safety. Moreover, both NASUCA and MUST fail to consider that the Joint Board concluded it would preclude state experimentation with calling plans and, therefore, not serve the public interest. Based on our consideration of all of the factors, specifically that it is not essential, that it would not serve the public interest, and that the Commission have no basis to determine whether it is competitively neutral, we find that unlimited local usage should not be added to the list of core services at this time.

C. Soft Dial Tone/Warm Line Service

11. The Commission agrees with the Joint Board that the definition of the services supported by universal service should not be expanded to include soft dial tone/warm line service. Soft dial tone/warm line service enables a consumer without local service to utilize an otherwise disconnected line to contact emergency services and the local exchange carrier's central business office. Such services, however, are not subscribed to by any residential consumers. Additionally, the Commission finds the record does not contain sufficient information to indicate that adding soft dial tone/warm line service to the list of supported services would serve the public interest. In response to the *Notice of Proposed Rulemaking,* no commenter provided estimates of the cost of adding soft dial tone or warm line service to the list of supported services or addressed in detail the implementation and administration of such a requirement.

12. Although the Commission agrees with USCCB *et al.* that soft dial tone/warm line service can improve the ability of certain low-income consumers to reach emergency services, we also agree with the Joint Board that states are in a better position to establish these programs because states maintain closer ties to local public safety organizations. The vast majority of commenters support the Joint Board's recommendation and believe the establishment of soft dial tone or warm line programs would be better left to the individual states. In fact, the New York Department of Public Service stated that a national solution, and the commitment costs that would be incurred, would conflict with its state program and eliminate the flexibility required to meet local needs. Accordingly, we adopt the Joint Board's recommendation that these services not be added to the list of supported services at this time. However, given the importance of such services, we do agree with NASUCA that we should continue to monitor the development of state soft dial tone and warm line programs.

D. Prepaid Calling

13. The Commission agrees with the Joint Board that the services supported by universal service should not be expanded to include prepaid services. In response to the *Notice of Proposed Rulemaking,* USCCB *et al.* proposes to add prepaid services generally to the list of supported services. It argued its proposal—which encompasses wireline and wireless technologies—meets the section 254(c) criteria and is competitively neutral.

14. Based on the record before us, USCCB *et al.*'s proposal does not appear to meet three of the statutory criteria. First, the record does not indicate that a substantial majority of residential consumers subscribe to prepaid services. Although the Commission agree with USCCB *et al.* that consumers receive the same telecommunications functionalities, *i.e.* voice grade access to the public switched network, regardless of when they pay for services, pre- and postpaid services utilize different billing practices. USCCB *et al.* has failed to provide any information regarding the number of consumers who select the prepaid billing option. Second, no party has submitted information in the record regarding the extent to which wireline and wireless carriers have billing systems capable of providing prepaid services, so the record is insufficient to determine whether carriers have deployed prepaid service billing equipment in their networks.

15. Third, the Commission question whether adding prepaid services to the list of supported services would be in the public interest. The record does not contain information about how much it would cost for carriers that do not already have prepaid functionalities to acquire such capabilities. Therefore, it is difficult to balance implementation costs with the potential benefits of increased subscribership. In addition, NASUCA asserts that because the requirement would apply to all ETCs, it would require some carriers that serve areas with high penetration rates to implement billing changes without any significant benefit. Because the record does not indicate whether wireline carriers have systems equipped for prepaid plans, the Commission also are concerned that USCCB *et al.*'s proposal may place wireline carriers at a competitive disadvantage vis-à-vis wireless carriers that may already offer prepaid plans. NASUCA also points out that prepaid pricing plans today are often significantly higher than those for post-paid services, and, therefore, may not be within the financial reach of some consumers. For these reasons, the Commission conclude that prepaid services should not be added to the list of supported services.

E. Payphone Lines

16. The Commission agrees with the Joint Board that payphone lines should not be included in the definition of supported services at this time. Although payphones play an important role in the public communications network, the Commission are persuaded by the Joint Board's finding that payphone lines are not subscribed to by a substantial majority of residential consumers. In addition, the Commission agrees with the Joint Board that the record is insufficient to determine whether adding payphone lines to the list of supported services would serve the public interest. There is no evidence in the record that additional federal support for payphone lines in high cost areas is needed for all payphone lines or would be necessary to ensure the continued availability of particular payphones. Moreover, including payphones in the list of core services could reduce the number of potential competitive providers of the core services because many competitive LECs and CMRS carriers do not offer payphone service throughout their

service areas and would be ineligible for ETC designations. No party filed comments in response to the *Notice of Proposed Rulemaking* in favor of adding payphone lines to the definition of supported services or supplemented the record analyzed by the Joint Board. Therefore, the Commission finds the record is insufficient to support the addition of payphone lines to the list of core services.

F. Braille TTY and Two Line Voice Carry Over

17. The Commission agrees with the Joint Board that the list of core services should not be expanded to include Braille TTYs and two line voice carry over (2LVCO). Braille TTYs are equipment used to print text messages in Braille for people who are deaf-blind, and 2LVCO allows hearing impaired consumers to read text messages and respond verbally to a relay operator. 2LVCO is a service that hearing-impaired consumers provide for themselves by purchasing a special TTY and combining it with a second line and conference calling. No commenter in response to the Commission's *Notice of Proposed Rulemaking* argued in favor of adding either to the list of supported services.

18. Like the Joint Board, the Commission finds that Braille TTYs, which are customer premises equipment, are ineligible for universal service support because section 254(c) expressly limits the definition of universal service to ''telecommunications services.'' Moreover, given the lack of information on the costs of implementing the proposal to make 2LVCO a supported service, the Commission agree with the Joint Board and finds the record insufficient to add this service to the list of supported services at this time. The Commission remains committed to exploring alternative mechanisms to ensure the accessibility of telecommunications services for persons with disabilities.

G. N11 Codes

19. The Commission adopts the Joint Board's recommendation that N11 codes, with the exception of 911 services, do not meet the statutory criteria and, therefore, should not be added to the definition of supported services. N11 codes are abbreviated dialing arrangements of which the first digit may be any digit other than 0 or 1, and the last two digits are both 1. These codes are used to enable callers to complete telephone calls to various services that require the dialing of a seven or ten digit telephone number. In order for consumers to access these services using the N11 code, the telephone network must be pre-programmed to translate the three-digit code into the appropriate seven or ten-digit telephone number to route the call. The Joint Board found that N11 codes are not subscribed to by a substantial majority of residential consumers and are not essential for education, public health, or public safety because consumers may reach the services by dialing the seven or ten digit number. In response to the Commission's *Notice of Proposed Rulemaking,* no commenter argued in favor of adding N11 services to the list of supported services. Therefore, the Commission agree with the Joint Board's recommendation and finds that N11 services should not be added to the list of supported services.

H. Toll or Expanded Area Service

20. The Commission agrees with the Joint Board that the definition of supported services should not be expanded to include toll or expanded area services. The Joint Board found the record insufficient to warrant addition of toll or expanded area services. Specifically, the record failed to identify the extent to which limited local calling areas pose a barrier for certain consumers to reach essential services, the cost of the remedy and what critical services if any should be supported. No commenter argued that these services should be added to the list in response to the Commission's *Notice of Proposed Rulemaking* or supplemented the record analyzed by the Joint Board. Therefore, like the Joint Board, we find the record insufficient to add these services to the list of supported services at this time.

I. Modifying Voice Grade Access Bandwidth

21. The Commission agrees with the Joint Board that the existing definition of voice grade access to the Public Switched Telephone Network (PSTN), which provides for a minimum bandwidth of 300 to 3,000 Hertz, should be retained. Several commenters representing small and rural LECs, in response to the Joint Board *Public Notice,* proposed to modify the definition to 300 to 3,500 Hertz, with the goal of improving dial-up modem speeds in rural areas. However, the record before the Joint Board was insufficient to demonstrate that the proposed modification would actually increase dial-up modem speeds in any areas. No commenter in response to the *Notice of Proposed Rulemaking* argued in favor of this modification or augmented the record on this issue. The Commission are persuaded by the Joint Board's conclusion that carriers should not be required to invest additional funds in mature narrowband technologies, particularly when such access would not be necessarily result in improved dial-up connection speeds. Moreover, because it is unclear, based on the record before us, whether carriers have deployed loops that meet the proposed voice grade bandwidth, the Commission, like the Joint Board, are concerned that redefining the definition of voice grade access in this manner could render existing wireline ETCs ineligible for support and preclude wireless carriers from being designated ETCs. The Commission agrees with the Joint Board that redefining voice grade access in this manner would not serve the public interest.

J. Transport Costs

22. The Commission agrees with the Joint Board that the list of supported services should not be expanded to include transport costs at this time. ''Transport costs'' refer to two proposals raised in response to the Joint Board's *Public Notice:* first, to modify the definition of ''access to interexchange service'' to include the use of transport facilities in insular areas and second, to provide universal service funding to IXCs in Alaska for transport costs needed to support 56kbps data transmissions. No commenter in response to the *Notice of Proposed Rulemaking* argued for the addition of transport costs to the list of supported services or supplemented the record analyzed by the Joint Board. Accordingly, the Commission agrees with the Joint Board and finds that the record is inadequate to determine whether there is need for such support and what the cost of providing such support would be. The Commission also agrees with the Joint Board that allowing funding for transport to enable 56 kbps transmissions would be inappropriate given the decision not to expand or modify the definition of voice grade access as described above.

K. Rural Wireless ETC Category

23. The Commission agrees with the Joint Board recommendation that a new rural wireless ETC category should not be created to enable wireless carriers to receive support for the implementation of CALEA and E911 solutions. The Joint Board found that creating different criteria for a subset of ETCs would be contrary to the intent of section 214 and may not be competitively neutral. No commenters in response to the *Notice of Proposed Rulemaking* disagreed with the Joint Board's conclusion. Accordingly, the Commission agrees

with the Joint Board that we should not create a subcategory of ETC for rural wireless carriers.

L. Technical and Service Quality Standards

24. The Commission agrees with the Joint Board and the vast majority of commenters that we should not impose technical or service quality standards as a condition to receive universal service support. The Commission is not persuaded that there is a need to adopt federal technical and service quality standards at this time. In response to the *Notice of Proposed Rulemaking,* no commenter provided specific examples of states that lack jurisdiction over certain carriers or service quality problems that would necessitate a federal standard. Based on the record before us in this proceeding, the Commission finds no reason to supplant the states' role of implementing and enforcing technical and service quality standards.

M. Equal Access

25. The Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services. Consequently, the *Recommended Decision* presented the arguments of the Joint Board members in favor of and opposed to adding equal access to the definition of supported services. Comments received in response to the *Notice of Proposed Rulemaking* were similarly split.

26. Parties in favor of adding equal access argue all ETCs that receive high cost support in a particular area should be required to provide comparable services. Specifically, they argue regulatory parity requires wireless ETCs to provide equal access, because the majority of incumbent LEC/ETCs offer it. Additionally, these parties assert that the current definition of supported services, when combined with the Commission's policies for calculating competitive ETC high-cost support, provides advantages to wireless ETCs. Specifically, they allege wireless ETCs receive a windfall when they receive support based on the incumbent ETC's costs, as these costs include the cost of providing equal access, a service not provided by wireless ETCs. The parties also argue that competition in high-cost areas will be enhanced with equal access requirements for universal service support, and that consumers will benefit. Furthermore, they assert that when considering the totality of the circumstances and the four section 254 criteria for determining what services should be supported, equal access should be added to the list of supported services. Finally, they argue that section 332(c)(8) of the Act does not prevent the Commission from requiring CMRS carriers to provide equal access in order to receive universal service funds. They contend this provision only prevents the Commission from requiring CMRS carriers to provide equal access as a general condition of mobile service.

27. Parties in opposition to adding equal access to the list of supported services assert that the costs of adding equal access to the list of supported services would hinder competitive ETCs from entering or continuing to serve some geographic areas. These parties also claim that the addition to the list of supported services would be inconsistent with the congressional intent of section 332(c)(8) of the Act, and would not further the competitive goals of the Act. Finally, they argue that equal access fails to meet the section 254(c) statutory criteria.

28. Because critical arguments in favor of adding equal access are related to the ETC designation process and the calculation of support for competitive ETCs, both of which are within the scope of the *Portability Proceeding,* the Commission makes no decision regarding equal access at this time. The Commission agrees with commenters like Verizon Wireless and T-Mobile that some of the arguments raised in favor of adding equal access are directly related to the methodology for calculating universal service support provided to competitive ETCs.

Given the scope of the *Portability Proceeding,* the Commission believe that a determination regarding equal access would be premature at this time. For example, if the Commission were to determine that competitive ETCs' support should be based on their own costs, as opposed to incumbents', many of the arguments for adding equal access could be moot. Accordingly, the Commission defers consideration of this issue pending resolution of the *Portability Proceeding.*

29. We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost universal service support in competitive areas could potentially impact, among other things, the support that competitive ETCs may receive in the future. As such, the Commission recognizes that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future. The Commission intends to proceed as expeditiously as possible to address the important and comprehensive issues that are being raised.

III. Procedural Issues

A. Final Regulatory Flexibility Act Analysis

1. Need for, and Objectives of, the Report and Order

30. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking.* The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

31. In this Order, the Commission adopts the Joint Board's recommendations to retain the existing list of services supported by universal service. Accordingly, the Commission do not adopt any changes to our universal service rules or reporting burdens.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

32. The Commission did not receive any comments in response to the IRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

33. The Commission did not adopt or modify any rules in this Order.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

34. There are no new or changed reporting requirements adopted in this Order.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternative Considered

35. Because no rules are adopted or modified in this Order, there are no economic impacts created by this Order.

6. Report to Congress

36. The Commission will send a copy of this Order, including the FRFA analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this Order, including this FRFA analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA analysis (or summaries thereof) also will be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

37. The action contained herein has been analyzed with respect to the

Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

IV. Ordering Clauses

38. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this order is adopted.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21163 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2003–15945]

RIN 2105–AD32

Establishment of the Chamorro Standard Time Zone

AGENCY: Office of the Secretary (OST), (DOT).

ACTION: Final rule.

SUMMARY: By statute, Congress established the Chamorro standard time zone. Geographically this time zone includes Guam and the Commonwealth of the Northern Mariana Islands. This final rule revises the Department of Transportation's regulations to reference the new time zone.

DATES: This rule is effective on August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the web page of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type in the last five digits of the docket number shown on the first page of this document. Then click on ''search.'' An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara/index.html.*

Background

On January 24, 2000, Congress passed the Guam and the Northern Mariana Islands Standard Time Zone Act [Pub. L. 106–564, 114 Stat. 2811], which amended title 15 of the United States Code. The Act established the Chamorro standard time zone for Guam and the Commonwealth of the Northern Mariana Islands. The term Chamorro refers to the culture and people of that area.

This final rule is ministerial in nature and is meant to incorporate the statutory change into the Department's regulations for reader convenience. As such, notice and comment are unnecessary and contrary to the public interest. Further, because this rule does not impose substantive requirements on the public, the Department finds that there is good cause to make this rule effective on the date of publication in the **Federal Register** because it is merely referencing a statutory change that is already in effect.

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. Similarly, the rule is not significant under the criteria of the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on States.

C. Indian Tribal Governments

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Department of Transportation hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) do not apply to this rulemaking.

G. Environment

We considered the environmental impact of this final rule and have determined that this rule has no environmental implications.

Final Rule

List of Subjects in 49 CFR Part 71

Time zones.

■ For the reasons discussed in the preamble, the Department of Transportation amends 49 CFR part 71 as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

■ 1. The authority citation for part 71 is revised to read as follows:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 1.59(a), unless otherwise noted.

■ 2. Add § 71.14 to read as follows:

§ 71.14 Chamorro Zone.

The ninth zone, the Chamorro standard time zone, includes the Island of Guam and the Commonwealth of the Northern Mariana Islands.

Issued in Washington, DC on June 24, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–21222 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA–2003–14217; Notice No. 1]

RIN 2130–AB58

Railroad Locomotive Safety Standards: Clarifying Amendments; Headlights and Auxiliary Lights

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This rulemaking action makes a technical clarification to certain locomotive headlight and auxiliary light provisions. The purpose of this modification is to codify FRA's longstanding acceptance of lamps used in locomotive headlights and auxiliary lights. FRA believes that the clarifications being made in this document are consistent with both FRA's intent when issuing the requirements related to locomotive headlights and auxiliary lights and FRA's enforcement policies related to those provisions. FRA also believes that the clarifications contained in this document further FRA's goal of facilitating the use of advanced technologies and enhance FRA's safety enforcement program by recognizing specific types of lamps it considers acceptable for use in headlights and auxiliary lights.

DATES: This interim final rule is effective August 19, 2003; written comments must be received on or before September 18, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Comments:* Any comments or petitions for reconsideration related to Docket No. FRA–2003–14217, may be submitted by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the General Information heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Public Hearing: Due to the extremely limited scope of this interim final rule, FRA does not believe that a public hearing is necessary at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed as noted above by the deadline for written comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Charles L. Bielitz, Mechanical Engineer, FRA Office of Safety, RRS–14, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590 (telephone: 202–493–6314), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Stop 10, Washington, DC 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION:

Background

Based on new technologies and designs related to the lamps utilized in road locomotive headlights and auxiliary lights over the last decade, FRA believes the federal regulations governing these components need to be modified to be consistent with FRA's intent when it issued those regulations and to incorporate FRA's enforcement policies developed over the intervening years. Currently, there are two types of lamps primarily utilized in locomotive headlight and auxiliary light fixtures. These include a Parabolic Allumination Reflection (PAR)–56, 200-watt, 30-volt lamp (200-watt lamp) and a PAR–56, 350-watt, 75-volt lamp (350-watt lamp).

Prior to the mid-1990s, the primary lamp used in road locomotive headlights throughout the industry was the 200-watt lamp, which produces a mean luminous intensity that is well in excess of 200,000 candela at the center of its beam, with all production samples having a minimum luminous intensity of 200,000 candela. In the early to mid-1990s, with the advent of auxiliary lights, the industry began using the 350-watt lamp in both headlight and auxiliary light fixtures. Controlled testing of auxiliary lights performed for FRA by the Volpe National Transportation Systems Center (Volpe) in 1995 used regular production 350-watt lamps. A single 350-watt lamp tested by the U.S. Coast Guard for the Volpe test, as well as data supplied by the lamp vendor, showed a center beam luminous intensity well in excess of 250,000 candela, but it has since been determined that this data was not representative of typical lamp production. At present, most new locomotives are equipped with the 350-watt lamps in both the headlight and auxiliary light fixture. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production (2001 through mid-2003) of the 350-watt lamps is centered at approximately 160,000 candela. Although most 350-watt lamps do not meet the 200,000 candela requirements related to headlights and auxiliary lights contained in 49 CFR 229.125(a) and (d), FRA has accepted and will continue to accept their use in both headlight and auxiliary light fixtures for the reasons discussed below. Hence forth, reference to a section or numbered part are to sections and numbered parts in title 49 of the CFR. In order to clarify FRA's continued acceptance of the use of these lamps and to incorporate existing enforcement guidance, FRA is amending the regulatory provisions contained in part 229 to specifically address the use of these types of lamps in both headlight and auxiliary light locations.

Section Analysis

A. Headlights: § 229.125(a)

The regulatory provisions related to locomotive headlights are contained at § 229.125(a) through (c). These requirements were included in the regulations when part 229 was added to the Code of Federal Regulations in 1980.

See 45 FR 21109 (March 31, 1980). Part 229 was added in order to modernize the federal regulations previously contained in part 230 related to all types of locomotives by separating and amending the requirements related to diesel and electric locomotives from those related to steam locomotives. The provisions contained in § 229.125(a)–(c) were intended to be a modified and condensed version of the requirements previously contained in § 230.231 prior to 1980. *See* 44 FR 29618 (May 21, 1979).

In the 1979 Notice of Proposed Rulemaking (NPRM) and the 1980 final rule, FRA explained that the approach contained in § 230.231 for determining intensity was imprecise and unscientific. Section 230.231 used a vague performance standard to describe the intensity which read as follows:

A headlight which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight. * * *.

See § 230.231 in pre-1980 CFR. In order to make this vague performance standard more precise and scientific, FRA specified that a locomotive headlight must produce a luminous intensity of at least 200,000 candela. *See* 44 FR 29618 and 45 FR 21109. In the preamble to the final rule, FRA stated that the more scientific 200,000-candela standard could be met by the headlights used in the existing locomotive fleet and that the use of the more modern standard should not be viewed as a change in FRA's enforcement approach. *Id.* At the time the final rule was issued, virtually all locomotive headlights were equipped with the 200-watt lamps which are capable of producing in excess of 200,000 candela. Thus, FRA was merely attempting to describe, in scientific terms, the type of lamps being used by the industry in locomotive headlight fixtures at that time.

Subsequent to the issuance of the final rule, FRA developed informal enforcement guidance for its field inspectors related to when a locomotive's headlight should be considered inoperative. The guidance was eventually included in FRA's Motive Power and Equipment (MP&E) Enforcement Manual distributed in July of 1992. *See* MP&E Enforcement Manual at 8–79. This guidance instructed FRA inspectors to consider a locomotive's headlight to be operative when the locomotive is equipped with a sealed two-beam (two-lamp) headlight fixture and only one of the lamps is illuminated. The rationale for this guidance was based on the fact that virtually all locomotives were equipped with a dual-lamp headlight fixture and prior to the early 1990s the lamps used in these fixtures were the 200-watt lamps, each independently capable of producing at least 200,000 candela. Because the regulation only requires the headlight to produce 200,000 candela, FRA determined that it would not consider a dual-lamp headlight inoperative if it is equipped with at least one operative lamp capable of producing 200,000 candela. *Id.*

As noted above, in the early to mid-1990s, the industry began widespread use of the 350-watt lamps in both headlight and auxiliary light fixtures. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production of the 350-watt lamps is centered at approximately 160,000 candela. Furthermore, data provided to FRA do not definitively establish that an individual 350-watt lamp meets the underlying performance standard, discussed above, on which the 200,000-candela requirement was based. Moreover, FRA is not comfortable applying an old and somewhat subjective performance standard in place of the more precise and scientific standard that was adopted several decades ago. Therefore, because most 350-watt lamps do not individually produce the luminous intensity specified in the existing regulation, FRA believes it is necessary to clarify its existing enforcement guidance and specifically modify the regulation to reflect its position regarding the use of 350-watt lamps in locomotive headlight fixtures.

Consistent with FRA's existing enforcement guidance related to the headlight provisions contained in § 229.125(a), FRA will continue to interpret the term ''headlight,'' as used in this provision, to mean the entire headlight fixture whether it is comprised of either one or more lamps. Thus, the requirement contained in this provision to produce 200,000 candela is to be determined by the luminous intensity of the entire headlight fixture. Although a single 350-watt lamp, as described above, generally does not produce 200,000 candela, data clearly establish that the beams of two 350-watt lamps in a dual-lamp headlight easily produce well in excess of 200,000 candela once the two beams overlap sufficiently, which occurs within a few feet in front of the fixture.

In light of the above, FRA will consider a locomotive with a dual-lamp headlight fixture that is equipped with two PAR–56, 350-watt, 75-volt lamps to meet the 200,000-candela requirement contained in § 229.125(a), provided both lamps are operative. If either lamp in such a configuration becomes inoperative, the locomotive is to be handled in accordance with the movement-for-repair provisions contained in § 229.9. Similarly, FRA will continue to consider a headlight fixture equipped with a single operative PAR–56, 200-watt, 30-volt lamp to meet the candela requirements of § 229.125(a) as such lamps are capable of individually producing 200,000 candela. FRA is amending the regulatory language contained in § 229.125(a) to specifically include the interpretation and clarification discussed above. It should be noted that FRA expects railroads to have some method or procedure in place which notifies the operating crew and mechanical employees of the type of lamps being utilized in the locomotive headlight fixture in order that the locomotive can be properly handled for repairs, if necessary.

B. Auxiliary Lights: § 229.125(d)(2)

The regulatory provisions related to locomotive auxiliary lights are found at § 229.125(d) through (h) and § 229.133. These requirements were added to the regulations between 1993 and 1996 and were established through a rulemaking that began with a 1993 interim final rule, containing interim provision related to auxiliary lights, and then proceeded to a 1995 NPRM proposing many of the auxiliary light provisions that were ultimately issued in the 1996 final rule. *See* 58 FR 6899 (February 3, 1993), 60 FR 44457 (August 28, 1995), and 61 FR 8881 (March 6, 1996). At this time, the provisions relating to auxiliary lights contained in § 229.133 are for the most part superseded by similar provisions contained at § 229.125, except to the extent that certain types of auxiliary lights were ''super-grandfathered'' as meeting the requirements of § 229.125. *See* 61 FR 8885–86 and § 229.133(c). Although these documents require that each prescribed auxiliary light produce 200,000 candela, none of them directly discusses FRA's rationale for including the specified luminous intensity. It can be assumed that the 200,000-candela requirement was based on the headlight provision discussed above. Moreover, at the time the auxiliary light provisions were added to the regulations, both the

200-watt and 350-watt lamps were believed to be capable of producing 200,000 candela. Consequently, when FRA incorporated the 200,000-candela requirement into the auxiliary light provisions, it is clear that FRA was merely attempting to describe the locomotive lamps being used by the industry at that time.

As part of the auxiliary light rulemaking, FRA's Office of Research and Development, through the Volpe National Transportation Systems Center (Volpe), studied the impact of auxiliary lights as alerting devices to improve locomotive conspicuity. The final report on this study was issued in July of 1995 under Report Number DOT/FRA/ORD–95–13 (Volpe report). The report is part of FRA Docket Number RSGC–2 and is available online at: *www.fra.dot.gov/rdv30/reports/index.htm*. As part of this study, FRA evaluated various lighting systems. Four alerting light systems were evaluated for compliance with FRA's interim advisory standards, for costs, and for reliability. Field tests were also conducted on these lighting systems to determine their ability to increase an approaching train's visibility. These four alerting light systems included: standard locomotive headlights, crossing, ditch, and strobe lights. FRA utilized the data developed in this study as the basis for the auxiliary light provisions currently contained in § 229.125(d) through (h). *See* 60 FR 44457; and 61 FR 8881.

Based on FRA's review of the Volpe Report and its supporting data and in light of data subsequently provided by General Electric Company (GE), FRA believes that use of either a 350-watt lamp or a 200-watt lamp in locomotive auxiliary lights meets FRA's intent when issuing the regulations pertaining to such fixtures. A review of the Volpe Report establishes that the lamps tested in the headlight, ditch light, and crossing light systems were all PAR–56, 350-watt, 75-volt lamps. *See* Volpe Report at Appendix D–4. Although the report notes that two 350-watt lamps sampled for luminous intensity produced peak intensity reading in excess of 200,000 candela, there is no indication in the report that those specific lamps were ever used in any of the subsequent testing. One of these measurements was on an isocandela plot supplied to Volpe by Quest Corporation, the lamp vendor, based on data supplied by General Electric Company (GE), the lamp manufacturer, and the second was from a test conducted by the U.S. Coast Guard for the Volpe Center. *See* Volpe Report at Table 4–5 and Appendix C. Based on information recently provided by GE, FRA believes that the intensity readings on these two lamps were an anomaly in terms of peak intensity for 350-watt lamps. The data supplied by GE shows that only one of 93 samples of the 350-watt lamp tested from 1994 to present produced a maximum beam candle power above 250,000 candela. This leads FRA to suspect that the lamp data supplied by Quest Corporation and the lamp tested by the Coast Guard in relation with the Volpe Report was potentially the same lamp, which was not representative of the lamps actually used in the Volpe tests. In fact, the lamps used in the Volpe field tests (which validated the benefits of using auxiliary lights) were 350 watt lamps. A large proportion of the lamps used in the tests in all probability did not meet the luminous intensity requirement because they were from normal production runs which included a high proportion of lamps with a peak luminous intensity below 200,000 candela.

In addition to the fact that the 350-watt lamp was used in the Volpe tests, FRA also believes that the 350-watt lamp currently being used in the industry provides equal, if not greater, benefits when used in auxiliary light fixtures than a 200-watt lamp capable of producing 200,000 candela. The primary purpose of locomotive auxiliary lights is to enhance the visibility of the front-end locomotive of a train from the perspective of a driver of a motor vehicle approaching a grade crossing. *See* 61 FR 8881. With this purpose in mind, FRA believes that, due to the design of 350-watt lamps, they provide equal, if not greater, visibility to motorists approaching grade crossings. Although FRA used peak candela to describe the type of lamps to be used in auxiliary light fixtures, FRA believes that a more appropriate measure is the intensity of the light at an angle from the head of the locomotive. The Volpe Report indicates that the point of first detection of a train's auxiliary lights for a motorist approaching a grade crossing (205 feet from centerline of the tracks) occurred at approximately 1,550 feet, a point that is 7.5 degrees from the centerline of the locomotive. *See* Volpe Report at Section 5. The Volpe Report also indicates that the point at which the separation of the lamps in the headlight and auxiliary lights became detectable to an approaching motorist was at a distance of approximately 570 feet, a point that is 20 degrees from the centerline of the locomotive. *Id.* Based on this information, it is evident that the key intensity figure for an auxiliary light is the intensity of the light at angles of between 7.5 degrees and 20 degrees from the centerline of the locomotive.

Although a 350-watt lamp does not generally produce a maximum beam candle power (MBCP) in excess of 200,000 candela, these lamps do produce a greater luminous intensity over a broader angle off of the beam centerline than the traditional 200-watt lamp capable of producing a MBCP in excess of 200,000 candela. In fact, the available data clearly establish that the currently produced 350-watt lamp has a higher light intensity at any angle greater than 3.5 degrees off the centerline when compared to the more traditional 200-watt lamp used on older locomotives. Thus, the 350-watt lamps are particularly well suited for use in auxiliary light locations, which are primarily intended to be seen by motorists well away from an approaching grade crossing. Consequently, FRA believes that available data support a determination that the 350-watt lamp currently being produced and which has been permitted to be used in most newer locomotive auxiliary light fixtures since the mid-1990s actually enhances the ability of a motorist to detect an on-coming train.

In addition to the supporting data, FRA also notes that it has accepted the use of both 200-watt and 350-watt lamps since they began being used in auxiliary light fixtures beginning in the early to mid-1990s. It should also be noted that grade crossing accidents, deaths, and injuries have dropped sharply since the introduction of the 350-watt auxiliary lights in the mid-1990s. Furthermore, FRA is not aware of any complaints by operating crews or any deficiencies being noted by its field inspectors related to the luminous intensity produced by the 350-watt lamps since they began being used in locomotives. Moreover, FRA is not aware of any private litigation where the intensity of the light produced by a locomotive's auxiliary lights was brought into question.

In order to reflect FRA's intent when issuing the regulations related to auxiliary lights and to incorporate FRA's existing enforcement posture with regard to the use of 350-watt lamps, FRA is amending the auxiliary light provisions currently contained at § 229.125(d)(2) to specifically permit the continued use of 350-watt lamps. FRA believes this modification is necessary to ensure that there is no misunderstanding by either the regulated community or its field inspectors with regard to FRA's position. The modification makes clear that FRA will accept the use of either a lamp capable of producing 200,000

candela (a PAR–56, 200-watt, 30-volt lamp) or a lamp capable of producing 3,000 candela at 7.5 degrees and 400 candela at 20 degrees from the centerline of the locomotive when the lamp is aimed parallel to the tracks (either a PAR–56, 200-watt, 30-volt lamp or a PAR–56, 350-watt, 75-volt lamp). The light intensities being specified in the regulation are based on the luminous intensity produced at those angles by a PAR–56, 200-watt, 30-volt lamp (according to data supplied by GE) when such a lamp is aimed parallel to the tracks. FRA believes this is the most appropriate measure because the agency has interpreted the regulations as permitting this light intensity since their inception. Thus, acceptance of a lamp that produces an equivalent or greater intensity at these critical angles is consistent with the intent and purpose of the auxiliary light provisions when originally prescribed and is consistent with FRA's goal of promoting and facilitating new technologies. In furtherance of this goal, FRA also notes that although the modification being made to the regulation identifies specific lamps as meeting the specified criteria, the modification also acknowledges that lamps of equivalent design and capable of producing equivalent light intensities would be considered acceptable by FRA.

Related Provisions

Although there are provisions contained in §§ 229.133 and 238.443 that reference the use of lamps producing 200,000 candela, FRA does not intend to change any of the language contained in those provisions at this time. Section 229.133 contains interim locomotive conspicuity measures that were incorporated into the regulations in 1993 while the final provisions related to locomotive auxiliary lights were being developed. *See* 58 FR 6899; 60 FR 44457; and 61 FR 8881. Although locomotives equipped with one of the specified conspicuity measures were grandfathered as being compliant with the auxiliary light provisions included in § 229.125, that grandfathering expired as of March 6, 2000. *See* 61 FR 8885 and § 229.125(d). When issuing the final rule related to locomotive auxiliary lights in 1996, FRA did ''super-grandfather'' certain locomotives if equipped with some of the auxiliary conspicuity measures specified in § 229.133, which included: oscillating lights; strobe lights; and auxiliary lights if spaced at least 44 inches apart. *See* 61 FR 8885 and § 229.133(c). Of the three types of measures ''super-grandfathered,'' only the provision related to oscillating lights specifies the use of a lamp capable of producing 200,000 candela. *See* § 229.133(c)(1) through (c)(3). As there are very few locomotives currently being operated that are equipped with oscillating lights and because FRA has no data related to the impact of utilizing 350-watt lamps in single-lamp oscillating light fixtures, FRA is not in a position to accept the use of such lamps in these devices at this time. However, FRA will continue to accept the use of 350-watt lamps in those circumstances where an oscillating light is used in conjunction with the auxiliary lights described in § 229.125, and in circumstances where an oscillating light under § 229.133(b)(4)(i)(A) consists of a dual-lamp fixture equipped with two operative 350-watt lamps.

The requirements related to Tier II passenger equipment also contain a requirement that Tier II power cars be equipped with headlights that produce at least 200,000 candela. *See* § 238.443. However, contrary to the headlight provisions in part 229, which require that a locomotive be equipped with a single headlight, the provision in § 238.443 requires each Tier II power car to be equipped with at least two headlights and that each headlight produce no less than 200,000 candela. *Id.* Moreover, the present design of the headlights on Tier II power cars utilizes a single lamp in each of the two required headlight fixtures. Thus, the preceding discussion related to FRA's acceptance of the use of 350-watt lamps in traditional locomotives covered under the provisions of § 229.125(a), is not applicable to the headlights on Tier II power cars which are separately addressed in part 238.

General Information

As the modifications contained in this document are intended to merely clarify FRA's intent when issuing the final rule related to auxiliary lights and incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights, FRA is issuing this document as an interim final rule with a request for comments. Moreover, this document addresses FRA's continued acceptance of locomotive lamps which have been used throughout the industry for nearly a decade. Thus, FRA views the amendments contained in this document as technical clarifications of the existing regulations. Consequently, pursuant to 5 U.S.C. 553(b)(3)(B), FRA believes that good cause exists for finding that prior public notice of this action is both impracticable and unnecessary. However, FRA is requesting written comments on the content of this interim final rule and, if any are received, FRA will address them when issuing the final rule.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this interim final rule are not considered significant because they are intended merely to clarify FRA's intent when issuing the final rule related to auxiliary lights and to incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights. The economic impact of the modifications and clarifications contained in this interim final rule will not generally affect the cost of compliance with the existing regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this interim final rule does not have a significant impact on a substantial number of small entities. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This interim final rule does not change any of the information collection requirements contained in the original regulatory provisions being amended.

Environmental Impact

FRA has evaluated this interim final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental

statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated interim final rule in accordance with Executive Order 13211. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 229

Auxiliary lights, Headlights, Locomotives, Railroad safety.

Adoption of the Amendment

■ In consideration of the foregoing, Part 229 of Chapter II of Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 1. The authority citation for Part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49(c), (m).

■ 2. Section 229.125 is amended by revising paragraphs (a) and (d)(2) to read as follows:

§ 229.125 Headlights and auxiliary lights.

(a) Each lead locomotive used in road service shall have a headlight that produces a peak intensity of at least 200,000 candela. If a locomotive or locomotive consist in road service is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that produces at least 200,000 candela. Each headlight shall be arranged to illuminate a person at least 800 feet ahead and in front of the headlight. For purposes of this section, a headlight shall be comprised of either one or two lamps.

(1) If a locomotive is equipped with a single lamp headlight, the single lamp shall produce a peak intensity of at least 200,000 candela. The following meet the standard set forth in this paragraph (a)(1): a single PAR–56, 200-watt, 30-volt lamp; or a lamp of equivalent design and intensity.

(2) If a locomotive is equipped with a dual-lamp headlight, a peak intensity of 200,000 candela shall be produced by the headlight based either on a single lamp capable of individually producing the required peak intensity or on the candela produced by the headlight with both lamps illuminated. If both lamps are needed to produce the required peak intensity, then both lamps in the headlight shall be operational. The following meet the standard set forth in this paragraph (a)(2): a single PAR–56, 200-watt, 30-volt lamp; two operative PAR–56, 350-watt, 75-volt lamps; or a lamp(s) of equivalent design and intensity.

* * * * *

(d) * * *

(2) Each auxiliary light shall produce a peak intensity of at least 200,000 candela or shall produce at least 3,000 candela at an angle of 7.5 degrees and 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. Any of the following meet the standard set forth in this paragraph (d)(2): a PAR–56, 200-watt, 30-volt lamp; a PAR–56, 350-watt, 75-volt lamp; or a lamp of equivalent design and intensity.

* * * * *

Issued in Washington, DC on August 12, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–21136 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1500, 1502, 1503, 1510, 1511, 1540, 1542, 1544, 1546, 1548, and 1550

[Docket No. TSA–2003–14702; Amendment Nos. 1500–1, 1502–1, 1503–1, 1510–3, 1511–2, 1540–5, 1542–1, 1544–4, 1546–1, 1548–1, and 1550–1]

RIN 1652–AA20

Transportation Security Administration Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002 transferred the Transportation Security Administration from the Department of Transportation to the newly created Department of Homeland Security. This rule makes conforming technical changes to various parts of the Transportation Security Regulations, chapter XII of title 49, Transportation, of the Code of Federal Regulations, revising, where appropriate, all references to the titles, abbreviations, and acronyms of the ''Department of Transportation'' and the ''Under Secretary of Transportation for Security.'' This regulation also makes conforming changes to the general definitions sections and revises TSA's address because of TSA Headquarters' physical move to Arlington, Virginia. Because this rule revises existing regulations to reflect organizational changes, it has no substantive effect on the public.

DATES: Effective August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Office of the Chief Counsel, TSA–2, Transportation Security Administration, West Building, Floor 8, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2706; e-mail *marisa.mullen@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html;* or

(3) Visiting the TSA's Law and Policy web page at *http://www.tsa.dot.gov/public/index.jsp.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Background

The rule makes technical changes to various provisions of chapter XII, title 49 (Transportation) of the Code of Federal Regulations (CFR), mainly in response to enactment of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (2002). Pursuant to the HSA, Congress established the Department of Homeland Security (DHS) (section 101 of HSA) and directed the transfer of the Transportation Security Administration (TSA) (section 403 of HSA) from the Department of Transportation (DOT) to DHS. As indicated in the Department of Homeland Security Reorganization Plan submitted on November 25, 2002, by the President to Congress (under section 1502 of the HSA), TSA transferred to DHS on March 1, 2003.

In addition, by March 1, TSA completed the physical move of its headquarters facilities and personnel from Washington, DC, to Arlington, Virginia. This rule revises any references to our location address or mailing address, as necessary.

Justification for Immediate Adoption

This rule relates only to agency organization, procedure, and practice. Therefore, under 5 U.S.C. 553(b)(3)(A), this rule is exempt from notice and comment rulemaking requirements. The changes made by the rule will have no substantive effect on the public; therefore, under 5 U.S.C. 553(d), this rule may become effective less than 30 days after publication in the **Federal Register**.

Provisions of the Final Rule

In 49 CFR, chapter XII, all references to the titles, abbreviations, and acronyms of the ''Department of Transportation'' and the ''Under Secretary of Transportation for Security'' are revised, where appropriate, to read ''Department of Homeland Security'' and ''Administrator,'' respectively. In conjunction with the transfer of TSA to DHS, the head of TSA has adopted the new title of Administrator and has implemented conforming changes to the titles of other senior management officials at TSA. Other organizational changes have been made as well. Consequently, for purposes of the Transportation Security Regulations (TSRs), the official formerly referred to as the Under Secretary of Transportation for Security will be referred to as the Administrator, and the official formerly referred to as the Deputy Administrator/Chief Operating Officer will be referred to as the Deputy Administrator. In addition, officials previously referred to as Associate Under Secretaries will be known as Assistant Administrators and the official previously referred to as the Deputy Chief Counsel for Enforcement will be known as the Deputy Chief Counsel for Civil Enforcement. The final rule makes conforming changes to the TSRs to reflect these changes and adds a new definition of ''Administrator'' to the general definitions sections.

This rule also revises TSA's address because of TSA Headquarters' physical move from Washington, DC, to Arlington, Virginia. Our U.S. mailing address will no longer be routed to TSA through the DOT Headquarters' address at 400 Seventh Street, SW., Washington, DC. The official address for all TSA mail (both U.S. Postal System and all overnight mail) now is: Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

Although most references to DOT have been revised to DHS, in some instances, most notably in §§ 1510.19 and 1511.11, references to DOT remain to allow DOT access to books and records related to TSA's Civil Aviation Security Fees in order to facilitate DOT's enforcement of its consumer protection and economic authority.

In addition, the authority citations in 49 CFR parts 1500 through 1511 and 1540 through 1550 were amended to add 49 U.S.C. 114 and 40113, as appropriate. These citations include general agency authorities to conduct rulemaking and issue orders that had inadvertently been left out of previous rulemakings.

Collection of Information

This rule does not impose any new information collection and recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requiring approval by the Office of Management and Budget.

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined this rulemaking is not a ''significant regulatory action'' as defined in section 3(f) of the Executive Order as this rule involves internal agency practices and procedures and non-substantive changes to rules of procedure and will not impose any costs on the public. Therefore, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order, nor does it require a review by the Office of Management and Budget.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The RFA does not apply to this rule and we are not preparing an analysis for the Act, since under 5 U.S.C. 553, TSA is not required to publish an NPRM for a rule that relates to agency management, procedures, and practice. However, because this rule will not impose any costs on the public, we have determined and certify that this rule does not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The TSA has assessed the potential effect of this rulemaking and has determined that it will have no effect on any trade-sensitive activity and will not constitute a barrier to international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and the TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

The TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Review Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1500

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1502

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties, Transportation.

49 CFR Part 1510

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1511

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Air carriers, Aircraft, Aviation safety, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign air carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1550

Aircraft, Security measures.

The Amendment

■ In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

■ 1. Revise the heading for chapter XII to read as follows:

CHAPTER XII—TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

■ 2. In 49 CFR chapter XII, revise all references to ''Under Secretary of Transportation for Security'' to read ''Administrator''; revise all references to ''Under Secretary of Transportation for Security's'' to read ''Administrator's''; revise all references to ''Under Secretary'' to read ''Administrator''; revise all references to ''Under Secretary's'' to read ''Administrator's''; and revise all references to ''Deputy Under Secretary of Transportation for Security/Chief Operating Officer'' to read ''Deputy Administrator''.

SUBCHAPTER A—ADMINISTRATIVE AND PROCEDURAL RULES

PART 1500—APPLICABILITY, TERMS, AND ABBREVIATIONS

■ 3. In part 1500, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 4. In § 1500.3, remove the redesignated definition of ''Administrator'', and add a new definition of ''Administrator'' in alphabetical order to read as follows:

§ 1500.3 Terms and abbreviations used in this chapter.

* * * * *

Administrator means the Under Secretary of Transportation for Security identified in 49 U.S.C. 114(b) who serves as the Administrator of the Transportation Security Administration.

* * * * *

PART 1502—ORGANIZATION, FUNCTIONS, AND PROCEDURES

■ 5. In part 1502, revise the authority citation to read as follows:

Authority: 5 U.S.C. 3345, 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44920, 44935–44936, 44942, 46101–46105, 45107, 46110.

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 6. In part 1503, revise the authority citation to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 40113–40114, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314.

■ 7. In part 1503, revise all references to ''Deputy Chief Counsel for Enforcement'' to read ''Deputy Chief Counsel for Civil Enforcement''.

§ 1503.3 [Amended]

■ 8. In § 1503.3(b), remove the word ''Associate'' from wherever it appears in the paragraph, and add in its place, the word ''Assistant''.

§§ 1503.5, 1503.16, 1503.209, 1503.210, 1503.230, and 1503.233 [Amended]

■ 9. In §§ 1503.5(b)(2), 1503.16(f), 1503.209(b), 1503.210(a), and 1503.233(a), remove the words ''Department of Transportation'' and add in their place, the words ''Department of Homeland Security''.

■ 10. In §§ 1503.5(k), 1503.5(k)(2)(C)(ii), 1503.209(b), 1503.210(a), and 1503.230(b)(2)(C)(ii), remove the words ''GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407'', and add in their place, the words ''TSA Headquarters, Visitor Center, 701 South 12th Street, Arlington, Virginia 22202''.

■ 11. In §§ 1503.209(b), and 1503.233(a), remove the question mark symbol ''?'', from wherever it appears in the paragraph.

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

■ 12. In part 1510, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 40113, and 44940.

■ 13. In § 1510.3, remove the redesignated definition of ''Administrator'', and add a new definition of ''Administrator'' in alphabetical order to read as follows:

§ 1510.3 Definitions.

* * * * *

Administrator means the Administrator of the Transportation Security Administration or the Administrator's designee.

* * * * *

■ 14. In § 1510.19, revise the text to read as follows:

§ 1510.19 Federal oversight.

Direct air carriers and foreign air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, the Secretary of Homeland Security, the Inspector General of the Department of Transportation, the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States to audit or review any of its books and records and provide any other information necessary to verify that the security service fees were properly collected and remitted consistent with this part.

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

■ 15. In part 1511, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 40113, 44901, and 44940.

■ 16. In § 1511.3, remove the redesignated definition of ''Administrator'', and add a new definition of ''Administrator'' in alphabetical order to read as follows:

§ 1511.3 Definitions.

* * * * *

Administrator means the Administrator of the Transportation Security Administration or the Administrator's designee.

* * * * *

■ 17. In § 1511.11, revise paragraph (a) introductory text to read as follows:

§ 1511.11 Federal oversight.

(a) Upon request, air carriers and foreign air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, the Secretary of Homeland Security, the Inspector General of the Department of Transportation, the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States to audit or review any of the books and records and provide any other information necessary to verify that:

* * * * *

SUBCHAPTER C—CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 18. In part 1540, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 19. In § 1540.115(b), remove the redesignated definition of ''Administrator'', and add a new definition of ''Administrator'' in alphabetical order to read as follows:

§ 1540.115 Threat assessments regarding citizens of the United States holding or applying for FAA certificates, ratings, or authorizations.

* * * * *

(b) * * *

Administrator means the Administrator of the Transportation Security Administration.

* * * * *

PART 1542—AIRPORT SECURITY

■ 20. In part 1542, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44917, 44935–44936, 44942, 46105.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 21. In part 1544, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

PART 1546—FOREIGN AIR CARRIER SECURITY

■ 22. In part 1546, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

PART 1548—INDIRECT AIR CARRIER SECURITY

■ 23. In part 1548, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

PART 1550—AIRCRAFT SECURITY UNDER GENERAL AVIATION OPERATING AND FLIGHT RULES

■ 24. In part 1550, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

Issued in Arlington, Virginia, on August 11, 2003.

James M. Loy,

Administrator.

[FR Doc. 03–20927 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 080503B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #2 - Adjustment of the Recreational Fishery from the Queets River to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery in the area from the Queets River to Cape Falcon, Oregon, was modified to open 7 days per week effective on Friday, July 26, 2003. On July 18, 2003, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that increasing the days open was warranted. This action was necessary to conform to the 2003 management goals.

DATES: Adjustment in the area from the Queets River to Cape Falcon, Oregon, effective 0001 hours local time (l.t.), July 26, 2003 through September 30, 2003. Comments will be accepted through September 3, 2003.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the recreational fishery in the area from the Queets River to Cape Falcon to be open 7 days per week effective Friday, July 26, 2003. On July 18 the Regional Administrator determined that available catch and effort data indicated that increasing the days open was warranted. Modification of recreational fishing days per calendar week are authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2003 annual management measures for ocean salmon fisheries (68 FR 23913, May 6, 2003), NMFS announced the recreational fishery in the area from the Queets River to Leadbetter Point, WA (Westport Area) would open June 22 through the earlier of September 14 or a 83,250 coho subarea quota with a subarea guideline of 40,600 chinook, and the area from Leadbetter Point, WA to Cape Falcon (Columbia River Area) would open June 29 through the earlier of September 30 or a 112,500 coho subarea quota with a subarea guideline of 12,700 chinook. Both the Westport and Columbia subareas were scheduled to open Sunday through Thursday during each calendar week.

On July 18, 2003, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook and coho catch rate, and effort data indicated that it was unlikely that the coho quotas or the overall recreational chinook quota north of Cape Falcon would be met. As a result, the states recommended, and the Regional Administrator concurred, that both the Westport and Columbia recreational fishery subareas, which include the area from the Queets River to Cape Falcon, be modified to be open 7 days per week effective Friday, July 26, 2003. All other restrictions that apply to this fishery remain in effect as announced in the 2003 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal

action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (68 FR 23913, May 6, 2003), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery modification must be implemented in order to allow fishers access to the available fish at the time the fish are available. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3). A delay in effectiveness of this action would unnecessarily limit fishers appropriately controlled access to available fish during the scheduled fishing season. The AA also determines that sufficient evidence exists to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(1) as this action relieves a restriction. It relieves a restriction because it expands the recreational fishery from 5 days per week to 7 days per week, and thus provides fishermen with two additional days per week to fish for salmon.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21045 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 160
Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG53

Guaranteed Loans—Rescheduling Terms and Loan Subordinations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to revise the regulations governing the Farm Service Agency (FSA) guaranteed farm loan program. This rule proposes to allow guaranteed loans to be rescheduled with a balloon payment under certain circumstances. Proposed also are provisions to allow low-risk subordinations to be approved by the appropriate Agency personnel at the field level rather than the National Office, allow lenders to make debt installment payments in accordance with lien priorities, payment due dates and cash flow projections, correct a wording error, clarify that packager and consultant fees for servicing of guaranteed loans are not covered by the guarantee, and clarify the amount a lender can bid at a foreclosure sale. The Agency is proposing these changes as a result of input from program participants and problems in administering current provisions. The changes proposed will improve Agency regulations without increasing risk to the Government.

DATES: Comments concerning this proposed rule must be submitted by October 20, 2003 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Address all comments on the rule to Craig Nehls, Branch Chief, Guaranteed Loan Servicing and Inventory Property Branch, Loan Servicing and Property Management Division, FSA, USDA, 1400 Independence Avenue, STOP 0523, Washington, DC 20250–0523; Fax: (202) 690–1196. Comments should reference the volume, date and page number of this issue of the **Federal Register**. You may submit comments via electronic mail to *Joseph_Pruss@wdc.usda.gov,* or at *http://www.regulations.gov.* Public inspection of this rule and all comments are available during regular business hours by contacting the Branch Chief at (202) 720–1984.

FOR FURTHER INFORMATION CONTACT: Joseph Pruss, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–2854; Facsimile: (202) 690–1196; e-mail: *Joseph_Pruss@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities, because it does not require any specific actions on the part of the borrower or the lenders. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601).

Environmental Evaluation

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406 Farm Operating Loans

10.407 Farm Ownership Loans

Discussion of the Proposed Rule

The first proposed change is in section 762.140(d), regarding payment of loan installments. Currently, the regulations require that guaranteed loan installments always be paid before unguaranteed loans held by the same lender. The Agency has found that this requirement is very difficult to implement. In practice the only way the FSA guaranteed loan payment can be made first is if all the payments come due at the same time. A typical farming operation may have payments coming due from several different creditors throughout the year. It is virtually impossible to get all payments structured so that they come due at the same time. The Agency recognizes that in the normal course of business, lien priority, payment due dates and cash flow are the determining factors in deciding the order in which loans are paid. The Agency's original intent was to assure that lenders were not paying non-guaranteed loans at the expense of the guaranteed loan. However, this risk only occurs at liquidation where proceeds will be applied in accordance with lien priority. Outside of a liquidation scenario, all installments would be paid since the loan would usually be in a current status. FSA proposes to change the wording in this section, to allow loan installments to be paid in accordance with lien priority, the due date, and the cash flow projection, in the normal course of business, which is in accordance with actual commercial lending practices. Therefore, the proposed rule states that when it becomes evident that a borrower will be unable to make all installments, the lender will be required to apply payments to the guaranteed loan before unguaranteed loans held by the same lender. The effect will be to maximize collection on the guaranteed loan, and minimize any loss claim. Lenders are responsible for servicing the entire loan in a reasonable manner.

The second proposed change is section 762.142(c)(3)(ii), regarding the Agency's approval requirements for certain subordinations. Currently, the regulations allow the lender to subordinate its interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so another lender can make a loan for annual production expenses. Approval of subordinations for real estate, machinery, and other basic security can only be granted by the Agency's National Office, if such action is in the Agency's best interest. However, there are situations where devolution of this approval authority is justified and would lead to more prompt service to Agency borrowers and lenders. The Agency proposes to place the approval authority at the local level for situations when a lender is simply refinancing existing indebtedness secured by a lien superior to the guaranteed loan, and no additional debt is being incurred. This is often done to allow a borrower to obtain better rates and/or terms on the loan, which in turn helps the borrower meet all of the borrower's loan obligations. There is no additional risk to the guaranteed loan, which remains in the same exact lien and security position after the subordination as it was before the subordination. It is not necessary for subordination requests of this nature to be routed to the Agency's national office, which may result in a time lag for approval or rejection.

The third proposed change is in section 762.144(c)(3)(iii), which discusses the payment of interest on loans which the Agency has repurchased. The proposed change will correct the second sentence where the words ''holder'' and ''lender'' were inadvertently reversed. The holder, not the lender would be requesting the Agency to repurchase the loan, after requesting the lender to repurchase the loan.

The fourth change proposed would allow balloon payments in restructuring guaranteed loans. Section 762.145 governs the restructuring of guaranteed loans, and paragraph (b)(4) of this section specifically prohibits the use of balloon payments in the restructuring process. FSA is proposing to lift this restriction and allow a lender to restructure a guaranteed loan with a balloon payment. This is standard practice in the lending industry, and lenders participating in the guaranteed program have requested the ability to use balloon payments in restructuring. FSA has made numerous administrative policy changes to enable lenders to service guaranteed loans in the same manner they service their non-guaranteed loans. This proposed change would provide lenders with another tool to use in servicing loans guaranteed by FSA, consistent with tools utilized for non-guaranteed loans.

Current regulations allow lenders to use balloon payments when originating loans, but not in loan servicing. Unequal installments can be used in both loan making and loan servicing, and lenders can use both unequal installments and balloon payments in originating a new loan. These tools are used primarily when establishing new enterprises or building facilities, situations where cash flow would be inadequate to support full amortization of the loan for some period of time. These same tools would be helpful, and may be necessary in a rescheduling situation such as recovering from a natural disaster, or a barn fire or other calamity, for instance. Definitions of unequal installments and balloon payments will be added in the FSA Handbook 2–FLP upon publication of the final rule.

To insure that this proposal would not result in additional exposure or loss to the Government, a provision requiring adequate security to be available at the time the balloon payment comes due will be included, in 7 CFR 762.145(b)(4). For real estate security a current appraisal would be required, with depreciation projected to the time the balloon payment is due for depreciable property such as buildings and improvements. Also, for equipment security, a current appraisal will be required. The lender will be required to project the security value of the equipment at the time the balloon payment is due, based on the remaining life of the equipment, or using the depreciation schedule on the borrower's Federal income tax return. Under no circumstances may livestock or crops alone be used as security for a guaranteed loan that is to be rescheduled using a balloon payment.

Allowing the restructuring of loans using a balloon payment schedule does not unduly increase the Government's risk. This change will allow more delinquent borrowers to achieve a feasible plan and ultimately be successful in paying their loans in full. FSA estimates that less than 200 loans per year will be rescheduled with a balloon payment. Currently, when a borrower becomes delinquent, a lender may choose to not continue with the loan since a balloon payment schedule is prohibited. Therefore, a viable operation may have to be liquidated due to limited loan servicing alternatives. Use of a balloon payment under those circumstances will reduce the likelihood that FSA will pay a loss under the guarantee and allow the lender to retain the guarantee. As in the current rule, 7 CFR 762.145(b)(4) permits the lender to allow unequal installments so long as a feasible plan can be projected when the installments are scheduled to increase.

As to the fifth change, FSA proposes to revise the security requirements in section 762.145(b)(7) for loans restructured with balloon payments. This change is necessary to prevent undue risk to the Government from adding balloon payment options as a loan servicing tool. Revising the rule to

permit balloon payments, but retaining the not fully secured position (or no security as long as the lender's security position is not diminished) of the current rule would increase FSA's exposure on loss claims and would be inconsistent with Government policy as expressed in Office of Management and Budget Circular A–129, November 29, 2000, Appendix A, II 3 (OMB Circular A–129). OMB Circular A–129 requires that agencies control the risk and cost of their credit programs and follow sound financial practices which include requiring lenders to have a substantial stake in full repayment in accordance with the loan. See 65 FR 71215. Therefore, FSA proposes to require loans restructured with balloon payments to be fully secured when the balloon payment becomes due.

The sixth proposed change would clarify § 762.149(d) and (i), to provide that packager fees and outside consultant fees for servicing guaranteed loans are not covered by the guarantee, and will not be paid in either the estimated or final loss claim.

Lenders should note that §§ 762.105 and 762.106 contain eligibility requirements for lenders participating in the guaranteed loan program, as well as a description of the classifications of lenders, and specific requirements for lenders in each classification. Under these sections, all lenders are required to have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested. A lender participating in the guaranteed loan program, therefore, should have adequately trained loan officers and analysts on staff to make and service guaranteed loans and should not usually have to rely on outside or contracted individuals to service their loans. Therefore, FSA will not pay any packager or servicing fees for guaranteed loans. At times, a lender may find it necessary to hire outside help to service its loan portfolio, or may find it financially advantageous to have someone from outside the lender analyze the loan portfolio; however the cost of these services will not be passed on to the Government in the event of a loss. It was never the intent of the Agency to cover such fees, and if the Agency were to cover such fees it would be tantamount to paying the lender's labor costs. The Lender's Agreement specifies that liquidation costs do not include the lender's in-house expenses.

The seventh proposed change would clarify § 762.149(h)(3) to specify that if a lender bids at a foreclosure sale, their bid will be either the net recovery value plus the prior lien amount, or the unpaid balance of the loan plus the prior lien amount, whichever is less. Under current regulations the lender has the authority to determine the amount it will bid at the foreclosure sale, starting at the amount which is the lesser between the net recovery value or the unpaid loan balance. Because the lender eventually could bid more than the net recovery value of the property, other potential bidders are discouraged from bidding, thus increasing the probability that the lender will take title to the property. If a lender is then unable to sell the security for at least the net recovery value, plus the expenses of holding and selling the property, under current regulations the lender's loss claim increases accordingly. After this excess bid amount is applied to the borrower's account, the loss claim amount is negotiated, which discourages the lender from taking responsibility for the excess bid.

The proposed rule, which limits the bid amount to the lesser of the net recovery value plus the prior lien or the unpaid loan balance plus the prior lien, will result in decreasing the Government's losses. Decreasing the bid amount will encourage potential bidders to bid on the property, thus increasing the likelihood of reducing the lender's loss claim. In situations where the lender bids an amount more than the lesser of the net recovery plus the prior lien, or the unpaid balance of the debt plus the prior lien, this action may be considered negligent servicing. To the extent that negligent servicing reduces the recovery on the loan, the resulting loss claim will be reduced. The Agency believes that the proposed rule will give lenders the incentive to maximize recovery, thus decreasing Government losses.

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 762 is proposed to be amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

2. Amend § 762.140 by revising paragraph (d) to read as follows:

§ 762.140 General servicing responsibilities.

* * * * *

(d) *Loan installments.* In the normal course of business, loan installments may be paid according to lien priority, payment due date, and where applicable, in accordance with an approved cash flow projection. When it becomes evident that a borrower will be unable to make all installments, guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

3. Amend § 762.142 by designating paragraph (c)(3)(ii) as (c)(3)(iii) and adding a new paragraph (c)(3)(ii) to read as follows:

§ 762.142 Servicing related to collateral.

* * * * *

(c) * * *

(3) * * *

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

* * * * *

4. Amend § 762.144 by revising paragraph (c)(3)(iii) to read as follows:

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

* * * * *

(c) * * *

(3) * * *

(iii) In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

* * * * *

5. Amend § 762.145 by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will

be derived from a current appraisal adjusted for depreciation that occurs until the balloon payment is due. If the loan is rescheduled with unequal installments, a feasible plan, as defined in § 762.102(b), must be projected for when installments are scheduled to increase.

* * * * *

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. A loan restructured with a balloon payment must be projected to be fully secured at the time the balloon payment becomes due, in accordance with paragraph (b)(4) of this section.

* * * * *

6. Amend § 762.149 by adding paragraph (d)(3), revising paragraph (h)(3) and amending paragraph (i)(2) by adding a sentence as follows:

§ 762.149 Liquidation.

* * * * *

(d) * * *

(3) Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated loss claim.

* * * * *

(h) * * *

(3) When it is necessary to enter a bid at a foreclosure sale, the lender will bid the lesser of the net recovery value plus the prior lien or the unpaid guaranteed loan balance plus the prior lien. A lender bid for other than the lesser of the net recovery value plus the prior lien or the unpaid balance of the debt plus the prior lien may be considered negligent servicing, and the resulting loss claim may be reduced to the extent that the negligent servicing reduced the recovery on the loan.

(i) * * *

(2) * * * Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in a final loss claim.

* * * * *

Signed at Washington, DC on August 5, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–21040 Filed 8–18–03; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AH26

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to the Certificate of Compliance. Amendment No. 5 would modify the present cask system design to add another dry shielded canister (DSC), designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask under a general license.

DATES: Comments on the proposed rule must be received on or before September 18, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH26) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@ nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML031820427.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on November 3, 2003. However, if the NRC

receives significant adverse comments by September 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or Technical Specifications.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, and NUHOMS®–32PT.

* * * * *

Dated at Rockville, Maryland, this 1st day of August, 2003.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 03–21149 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15695; Airspace Docket No. 03–AAL–17]

Proposed Establishment of Class E Airspace; Kivilina, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kivilina, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Kivilina Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Kivilina, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kivilina, AK.

DATES: Comments must be received on or before October 3, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15695/ Airspace Docket No. 03–AAL–17, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue,

Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15695/Airspace Docket No. 03–AAL–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Kivilina, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Kivilina, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Kivilina Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 30, original; and (2) RNAV (GPS) Runway 12, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Kivilina, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Kivilina Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kivilina, AK [New]

Kivilina Airport, AK
(lat. 67°44′10″ N., long. 164°33′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kivilina Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 67°16′50″ N 163°46′00″ W, to 67°12′50″ N 163°53′00″ W, to 67°30′00″ N 164°30′00″ W, to point of beginning and that airspace extending upward from 1,200 feet above the surface between Federal Colored Airway Blue 2 and Victor Airway V531 south of a line at 68°10′00″ N to the point at which B2 and V531 join at 67°19′50″ N, 163°28′00″ W, excluding that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on August 11, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–21224 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–140378–01]

RIN 1545–BA22

Property Exempt From Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to regulations relating to property exempt from levy, currently published under Internal Revenue Code section 6334. The regulation has been revised to provide guidance with respect to the following items and reflect changes made by the IRS Restructuring and Reform Act of 1998 (RRA 98): procedures for obtaining prior judicial approval of certain principal residence levies; exemption from levy for certain residences in small deficiency cases and for certain business assets in the absence of administrative approval or jeopardy; applicable dollar amounts for certain exemptions and the relevant dates for calculating the inflation adjustment for certain exemptions; and changes in titles of certain employees as a result of the reorganization of the IRS mandated by that Act. The proposed regulations also permit levy on certain specified payments with the prior approval of the Secretary, reflecting changes made by the Taxpayer Relief Act of 1997.

DATES: Written comments and requests for a public hearing must be received by November 17, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–140378–01), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:PA:RU (REG–140378–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Robin Ferguson at (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code of 1986. The proposed regulations provide guidance on the amendments to section 6334 made by the IRS Restructuring and Reform Act of 1998 (Public Law 105–206)(RRA 98), and the Taxpayer Relief Act of 1997 (Public Law 105–34)(TRA 97).

Explanation of Provisions

Overview

Section 6334 enumerates items of property exempt from levy and provides special rules for levies. In RRA 98, Congress amended section 6334 and created new requirements for levy upon certain residential property and business assets. Specifically, section 6334 was amended to provide for an exemption, in small deficiency cases, from levy for certain real property used as a residence by any individual; to require judicial approval of the levy of certain principal residences; to require administrative approval of the levy of certain business assets; to increase certain exemption amounts; and to make certain conforming amendments. RRA 98 also mandated an IRS reorganization, which changed or eliminated certain position titles. TRA 97 amended section 6334 to provide that certain payments shall not be exempt from levy if the Secretary approves. The proposed regulations provide guidance on each of these provisions.

Levy Exemption for Residences in Small Deficiency Cases

As amended, section 6334(a)(13) provides an exemption from levy for any real property used as a residence by the taxpayer or any other individual (except for real property that is rented) if the amount of the levy does not exceed $5,000. The proposed regulations provide guidance on this exemption.

Judicial Approval for Levies of Certain Principal Residences

Prior to RRA 98, section 6334(a)(13) provided that the principal residence of the taxpayer, within the meaning of section 121, was exempt from levy in the absence of jeopardy or certain approval. Section 6334(e) permitted levy if an IRS district director or assistant district director personally approved, in writing, the levy of property, or the Secretary determined that the collection of tax was in jeopardy.

As amended, section 6334(a)(13)(B)(i) provides that the principal residence of the taxpayer, within the meaning of section 121, is exempt from levy except to the extent provided in section 6334(e). Section 6334(e)(1)(A) provides that a principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves, in writing, the levy of such residence. Section 6334(e)(1)(B) provides that the district courts of the United States shall have exclusive jurisdiction to approve such levy. Accordingly, judicial approval is required prior to levy of a taxpayer's principal residence (hereinafter referred to as the section 6334(e)(1) proceeding).

The Conference Report for RRA 98 states that no seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse, or minor child will be allowed without prior judicial approval. The Conference Report further provides that notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. The Conference Report also states that at the judicial hearing, the Secretary will be required to demonstrate (1) that the requirements of any applicable law or administrative procedures relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists. IRS Restructuring and Reform Act of 1998, Conference Report to Accompany H.R. 2676, H.R. Conf. Rep. No. 105–599, 105th Cong., 2d Sess., at 267.

With respect to whether a liability is owed, these proposed regulations interpret the legislative history to require the IRS to demonstrate only that an assessed liability has not been satisfied. The proposed regulations specifically do not require the IRS to demonstrate the merits of the underlying liability. Treasury and the IRS have concluded that the purpose of a section 6334(e)(1) proceeding is to determine whether the proposed seizure is appropriate rather than to afford the taxpayer with an additional opportunity to contest the merits of the underlying tax liability. As discussed below, a section 6334(e)(1) proceeding, therefore, looks to whether the IRS has followed applicable law and procedural rules relating to the levy and the existence of reasonable collection alternatives, in addition to whether an unsatisfied liability exists. Other provisions of the Code, such as the deficiency procedures for income taxes, provide taxpayers with the opportunity to challenge the merits of an asserted liability. In the levy context, section 6330 gives taxpayers the right to request a hearing prior to levy, including levies that also are the subject of a section 6334(e)(1) proceeding. Section 6330(c)(2)(B) specifically gives the taxpayer the right

to challenge the merits of the underlying liability if the taxpayer did not receive the statutory notice of deficiency or did not otherwise have an opportunity to dispute the tax liability. In contrast, nothing in section 6334(e)(1) indicates that Congress intended to provide a taxpayer with a further opportunity to contest the merits of the underlying tax liability.

Consistent with the language of section 6334(e)(1) and the legislative history, the proposed regulations provide that judicial approval is required prior to levy of the principal residence of the taxpayer, taxpayer's spouse, taxpayer's former spouse, or taxpayer's minor child. Also in accordance with this legislative history, the proposed regulations provide that the Government will request that the taxpayer be given notice and an opportunity to participate in the section 6334(e)(1) proceeding.

The Government will initiate the section 6334(e)(1) proceeding by filing with a district court of the United States a petition seeking judicial approval of a principal residence levy. In its petition, the Government will set forth its prima facie case by demonstrating that (1) The underlying tax liability has not been satisfied, (2) the requirements of any applicable law or administrative procedure relevant to the levy have been met, and (3) no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and a notice of hearing.

The taxpayer will be granted a hearing to rebut the Government's prima facie case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that (1) The assessed tax liability has been satisfied, (2) the taxpayer has other assets from which the liability can be satisfied, or (3) the IRS did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer makes a timely and appropriate showing, the court would be expected to enter an order approving the levy of the principal residence property.

If the property to be levied is the principal residence of the taxpayer's spouse, former spouse, or minor child, the Government will send each such person a letter providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence and/or what such person's relationship is to the taxpayer, a letter will be addressed to ''Occupant''. The purpose of the letter is to make the family members aware that their living arrangements may be placed in jeopardy if the court approves levy of the principal residence property.

The proposed regulations provide that family members who receive notice of the commencement of a section 6334(e)(1) proceeding may not be joined as parties to the proceeding. As noted above, Treasury and the IRS believe that the purpose of such notification is to ensure that family members living at the residence that is the subject of the proposed levy understand that their living arrangements may be placed in jeopardy. A levy by the IRS, however, can reach only the taxpayer's interest in property. The property rights (if any) of family members living at the residence are outside of the scope of that levy and are not at issue when an order approving the levy is sought from the court. Accordingly, because only the taxpayer's property rights are at issue in a section 6334(e)(1) proceeding, the proposed regulations do not permit other family members to contest a request for judicial approval of a principal residence levy. This rule is similar to those for actions by the IRS to foreclose on tax liens on property under section 7403. In those actions, the Government names as defendants all individuals who may claim an interest in the property; residents who do not otherwise have a legal interest in property, such as by co-tenancy, are not named as defendants.

The proposed regulations incorporate the procedures for obtaining judicial approval of a principal residence levy.

Prior Approval of Levies of Certain Business Assets

In enacting RRA 98, Congress created new approval requirements for levies of certain business assets. Specifically, Congress enacted new section 6334(a)(13)(B)(ii), which provides that, except to the extent provided in section 6334(e), tangible personal property or real property (other than real property that is rented) used in the trade or business of an individual taxpayer shall be exempt from levy. Section 6334(e) was amended to provide that such property shall not be exempt from levy if a district director or assistant district director of the IRS personally approves (in writing) the levy of such property, or the Secretary finds that the collection of tax is in jeopardy. Section 6334(e)(2) of the Internal Revenue Code (Code). Section 6334(e) was further amended to provide that an official may not approve such levy unless the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.

RRA 98 section 3445(c)(1) clarifies that, with respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term other assets as used in section 6334(e)(2) includes future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit. RRA 98 section 3445(c)(2) provides that section 3445(c)(1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in such permits is not property or a right to property under the Code.

The proposed regulations provide guidance on the current requirements of section 6334(e) relating to the procedures for approval of the levy of certain business assets.

Exemption Amounts and Conforming Amendments

In RRA 98, Congress amended section 6334(a)(2) and (a)(3) to increase the applicable exemption dollar amounts (which are indexed for inflation). Congress also enacted a conforming amendment to section 6334(g)(1) to revise the dates to be used in calculating the inflation adjustment to the section 6334(a)(2) and (a)(3) exemptions. The proposed regulations provide guidance on these provisions.

IRS Reorganization

Pursuant to the reorganization of the IRS after RRA 98, the titles of district director and assistant district director cited in section 6334(e)(2)(A) no longer exist. The proposed regulations replace these titles with the current title, which is Area Director.

Levy on Certain Payments

In TRA 97, Congress amended section 6334 by adding new section 6334(f) and redesignating former section 6334(f) as section 6334(g). Section 6334(f) provides that any payment described in section 6331(h)(2)(B) or (h)(2)(C) (certain payments upon which continuous levy may be authorized) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h). The proposed regulations provide guidance on this provision.

Proposed Effective Dates

The proposed regulations will apply on the date corresponding final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the proposed regulations is Robin Ferguson of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

Lists of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 301.6334–1 is amended as follows:

1. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), and (f) are revised.

2. Paragraphs (g) and (h) are added.

The revisions and additions read as follows:

§ 301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $6,250 in value.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $3,125 in value.

* * * * *

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of that taxpayer's minor children, so much of that taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Service is not required to release a levy until such time as it is established that the amount to be released from levy actually will be applied in satisfaction of the support obligation. The Service may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period that shall be exempt from levy, for purposes of complying with a support obligation. If the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy, at the discretion of the Service, may be allocated entirely to one salary, wage or source of other income or be apportioned between the several salaries, wages, or other sources of income.

* * * * *

(13) *Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy*—(i) Residences in small deficiency cases. If the amount of the levy does not exceed $5,000, any real property used as a residence of the taxpayer or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(ii) *Principal residences and certain business assets.* Except to the extent provided in section 6334(e), the principal residence (within the meaning of section 121) of the taxpayer and tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

* * * * *

(d) *Levy allowed on principal residence.* The Service will seek approval, in writing, by a judge or magistrate of a district court of the United States prior to levy of property that is owned by the taxpayer and used as the principal residence of the taxpayer, the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child.

(1) *Nature of judicial proceeding.* The Government will initiate a proceeding for judicial approval of levy on a principal residence by filing a petition with the appropriate United States District Court demonstrating that the underlying liability has not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and will also ask the court to issue a notice of hearing.

(2) The taxpayer will be granted a hearing to rebut the Government's prima facie case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the Service did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer files a timely and appropriate objection, the court would be expected to enter an order approving the levy of the principal residence property.

(3) *Notice letter to be issued to certain family members.* If the property to be

levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the Government will send a letter to each such person providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence property and/or what such person's relationship is to the taxpayer, a letter will be addressed to ''Occupant''. The purpose of the letter is to provide notice to the family members that the property may be levied. The family members may not be joined as parties to the judicial proceeding because the levy attaches only to the taxpayer's legal interest in the subject property and the family members have no legal standing to contest the proposed levy.

(e) *Levy allowed on certain business assets.* The property described in section 6334(a)(13)(B)(ii) shall not be exempt from levy if—

(1) An Area Director of the Service personally approves (in writing) the levy of such property; or

(2) The Secretary finds that the collection of tax is in jeopardy. An Area Director may not approve a levy under paragraph (e)(1) of this section unless the Area Director determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceeding. When other assets of an individual taxpayer include permits issued by a State and required under State law for the harvest of fish or wildlife in the taxpayer's trade or business, the taxpayer's other assets also include future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(f) *Levy allowed on certain specified payments.* Any payment described in section 6331(h)(2)(B) or (C) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

(g) *Inflation adjustment.* For any calendar year beginning after 1999, each dollar amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (using the language ''calendar year 1998'' instead of ''calendar year 1992'' in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

(h) *Effective date.* This section will apply as of the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–20473 Filed 8–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R

RIN 0720–AA86

TRICARE Program; Coordination of Benefits Between TRICARE and the Department of Veterans Affairs

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: Under current rules, beneficiaries who are eligible for both TRICARE and Department of Veterans Affairs (VA) benefits may use only one program for care but cannot use both at the same time. This proposed rule changes that policy to establish VA benefits as double coverage under TRICARE, so that beneficiaries may use TRICARE benefits to augment or replace services being provided through the VA.

DATES: Public comments must be received by October 20, 2003.

ADDRESSES: Forward comments to: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3572.

SUPPLEMENTARY INFORMATION:

Coordination of TRICARE and the Department of Veterans Affairs Benefits

According to 10 USC 1086(g) TRICARE is to ensure ''that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs''.

In applying this statutory provision, TRICARE has established a policy that would ensure free access to care under either program and continuity of care for beneficiaries while also ensuring that TRICARE and the Department of Veterans Affairs (VA) do not duplicate benefits. This policy allows beneficiaries to use either TRICARE or the VA for any episode of care, but they cannot use both. Often beneficiaries make the choice of which program to use, not by any definitive action, but simply by going first to either TRICARE or the VA for care. Once that is done, the other program cannot be involved. For example, if a beneficiary experiences back pain and goes to the VA for care, the beneficiary must then receive all care related to that back pain from the VA. If the beneficiary subsequently goes to a civilian physician for the back pain and submits a claim to TRICARE, TRICARE will deny the claim.

This limitation on care has been based on ''episodes of care'' which has never been fully defined under TRICARE, in either the regulation or any TRICARE manual. It is generally accepted to be all care related to a single injury or illness, but it has been left to the TRICARE managed care support contractors to actually determine what constitutes an episode of care when a claim is received that might be subject to this limitation. There has also not been any universal policy as to when an episode of care ends. Using the previous example of the beneficiary with back pain, if the beneficiary goes for thirty days without receiving any care for the back pain, does that end the episode of care? Should it be sixty days? Or ninety days? The end of the episode of care is important, because the limitation on using only TRICARE or the VA applies only to episodes of care. That is, if the beneficiary has elected to use the VA for one episode of care, the beneficiary can elect to use TRICARE for a different episode of care. That episode of care can overlap the initial episode of care if it is for a totally different injury or illness. If it is for the same injury of illness, an appropriate amount of time must have passed without the beneficiary receiving any care.

As noted above, this policy was established in order to ensure continuity of care for our beneficiaries and to ensure there was no duplication of care or payments between TRICARE and the VA. If a beneficiary is receiving care from the VA for an injury or illness, a plan of care will have been established by the VA provider, and subsequently receiving care from a different provider under TRICARE, who might decide on a different course of treatment, may actually negatively impact the beneficiary's progress. At the very least

the services from the second provider would probably be duplicative and result in unnecessary expenditures by TRICARE.

This policy has caused few problems, but there have been cases where a beneficiary has been dissatisfied with the care he/she was receiving from either TRICARE or the VA and has wanted to switch to the other program to receive services for the same episode of care. They have been unable to do so.

Section 708 of the National Defense Authorization Act for FY 2003 (Pub. L. 107–314) addresses this issue. Although it makes no change to the statutes that govern TRICARE (10 U.S.C. Chapter 55), it directs the Secretary of Defense to (1) take actions to establish a process for coordinating care between TRICARE and the VA that ensures patient safety and continuity of care while preventing diminution of access to health care from either source, and (2) prescribe a clear definition of an episode of care for use in the process of coordinating care between TRICARE and the VA.

In analyzing how best to establish this process, we have decided to change our basic policy rather than defining episode of care. By changing our policy we will ensure that no one is inadvertently denied access to care under TRICARE for which they also can receive treatment in a VA facility.

Any attempt to establish a workable definition of episode of care would require some specific and arbitrary end date which undoubtedly would be detrimental to some individual case. We also believe that there are few cases that actually are affected by this policy. For the vast majority of cases, beneficiaries decide to use either TRICARE or the VA for reasons that are important to them, and they are satisfied with continuing to receive their care from the same source.

Therefore, we propose to change our policy to include care from VA medical care facilities under the definition of double coverage for TRICARE. In support of the policy explained above, the TRICARE regulation (32 CFR Part 199) currently states that TRICARE double coverage plans do not include entitlement to receive care from VA medical care facilities. Most other coverages (insurance, medical service or health plans) are considered double coverage, which means that a beneficiary simply must submit a claim for services or supplies to the double coverage plan first. After the double coverage makes payment, TRICARE will process the claim and usually will pay the remaining liability on the claim.

The effect of our proposed change will be to enable individuals who are receiving care from the VA to change to care under TRICARE for the same episode of care. Under this policy the VA will be responsible for payment for the services they provide, either directly through their medical care facilities or through a basic ordering agreement with a civilian provider. A claim can then be submitted to TRICARE for reimbursement of any VA cost-shares. At the same time, the beneficiary may choose to receive care from a civilian provider for the episode of care that has not been arranged by the VA. Claims for this care, so long as it is medically necessary, can be submitted to TRICARE, and they will be reimbursed.

This policy eliminates the need for an arbitrary definition of an episode of care, and it ensures full freedom of choice for beneficiaries who have entitlement to both TRICARE and VA benefits. While there may be some remaining issue regarding continuity of care and duplicative care for a very few cases, this is largely mitigated by the fact that many TRICARE beneficiaries are enrolled in TRICARE Prime. Under Prime, all care is coordinated by an assigned Primary Care Manager who can ensure that any care received under TRICARE does not interfere with or duplicate care being provided by the VA.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2 is proposed to be amended by revising the definition *double coverage plan* as follows.

§ 199.2 Definitions.

* * * * *

(b) * * *

* * * * *

Double coverage plan. The specific insurance, medical service or health plan under which a CHAMPUS beneficiary has entitlement to medical benefits that duplicate CHAMPUS benefits in whole or in part. Double coverage plans do not include;

(i) Medicaid.

(ii) Coverage specifically designed to supplement CHAMPUS benefits.

(iii) Entitlement to receive care from the Uniformed Services medical facilities;

(iv) Part C of the Individuals with Disabilities Education Act for services and terms provided in accordance with Part C of the IDEA that are medically or psychologically necessary in accordance with the Individualized Family Service plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

* * * * *

3. Section 199.8 is proposed to be amended by redesignating existing paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5) respectively, and adding a new paragraph (b)(3) to read as follows:

§ 199.8 Double coverage plan.

* * * * *

(b) * * *

(3) Entitlement to receive care from VA medical care facilities.

* * * * *

Dated: August 12, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21012 Filed 8–18–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AJ25

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–2005 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2004–2005 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2003–2004 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on June 30, 2004. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of wildlife.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 24, 2003. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule on several dates starting from September 9, 2003–October 14, 2003. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings including dates.

ADDRESSES: You may submit proposals electronically to *Subsistence@fws.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board), through the Regional Councils, will hold meetings on this proposed rule at the following locations and on the following dates in Alaska:

Region 1—Southeast Regional Council	Craig	October 5, 2003.
Region 2—Southcentral Regional Council	Talkeetna	October 7, 2003.
Region 3—Kodiak/Aleutians Regional Council	King Cove	September 18, 2003.
Region 4—Bristol Bay Regional Council	Dillingham	September 29, 2003.
Region 5—Yukon-Kuskokwim Delta Regional Council	Wasilla	October 12, 2003.
Region 6—Western Interior Regional Council	Wasilla	October 12, 2003.
Region 7—Seward Peninsula Regional Council	Nome	September 25, 2003.
Region 8—Northwest Arctic Regional Council	Kotzebue	October 2, 2003.
Region 9—Eastern Interior Regional Council	Wasilla	October 14, 2003.
Region 10—North Slope Regional Council	Barrow	September 9, 2003.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings. The agenda of each Regional Council meeting will include a review of wildlife issues in the Region, discussion and development of recommendations on fishery proposals for the Region, and staff briefings on matters of interest to the Council.

Electronic filing of comments (preferred method): You may submit electronic comments (proposals) and other data to *Subsistence@fws.gov.* Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During November 2003, we will compile the written proposals to change Subpart D hunting and trapping regulations and customary and traditional use determinations in Subpart C and distribute them for additional public review. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on January 5, 2004.

We will hold a second series of Regional Council meetings in February and March 2004, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage in May 2004. You may provide additional oral testimony on specific proposals before the Board at that time. At that public meeting, the Board will then deliberate and take final action on proposals received that request changes to this proposed rule.

Please Note: The Board will not consider proposals for changes relating to fish or shellfish regulations at this time. The Board will be calling for proposed changes to those regulations in January 2004.

The Board's review of your comments and wildlife proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which you are suggesting changes; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional

information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in §_____.24, Subpart C and §§_____.25 or _____.26, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised February 18, 2003 (68 FR 7703), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2003) and 50 CFR 100.11 (2003), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2004.

Proposed Changes from 2003–2004 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§_____.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2003–2004 Subparts C and D final rule, without modification, served as the foundation for the 2004–2005 Subparts C and D proposed rule. The regulations contained in this proposed rule would take effect on July 1, 2004, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance: A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations

for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940; May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and has therefore signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA: A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act: This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned control number 1018–0075, which expires July 31, 2003. On July 3, 2003, we submitted our request for OMB renewal of 3-year approval of this information collection (68 FR 2347). We will not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects: This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value Statewide.

Regulatory Flexibility Act: The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630: Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act: The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988: The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132: In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Government-to-Government Relations with Native American Tribal Governments: In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Energy Effects: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information: William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Dennis Tol, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife

Service; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2004–05 regulatory year. The text of the amendments would be the same as the final rule for the 2003–04 regulatory year published in the **Federal Register** of 68 FR 38464, June 27, 2003.

Dated: July 28, 2003.

Peggy Fox,

Acting Chair, Federal Subsistence Board.

Dated: July 23, 2003.

Steve Kessler,

Subsistence Program Manager, USDA-Forest Service.

[FR Doc. 03–21121 Filed 8–18–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 397

[Docket No. FMCSA–97–2180; formerly FHWA–97–2180]

RIN 2126–AA07

Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: The FMCSA proposes to establish a safety permit program for motor carriers that transport any of the following hazardous materials in interstate or intrastate commerce: a highway route-controlled quantity of a Class 7 (radioactive) material; more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material; more than one liter (1.08 quarts) per package of a material in Division 2.3, Packing Group I, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; and a shipment of compressed or refrigerated liquid methane or natural gas in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases. As part of this safety permit program, FMCSA proposes to consider additional ''acute'' and ''critical'' regulations relevant to its determination of a carrier's safety fitness rating and, accordingly, the issuance of a safety permit.

This rulemaking would implement requirements in Federal hazardous material transportation law that DOT must establish a safety permit program and a motor carrier must hold a safety permit in order to transport certain hazardous materials in commerce. This rulemaking would also carry out a statutory provision to issue regulations requiring a pre-trip inspection and certification of a motor vehicle used to transport a highway route controlled quantity of a Class 7 (radioactive) material.

This rulemaking would also announce the agency's decision to not prescribe a uniform permitting system for intrastate transportation of hazardous materials, as proposed in the 1993 notice of proposed rulemaking to this action. Specifically, FMCSA would not require States that issue permits for the intrastate transportation of hazardous materials to use uniform forms and procedures, or to require each State to register all persons who transport hazardous materials—or cause hazardous materials to be transported—intrastate by motor vehicle. FMCSA believes that it is not possible to devise a uniform system that would satisfactorily anticipate, address and resolve the myriad of permitting challenges and concerns that are unique to individual States.

This proposed rule, if promulgated, will promote the safe and secure transportation of the designated hazardous materials and enhance motor carrier safety.

DATES: Comments must be received on or before October 20, 2003.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Dockets Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comments. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., *e.t.,* Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* by typing the last four digits of the docket number appearing in the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the closing date will be included in the docket, and FMCSA will consider late-filed comments to the extent practicable. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. James Simmons, (202) 493–0496, Hazardous Materials Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Background

Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* was enacted ''to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce * * *''. Certain provisions of this law, including sections 5105(e), 5109, and 5119, apply only to the transportation of hazardous material by motor vehicle. The authority for implementing these provisions (except section 5109(f)) has been delegated to FMCSA under 49 CFR 1.73(d)(2)). (This authority was transferred from the Federal Highway Administration (FHWA) to a separate Office of Motor Carrier Safety, 64 FR 56270 (Oct. 19, 1999), which became FMCSA on January 1, 2000. *See* 64 FR 72959 (Dec. 29, 1999), and 65 FR 220 (Jan. 4, 2000)).

Section 5105(e) provides that DOT ''shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations.'' This section also provides that DOT ''may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.'' The definition of a ''highway route controlled quantity'' of a Class 7 (radioactive) material is set forth at 49 CFR 173.403, in terms of the activity level of the radioactive material in a single package. In general, this is a quantity that emits high levels of radioactivity and, accordingly, the packaging, hazard communication, and operating requirements that apply to a shipment of a highway route controlled quantity of a Class 7 material are intended to both adequately identify the presence of this material and ensure that the packaging will withstand normal transportation conditions and foreseeable accidents, without a breach of containment integrity.

Section 5109 requires DOT to issue regulations for safety permits for transporting certain hazardous materials. A motor carrier must hold a safety permit issued by DOT, and keep a copy of the permit or other proof of its existence in the vehicle, in order to transport certain hazardous materials in commerce or cause such materials to be transported in commerce by motor vehicle. 49 U.S.C. 5109(a). A person may not offer such hazardous materials for motor vehicle transportation in commerce unless the motor carrier has a safety permit. 49 U.S.C. 5109(f).

Under section 5109(b), a safety permit is required for the following four hazardous materials, above threshold amounts established by DOT, but DOT may also prescribe additional hazardous materials, and the amount of each, to be subject to the safety permit requirement:

1. A Class A or B explosive (now Division 1.1, 1.2, or 1.3 explosive);
2. Liquefied natural gas;
3. Hazardous material designated as extremely toxic by inhalation; and
4. A highway route controlled quantity of radioactive material.

Other provisions in section 5109 require DOT to issue regulations for issuing safety permits, including application procedures; the duration, term, and limitations of a safety permit; other conditions needed to protect public safety; and procedures to amend, suspend, or revoke a safety permit. In order to issue a safety permit, DOT must find that the motor carrier is fit, willing, and able to (1) Provide the transportation to be authorized by the safety permit; (2) comply with Federal hazardous material transportation law and DOT's regulations under that law; and (3) comply with applicable Federal motor carrier safety laws and applicable minimum financial responsibility laws and regulations. 49 U.S.C. 5109(a).

Section 5119 directed DOT to establish a working group of State and local government officials to make recommendations to DOT with respect to uniform forms and procedures for a State ''to register persons that transport or cause to be transported hazardous material by motor vehicle in the State'' and ''to allow the transportation of hazardous material in the State,'' including ''whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business.'' After receiving a final report from the working group, DOT ''shall prescribe regulations to carry out the recommendations contained in the [final] report * * * with which the Secretary agrees.''

Prior Proceedings

On June 17, 1993, the Federal Highway Administration (FHWA) published in the **Federal Register** a notice of proposed rulemaking to establish a safety permit program covering the four hazardous materials specified in 49 U.S.C. 5109(b), including the requirement for a pre-trip inspection of a motor vehicle to be used to transport a highway route controlled quantity of Class 7 (radioactive) material. 58 FR 33418. In response to that notice, FHWA received more than 50 written comments, and these comments have been considered in the preparation of this SNPRM, as discussed below.

On November 17, 1993, the Alliance for Uniform HazMat Transportation Procedures (Alliance), established under 49 U.S.C. 5119, transmitted its recommendations to DOT, and it submitted its final report to DOT on March 15, 1996. According to the Alliance, ''[a]ll but nine states have some type of permitting and/or registration program for hazardous materials transportation.'' November 17, 1993 Report, p. 2–7. The Alliance recommended that DOT:

1. Explore options for consolidating State registration programs with the Federal registration program (applicable to shippers and carriers by all modes and administered by DOT's Research and Special Programs Administration (RSPA), under 49 U.S.C. 5108);
2. Consider waiving the Federal requirement for a safety permit for a motor carrier that obtains a permit under a uniform State permit program; and
3. Promote a one-stop repository for up-to-date information on hazardous materials routing designations.

In its final report, the Alliance described a two-year pilot project carried out in four States (Minnesota, Nevada, Ohio, and West Virginia) of a ''base-state'' system for registration and collection of fees and reciprocity between States that require permits.

FHWA decided not to proceed with further rulemaking action to implement the requirements in 49 U.S.C. 5109 and 5105(e) until it had considered the final report and recommendations of the Alliance. In its July 9, 1996 notice published in the **Federal Register** (61 FR 36016), FHWA (1) summarized the Federal permit and registration requirements in the Federal hazardous material transportation law, (2) discussed the activities and recommendations of the Alliance, and (3) invited comments on the Alliance's final report and recommendations. In a supplemental notice published in the **Federal Register** on March 31, 1998 (63 FR 15362), FHWA discussed the comments received in response to its July 9, 1996 notice and directed a series of additional questions to State agencies and motor carriers. Only 11 States responded to the notice, and they did not reach a clear consensus on the direction FHWA should take. State designations and restrictions of highway routes for transporting hazardous materials have been published in the **Federal Register** on June 9, 1998 (63 FR 31549), and Dec. 4, 2000 (65 FR 75771), and are maintained on FMCSA's Internet Web site at *http://hazmat.fmcsa.dot.gov.*

DOT has asked Congress to amend or repeal 49 U.S.C. 5109 three times since 1997, because ''many States have different permit requirements'' for carriers of hazardous materials and because the agency believed it had appropriate safety monitoring systems in place to address unsafe carriers transporting these materials. In addition, the pilot project under 49 U.S.C. 5119 revealed that a uniform permit system will not likely resolve different States' concerns that their needs will be met, and raises additional concerns related to unnecessary preemption and expenses of a parallel Federal permitting system. In place of a Federal safety permit, DOT proposed that it should be authorized to continue

its safety monitoring of carriers transporting hazardous materials and consider alternative means of enhancing safety in motor carrier transportation of hazardous materials, by such means as additional monitoring of the safety performance of carriers and performing a safety review of ''new entrants'' within 18 months of the date when the carrier begins operations. (On May 13, 2002, FMCSA published an interim final rule in the **Federal Register** establishing minimum requirements for new entrant motor carriers. The rulemaking seeks to ensure that they are knowledgeable about the applicable Federal regulations and advises that FMCSA will conduct a safety audit as soon as the new entrant has been in operation for enough time (generally, at least three months) to have sufficient records to evaluate the carrier's basic safety management controls. 67 FR 31978.)

The SNPRM

Congress has not eliminated the statutory requirement for a Federal safety permit. Accordingly, the FMCSA is issuing a revised proposal in this SNPRM. The FMCSA invites all interested persons to comment on this revised proposal and hopes to issue a final rule that will phase in the requirement for a safety permit over the 2005–2006 time period as motor carriers submit or update their Motor Carrier Identification Report (Form MCS–150) (according to the schedule set forth in 49 CFR 390.19(a)).

Hazardous Materials for Which a Safety Permit Would Be Required

In the 1993 NPRM, FHWA proposed that a motor carrier would be required to hold a safety permit in order to transport in commerce any of the four hazardous materials specified in 49 U.S.C. 5109(b), in the same threshold quantities for which the carrier must submit a registration statement and pay a registration fee under 49 U.S.C. 5108(a)(1)(A)–(D):

1. A highway route-controlled quantity of a Class 7 (radioactive) material;

2. more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material;

3. more than one liter (1.08 quarts) per package of a poisonous-by-inhalation (PIH) material in Division 2.3, Packing Group I, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; and

4. a shipment of compressed or refrigerated liquid methane or natural gas in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

Accordingly, the motor carriers required to hold a safety permit would be a subset of the carriers required to register and pay a registration fee, and no carrier that did not have to register would be required to hold a safety permit. In this SNPRM, FMCSA is proposing the same scope of the safety permit requirement, with the following modifications from the proposals in the NPRM:

—For motor carriers already transporting these materials in interstate or intrastate commerce, there would be a two-year phase-in period to obtain a safety permit based on the schedule in 49 CFR 390.19(a) for submitting or updating the Motor Carrier Identification Report (Form MCS–150). Also, there would not be a separate three-year phase-in period for motor carriers who transport explosives, based on the amount of explosives transported in a single shipment, as proposed in the 1993 NPRM.

—Liquefied natural gas would include all liquefied gases having a methane content of at least 85%.

In response to the 1993 NPRM, several commenters supported limiting the scope of the safety permit requirement to the materials specified in the statute. The Edison Electric Institute (EEI) stated that the requirement to hold a safety permit should not be extended to additional classes and quantities of hazardous materials ''unless and until DOT gathers substantial evidence that such extension would significantly enhance transportation safety,'' based on its view that this requirement ''would impose additional administrative burdens on affected motor carriers and on FHWA.'' EEI quoted the statement from DOT's comments on H.R. 3520, which became the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101–615, 104 Stat. 3244 (Nov. 16, 1990), that ''it is essential to begin with a limited permitting program that is administratively practicable, and then consider expanding the program, as determined necessary.'' House Report No. 101–444, Committee on Energy and Commerce, 101st Cong., 2d Sess., pp. 66–67 (April 3, 1990).

The Chemical Waste Transportation Institute (CWTI) recommended that the requirement for a safety permit be broadened to cover all motor carriers required to register and pay a registration fee under 49 U.S.C. 5108. CWTI stated that any motor carrier that transports a quantity of hazardous material for which a placard is required ''should have a safety rating to demonstrate that [its] safety rating is above ''unsatisfactory,''' and the ''only 'new' administrative burden would be that created by the requirement to 'review' each subject motor carrier's rating every three years.''

Two commenters, Tri-State Motor Transport Co. (Tri-State) and the International Brotherhood of Teamsters, suggested that a safety permit should be required for motor carriers that transport any hazardous materials, without specifying any threshold amounts. According to Tri-State, ''the sooner the program is expanded to cover all hazardous materials the more effect it will have in reaching this goal.'' The Teamsters noted that ''all classes of hazmat'' are involved in hazardous materials incidents.

Additional comments addressed the specific hazardous materials for which a safety permit would be required. With respect to explosives, a construction industry association stated that a safety permit should be required only for a carrier that transports large quantities of explosives ''from manufacturer to the supplier,'' and that ''[e]xisting OSHA regulations can cover the transportation'' by a contractor who used explosives at a specific jobsite, because the 25 kg threshold ''is often transported in a small 'pick-up' type truck.'' The American Pyrotechnics Association (APA) stated that requiring a safety permit to transport more than 25 kg of Division 1.3 G explosives (including ''display'' fireworks) would present ''unnecessary burdens'' for this industry. APA referred to the seasonal nature of this industry (around July 4), its ''excellent safety record'' as reflected in the few incidents in RSPA's Hazardous Materials Information System, and other requirements such as: (1) provisions in the Hazardous Materials Regulations (HMRs, 49 CFR parts 171–180) on training of hazmat employees, and (2) the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) for the driver to have a commercial driver's license with a hazmat endorsement. APA stated that a requirement for a safety permit ''will do nothing to enhance public safety beyond that which will be achieved through the [hazmat] training,'' and it expressed concerns that States will develop separate programs ''with duplicative permit requirements and unnecessary, burdensome paperwork.'' APA asked for a delay in the effective date of the safety permit program for carriers of explosives, while the Idaho State Police opposed any extension of the three-year phase-in period. Tri-State also recommended reducing the three-year phase-in period.

In the NPRM, FHWA proposed to limit the poisonous inhalation (PIH) materials for which a safety permit would be required to those Packing Group I materials in Hazard Zone A. However, it asked for information on materials in Hazard Zone B and whether the safety permit requirement ''should be expanded to include the transportation of [PIH] Hazard Zone B hazardous materials,'' which ''include such widely distributed chemicals as chlorine, hydrogen sulfide, ethylene oxide, and nitric oxide, to name a few.'' (58 FR at 33420). Two State police forces recommended including Hazard Zone B materials (California) or giving further consideration to Hazard Zone B materials (Idaho); with Idaho suggesting that ''safety is a greater concern under the safety permit program than under the registration program,'' so that the reasons for not requiring registration by carriers of smaller amounts of Hazard Zone B materials (in a bulk container with a capacity less than 3,500 gallons) should not apply to the requirement for a safety permit. Three other commenters opposed expanding the safety permit requirement to Hazard Zone B materials, including the Oregon Public Utilities Commission, which stated that safety would not be increased by requiring a safety permit for ''all movements of chlorine'' and ''many pesticide movements.''

Many comments addressed the proposal to require a safety permit to transport ''liquefied natural gas,'' including the gases covered by that term. Several persons said that the NPRM was ambiguous and could be read to cover all Division 2.1 materials that can be a ''liquid natural gas'' and all liquid fuels derived from natural gas. Air Products and Chemicals, Inc. stated that ''liquefied petroleum gases and natural gas liquids represent at least comparable safety risks and require at least comparable carrier expertise,'' while the National Propane Gas Association (NPGA) opined that ''propane, also known as liquefied petroleum gas or LP-gas, was not included in the statute as a product to be regulated through a permit,'' based on ''the historical safety of the propane gas transportation system under the existing comprehensive DOT regulatory system.'' NPGA stated that there is no basis in legislative history or experience to require a safety permit for all Division 2.1 hazardous materials. The American Petroleum Institute recommended that the proper shipping name(s) of the specific materials be set forth in the regulations, rather than references to Division 2.1 materials. Three commenters stated that the use of the term 'in bulk' to refer to a container with a capacity of 3,500 gallons or more would be confusing, because a ''bulk packaging'' is defined in 49 CFR 171.8 to include a container having a ''maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid'' and a ''water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas.'' Yellow Freight System, Inc. supported the 3,500-gallon capacity threshold for liquefied natural gas, because ''[l]ess than 'in bulk' quantities generally are less likely to pose an immediate danger to public safety while in transit compared to 'in bulk' shipments.''

In the preliminary cost-benefit analysis of this rulemaking (a copy of which has been placed in the docket), the agency considered three different lists of hazardous materials for which a safety permit would be required:

Option No. 1 is the ''statutory'' list of the four categories of hazardous materials in 49 U.S.C. 5109(b), at the same threshold quantities for which registration is required. Under this option, almost 2,500 motor carriers (including about 800 intrastate carriers) would be required to obtain a safety permit.

Option No. 2 includes an ''expanded'' list of the following hazardous materials, which would make approximately 6,500 motor carriers (including about 1,830 intrastate carriers) subject to the safety permit requirement:

—*Explosive materials:* any quantity of Division 1.1 and 1.2 materials; more than 25 kg (55 pounds) of Division 1.3 materials; and more than 454 kg (1,000 pounds) of Division 1.5 materials.

—*PIH materials (in Divisions 2.3 and 6.1):* Hazard Zone A materials in any quantity; a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

—Flammable gases (Division 2.1), anhydrous ammonia (Division 2.2), and poisons (Division 6.1, Packing Group I, other than PIH materials): a shipment in a bulk packaging having a capacity equal to or greater than 13, 248 L (3,500 gallons).

—*Organic peroxides:* any quantity of a Type B, temperature controlled organic peroxide (Division 5.2) material.

—*Infectious substances (Division 6.2):* any quantity of a select agent or toxin regulated by the Centers for Disease Control and Prevention (CDC) under 42 CFR part 73, except for laboratory samples.

—Radioactive (Class 7) materials: any ''exclusive use'' shipment of Class 7 materials transported in accordance with 49 CFR 427(a) as well as any highway route controlled quantity.

Option No. 3 would apply the requirement for a safety permit to all motor carriers subject to the security plan requirements in 49 CFR 172.800, adopted in the final rule published by RSPA under docket No. RSPA–02–12064 (HM–232) on March 25, 2003 (67 FR 14521). This would be more than 16,250 motor carriers (including about 4,600 intrastate carriers) that are required to register with RSPA and pay a registration fee or transport a select agent or toxin regulated by the CDC under 42 CFR part 73.

FMCSA continues to believe that the initial requirements for a safety permit should apply to only those motor carriers that transport the materials mandated by Congress (option No. 1). However, expanding the existing statutory list to require a safety permit for motor carriers that transport other hazardous materials (covered by option Nos. 2 or 3) should provide the public with additional safety measures, and FMCSA invites comments on whether the agency should, in the future, apply the requirement for a safety permit to motor carriers that transport the hazardous materials in the ''expanded'' or ''HM–232'' lists above.

Intrastate and Foreign Motor Carriers

The requirement to hold a safety permit in 49 U.S.C. 5109 applies to both interstate and intrastate motor carrier operations within the United States. In the 1993 NPRM, FHWA proposed to require that intrastate motor carriers must comply with ''all applicable parts of the FMCSRs'' in order ''to use the provisions of part 385, 'Safety Fitness Procedures,' in making determinations to issue, or deny, a request for a safety permit for either interstate or intrastate motor carriers'' (58 FR at 33421). Several commenters raised concerns about applying the financial responsibility requirements in 49 CFR part 387 to intrastate carriers that are subject only to State requirements when they use a smaller vehicle (having a gross vehicle weight rating of less than 10,000 pounds) to transport the hazardous materials for which a safety permit would be required.

As discussed below under ''Conditions for issuing a safety permit,'' FMCSA is still proposing to require that a motor carrier have a ''satisfactory''

safety rating in order to obtain a safety permit. Accordingly, an intrastate carrier would be required to apply for a U.S. DOT number as a ''new entrant'' and subject itself to a compliance review. The safety rating issued by FMCSA to an intrastate carrier would be used only for purposes of issuing a safety permit; the safety rating issued to an intrastate carrier would not be posted on FMCSA's Web site nor would it be used by FMCSA for any purpose other than determining whether the carrier is entitled to a safety permit.

FMCSA does not consider that section 5109 is a mandate to make all intrastate motor carriers subject to provisions in the FMCSRs that do not already apply to them, including the financial responsibility requirements in 49 CFR part 387. Except for the requirement to hold a safety permit, in order to transport any of the designated hazardous materials, and to undergo a compliance review in order to demonstrate its fitness to hold a safety permit, an intrastate carrier would not become subject to other requirements in the FMCSRs that do not already apply.

The definition of ''interstate commerce'' includes foreign commerce. Therefore, Canadian and Mexico-domiciled motor carriers transporting HM permitted materials in the United States would be subject to the requirements proposed in this SNPRM.

Application Procedures

Each motor carrier that conducts operations in interstate commerce must submit to FMCSA a Motor Carrier Identification Report, Form MCS–150, before it begins operations and on a two-year cycle thereafter (the month and year of submission are based on the last two digits of the carrier's U.S. DOT number). 49 CFR 390.19(a). Effective January 1, 2003, a ''new entrant'' motor carrier must also submit Form MCS–150A, Safety Certification for Application for a U.S. DOT Number, and other forms to obtain operating authority. 49 CFR 385.305.

In the 1993 NPRM, FHWA proposed to use a revised Form MCS–150 as the application for a safety permit. Two commenters supported the use of the MCS–150 form (with revisions) for applying for a safety permit. Other commenters suggested combining the safety permit and registration programs, in terms of a single application form, registration and permit number, and expiration dates.

FMCSA believes that the safety permit program can best be coordinated with the biennial report filed on Form MCS–150 (and Form MCS–150A for a new entrant). Rather than revising the Form MCS–150, however, FMCSA proposes to create a new Form MCS–150B for a motor carrier to provide the limited additional information required for issuance of a safety permit. FMCSA believes that keeping the safety permit program part of the motor carrier identification and safety fitness program with the same schedule for renewal will be more efficient than attempting to combine the safety permit application with the registration program (which applies to offerors and carriers by all modes of transportation, allows registration for one, two, or three years at the registrant's option, and operates on a mid-year basis [July 1 to June 30] rather than a staggered cycle throughout a two-year period).

Implementation of the safety permit requirement would be phased in beginning January 1, 2005. The actual date of compliance would depend on whether the motor carrier is already involved in the transportation of a permitted material. A motor carrier that is not involved in the transportation of a permitted material on January 1, 2005, would need to apply for and receive a safety permit before it may transport any of the hazardous materials for which a safety permit would be required. However, a ''new entrant'' motor carrier that applies for a U.S. DOT number after January 1, 2005, would be required to apply for a safety permit (by submitting Form MCS–150B) during 2005 or 2006. Thus, until the motor carrier that is already operating is required to renew its U.S. DOT number during 2005 or 2006, it need not apply for a safety permit. In all cases, a safety permit will be valid until the next date for filing Form MCS–150 (in accordance with the schedule set forth in 49 CFR 390.19(a)(2) and (3)).

A draft of Form MCS–150B is available in the docket (at the DMS Web site *http://dms.dot.gov*), and interested persons are invited to submit comments on that draft. As indicated on that draft, FMCSA proposes to require that an official of the motor carrier must certify ''under penalties of perjury,'' but not to require notarization. As in the 1993 NPRM, FMCSA is not proposing to charge a fee for applying for a safety permit, but it may consider the need to assess an application fee in the future, especially if the safety permit program is expanded to apply to motor carriers of additional types and quantities of hazardous materials.

Conditions for Issuing a Safety Permit

In the 1993 NPRM, FHWA proposed that its determination on an application for a safety permit would be based ''upon a safety fitness finding made pursuant to 49 CFR part 385.'' 58 FR at 33421. FHWA also proposed authority to issue a temporary safety permit to an unrated motor carrier, pending a safety fitness determination, when the carrier has certified in its application that it is operating in full compliance with the FMCSRs and HMRs, or comparable State regulations (including financial responsibility requirements in part 387 or State regulations, whichever is applicable). Under the 1993 proposal, a temporary safety permit would remain in effect for no more than 120 days ''or until a safety rating is assigned, whichever occurs first'' (58 FR at 33424).

As in the 1993 NPRM, FMCSA proposes to require that a motor carrier have a ''satisfactory'' safety rating in order to obtain a safety permit. Appendix B to 49 CFR part 385 contains an explanation of the safety rating process including a list of the regulations that FMCSA considers ''acute'' (where noncompliance is so severe as to require immediate compliance) and ''critical'' (where noncompliance relates to management and/or operational controls). This SNPRM also proposes additions to the list of ''acute'' and ''critical'' regulations in Section VII of Appendix B to part 385.

FMCSA is also proposing to add two further conditions for issuing a safety permit: (1) the motor carrier must show that it has a satisfactory security program, and (2) the motor carrier must be registered with RSPA (and remain registered). A satisfactory security program would apply to motor carriers transporting hazardous materials in commerce listed in this Supplemental Notice of Proposed Rulemaking (SNPRM). A satisfactory security program must include: (1) A security plan as prescribed in subpart I of Part 172 of this title, (2) means of communication that will enable the vehicle operator to immediately contact the motor carrier during the course of transportation as required in this SNPRM, and (3) means of providing its hazardous materials employees with security training for hazardous materials employees. FMCSA is also proposing to issue a temporary safety permit, valid for up to 270 days, to a motor carrier that does not have a safety rating but certifies that it has a satisfactory security program and is operating in full compliance with the HMRs, the FMCSRs or comparable State regulations, and minimum financial responsibility requirements in 49 CFR part 387 or State regulations (whichever are applicable). However, FMCSA would not issue a temporary safety

permit to a motor carrier that, as indicated in the Motor Carrier Management Information System (MCMIS), has a crash rate in the top 30% of the national average; has a driver, vehicle, hazardous material, or total out-of-service rate in the top 30% of the national average; or is listed on FMCSA's SafeStat A, B, C, or D lists.

Comments to the 1993 NPRM supported use of the safety rating to determine a motor carrier's fitness to hold a safety permit, but raised questions about the manner in which a safety rating is assigned and whether the 120 day limitation for a temporary safety permit was sufficient, especially to cover all intrastate carriers that have not previously been required to submit Form MCS–150 and obtain a U.S. DOT number. The California Highway Patrol (CHP) recommended that a safety rating be assigned only after a ''compliance review,'' with greater emphasis on ''the mechanical condition of the carrier's vehicles,'' and not a lesser ''safety review'' which it considered not to be ''sufficient to determine a carrier's actual safety compliance.'' CHP also recommended that the compliance review be performed at the principal location where hazardous materials operations take place, rather than at its main office or headquarters which may be ''far removed from the actual working locations.''

The Oregon Public Utilities Commission expressed concern that the safety ''rating system is difficult to decipher and appears * * * to be somewhat arbitrary'' with variations among different regions. Baker Performance Chemicals, Inc. suggested that there be more discussion on how the safety rating is determined. CWTI recommended that a written notification of an ''unsatisfactory'' or ''conditional'' safety rating include written notice that the carrier is prohibited from transporting any of the hazardous materials for which a safety permit is required.

FMCSA believes that most, if not all, of the concerns expressed about the safety rating system itself have been addressed in the 1997 revisions to 49 CFR part 385, including the addition of Appendix B to that part (''Explanation of Safety Rating Process''). See the final rules published May 28, 1997 (62 FR 28807), and November 6, 1997 (62 FR 60035). At present, FMCSA bases a safety rating only on a full compliance review, and it retains the discretion to perform that review at any of the motor carrier's facilities. FMCSA shares the concerns that 120 days may not be sufficient time to perform a compliance review for a motor carrier that does not have a safety rating, and the agency proposes to allow a temporary safety permit to remain in effect for up to 270 days, providing that the applicant satisfies all the conditions for issuance of a temporary safety permit.

Permit Number and Evidence in the Vehicle

In the 1993 NPRM, FHWA proposed that its written notification of a ''satisfactory'' safety rating would ''serve as the safety permit and shall include the safety permit number assigned.'' (59 FR at 33424) It also proposed that the safety permit number must be ''clearly displayed on shipping papers or the appropriate transportation document,'' in order to meet the statutory requirement for the motor carrier to keep ''a copy of the permit, or other proof of its existence, in the vehicle.'' 49 U.S.C. 5109(a). FHWA noted the prohibition in § 5109(f) against a person offering a designated hazardous material for transportation by motor vehicle unless the carrier holds a safety permit, and it indicated that ''RSPA will subsequently initiate rulemaking which will address shipper responsibility.'' (58 CR at 33419)

The National Motor Freight Traffic Association (NMFTA) supported the use of a carrier's U.S. DOT number as the safety permit number and stated that ''use of this number would minimize paperwork, inasmuch as the assigned safety permit number would be displayed on the carriers' transportation documents.'' It also stated that, since FHWA intended to add a ''permit'' database to its existing information systems, ''safety fitness and permit information would be readily available to federal and state officials and enforcement personnel.'' CHP questioned whether use of the U.S. DOT identification number would be sufficient because ''all private interstate motor carriers must obtain and display'' this number. The Idaho State Police stated that ''there is no way for an enforcement officer [to] know that the carrier has met the requirements for having a safety permit,'' and it recommended the creation of an approach providing ''adequate measures for ensuring that safety permit numbers are legitimate and verifiable.''

Some commenters suggested that the same number should be used for both registration and the safety permit, to cover the same period of time, and that DOT should use information from the registration program to issue safety permits to carriers with a U.S. DOT identification number. CWTI suggested that the safety permit number should be included on the registration certificate or another document carried on the vehicle, rather than the shipping paper prepared by the shipper (or offeror).

Other commenters objected to the proposed requirement that the safety permit number must be on the shipping paper or stated that the specific location and manner of displaying the safety permit number needed to be addressed. Yellow Freight stated that law enforcement officers should be able to determine ''through another source'' whether a carrier holds a safety permit, and adding additional information to shipping papers ''that is not essential to immediate safety concerns will not enhance the transportation of hazardous materials.'' The Institute of Makers of Explosives (IME) and the International Society of Explosive Engineers (ISEE) stated that requiring the shipper to put the carrier's safety permit number on the shipping paper would result in more errors, as well as increase the time and effort of preparing shipping papers. 3M suggested that the carrier (rather than the shipper) should be responsible for putting the safety permit number on shipping papers.

Associations of motor carriers endorsed the statutory requirement that a shipper (or offeror) must verify that the carrier holds a safety permit before offering a designated hazardous material for transportation. 3M objected and Mobil stated that access to FMCSA's Motor Carrier Management Information System (MCMIS) would be necessary for a shipper to verify that it has a permit, and that there would be no need to have the permit number on shipping papers if a carrier were required to provide ''proof of fitness and safety permit issuance'' to shippers. In addition, ISEE raised a concern about ''the availability of explosives information to the public through the inclusion of carrier permit information in MCMIS.''

In this SNPRM, FMCSA is no longer proposing that the carrier's safety permit number must appear on the shipping paper, but the carrier would be required to maintain a copy of the safety permit or another document showing the permit number in the vehicle transporting a designated hazardous material. A State or local law enforcement officer would be able to confirm the validity of this number through real-time or close to real-time information made readily accessible by FMCSA.

Section 5109(f) provides that a person may offer a designated hazardous material to a motor carrier for transportation in commerce ''only if the carrier has a safety permit.'' The authority for implementing this

provision has been delegated to RSPA. See 49 CFR 1.53(b)(2), 1.73(d)(2).

Written Route Plan and Communication

The 1993 NPRM included a proposal to require compliance with the routing and route plan requirements then set forth in 49 CFR 177.825 (with regard to radioactive materials) and 397.9 (with regard to Class A and B explosives). These requirements (now contained in 49 CFR 397.67 and 397.101) specify that the carrier must provide its driver with a written route plan when the motor vehicle contains a highway route controlled quantity of a Class 7 (radioactive) material or any quantity of a Division 1.1, 1.2, or 1.3 (explosive) material.

FMCSA considers that preparation of and adherence to a written route plan will improve the safety and security of transportation of all materials for which a safety permit is required. Accordingly, in this SNPRM, FMCSA is proposing to revise 49 CFR 397.67(d) to require the carrier or its agent to prepare and provide its driver with a written route plan covering any shipment of a PIH material or liquefied natural gas for which a safety permit is required, in addition, to all shipments of Division 1.1, 1.2, and 1.3 materials. We are also proposing to require (in proposed § 385.415) that the written route plan be carried in the vehicle and followed, unless an alternate route is required by a law enforcement officer or emergency conditions. The written route plan when carried in the vehicle, must be maintained in such a manner that ensures security requirements set forth in Subpart I of part 172 of this title are met. The driver would no longer be allowed to prepare the written route plan for the carrier, but the driver would be required to amend the written route plan to show any deviation. In addition, the driver would be required to communicate with the carrier at least once every two hours and any time there is a deviation from the written route plan, and the motor carrier would be required to contact law enforcement officials in the event that there has been no communication from its driver for more than three hours.

FMCSA is also proposing to require that the vehicle driver must have in the vehicle, and make available to law enforcement officials upon request, the telephone number of an employee of the motor carrier who has a copy of the written route plan and is able to determine whether the motor vehicle is on the route specified in that route plan. Furthermore, FMCSA is proposing to require the motor carrier to maintain a record of all communications with the vehicle driver during transportation of a hazardous material for which a safety permit is required, containing the name of the driver, identification of the vehicle, the hazardous material(s) being transported, the date and time of each communication, and each period of more than two hours without a communication with the driver including a statement of the facts or conditions that prevented communication for more than two hours.

Pre-Trip Inspections

To implement the pre-trip inspection requirement in 49 U.S.C. 5105(e), FHWA proposed in the 1993 NPRM to require an inspection of a vehicle transporting a highway route controlled quantity of a Class 7 (radioactive) material, before each trip, in accordance with Appendix G to the FMCSRs. FHWA also proposed that the inspector must have the qualifications specified in 49 CFR 396.19 and that written certification including certain information must be prepared and retained by the carrier for one year. It invited comments on its proposed inspection criteria and ''whether radiological monitoring should be included.''

The comments on this topic addressed who should perform these inspections, the inspection criteria, and whether or not the inspection should include radiological monitoring. The Department of Energy (DOE) and EEI expressed concern that a requirement for radiological monitoring would duplicate the requirement in 49 CFR 173.441 to ensure that a package containing radioactive material is checked before shipment, but several other commenters supported a requirement for monitoring as part of the pre-trip inspection. To the extent that monitoring is performed, some commenters, including Tri-State, stated that only the shipper has monitoring equipment and trained personnel so that it (rather than the carrier) should perform the pre-trip inspection. DOE endorsed ''the flexibility of allowing inspections to be performed by inspectors from organizations other than the carrier itself,'' and other persons (besides a motor carrier official) should be allowed to sign the inspection certification. DOE also stated that in any case, radiological monitoring should not be done by ''a qualified vehicle inspector'' unless that person was also a qualified health physicist.

Tri-State and CHP supported use of the proposed inspection criteria and inspector qualifications in the FMCSRs. Others stated that the criteria in Appendix G are not sufficient and suggested using standards then under development by the Commercial Vehicle Safety Alliance (CVSA). The Idaho State Police also recommended that ''in order to pass the inspection, the vehicle must be defect free.'' CHP and Montana DOT recommended that the inspection document or certification must be carried on the vehicle.

In this SNPRM, FMCSA is proposing inspection standards similar to those contained in the CVSA Level VI Inspection Program for Radioactive Shipments. The pre-trip inspection would have to be performed by a government inspector, (*i.e.*, one employed by or under contract to a Federal, State or local government). The inspector must have completed an appropriate training program of at least 104 hours, including at least 24 hours of training in conducting radiological surveys and inspecting vehicles transporting highway route controlled quantity (HRCQ) radioactive materials. The inspection must cover all applicable requirements in the HMRs and FMCSRs, or compatible State regulations, including 49 CFR parts 383 (commercial driver's license), 391 (driver qualifications), 395 (hours of service), parts 393 and 396 (vehicle condition), provisions in the HMRs on the transportation of radioactive materials (49 CFR parts 171, 172, 173, and 178), and registration (49 CFR part 107, subpart G).

Denial, Suspension, or Revocation of a Safety Permit

As discussed above, in order to be issued a safety permit, a motor carrier would have to be registered with RSPA and have a ''satisfactory'' safety rating and a satisfactory security program. A temporary safety permit could be issued to a carrier that does not have a safety rating, valid for up to 270 days; if the carrier receives a ''satisfactory'' safety rating, it would receive a safety permit, but the temporary permit would be revoked if the carrier receives a safety rating that is less than ''satisfactory.'' FMCSA is also proposing that a safety permit will be subject to suspension or revocation if a carrier fails to maintain its ''satisfactory'' safety rating or under other specified circumstances, including the failure to submit a renewal application or providing any false or misleading information on a required application form; failure to maintain a satisfactory security plan; failure to comply with an out-of-service order; failure to comply with the FMCSRs, HMRs, or compatible State requirements, or an order issued under any of these, in a manner that shows the

carrier is not fit to transport the hazardous materials for which a safety permit is required; loss of its operating rights; and suspension of its registration for failure to pay a civil penalty or abide by a payment plan.

The SNPRM contains procedures for administrative review of a denial, suspension, or revocation of a safety permit. A motor carrier's rights to administrative review would depend on the ground for denial, suspension, or revocation of the safety permit. In summary, where there already exists a right to administrative review of the underlying basis for denial, suspension, or revocation, the carrier must pursue its existing rights to review. Accordingly, if the basis for denial, suspension, or revocation of a safety permit is the carrier's failure to receive or maintain a ''satisfactory'' safety rating, its review rights are limited to those set forth in 49 CFR 385.15 (administrative review of a proposed safety rating) and 385.17 (change to safety rating based on corrective actions). If the basis for denial, suspension, or revocation of a safety permit is the carrier's failure to pay a civil penalty or abide by a payment plan, its review rights are limited to the show cause proceedings set forth in 49 CFR 386.83(b) and 386.84(b).

When a denial, suspension, or revocation of a safety permit is based on another ground, the SNPRM proposes that the carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has (1) denied a safety permit, (2) immediately suspended or revoked a safety permit (when an imminent hazard exists), or (3) proposed to suspend or revoke a safety permit. The specific procedures that would apply to a request for administrative review are contained in proposed § 385.423(d).

State Permits

The 1993 NPRM contemplated that many States would continue to require carriers to obtain a permit in order to transport hazardous materials within the State. In the SNPRM, FMCSA proposes that the Federal safety permit would be in addition to any required State permit, but that FMCSA would issue a safety permit to a carrier without further inspection or investigation when FMCSA is able to verify that the carrier holds a safety permit issued by a State under a program that is equivalent to the Federal safety permit program.

As stated in the 1993 NPRM, a State permit requirement would be preempted ''if compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the accomplishment'' of Federal hazardous material transportation law and the regulations.'' (58 FR at 33419) In addition to these general preemption criteria now set forth in 49 U.S.C. 5125(a), a State may impose a fee for a permit to transport hazardous materials, ''only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.'' (49 U.S.C. 5125(g)(1)).

RSPA has stated that ''[a] permit may serve several legitimate State police power purposes, and the bare requirement * * * that a permit be applied for and obtained is not inconsistent with Federal requirements. However, a permit itself is inextricably tied to what is required in order to get it'' so that a permit requirement ''must be considered together with the application requirements.'' Inconsistency Ruling (IR) No. 2 (Rhode Island), 44 FR75566, 75570–71 (Dec. 20, 1979). Accordingly, a State and local permit for hazardous materials transportation is not preempted in all cases, but only when the underlying requirements that must be fulfilled in order to obtain the permit conflict with Federal hazardous materials law or the HMR. *Id.*; Preemption Determination (PD) No. 14 (Houston), 63 FR 67506, 67510 (Dec. 7, 1998), 64 FR 949, 33952 (June 24, 1999); IR–28 (San Jose, California), 55 FR 8884, 8890 (Mar. 8, 1990); IR–20 (Triborough Bridge and Tunnel Authority), 52 FR 24396, 24397–98 (June 30, 1987); IR–3 (Boston), 46 FR 18918, 18923 (Mar. 26, 1981).

The November 17, 1993 report of the Alliance discussed the two primary reasons that States carry out their own permit and registration programs: (1) The issuance of a permit provides an enforcement mechanism (suspension or revocation of the permit) if a carrier acts irresponsibly or violates State transportation or environmental laws, and (2) the registration or permit process provides a State information about the business activities of persons who operate within the State but are not based within the State. In its letter transmitting that report, the Alliance stated that its members had operated under the assumption that Federal hazardous material transportation law ''authorized a dual system for registering and permitting motor carriers,'' and that a 1992 technical amendment to the law made this explicit. The Alliance stated that the language in the two separate sections of the law on a Federal safety permit and State permits (now §§ 5109 and 5119) does not restrict ''the types of hazardous materials'' that may be covered under a State permit, and expressed opposition to finding that a Federal safety permit program ''would preempt state permitting of carriers of hazardous materials covered under the federal program.''

CWTI concurred that a uniform State permit system proposed by the Alliance and implemented under Federal regulations would not be subject to preemption under the dual compliance and obstacle criteria, contained in 49 U.S.C. 5125(a). It recommended that the applicability of these criteria to State permits should be clarified in several respects by placing the preemption standard in the regulations (rather than just in the preamble) and explicitly stating that ''a motor carrier holding a valid federal safety permit would be exempt from all non-federal permit requirements.''

The Public Utilities Commission of Ohio stated that it would be ''against the public interest'' to establish a Federal program under which a State permit program would be preempted with respect to the hazardous materials for which a safety permit would be required, but not with respect to other, ''lower risk'' materials. CHP asked for further clarification of the preemption standard to be applied to State permits, in light of the statement in the 1993 NPRM that a State permit covering the ''same hazardous materials * * * based on a demonstration of safety fitness'' would be preempted after implementation of a Federal safety permit program. (58 FR at 33423)

Other persons submitting comments on the 1993 NPRM urged alignment of the Federal and State programs, suggesting that States ''accept the FHWA program'' (IME), ''closely align this permit program with the work of the Alliance'' (Yellow Freight), ''see if one program could be established'' under the Alliance proposal (Montana DOT), or ''consider waiving the FHWA permitting requirement'' if a uniform State program contained requirements that ''duplicate or exceed those contained in the NPRM'' (DuPont).

FMCSA agrees that Federal hazardous materials transportation law allows States to continue their permit requirements after the implementation of a Federal safety permit requirement, and that, if a State has a safety permit program that is equivalent to the requirements in 49 U.S.C. 5109, FMCSA may properly accept the findings of the State that a motor carrier is ''fit, willing, and able'' to transport the designated

hazardous materials and to comply with the applicable laws, regulations, and financial responsibility requirements. Section 5109 requires DOT to issue a Federal safety permit to a motor carrier that meets these requirements, rather than simply allow the carrier to operate under an equivalent State permit, so FMCSA proposes to issue a Federal permit, without further inspection or investigation, when it can verify that this condition exists. FMCSA encourages States to have or implement a HM Permit program equivalent to a Federal permit that will ultimately prevent duplication of a State and Federal requirement.

To the extent that a State permit program is equivalent to the Federal requirements, no preemption issues would arise. It is only differences between Federal and non-Federal requirements that should raise issues of preemption. In this regard, FMCSA and RSPA consider that the preemption criteria set forth in 49 U.S.C. 5125 will continue to apply to non-Federal permit requirements, just as those criteria have applied in the past, and that the impact on States of a Federal permit program should be ''minimal.'' (58 FR at 33423)

Preemption would not necessarily arise simply if a State applies its permit requirements to a smaller, larger, or different group of hazardous materials, than those to be covered by a Federal safety permit. In a recent determination, RSPA noted that it ''has considered numerous challenges to non-Federal requirements without finding that the specific requirements were preempted because they did not apply to all hazard classes and all materials listed in the Hazardous Materials Table in 49 CFR 172.101,'' although there are circumstances in which ''a specific non-Federal requirement that applies only to one hazardous material may, indeed, be an obstacle to accomplishing and carrying out Federal hazardous material transportation law or the HMR.'' PD–13(R) (Nassau County), decision on petition for reconsideration, 65 FR 60238, 60241 (Oct. 10, 2000). As already discussed, in assessing a differing State (or local) permit requirement, the issue will be whether the underlying requirements that must be fulfilled in order to obtain the permit conflict with Federal hazardous materials law or the HMR. The preemption criteria set forth in 49 U.S.C. 5125 will continue to apply to State permits, and it is not considered necessary to repeat those criteria in the regulatory text of this final rule.

Related Regulations and Rulemaking Projects

As discussed above, in this SNPRM, we are proposing to require an applicant for a safety permit to certify compliance with the HMR security plan and training requirements adopted in a final rule published by the Research and Special Programs Administration (RSPA) on March 25, 2003 (68 FR 14509). That final rule, published under RSPA's docket HM–232, requires persons who offer for transportation or transport certain hazardous materials in commerce to develop and implement security plans. The security plan requirement, codified in a new subpart I of part 172 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), applies to shipments of the following classes and quantities of hazardous materials:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation that meets the criteria for Hazard Zone A;

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention; and

(7) A quantity of hazardous material that requires placarding.

A security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials listed above and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must cover personnel security, unauthorized access to shipments, and en route security.

In addition, the HM–232 final rule requires all hazmat employees (as defined in § 171.8 of the HMR) to receive security awareness training that provides an awareness of security risks associated with hazardous materials transportation and methods to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

As part of DOT's effort comprehensively to enhance hazardous materials transportation security, FMCSA is conducting a field operational test (FOT) to quantify the security costs and benefits of an operational concept that applies technology and improved enforcement procedures to hazardous materials transportation by motor carriers. The FOT will demonstrate an approach that enhances the safety and security of hazardous materials shipments from origin to destination by examining possible vulnerabilities in the transportation system. In parallel with the FOT, FMCSA will also conduct an independent evaluation to ascertain whether the FOT met the objective of ensuring the safety and security of hazardous materials shipments. This evaluation will also include a benefit-cost analysis on the security technologies tested, including remote vehicle tracking systems, remote vehicle disabling systems, off-route alert systems, and electronic ignition locks. We expect to begin the FOT in the fall of 2003 and complete the FOT and evaluation by September 2004.

In a related action, on July 16, 2002, RSPA and FMCSA jointly published an advance notice of proposed rulemaking (ANPRM) under docket HM–232A to examine the need for enhanced security requirements for hazardous materials transportation that would be in addition to the security requirements adopted under HM–232 (67 FR 46622). The ANPRM sought comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures under consideration include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and pre-notification of shipments to state and local authorities.

RSPA is currently evaluating comments received in response to the HM–232A ANPRM to determine if additional security rulemaking is necessary. This evaluation will include an examination of the security threats posed by specific classes and quantities of hazardous materials and an assessment of the effectiveness of specific operational or technological measures in reducing security threats. Persons who may be affected by the proposals in this NPRM should be aware that the ongoing research and rulemaking projects described above may result in modifications to the proposals in this NPRM.

Transportation Security Administration/Department of Homeland Security will continue to evaluate security issues, and in the future, may issue additional standards relating to security issues raised in this rulemaking.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues relating to hazardous material permitting. The FMCSA has estimated costs and benefits for three policy/regulatory options. These estimates are discussed in detail in the full regulatory evaluation contained in the docket. Option 1, the statutory option, is the one preferred by FMCSA. It is an option involving a limited listing of HM included by Congress in earlier rulemaking considerations. It is anticipated that the economic impact of this rule, implementing option 1, would be $0.6 million in the first year and $10.5 million in each subsequent year. The total discounted cost estimates are $74.5 million over 10 years. The costs and benefits for this NPRM are discussed below.

Permit Applications. Industry costs directly tied to obtaining a permit include obtaining an application form, completing the information requested on the form, and submitting the form to FMCSA. Using data from RSPA on carriers that are registered with DOT under the provisions of 49 CFR Part 107 (FY 2002, most recent year available), FMCSA estimates that 2,434 carriers will be subject to this proposed rule. FMCSA estimates that it will take carriers 2 hours to obtain and complete the initial permit application at a total cost per carrier of $42 ($15 per hour plus fringe benefits). There are no permit application fees under the proposed program. The industry would thus incur an estimated $102,228 in permit application costs. This is a one time non-recurring cost.

Permit renewal applications would be required every two years. The estimated burden to complete a renewal application is 15 minutes per carrier per year. This involves gathering some information and checking off a few additional boxes on the MCS–150 Form. Using the same unit cost of $15 per hour plus fringe benefits, the annual costs to industry are estimated at $12,789.

Safety Record Standards Compliance. FMCSA data show that 1,865 motor carriers subject to the requirements proposed in this rule do not currently possess a satisfactory safety rating and will need to obtain one as part of the permit process. This includes carriers without a current safety rating and those whose most recent safety ratings were unsatisfactory or conditional. Carriers who transport HRCQ or radioactive materials (RAM) are assumed to have met the safety record requirements of this rule through their compliance with regulations imposed by the Department of Energy and the Nuclear Regulatory Commission. FMCSA assumes that a typical carrier will spend $182 preparing for the compliance review necessary to obtain a new safety rating. This includes 2 hours for the carrier's safety director and 6 hours for a clerk to gather and process the necessary information. The total one-time non-recurring permit application and safety compliance costs to industry are, therefore, estimated to be $339,430.

Operational Costs. The proposed rule imposes four requirements on carriers that will result in increased costs, most of which will recur annually. The rule requires that drivers must be able to contact the carrier and/or law enforcement in emergencies. While many carriers employ sophisticated satellite communication systems, FMCSA assumes that cell-phone type service will meet these requirements and that 90 percent of the vehicles in service already have such a device. The service life of the communications equipment is assumed to be 10 years. Utilizing data from the 1997 Vehicle Inventory and Use Survey (VIUS), FMCSA estimates the total number of vehicles affected by the proposed regulations to be 12,500. Ten percent of these vehicles will require new equipment, estimated at $100 per vehicle, as well as a communications service plan, estimated at $60 per month. The one-time non-recurring communication requirement cost to industry is expected to be $125,000 (1,250 vehicles × $100/vehicle) and $900,000 annual cost in subsequent years (1,250 vehicles × $60/month × 12 months).

Under current requirements for the Commercial Vehicle Safety Alliance (CVSA) Level VI inspections, point of origin inspections are conducted on all shipments of HRCQ or radioactive materials (RAM). Carriers of these HM are required to have route plans and satisfy conditions for expeditious delivery. As such, HM carriers would not incur extra costs under the proposed permit program to satisfy point-of-origin inspections and route plan requirements.

The proposed rule requires carriers to develop and maintain route plans and ensure that route verification contact numbers are carried on the vehicle so that law enforcement could verify the correct location of the shipment. It is believed that the carrier's representative responsible for developing the route plans would be the one to ensure the numbers are placed in the vehicles and available for inspection. It was also assumed that the same individual would ensure that the permit verification number is placed in the vehicle. A unit cost of $5.25 per shipment was based on an hourly rate of $21 (including fringe benefits) for a clerk and 15 minutes to complete the task and was derived from comments to the joint FMCSA/RSPA ANPRM entitled ''Security Requirements for Motor Carriers Transporting Hazardous Materials,'' published July 16, 2002 (67 FR 46622) (FMCSA Docket No. 2002–11650). FMCSA realizes that some shipments are moved along the same routes repeatedly between given origins and destinations and new route plans would not need to be generated each year for these shipments. Further, the HM permits would be valid for two years and the carrier contact numbers are not expected to change frequently, if at all. Therefore, developing route plans and providing verification contact numbers and permit numbers in the vehicles are assumed to be repeated for only 50 percent of the shipments in a given year. The annual number of shipments, 1,221,144, were estimated with FMCSA data and VIUS data on the number of vehicles transporting different HM and assumptions regarding the anticipated number of trips per vehicle per year. Class 1.1, 1.2, and 1.3 and HRCQ RAM shipments were excluded as they already meet the proposed requirements. The estimated annual costs for industry compliance is $3,205,503 ([1,221,144 annual shipments] × [½of shipments requiring action] × [$5.25/shipment]).

The cost to a carrier to document and maintain written communication records between itself and its drivers assumes 15 minutes of a clerk's time per shipment. All shipments are considered to require this documentation. The estimated annual cost for this requirement is $6,411,006 ([1,221,144 annual shipments] × [$5.25/shipment]).

Benefits. The benefits of the proposed HM permit program include improved

safety due to reductions in accidental and intentional HM releases. Secondary benefits were also considered. Among the secondary benefits is the reduction in incident delays, evacuations, product losses, property damages, environmental damages and cleanups. For accidental releases, incident cost estimates for specific hazard classes from a prior FMCSA risk study were combined with estimates of the number of crashes expected to occur annually in each hazard class among the permitted shipments. FMCSA assumes that the safety elements of the proposed permitting program will reduce the number of HM incidents among permitted shipments by 25 percent. Therefore, the expected annual benefit from reducing accidental HM releases is $2,025,000.

The potential benefits of reducing intentional releases due to increased security measures are consistent with those analyzed in the NPRM for HM–232. The security measures under the HM–232 NPRM are consistent with, and applicable to, the proposed permitting program. Therefore, a separate analysis of the benefits of security was not conducted.

It is difficult to accurately ascertain the direct benefit of this proposal insofar as its impact upon reducing the malicious use of hazardous materials in transportation. To begin with, the actual costs that an averted terrorist attack of this nature would have imposed, and its probability of success with and without these measures, is unknowable. Terrorism is a fairly new phenomenon, and we have little notion of a likelihood function under the current conditions for HM transportation or under this proposal regarding hazardous materials permitting procedures. Similarly, we have little idea of the expected cost of a terrorist attack, given that one occurs. So although the theory for calculating the benefit is straightforward and simple, finding actual data for a future attack is not possible.

For purposes of this analysis and given the lack of data in this area, FMCSA has assigned 1/1000 as the probability that this proposal would be decisive in stopping an incident involving the malicious use of hazardous materials. FMCSA interprets this to mean that this proposal would result, over the next 1,000 years, in one additional year that is free from a malicious hazardous materials incident than would have occurred without these procedures. Interpreted differently, FMCSA estimates that this proposal would completely foil one of the next 1,000 attempted malicious hazardous materials incidents. FMCSA interprets this to mean that this proposal would make each attempted malicious hazardous materials incident less likely to inflict its intended damage. Alternately, one could interpret this to mean that these procedures will completely foil one of the next 1,000 attempted malicious hazardous materials incidents.

Next, FMCSA derived a scaled estimate of $25 billion as the cost of a malicious hazardous materials incident (This figure is based upon the lowest estimate reported of the most costly terrorist attack ever—the September 11th attacks and the costs of other recent terrorist attacks occurring in the past ten years. Please refer to the regulatory evaluation for this rulemaking, Hazardous Materials Carrier Permitting Program; Benefit-Cost Analysis of Permitting Options, for a more detailed discussion of how the scaled estimate was derived).

Finally, we multiplied the scaled estimate of the cost of a malicious hazardous materials incident by the probability estimate as follows: $25 billion × .001 =$25 million. Therefore, FMCSA estimates that this proposal would result in a direct benefit of $25 million each year for the ten-year planning horizon, insofar as it relates to a malicious hazardous materials incident. When calculating total benefits, these should be discounted using a standard 7% rate. We limit the analysis to ten years to conform to FMCSA analytical standards. (FMCSA uses a 10-year time frame for all its regulatory analyses to allow comparability from one rule to another.) There is no reason to believe that the benefits would stop unless the policy underlying this proposed rulemaking was to be changed.

Therefore, the combined annual direct benefit of this proposal would be $27 million ($2 million (rounded) + $25 million). FMCSA invites comments from the public to assess any potential costs or burdens that may be associated with this proposal.

Executive Order 13175 (Tribal Consultation)

The FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed rule would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' FMCSA has preliminarily determined that this action would not be a significant energy action under that Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532, *et seq.*) requires each agency to assess the effects of its regulatory actions on State, local, tribal governments, and the private sector. Any agency promulgating a final rule that is likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rulemaking would not have an impact of $100 million or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on the assessment in the accompanying regulatory evaluation, and the absence of contradictory information submitted to the docket during the public comment period, FMCSA certifies that the proposals in this rulemaking are not applicable to a substantial number of small businesses.

The definition of ''small businesses'' has the same meaning as under the Small Business Act, established by the Small Business Administration (SBA), Office of Size Standards and codified in 13 CFR 121.201 . The FMCSA evaluated the effects of this proposed rule on small business entities, including as applicable small businesses, small non-profit organizations, and small governmental entities with populations under 50,000. Many of these small business entities operate as motor carriers of property in interstate or intrastate commerce.

Goal of the SNPRM. FMCSA is required by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990 to develop and implement a new motor carrier safety permit program. The safety permit program is intended to enhance the safety and security of certain hazardous materials shipments that, if released either accidentally or intentionally during transportation, have the potential to kill or injure large numbers of people and damage property and the environment.

Description of Actions. This SNPRM identifies specific fitness, financial and regulatory criteria for interstate and intrastate motor carriers to qualify and obtain a safety permit from FMCSA. Criteria include imposing operational security requirements, setting minimum safety and security standards, and making safety and security assessments of carriers to ensure compliance with operational, safety, and security standards. The specific hazardous materials covered by this permit program are: highway route-controlled quantities of a Class 7 radioactive material; more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material; more than one liter (1.08 quarts) per package of extremely toxic-by-inhalation hazardous material; and compressed or refrigerated liquid methane or natural gas in bulk packaging of 13,248 liters (3,500 water gallons) or more.

Identification of potentially affected small entities. The proposed rule would affect intrastate and interstate carriers of hazardous materials. The number of small carriers is determined based on the Small Business Administration (SBA) definition used for the RSPA registration file. RSPA flags the small carriers in their registration system based on the number of employees or annual revenue. Of the 2,434 total carriers expected to be affected by this proposed rule, 1,816 have been estimated to be small entities.

In addition to small carriers, other small businesses and small entities potentially could be affected by the proposed permit system. Small businesses that provide services to small carriers, offer hazardous materials for transportation, or receive shipments could also be affected by the proposed rule. The customers and suppliers of small carriers could be adversely affected if a carrier were prohibited from shipping certain hazardous materials because a permit was denied or revoked. Similarly, local government entities such as police could be affected by the proposed hazardous materials permitting requirements. Local police would be notified anytime three or more hours elapsed after the last time that a communication was received from the driver of a hazardous materials vehicle covered by the permit. This probably would require the expenditure of law enforcement resources to investigate the communication lapse. The number of local police entities that would be involved is difficult to estimate before the permit program is implemented. It has been determined that 1,816 small motor carriers will be affected by the statutory requirements of this rule. Based on an expert judgment, the number of small businesses affected by this rule, excluding small motor carriers, was determined by doubling the number of small carriers affected by the statutory requirements. The application of expert judgment suggests that there could easily be two or more of these entities for each of the small carriers affected. Therefore, it is estimated that as many as approximately 4,000 small businesses could potentially be affected by the rule.

Reporting and recordkeeping requirements. This SNPRM proposes several new or modified recordkeeping requirements. While they have not been fully defined, they are detailed in the section of this preamble entitled ''Paperwork Reduction Act.'' FMCSA has built flexibility into the proposed requirements, so that entities can choose the method by which they comply with the proposals. For example, there is no prescribed method of communication between the driver and the carrier. Carriers are permitted to use any system which meets the performance criteria specified. Similarly, there are no specifications for the manner in which carriers develop and maintain route plans, allowing either electronic or paper-based approaches to be used. Entities can assess their own situations and tailor the requirements to fit them.

Related Federal rules and regulations. If this rule is adopted as proposed, FMCSA will eliminate possible conflict with two pieces of legislation: 49 U.S.C 5119 and U.S.C. 5105(e). 49 U.S.C. 5119 authorizes states to participate in the Alliance. The FMCSA intends to automatically issue a Federal permit to a carrier that obtains a permit from a State that is part of the Alliance program or another state that has a program equivalent to the Federal permit program in operation. Therefore, a comparable state program will be deemed equivalent to the Federal HM Permit Program and no statutory conflict will exist. The other area is the Point of Origin Inspections for Highway Route Controlled Quantities (HRCQ) shipments that are required by 49 U.S.C. 5105(e). These inspections are currently being conducted via the CVSA Level VI Enhanced Radioactive Materials Inspection Program. This current program would fulfill the requirements of this proposed rule and thus prevent any statutory conflict.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. There are no significant alternatives to the proposed rule that would accomplish the stated proposed HM permitting rule and which would minimize any significant economic impact of the proposed rule on small entities. Alternative permitting systems, such as that of the Alliance program, could address national permitting needs if expanded to include all states, but the effects on small entities would be the same as under the proposed rule because the same requirements and provisions would be in effect.

We developed this SNPRM under the assumption that small businesses make up the majority of entities that will be subject to its provisions. Thus, we considered how to minimize the expected compliance costs as we developed this SNPRM.

Based on the discussion of the potential costs of this SNPRM in the section of this preamble entitled ''Executive Order 12866 and DOT Regulatory Policies and Procedures,'' FMCSA certifies that although this rulemaking would impose a significant economic impact on those small business entities, these small entities do not represent a substantial number of small businesses within the trucking industry. The Research and Special Programs Administration (RSPA) identifies the small carriers in their registration system based on the number of employees or annual revenue, consistent with the Small Business Administration's Small Business Size Standards, which are matched to the North American Industry Classification System (NAICS). FMCSA estimates the costs to a small carrier to comply with this proposed rule to be $4,512 in the initial year, and $4,093 in subsequent years. A summary and breakdown of these first-year and annual costs is shown in Table 1. Note that the number of shipments was determined by using data provided by FMCSA in conjunction with U.S. Census Bureau Vehicle Inventory and Use Survey (VIUS) data for the number of trucks transporting particular HM, and assumptions regarding the anticipated number of

trips per vehicle per year. Communication requirements were assumed to be satisfied with a cell-phone-type service. Costs were calculated based on the assumption that 90 percent of the vehicles already have such a device and only 10 percent of the total vehicles will need new devices. Additionally, the table shows that the cost for route plans, route verification contact numbers, and permit verification is only half that of communication recordkeeping requirements. This is because the route planning activities are applied to only one half of shipments. Divisions 1.1 and 1.2 and HRCQ of RAM were excluded because all shipments of these materials have routing requirements under current DOT regulations. Finally, the unit cost is assumed to be a clerk's hourly pay of $15/hour plus fringe benefits (40%) for a total of $21/hour. A unit cost of $5.25 represents fifteen minutes of a clerk's labor.

TABLE 1.—COST SUMMARY PER SMALL CARRIER

Permit related activity	Unit cost	Cost per carrier for first year	Cost per carrier for successive years
Permit application	$21/hour	$42.00	N/A
Permit renewal	21/hour	N/A	$5.25
Safety record compliance	182/carrier	182	N/A
Communication requirements	100/vehicle, 60/month service.	1,640	1,440
Route plans; route verification contact numbers; permit verification	5.25/shipment	883	883
Communication record keeping requirements	5.25/shipment	1,765	1,765
Total Cost per Small Carrier		4,512	4,093

Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this SNPRM to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires FMCSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

FMCSA currently has an approved information collection under OMB Control No. 2126–0013, ''Motor Carrier Identification Report'' with 74,250 burden hours and $0 cost. There will be an increase in the burden for OMB Control No. 2126–0013 due to extension of the data collection requirements to intrastate motor carriers that transport the permitted hazardous materials. Using RSPA registration data, it is estimated that 797 intrastate motor carriers will be required to comply with this current data collection, with an annual burden per carrier of 2 hours. In addition, there will be a new information collection burden for the new requirement to submit initial and renewal permit applications. This new information collection, ''Hazardous Materials Safety Permits,'' will be assigned an OMB control number after review and approval by OMB.

The new information collection requires that the carriers provide estimates of the anticipated annual shipments. It is assumed that this information would be readily available for large carriers, which would apply an inflationary estimate to the prior year's number from their database. Small carriers would either have a ready estimate (due to a limited number of shipments) or, more likely, could determine their prior year shipment totals from data they are required to maintain to support their reporting under the International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP).

The burden to provide estimates of anticipated shipments are as follows: small carriers—30 minutes and large carriers—15 minutes. It is estimated that an additional 0.25 burden hours (15 minutes) per carrier will be required to complete the permit application form, including information, such as, carrier name and address, DOT number, etc. This results in a total burden of 1,671 hours as follows: [1,816 small carriers (596 intrastate + 1,220 interstate) × 0.75 hours per carrier = 1,362 hours] + [618 large carriers (201 intrastate + 417 interstate) × 0.50 hours = 309 hours].

Permit renewal will require carriers only to check-off a few additional boxes on the new MCS–150B Form as well as providing estimates of the annual shipments. The burden hours to check-off the additional boxes on MC–150B Form are considered negligible. The time required to gather the required information for the permit renewal is considered to be part of the time in estimating the number of shipments.

The proposed permitting program requires that carriers develop and maintain route plans and ensure that route verification contact numbers are carried in the vehicle. These provisions would add an average burden of 0.25 hour per day per carrier. The total burden hours were estimated assuming 260 working days in a year, based on an average of five working days per week—and one shipment per day on average. FMCSA realizes that some shipments are moved along the same routes repeatedly between given origins and destinations and new route plans would not need to be generated each year for these shipments. Further, the HM permits would be valid for two years and the carrier contact numbers are not expected to change frequently, if at all. Therefore, in estimating the burden hours involved in developing route plans and providing verification contact numbers and permit numbers on the vehicles, it was assumed that this activity will be repeated for only 50 percent of the shipments in a given year or 130 days per year [*i.e.*, 0.5 × 260 = 130 days]. Thus, the burden hours for this activity is estimated as 79,105 hours [*i.e.*, 2,434 (797 intrastate + 1,637 interstate) × 32.5 hours (0.25 hours per day × 130 days per year) = 79,105 hours].

The proposed permitting program also requires carriers to maintain written records of the communication between drivers and the carriers. The types of information required includes time of communication, HM transported, vehicle, and reasons for any communication lapses. While drivers and carriers are required under the

proposed permitting program to be in frequent contact, this requirement places an additional reporting burden on the carriers. It is assumed that recording and maintaining these communications between the driver and carrier adds a burden of 0.25 hour per day on average per carrier. The total burden hours were similarly estimated assuming 260 working days in a year to be 158,210 hours as follows: [2,434 (797 intrastate + 1,637 interstate) × 65 hours (0.25 hours per day × 260 days per year) = 158,210 hours].

The total burden hours for the proposed rule are summarized in Table 2.

TABLE 2.—FIRST-YEAR BURDEN HOURS

	Carriers			Burden hours	
	Intrastate	Interstate	Total	Per carrier	Total
Increased reporting under OMB Control No. 2126–0013 ...	797	N/A	797	2	1,594
Annual shipment estimates:					
Small carriers	596	1,220	1,816	0.75	1,362
Large carriers	201	417	618	0.50	309
Written route plans, verification number details, copy of permits	797	1,637	2,434	32.5	79,105
Maintaining communications records	797	1,637	2,434	65	158,201
Total	.....	.....	.....	.....	240,580

In subsequent years, we estimate that burden hours would include the permit renewal application and the time to provide shipment estimates, route plans, and communication records as indicated above. Given the biennial renewal process, the burden hours for application renewal and shipment estimates would be half as many in subsequent years. However, the burden hours for maintaining route plans and communication records will be the same for all years. Subsequent-year burden hour estimates are shown in Table 3.

TABLE 3.—SUBSEQUENT-YEAR BURDEN HOURS

	Carriers			Burden hours	
	Intrastate	Interstate	Total	Per carrier	Total
Increased reporting under OMB Control No. 2126–0013 ...	797	N/A	797	1	797
Annual shipment estimates:					
Small carriers	596	1,220	1,816	0.375	681
Large carriers	201	417	618	0.25	154.5
Written route plans, verification number details, copy of permit:	797	1,637	2,434	32.5	79,105
Maintaining communications records	797	1,637	2,434	65	158,210
Total	.....	.....	.....	.....	238,151

We estimate that the new total information collection and recordkeeping burden resulting from the additional Motor Carrier Identification Reports and permit applications under this rule are as follows.

Motor Carrier Identification Report

[OMB No. 2126–0013]

Total Annual Number of Respondents: 275,297.
Total Annual Responses: 275,297.
Total Annual Burden Hours: 75,844.
Total Annual Burden Cost: $0.

Hazardous Materials Permit

[OMB No. 2126–xxxx]

First Year Annual Burden:
Total Annual Number of Respondents: 2,434.
Total Annual Responses: 1,835,367.
Total Annual Burden Hours: 240,580.
Total Annual Burden Cost: $0.
Subsequent Year Burden:
Total Annual Number of Respondents: 2,434.
Total Annual Responses: 1,835,367.
Total Annual Burden Hours: 238,151.
Total Annual Burden Cost: $0.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goals of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms on information technology.

National Environmental Policy Act

FMCSA has performed an Environmental Assessment that is available for review in the public docket on the DMS Web site, *http://dms.dot.gov.* Based on the assessment, FMCSA has determined that this SNPRM rule does not have any significant negative impacts to the environment and may result in a net benefit from increased protection and monitoring of hazardous materials shipments. Therefore, we find that there are no significant environmental impacts associated with this SNPRM. The agency solicits comments on this issue.

Executive Order 12988 (Civil Justice Reform)

This action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12612 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, as discussed under ''State permits,'' above, where the applicable law and the concerns previously expressed by State officials are set forth.

Federal hazardous material transportation law allows States, political subdivisions, and Indian tribes to continue their permit requirements after the implementation of a Federal safety permit program. To the extent that a State permit program is equivalent to the Federal requirements, no preemption issues would arise. To the extent that there are differences between Federal and non-Federal requirements, the preemption provisions in 49 U.S.C. 5125 will continue to apply to non-Federal permit requirements, just as those criteria have applied in the past.

For these reasons, FMCSA believes that nothing in this proposed rule, if adopted, will directly preempt any State law or regulation or have a substantial direct effect or sufficient federalism implications that would limit the policymaking discretion of the States. FMCSA invites States and other interested parties to comment on whether they believe any State permit requirement would be affected by the adoption of this proposed rule.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 1985). This proposed rule is not an economically significant rule because the FMCSA has determined that the proposed rule, if adopted, will not present an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, ''Improving Access to Services for Persons With Limited English Proficiency'' (LEP), requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency.

Its purpose is to clarify for Federal-fund recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin. Thus, we believe that this proposed action complies with the principles enunciated in the Executive Order.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements; Safety fitness procedures.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, the Federal Motor Carrier Safety Administration proposes to amend 49 CFR chapter III as set forth below:

PART 385—SAFETY FITNESS PROCEDURES [AMENDED]

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(c), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.1 by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 385.1 Purpose and scope.

* * * * *

(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403 of this part.

* * * * *

3. Add a new subpart E to this part 385 to read as follows:

Subpart E—Hazardous Materials Safety Permits

Sec.

385.401 What are the definitions of terms used in this subpart?
385.403 Who must hold a safety permit?
385.405 How does a motor carrier apply for a safety permit?
385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?
385.409 When may a temporary safety permit be issued to a motor carrier?
385.411 Must a motor carrier obtain a safety permit if it has a State permit?
385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?
385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?
385.417 Is a motor carrier's safety permit number available to others?
385.419 How long is a safety permit effective?
385.421 Under what circumstances will a safety permit be subject to revocation or suspension by the FMCSA?
385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

Subpart E—Hazardous Materials Safety Permits

§ 385.401 What are the definitions of terms used in this subpart?

(a) The definitions in parts 390 and 385 of this subchapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

Hazardous material has the same meaning as under § 171.8 of this title, a substance or material that the Secretary of Transportation has determined as capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials

transportation law (439 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazmat employee has the same meaning as under § 171.8 of this title, a person who is employed by a hazmat employer as defined under § 171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle which transports hazardous materials in commerce. This term includes an individual, including a self-employed individual, employed by a hazmat employer who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;

(3) Prepares hazardous materials for transportation;

(4) Is responsible for safety of transporting hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85% or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403(a) of this subpart.

Shipment means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 385.403 Who must hold a safety permit?

After the date following January 1, 2005 that a motor carrier is required to file a Motor Carrier Identification Report (Form MCS–150) according to the schedule set forth in § 390.19(a) of this subchapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this title;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material;

(c) More than one liter (1.08 quarts) per package of a ''material poisonous by inhalation,'' as defined in § 171.8 of this title, that meets the criteria for ''hazard zone A,'' as specified in §§ 173.116(a) or 173.133(a) of this title; or

(d) A shipment of liquefied natural gas in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

§ 385.405 How does a motor carrier apply for a safety permit?

(a) *Application form(s).* To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS–150B, HM Permit Application. If the motor carrier does not have a current U.S. DOT identification number, it must also submit Form MCS–150, Motor Carrier Identification Report (*see* § 390.19 of this subchapter). A new entrant must also submit Form MCS–150A, Safety Certification for Application for U.S. DOT Number (see subpart D of this part).

(b) *Where to get forms and instructions.* The forms listed in paragraph (a) of this section and instructions for completing them, may be obtained on the Internet at *http://www.fmcsa.dot.gov* or by contacting FMCSA at Federal Motor Carrier Safety Administration, MC–RIS, Room 8214, 400 7th St. SW., Washington, DC 20590, Telephone: 1–800–802–5668.

(c) *Signature and certification.* An official of the motor carrier must sign each of these forms and certify that the information is correct.

(d) *Updating information on Form MCS–150B.* A motor carrier that holds a safety permit must report to the FMCSA in writing any change in the information on its Form MCS–150B, within 30 days of the change, using the contact information in paragraph (b) of this section.

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Satisfactory safety rating.* The motor carrier must have a ''satisfactory'' safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of part 385 of this subchapter, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of part 385 of this subchapter.

(b) *Satisfactory security program.* The motor carrier must establish that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title. The security plan must address how the carrier will ensure the security of the written route plan required by this part;

(2) A communications system installed on each motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart that enables the vehicle operator to immediately contact the motor carrier during the course of transportation of the hazardous material, and each operator must be trained in the use of the communications system; and

(3) Hazmat employees who have all successfully completed the security training required in § 172.704(a)(4) of this title.

(c) *Registration with RSPA.* The motor carrier must be registered with RSPA in accordance with subpart G of part 107 of this title.

§ 385.409 When may a temporary safety permit be issued to a motor carrier?

(a) *Temporary safety permit.* If a motor carrier does not have a safety fitness rating, FMCSA may issue a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS–150B that it is operating in full compliance with the HMRs, the FMCSRs, or comparable State regulations, and the minimum financial responsibility requirements in part 387 of this subchapter or State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that meets any of the following conditions. The motor carrier:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b) of this subpart;

(2) Has a crash rate in the top 30% of the national average as found in the FMCSA Motor Carrier Management Information System (MCMIS);

(3) Has a driver, vehicle, hazardous material, or total out-of-service rate in the top 30% of the national average as found in the FMCSA MCMIS; or

(4) Is on the FMCSA SafeStat List A, B, C, or D.

(c) A temporary safety permit shall be valid for 270 days after the date of issuance or until the motor carrier is assigned a safety rating, whichever occurs first.

(1) A motor carrier that receives a satisfactory safety rating will be issued a safety permit.

(2) A motor carrier that receives a less than satisfactory safety rating, is

ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 270-day time period, the FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

§ 385.411 Must a motor carrier obtain a safety permit if it has a State permit?

Yes. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined is equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with § 385.405 of this subpart, without further inspection or investigation.

§ 385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit unless and until a satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (*see* § 385.421 of this subpart).

§ 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

(a) *Information that must be carried in the vehicle.* During transportation, the following must be maintained in each motor vehicle that transports a hazardous material listed in § 385.403(a) of this subpart and, upon request, made available to an authorized official of a Federal, State, or local government agency:

(1) A copy of the safety permit or another document showing the permit number;

(2) A written route plan that meets the requirements of § 397.101 of this subchapter (for Class 7 (radioactive) materials) or § 397.67 of this subchapter (for non-radioactive materials); and

(3) The telephone number of an employee of the motor carrier who has a copy of the route plan required in paragraph (a)(2) of this section and is able to determine whether the motor vehicle is on the route specified in that route plan. This phone number must be monitored by the motor carrier at all times the vehicle is in transit.

(b) *Inspection of vehicle transporting Class 7 (radioactive) materials.* Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the following requirements:

(1) The inspection must be performed by a inspector who—

(i) Is employed by or under contract to a Federal, State, or local government, and

(ii) Has completed a commercial vehicle inspection-training program of at least 104 hours in duration, including 24 hours on the inspection of vehicles transporting HRCQ of Class 7 (radioactive) materials and conducting radiological surveys.

(2) The inspection must determine whether the motor carrier, driver(s) and the motor vehicle are in compliance with requirements governing:

(i) Commercial driver's licenses, in part 383 of this subchapter;

(ii) Qualifications and hours of service of drivers, in parts 391 and 395 of this subchapter, or compatible State requirements that are applicable;

(iii) The mechanical condition of the vehicle, in parts 393 and 396 of this subchapter, or compatible State requirements that are applicable;

(iv) The requirements in the Hazardous Materials Regulations (49 CFR parts 171 through 180) and compatible State requirements applicable to the acceptance and transportation of a highway route controlled quantity of a Class 7 (radioactive) material, including the limits for external radiation, heat, and contamination specified in §§ 173.441, 173.442, and 173.443 of this title;

(v) Registration and payment of the registration fee, in subpart G of part 107 of this title; and

(vi) Requirements for motor carriers and drivers, in subpart D of part 397 of this title.

(3) If any violation of the requirements in paragraph (b)(2) of this section is discovered, the vehicle may not begin transportation until the violation has been corrected. If any violation of the requirements in paragraph (b)(2)(iii) of this section is discovered, the vehicle must be placed ''out of service'' and may not be moved until completion of all repairs necessary for compliance with the requirements in paragraph (b)(2)(iii) of this section.

(4) If the inspector determines that the driver(s) and vehicle are in compliance with all the requirements set forth in paragraph (b)(2) of this section, the inspector shall affix to the vehicle a decal indicating the nature of the inspection and containing the date of the inspection. This decal must be removed upon delivery of the shipment to the consignee.

(c) *Additional requirements.* (1) The operator of a motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart must:

(i) Follow the written route plan required by paragraph (a)(2) of this section, unless an alternate route is required by a law enforcement official or emergency conditions (in which case the operator must amend the written route plan to show the deviation); and

(ii) At least once each two hours during transportation of a hazardous material for which a safety permit is required, and any time there is a deviation from the written route plan required by paragraph (b) of this section, communicate with the motor carrier by means of the communications system required by § 385.407(b)(2) of this subpart.

(2) The motor carrier must contact law enforcement authorities at any time more than three hours have elapsed since the last communication from the operator of a motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart. The motor carrier must maintain a record for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required, containing the name of the operator, identification of the vehicle, hazardous material(s) being transported, the date and time of each communication, and each period of more than two hours without a communication with the operator including a statement of the facts or conditions that prevented communication for more than two hours.

§ 385.417 Is a motor carrier's safety permit number available to others?

Upon request, a motor carrier must provide the number of its safety permit to a person who offers a hazardous material listed in § 385.403(a) of this subpart for transportation in commerce. A motor carrier's permit number will also be available to the public on the FMCSA Safety and Fitness Electronic Records System at *http://www.safersys.org.*

§ 385.419 How long is a safety permit effective?

Unless suspended or revoked, a safety permit (other than a temporary safety permit) is effective for two years, except that:

(a) a safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth for filing Form MCS–150 in § 390.19(a)(2) and (3) of this subchapter; and

(b) a safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS–150B) in accordance with the schedule set forth in § 390.19(a)(2) and (3) of this subchapter.

§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by the FMCSA?

(a) *Grounds.* A safety permit will be subject to revocation or suspension by the FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth in § 390.19(a)(2) and (3) of this subchapter;

(2) A motor carrier provides any false or misleading information on its application (Form MCS–150B), Form MCS–150A (when required), or an update of information on its Form MCS–150B (see § 385.405(e) of this subpart);

(3) A motor carrier is issued a final safety rating that is less than satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in § 385.407(b) of this subpart;

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner that shows that the motor carrier is not fit to transport or offer for transportation the hazardous materials listed in § 385.403(a) of this subpart;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner that shows that the motor carrier is not fit to transport or offer for transportation the hazardous materials listed in § 385.403(a) of this subpart;

(8) A motor carrier fails to maintain the minimum financial responsibility required by § 387.9 or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Research and Special Programs Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with § 386.83 or § 386.84 of this subchapter for failure to pay a civil penalty or abide by a payment plan.

(b) *Effective date of suspension or revocation.* A suspension or revocation of a safety permit is effective:

(1) immediately when FMCSA determines that an imminent hazard exists, when FMCSA issues a final safety rating that is less than satisfactory, or when a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) 30 days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) as specified in § 385.423(c) of this subpart, when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

§ 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

A motor carrier has a right to an administrative review pursuant to the following procedures and conditions:

(a) *Less than satisfactory safety rating.* If a motor carrier is issued a proposed safety rating that is less than satisfactory, it has the right to request (1) an administrative review of a proposed safety rating, as set forth in § 385.15 of this part, and (2) a change to a proposed safety rating based on corrective action, as set forth in § 385.17 of this part. After a motor carrier has had an opportunity for administrative review of, or change to, a proposed safety rating, FMCSA's issuance of a final safety rating constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final safety rating that is less than satisfactory.

(b) *Failure to pay civil penalty or abide by payment plan.* If a motor carrier is notified that failure to pay a civil penalty will result in suspension or termination of its operating rights, it has the right to an administrative review of that proposed action in a show cause proceeding, as set forth in § 386.83(b) or § 386.84(b) of this subchapter. The decision by FMCSA's Chief Safety Officer in the show cause proceeding constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has lost its operating rights or had its registration suspended for failure to pay a civil penalty or abide by a payment plan.

(c) *Other grounds.* Under circumstances other than those set forth in paragraphs (a) and (b) of this section, a motor carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has denied a safety permit, that FMCSA has immediately suspended or revoked a safety permit or that FMCSA has proposed to suspend or revoke a safety permit. The rules for computing time limits for service and requests for extension of time in §§ 386.31 and 386.33 apply to the proceedings on a request for administrative review under this section.

(1) The motor carrier must send or deliver its written request for administrative review to FMCSA Chief Safety Officer, with a copy to FMCSA Chief Counsel, at the following addresses:

FMCSA Chief Safety Officer, Federal Motor Carrier Safety Administration, c/o Adjudications Counsel (Room 8302A), 400 Seventh Street, SW., Washington, DC 20590.

FMCSA Chief Counsel, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Room 8125, 400 Seventh Street, SW., Washington, DC 20590.

(2) A request for administrative review must state the specific grounds for review and include all information, evidence, and arguments upon which the motor carrier relies to support its request for administrative review.

(3) Within 30 days after service of a written request for administrative review, the Office of the Chief Counsel shall submit to the Chief Safety Officer a written response to the request for administrative review. The Office of the Chief Counsel must serve a copy of its written response on the motor carrier requesting administrative review.

(4) The Chief Safety Officer may decide a motor carrier's request for administrative review on the written submissions, hold a hearing personally, or refer the request to an administrative law judge for a hearing and recommended decision. The Chief Safety Officer or administrative law judge is authorized to specify, and must notify the parties of, specific procedural rules to be followed in the proceeding (which may include the procedural rules in Part 386 of this subchapter that are considered appropriate).

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision of the administrative law judge becomes the final decision of the Chief Safety Officer 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Chief Safety Officer (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Chief Safety Officer may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand the petition for review to the administrative law judge for further proceedings.

(6) The Chief Safety Officer will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

(7) The decision of the Chief Safety Officer (including a recommended decision of an administrative law judge that becomes the decision of the Chief Safety Officer under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

4. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order between §§ 171.16 and 177.800:

APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

* * * * *

VII. List of Acute and Critical Regulations

§ 172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words ''Inhalation Hazard'' (acute).

§ 172.704(a)(4) Failing to provide security awareness training (critical).

§ 172.704(a)(5) Failing to provide in-depth security awareness training (critical).

§ 172.800(b) Offering or transporting HM without a security plan that conforms to Subpart I requirements (acute).

§ 172.800(b) Failure to adhere to a required security plan (acute).

§ 172.802(b) Failure to make copies of security plan available to hazmat employees (critical).

§ 173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).

§ 173.421(a) Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).

§ 173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.441 Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).

§ 173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50°C (122°F) in other than an exclusive use shipment, or 85°C (185°F) in an exclusive use shipment (acute).

§ 173.443 Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

4a. Appendix B to to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order after § 177.800(c):

§ 177.801 Accepting for transportation or transporting a forbidden material (acute).

4b. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numberical order after § 177.823(a):

§ 177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§ 177.835(c) Accepting for transportation or transporting Division 1.1 or 1.2 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§ 177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31131, 31133, 31502, and 31504, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

§ 390.3 General applicability.

* * * * *

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Subparts A, C, and E of Part 385, for carriers subject to the requirements of § 385.403(a) of this subchapter.

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this subchapter.

(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403(a) of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES [AMENDED]

7. The authority citation for Part 397 continues to read as follows:

Authority: 49 U.S.C. 322, 5112; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

8. Amend § 397.67 to revise paragraph (d) to read as follows:

§ 397.67 Motor carrier responsibility for routing.

* * * * *

(d) Before a motor carrier requires or permits the operation of a motor vehicle containing any of the following hazardous materials, the carrier or its agent shall prepare and furnish to the vehicle operator a written route plan that complies with this section:

(1) A Division 1.1, 1.2, or 1.3 (explosive) material (*see* § 173.50 of this title);

(2) More than one liter (1.08 quarts) per package of a ''material poisonous by inhalation,'' as defined in § 171.8 of this title, that meets the criteria for ''hazard zone A,'' as specified in §§ 173.116(a) or 173.133(a) of this title); or

(3) A shipment of liquefied natural gas in a bulk packaging (*see* § 171.8 of this title) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

Issued on: August 11, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–20887 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–15097; Notice 1]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition.

SUMMARY: This notice denies a petition for rulemaking from DaimlerChrysler Corporation requesting that the agency amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' to allow for the deactivation of passenger air bags through the use of certain features of the child restraint lower anchorages described in FMVSS No. 225, ''Child restraint anchorage systems.'' This was proposed both in lieu of, and in addition to, a manual passenger air bag on-off switch. The agency has analyzed the main issues surrounding the petitioner's request in the context of current and future air bag requirements. This notice completes agency rulemaking on that petition.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lori Summers, Office of Crashworthiness Standards. Telephone: (202) 366–4917, Facsimile: (202) 493–2739.

For legal issues, you may contact Rebecca MacPherson, Office of the Chief Counsel. Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, vehicle manufacturers were beginning to install, and would soon be required to install, right front passenger air bags in all passenger cars and light trucks. At that time, the National Highway Traffic Safety Administration (NHTSA) believed that placing a rear facing child safety system (RFCSS) in the front seat of passenger air bag-equipped vehicles would have the potential for producing harmful effects. The agency's laboratory tests had shown that when RFCSSs were placed in the front seat of a passenger air bag-equipped vehicle, they extended forward to a point near the instrument panel where they could be struck by a deploying air bag and have the potential to cause serious injury to infants. This possibility was particularly acute when caregivers had no other choice because the rear seats of the vehicle were too small to accommodate the RFCSS or because the vehicle was not equipped with a rear seat.

As a countermeasure to this potential safety problem, the agency amended FMVSS No. 208, ''Occupant crash protection,'' on May 23, 1995 (60 FR 27333) to allow manufacturers the option of installing an on-off switch that motorists could use to deactivate the front passenger-side air bag in vehicles that have no rear seat or a rear seat too small to accommodate a RFCSS. A yellow telltale light was also required to indicate when the passenger air bag was deactivated. On January 6, 1997, the agency published a Final Rule (62 FR 798) extending the allowance for on-off switches until September 1, 2000, and this was further extended to September 1, 2012 in the May 12, 2000 Final Rule regarding advanced air bag requirements (65 FR 30680).

In addition to the manual on-off switch extension, the FMVSS No. 208 Final Rule regarding advanced air bags added requirements for minimizing air bag risk to infants in RFCSS and car beds, and children in forward-facing child safety seats. The requirements allow manufacturers to meet one of two options: Option 1—Automatic Suppression Feature, or Option 2—Low Risk Deployment.[1] Advanced air bag systems designed to meet the requirements are expected to work automatically. Once installed, the device should require no action on the part of the occupant. For example, if an automatic suppression system recognizes the presence of a RFCSS in the right front passenger seat, the air bag should automatically not deploy. We note that vehicle manufacturers are not restricted in their choice of technology. Unlike the earlier on-off switch requirements, there are no restrictions limiting installation of suppression systems to vehicles that have no rear seat or have rear seats that are too small to accommodate a RFCSS.

Currently FMVSS No. 225, ''Child restraint anchorage systems,'' mandates that if a vehicle does not have an air bag on-off switch meeting the requirements of S4.5.4 of FMVSS No. 208, it shall not have a child restraint anchorage system installed at a front designated seating position. The on-off switch requirements in S4.5.4 of FMVSS No. 208 specify, among other things, that the on-off device be operable by means of the ignition key for the vehicle.

II. DaimlerChrysler's Petition

On November 16, 1999, DaimlerChrysler Corporation (DaimlerChrysler) petitioned NHTSA to amend FMVSS No. 208, to allow for the deactivation of passenger air bags through the use of certain features of the child restraint lower anchorages described in FMVSS No. 225. DaimlerChrysler believes the attachment should be permitted as a substitute for, or in addition to, a manual on-off switch.

DaimlerChrysler stated they were considering the development of a system that would sense the presence of a RFCSS held in place with components (identified in FMVSS No. 213, ''Child restraint systems'') for attaching to the child restraint lower anchorages described in FMVSS No. 225. In addition to sensing RFCSSs, the system would also deactivate the passenger air bag when forward facing child safety systems equipped with similar components are installed in the front seat. According to DaimlerChrysler, air bag deactivation would be accomplished and assured by the act of installing the child safety system attachment components onto the anchorages described in FMVSS No. 225. The attachment components would be detected by a switch actuator that is

[1] **NOTE:** Manufacturers are required to pick a certification option for each of the three child occupant categories: 12-month-old infant, 3-year-old and 6-year-old child. The 3-year-old and 6-year-old child categories also have a third option for dynamic automatic suppression.

integral with the lower anchorages. The telltale light of S4.5.4.3 of FMVSS No. 208 would still be required, and would be illuminated whenever the passenger air bag is turned off by means of the proposed system.

III. Analysis of Petition

Both of the proposed amendments included in DaimlerChrysler's petition for rulemaking are being denied. First, DaimlerChrysler petitioned that FMVSS No. 208 be amended to allow the child restraint anchorage system attachment be permitted as a means of turning off the right front passenger air bag in lieu of a manual air bag on-off switch. However, NHTSA believes that the child restraint anchorage system technology proposed by DaimlerChrysler would limit the target population of children that may benefit from a manual air bag on-off switch. Using this technology, children not in child seats, or in child seats without appropriate child seat anchorage hardware, will not be able to have their air bag manually turned off, in vehicles with no rear seat or a rear seat too small to accommodate a RFCSS. Currently, air bag on-off switches have the potential for suppressing the passenger air bag for all children (whether they are using a child restraint anchorage system or not).

DaimlerChrysler commented on the tragic circumstances that can occur when a caregiver neglects to manually turn ''off'' the right front passenger air bag. NHTSA has studied how manual passenger air bag on-off switches are being used and misused in the field and is developing new strategies on how to improve information and educational efforts regarding on-off switch use in current vehicles. For new vehicles, certified with advanced air bag technology in conjunction with an on-off switch, the on-off switch is largely a system redundancy for children. These vehicles will be able to provide the option for caregivers to manually turn off the passenger air bag in the presence of children, or, alternatively, allow the system to work in an automatic mode. The ''automatic'' mode would be required to minimize the risk of air bags to all children either through air bag suppression or providing a low risk deployment (depending upon a vehicle's certification methods), while maintaining moderate to high speed crash protection for adult occupants.

Adopting DaimlerChrysler's petition could also lead to conditioning caregivers into assuming that once a child seat is connected to the child restraint anchorage system in the right front passenger seat, no further action is necessary on their part to suppress passenger air bag deployment in vehicles that are not equipped with advanced air bags. For example, if that other vehicle has child restraint lower anchorages and a manual air bag on-off switch for the right front passenger seat, the caregiver may not know that the air bag will not be suppressed unless they use the manual, key-operated on-off switch.

DaimlerChrysler's petition acknowledged the argument that their system could encourage the placement of toddlers in child restraint systems equipped with FMVSS No. 225 lower anchorage attachments in the front rather than appropriate rear seating positions. However, they dismissed its significance by stating they believe the toddler has the advantage of the improved child restraint system. However, as previously discussed, this improved child restraint system would only apply to children in child seats equipped with lower anchorage attachments, not other children. Additionally, this system could be susceptible to mis-use if the lower anchorages are only partially engaged. DaimlerChrysler's petition did not address risks associated with partial engagement.

More recently, DaimlerChrysler demonstrated a new stowable/foldable lower anchorage deactivation system that is also applicable to this petition.[2] In this design, the lower anchorages, and air bag deactivation feature, would only be accessible for child restraint attachment when the vehicle seat was placed in a certain seat track position. For example, the vehicle manufacturer could designate the most rearward seat track position to be the sole location where the stowable/foldable lower anchorages are made available. However, NHTSA believes that this technology, like the non-stowable/foldable type previously discussed, would not be applicable to the same target population as an on-off switch. Furthermore, even for the sub-population of children in child seats with lower anchorage hardware, we believe the stowable/foldable lower anchorage deactivation system provides little advantage over a switch since it still requires two actions by the caregiver. First, it requires activation of a switch to position the vehicle seat and make the anchorages accessible, followed by a second action of attaching the child restraint system to the lower anchorage. In addition, the stowable/foldable lower anchorage deactivation system has the potential of being defeated if the single seat track position, which provides the lower anchorages, is obstructed from use (*i.e.*, due to cargo in the rear).

DaimlerChrysler alternatively proposed that NHTSA could consider their child restraint anchorage technology in conjunction with an air bag on-off switch system. NHTSA notes that FMVSS No. 208 does not prohibit the use of such technologies. While this technology alone will not be enough for certification with the advanced air bag requirements, it can be used to supplement the technologies that will be used for certification. For the interim fleet of vehicles that are being produced between now and the completion of the advanced air bag phase-in, NHTSA has never prohibited such systems. Furthermore, DaimlerChrysler's petition is very technology-specific to the child restraint lower anchorages, and would not encompass the broad range of other advanced technologies that could likely demonstrate the same air bag suppression capabilities and seek the same interim classification as an on-off switch. Therefore, NHTSA is denying DaimlerChrysler's petition for a rulemaking proceeding addressing vehicles produced in the interim.

IV. Conclusion

NHTSA's educational campaigns have strongly encouraged caregivers to place children in the rear seat of vehicles, and FMVSS No. 225 currently prohibits the installation of child restraint anchorage systems in the front seat of vehicles unless an on-off switch is present. NHTSA believes that the child restraint anchorage system technology proposed by DaimlerChrysler would limit the target population of children that may benefit from a manual air bag on-off switch. Using this technology, children not in child seats, or in child seats without appropriate child seat anchorage hardware, will not be able to have their air bag manually turned off, in vehicles with no rear seat or a rear seat too small to accommodate a RFCSS. Consequently, NHTSA is denying this petition for rulemaking. We are also denying DaimlerChrysler's alternative proposal to consider their child restraint anchorage technology in conjunction with an air bag on-off switch system since FMVSS No. 208 does not prohibit the use of such technologies.

In accordance with 49 CFR Part 552, this completes the agency's review of the petition for rulemaking. The agency has concluded that there is no reasonable possibility that the amendments requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly,

[2] Exparte meeting with DaimlerChrysler, NHTSA–03–15097.

rulemaking on the petition is completed.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8

Issued on: August 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21218 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 081103D]

New England Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings to solicit comments on proposals to be included in Amendment 13 of the Northeast Multispecies Fishery Management Plan (FMP).

DATES: Written comments on the proposals will be accepted through October 15, 2003. The public hearings will begin September 9, 2003 and end on September 30, 2003. See Public Hearings for specific hearing dates.

ADDRESSES: To obtain copies of the public hearing document or to submit comments, contact Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Identify correspondence as ''Comments on Groundfish Amendment 13.'' Hearings will be held in New Jersey, New York, Rhode Island, Massachusetts, New Hampshire and Maine. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492. For specific locations, see PUBLIC HEARINGS.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to address the revised requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996. The Council will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in the public hearing document for the Northeast Multispecies FMP. Once it has considered public comments, the Council will approve final management measures and prepare a submission package to NMFS. There will be an additional opportunity for public comment when the proposed rule for this action is published in the **Federal Register**.

The primary purpose of this Amendment is to develop a program to rebuild overfished stocks. Major elements of the proposals in this public hearing document include: (1) management options to reduce fishing mortality that include reductions in the number of days-at-sea (DAS), additional gear requirements, trip/possession limits, and the use of ''hard'' Total Allowable Catch systems; (2) options that define and clarify the status determination criteria used to guide management actions; (3) measures designed to minimize, to the extent practicable, adverse effects of fishing on essential fish habitat; (4) measures to reduce or control excess harvesting capacity in the fishery; (5) measures to address a wide range of administrative issues, including but not limited to the development of special access programs, changes to the fishing year, and a DAS leasing proposal; (6) revisions to the northern shrimp fishery exemption area, restrictions on tuna purse seine vessel access to groundfish closed areas, and a proposal for a general category scallop exemption area in southern New England. The Council will consider all comments received on these proposals until the end of the comment period on October 15, 2003.

Public Hearings

The dates, times, locations, and telephone numbers of the hearings are as follows:

Tuesday, September 9, 2003, at 5 p.m.—Holiday Inn, 290 Highway, 37 East, Tom's River, NJ 08753; telephone: (732)244–4000;

Wednesday, September 10, 2003, at 5 p.m.—Best Western East End, 1830 Route 25, Riverhead, NY 11901; telephone: (631) 369–2200;

Thursday, September 11, 2003, at 4 p.m.—Holiday Inn South Kingston, 3009 Tower Hill Road, South Kingston, RI 02674; telephone: (401) 789–1051;

Monday, September 15, 2003, at 2 p.m. (Recreational issues to begin at 7:00 p.m.)—Ramada Inn, 1127 Route 132, Hyannis, MA; telephone: (508) 775–1153;

Monday, September 22, 2003, at 4 p.m.—Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone (978) 283–4200;

Tuesday, September 23, 2003, at 2 p.m. (Recreational Issues to begin at 7:00 p.m.)—Yoken's Comfort Inn, 1390 Lafayette Road, Portsmouth, NH 03801; telephone: (603) 433–3338;

Wednesday, September 24, 2003, at 5 p.m.—Holiday Inn Ellsworth, 215 High Street, Ellsworth, ME 04505; telephone (207) 667–9341;

Thursday, September 25, 2003, at 4 p.m.—DoubleTree Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774–5611;

Tuesday, September 30, 2003, at 4 p.m.—Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 13, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21206 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 160
Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Nevada State Advisory Committee in the Western Region will convene at 10 a.m. (PDT) and adjourn at 11 a.m., Friday, August 22, 2003. The purpose of the conference call is to discuss regional resolutions and plan Committee activities.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code number 18318270. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, August 21, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21169 Filed 8–14–03; 12:16 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Texas State Advisory Committee in the Western Region will convene at 1 p.m. (PDT) and adjourn at 2 p.m., Friday, August 15, 2003. The purpose of the conference call is to discuss the Patriot Act.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code number 18267616. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, August 14, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21168 Filed 8–14–03; 12:16 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Washington State Advisory Committee in the Western Region will convene at 10 a.m. (PDT) and adjourn at 11 a.m., Wednesday, August 27, 2003. The purpose of the conference call is to discuss regional resolutions and plan Committee activities.

This conference call is available to the public through the following call-in number: 1–800–659–1025, access code number 18318272. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, August 26, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21170 Filed 8–14–03; 12:16 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2003 Report of Organization (Company Organization Survey).

Form Number(s): NC–99001.

Agency Approval Number: 0607–0444.

Type of Request: Revision of a currently approved collection.

Burden: 133,917 hours.

Number of Respondents: 55,000.

Avg Hours Per Response: 2 hours and 26 minutes.

Needs and Uses: The Census Bureau is requesting a revision of the currently approved Company Organization Survey (COS) data collection for the 2003 survey year. We will include questions on research and development activities performed by the company. We are also requesting an extension of the current expiration date to November 2004 (the existing date is November 2003) in order to complete the data collection for the 2003 COS.

The Census Bureau conducts the annual COS in order to update and maintain a central, multipurpose Business Register (BR). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment enterprises. The BR provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. The BR also provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents.

COS inquiries to each of the 55,000 multi-establishment enterprises will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Additional COS inquiries will apply to approximately 1.2 million establishments operated by these 55,000 enterprises. These additional inquiries will list an inventory of establishments and request updates to the inventory, including additions, deletions, and changes to Federal Employer Identification number, name and address, and industrial classification. Further, the additional inquiries will collect the following basic operating data for each listed establishment: end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Affected Public: Business or other for-profit; not-for-profit institutions; farms; state, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 182, 195, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 13, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21142 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), the U.S. Census Bureau (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations (The Committee). The Committee will address issues regarding Census Bureau programs and activities related to their areas of expertise. Members will address policy, research, and technical issues related to the 2010 decennial census, including the American Community Survey and related programs. The Committee also will discuss the 2002 Economic Census and other economic initiatives, as well as issues pertaining to marketing services, language, and data products. Last-minute changes to the agenda are possible, which could prevent giving advance notice of schedule adjustments.

DATES: The meeting will convene on October 23–24, 2003. On October 23, the meeting will begin at approximately 9 a.m. and adjourn at approximately 5 p.m. On October 24, the meeting will begin at approximately 9 a.m. and adjourn at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233. Her telephone number is (301) 763–2070, TDD (301)–457–2540.

SUPPLEMENTARY INFORMATION: The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the presidents of the American Economic Association, the American Statistical Association, and the Population Association of America, and the chairperson of the Board of the American Marketing Association. The Committee addresses issues regarding Census Bureau programs and activities related to their respective areas of expertise.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing, at least three days before the meeting, to the Committee Liaison Officer named above in the **FOR FURTHER INFORMATION CONTACT** heading. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: August 13, 2003.

Hermann Habermann,

Deputy Director, Bureau of the Census.

[FR Doc. 03–21123 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of recommencement of appeal proceedings; reopening of public comment period.

SUMMARY: This notice: (1) Announces the resumption of processing of Islander East's administrative appeal (Consistency Appeal of Islander East Pipeline Company, L.L.C.) by the Department of Commerce; (2) reopens the period for the public to comment on

Islander East's administrative appeal; and (3) provides information about other procedural aspects of the appeal.

DATES: Processing of the Islander East appeal by the Department of Commerce resumed on August 8, 2003. The public comment period for the appeal will run through November 20, 2003. The deadline for federal agencies to submit comments on the appeal is October 27, 2003. Information concerning a public hearing on the appeal to be held in Connecticut will be available approximately 30 days prior to the hearing.

ADDRESSES: All e-mail comments on issues relevant to the Secretary of Commerce's (Secretary) decision in this appeal may be submitted to *IslanderEast.comments@noaa.gov.* Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via e-mail at *GCOS.inquiries@noaa.gov,* or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION:

I. Recommencement of Appeal Proceedings

In November 2002, the Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Department of Commerce (Department) pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce override the State of Connecticut's (State) objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecticut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

Appeal proceedings before the Department have been stayed since March 17, 2003. The initial stay and an extension were granted at the request of both parties to allow for settlement negotiations. A subsequent stay was granted in order to accommodate Islander East's request that the appeal be remanded to the Connecticut Department of Environmental Protection (Connecticut) for reconsideration of its objection to the proposed natural gas pipeline project. On July 29, 2003, Connecticut reiterated its continuing objection to the proposed pipeline. Connecticut's determination requires the Department of Commerce to resume processing the Islander East appeal. 15 CFR 930.129(d). Consequently, the Department provided notice to the parties on August 8, 2003 that it was recommencing processing of Islander East's appeal. Information on scheduled filings by the parties is available at the Department's Coastal Zone Management Act Appeals Web site, *http://www.ogc.doc.gov/czma.htm.*

II. Public Comments

In connection with the resumption of appeal proceedings, the public comment period has been reopened through November 20, 2003. During this period, the public may submit comments to the Department of Commerce (see address section above) on issues to be considered in the appeal. A summary of the grounds for which Islander East requested an override of the State's objection appears in the **Federal Register** at 68 FR 3513. Comments received between July 31, 2003, the close of the earlier public comment period, and before the publication of this notice, will be considered to be timely filed.

III. Other Procedural Matters

This portion of the **Federal Register** notice provides information concerning other aspects of the Islander East appeal that are affected by the resumption of proceedings. The federal agency comment period has been reopened and letters announcing this action were sent to agencies whose views had been previously solicited but not yet received, although timely comments will be accepted from all agencies. The Department will also schedule a public hearing on the appeal in the State of Connecticut. A hearing, to occur prior to the close of the public comment period, had been previously announced in the **Federal Register**. 68 FR 5620. A notice concerning the date, location and related information will be provided at least 30 days prior to the hearing.

Please visit the Department of Commerce CZMA Appeals Web site (*http://www.ogc.doc.gov/czma.htm*) for further information concerning the CZMA administrative appeal process or to review documents from the Islander East appeal record.

Questions about the resumption of the Islander East appeal may be sent to the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, via e-mail (*GCOS.inquiries@noaa.gov*) or made by telephone (301 713–2967, extension 186).

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: August 13, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–21207 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Environmental Assessment and Finding of No Significant Impact Related to the Pulsed Fast Neutron Analysis Cargo Inspection System Test Facility at the Ysleta Port of Entry Commercial Cargo Facility, El Paso, Texas

AGENCY: Counterdrug Technology Development Program Office (CTDPO), Department of Defense (DoD).

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact.

SUMMARY: The Counterdrug Technology Development Program Office (CTDPO) is considering the construction of a Pulsed Fast Neutron Analysis (PENA) Cargo Inspection System Test Facility at the Ysleta Port of Entry Commercial Cargo Facility, El Paso, Texas and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the Department of Defense has concluded that a Finding of No Significant Impact is appropriate, and therefore an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Haimbach, Department of Defense, Counterdrug Technology Development Program Office, Naval Surface Warfare Center, 17320 Dahlgren Road, Dahlgren, Virginia 22448–5100; telephone (540) 653–2374 or e-mail *PFNAmail@dodcounterdrug.com.*

SUPPLEMENTARY INFORMATION: In its counter-terrorism and counter-drug efforts, the Federal Government has invested considerable resources into developing technologies for detecting explosives, narcotics or other

contraband hidden among the freight imported into the United States. Radiation-based, non-intrusive inspection systems, such as X-ray and gamma ray, have been in use for several years by Federal Government agencies. A related technology, called Pulsed Fast Neutron Analysis (PFNA), was developed several years ago for cargo inspection. PFNA is designed to directly and automatically detect and measure the presence of specific materials, such as cocaine or explosives, which may have been hidden within the vehicle. PFNA technology uses pulses of neutrons as the radiation source to non-intrusively examine packages and containers for suspect materials. While PFNA has been successfully demonstrated in a laboratory setting, it has yet to be tested in an operational environment.

The Department of Defense in cooperation with the United States Bureau of Customs and Border Protection and the Transportation Security Administration plans to conduct a six-month operational test of a PFNA system at the Ysleta/Zaragosa Border Station in Ysleta, Texas. Ysleta is next to the Rio Grande River just southeast of the city of El Paso. Ysleta was selected as the test location principally because it had space available (no additional land purchase was required) and sufficient commercial traffic.

The test facility will consist of an inspection building (approximately 220 feet by 60 feet) housing the PFNA equipment and several smaller structures for electronic equipment and operators.

The Environmental Assessment is available for public viewing by accessing the following Internet address: *http://www.scainc.biz/EA.*

Dated: August 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21161 Filed 8–18–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council (FICC) Meeting

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to health services for young children with disabilities and their families. The meeting will be open and accessible to the general public.

DATE AND TIME: FICC Meeting: Thursday, September 18, 2003 from 9 a.m. to 4:30 p.m.

ADDRESSES: American Institutes for Research, 1000 Thomas Jefferson Street, NW, Conference Rooms B & C, 2nd Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 330 C Street, SW, Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3090, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–21195 Filed 8–18–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–284]

Sempra Energy Solutions

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Energy Solutions (SES) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before September 2, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–2793).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 6, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from SES to transmit electric energy from the United States to Mexico. SES is incorporated in the State of California and has its principal place of business in San Diego, California. SES is a wholly-owned subsidiary of Sempra Energy Global Enterprises, which, in turn, is a wholly-owned subsidiary of Sempra Energy. Sempra Energy owns 100% of San Diego Gas & Electric Company(SDG&E). SES does not have a franchised utility service area. The electric energy which the applicant proposes to export to Mexico would be surplus generation from utilities and

Federal power marketing agencies within the United States.

The applicant proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by SDG&E. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by the applicant, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

SES has requested an expedited notice and comment period in order to be able to respond to a solicitation to deliver electric energy to Mexico in the first week of September, 2003. DOE has granted the request and shortened the public comment period to 14 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with sections 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the SES application to export electric energy to Mexico should be clearly marked with Docket EA–284. Additional copies are to be filed directly with Kelly Morton, Esq., Sempra Energy, 101 Ash Street, HQ13D, San Diego, CA 92101.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on August 13, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–21173 Filed 8–18–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0091; FRL–7546–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM), EPA ICR Number 1064.10, OMB Control Number 2060–0034

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0091, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0091, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Automobile and Light Duty Truck Surface Coating Operations, (40 CFR part 60, subpart MM).

Abstract: The New Source Performance Standards (NSPS) for automobile and light duty truck surface coating operations were proposed on October 5, 1979 and promulgated on December 24, 1980 (45 FR 85415). These standards apply to the following automobile and light duty truck assembly plant lines: each prime coat operation, guide coat operation, and top coat operation commencing construction, modification or reconstruction after October 5, 1979. Volatile organic compounds (VOC) are the pollutants regulated under the standards.

Owners or operators of the affected facilities described must make the following one time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test (not required under section 60.393(a)); and the results of the initial performance test. Responses to the collection of information are mandatory (40 CFR part 60, subpart MM, Automobile and Light Duty Truck Surface Coating Operations). The required information has been determined not to be confidential. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 745 (rounded) hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Automobile and light duty truck surface coating plants.

Estimated Number of Respondents: 54.

Frequency of Response: Initial, Quarterly.

Estimated Total Annual Hour Burden: 156,362 hours.

Estimated Total Annual Cost: $92,700, which includes $1,700 annualized capital/startup costs and $91,000 annual O&M costs.

Changes in the Estimates: There is an increase of 10,763 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to more accurate estimates of existing and anticipated new sources and the correction of a mathematical error in the previous ICR.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21179 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0049; FRL–7546–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for the Printing and Publishing Industry (40 CFR Part 63, Subpart KK), EPA ICR Number 1739.04, OMB Number 2060–0335

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0049, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Enforcement and Compliance Docket and Information Center, EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0049, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those

documents in the public docket that is available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for the Printing and Publishing Industry (40 CFR part 63, subpart KK), OMB Control Number 2060–0335, EPA ICR Number 1739.04.

Abstract: The Maximum Achievable Control Technology (NESHAP) for the Printing and Publishing Industry were promulgated on May 30, 1996 (61 FR 27131). These standards apply to the following facilities in 40 CFR part 63, subpart KK: publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing presses at major sources. The effective date was May 30, 1999, for sources existing on May 30, 1996. For new sources or reconstructed sources after May 30, 1996, the effective date of startup is May 30, 1996, whichever is later.

These standards of performance for this category of major sources and area sources of hazardous air pollutants are required by section 112 of the Clean Air Act. Facilities may meet the standards by materials' substitution, by installing control devices, or by a combination of both. The information that is required to be submitted to the Agency or kept at the facility is needed to insure compliance with the regulation. These include initial one time notifications, performance test plans and reports and records of maintenance and shutdown, startup, and malfunctions. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, leaks are being detected and repaired and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. For facilities that install continuous monitoring systems (CMS) there are performance test, and maintenance reports. Excess emissions reports are submitted semiannually. Responses to the information collection are mandatory under Clean Air Act section 112 and 40 CFR part 63, subpart KK. The responses are not anticipated to be kept confidential due to the nature of the information collected; however, any information submitted to the Agency for which claim of confidentiality is made will be safeguarded according to the Agency policy set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 163 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses.

Estimated Number of Respondents: 151.

Frequency of Response: One time notification, semiannual reports, and on occasion.

Estimated Total Annual Hour Burden: 49,548 hours.

Estimated Total Annual Capital and Operations and Maintenance Costs: $412,000, which includes $7,000 annualized capital/startup costs and $405,000 annual O&M costs.

Changes in the Estimates: There is a decrease of 2,947 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Even though there is a decrease of hours in the total estimated burden from the most recently approved ICR, there was an increase in the number of new or modified sources, and an increase in the annual cost, which is due to a revised hourly rate from the United States Department of Labor.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21180 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0050; FRL–7546–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M), EPA ICR Number 1415.05, OMB Control Number 2060–0234

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0050, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0050, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR part 63, subpart M).

Abstract: These standards apply to owners or operators of dry cleaning facilities that use perchloroethylene (PCE). Owners or operators of such facilities must provide EPA, or the delegated State regulatory authority, with the one-time notifications and reports. The owners or operators must also perform weekly monitoring (or biweekly for the smaller facilities), and must keep records for five years. The notification and reports enable EPA or the delegated State regulatory authority to determine whether the appropriate control technology is installed and properly operated and maintained, and to schedule inspections and/or compliance assistance activities. The responses to this information collection are mandatory under Clean Air Act section 112 and 40 CFR part 63, subpart M. The responses are not anticipated to be kept confidential due to the nature of the information collected; however, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average approximately 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Perchloroethylene Dry Cleaning Facilities.

Estimated Number of Respondents: 34,240.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 1,537,784 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $53,000, which includes zero annualized capital/startup costs and $53,000 annual O&M costs.

Changes in the Estimates: There is an increase of 325,655 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in burden is due to a more accurate estimate of existing and anticipated new sources. In addition, a revised hourly labor rate from the United States Department of Labor, resulted in an increase over the three-year period from the previous ICR. Since the active ICR indicated that there were 25,090 existing respondents subject to the rule over the three-year period, we conducted additional research by contacting a number of Trade Associations, and subsequently determined that the number of respondents subject to the rules addressed by this ICR is 34,240. In addition, a math error in the previous ICR was corrected.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21181 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0036; FRL–7546–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Secondary Lead Smelter Industry (40 CFR Part 63, Subpart X), EPA ICR Number 1686.05, OMB Control Number 2060–0296

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0036, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0036, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Title: NESHAP for the Secondary Lead Smelter Industry (40 CFR part 63, subpart X).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Secondary Lead Smelter Industry (40 CFR part 63, subpart X) were proposed on June 9, 1994 (59 FR 29750) and promulgated on June 23, 1995 (60 FR 32587). In response to industry petitions to reconsider, the final rule was amended on June 13, 1997 (62 FR 32209). Entities potentially affected by this rule are owners or operators of secondary lead smelters that operate furnaces to reduce scrap lead metal and lead compounds to elemental lead. The rule applies to secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. These sources are emitters of several chemicals identified as hazardous air pollutants, including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. The rule provides protection to the public by requiring all secondary lead smelters to meet emission standards reflecting the application of the maximum achievable control technology (MACT). This information is being collected to assure compliance with 40 CFR part 63, subpart X.

Owners or operators of the affected facilities described must make one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Owners or operators must maintain records of initial and subsequent compliance tests for lead compounds, and identify the date, time, cause and corrective actions taken for all bag leak detection alarms. Records of continuous monitoring devices, including parametric monitoring, must be maintained and reported semiannually. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the records for at least five years following the date of such measurements and records. At a minimum, records of the previous two years must be maintained on site.

Industry and EPA records indicate that 23 sources are subject to the standard, and no additional sources are expected to become subject to the

standard over the next three years. However, we have assumed that one furnace will be rebuilt per year and that each facility will make a major adjustment once per year which will require revising its operational plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 229 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of secondary lead smelters.

Estimated Number of Respondents: 23.

Frequency of Response: Semiannual and initially.

Estimated Total Annual Hour Burden: 16,034 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $150,000 which includes zero annualized capital/startup costs and $150,000 annual O&M costs.

Changes in the Estimates: There is an increase of one hour in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens due to the rounding-off of the mathematical calculations. There was no increase in the number of new or modified sources. The increase in the annual cost, is due to the use of an updated revised hourly pay rate from the United States Department of Labor.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21182 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7545–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2088.01; Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program; was approved 07/14/2003; OMB Number 2070–0166; expires 07/31/2006.

Dated: August 7, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21183 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0008; FRL–7545–8]

Agency Information Collection Activities; Submission of EPA ICR No. 1381.07 (OMB No. 2050–0122) to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices (OMB Control No. 2050–0122, EPA ICR No. 1381.07) This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Municipal Information and Analysis Branch, Office of solid Waste, mailcode 5306W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9037; fax number: (703) 308–8686; e-mail address: *dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 19, 2003 (53 FR 13299), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2003–0008, which is available for public viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA

Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices (OMB Control No. 2050–0122, EPA ICR Number 1381.07). This is a request to renew an existing approved collection that is scheduled to expire on August 31, 2003.

Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available. The operating record must be supplied to the State as requested until the end of the post-closure care period of the MSWLF. The information collected will be used by the State Director to confirm owner or operator compliance with the regulations under part 258. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 101 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Municipal Solid Waste Landfills.

Estimated Number of Respondents: 1900.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 191,028 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $2,210,853.

Changes in the Estimates: There is a decrease of 48,830 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of decreasing numbers (approximately 17%) of MSWLFs.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21184 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0027; FRL–7545–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Water Quality Program Management Resource (Gap) Analysis, EPA ICR Number 1945.02, OMB Control Number 2040–0216

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0027, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jane Ephremides, Resources Management and Evaluation Staff, Office of Wastewater Management, Office of Water, Mail Code: 4201M , Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0643; fax number: (202) 301–2399; e-mail address: *ephremides.jane@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 8, 2003 (68 FR 24374), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0027, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: State Water Quality Program Management Resource (Gap) Analysis.

Abstract: The Environmental Protection Agency (EPA), in partnership with States, is conducting this voluntary State Water Quality Management Resource Analysis (Gap Analysis) to help enumerate current and future funding needs and to help identify innovative strategies for reducing resource gaps. To gather preliminary information in a short time frame, the Gap Analysis was originally divided into two phases. Phase I consisted of the development of an initial, national estimate of the resource gap faced by water quality management programs to provide a general idea of the magnitude of the resource gap faced by States.

Phase II of the Gap Analysis involved developing a detailed, activity-based workload model to provide a common framework and consistent methodology for States and EPA to estimate the cost to the States to meet the objectives of the Clean Water Act (CWA) over the next five years. In order to complete the model, EPA's Office of Wastewater Management (OWM) gathered data from 21 States on current and future resources needed for water quality management activities.

Phase III of the Gap Analysis will build upon the information collected in Phase II, which used an estimate of current State expenditures on water quality activities. Under Phase III, States will complete a portion of the Phase II modules to update the needs numbers to reflect regulatory changes or changes to their programs. In addition, States will be asked to complete an activity-based model for current expenditures that mirrors the model for needs. This baseline spending data will allow the States and EPA to more accurately estimate the gap between expenditures and needed resources.

Phase III of the Gap Analysis is a one-time collection effort by OWM, and responses to this information collection request (ICR) are voluntary. The collection is necessary to develop an estimate of the gap in resources facing water quality management programs, both for individual States and the nation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: EPA estimates the burden to be 61 hours per respondent for each respondent that chooses to submit information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State water quality management programs.

Estimated Number of Respondents: 20.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 1207.

Estimated Total Annual Cost: $37,648, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 2396 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of a different phase of a voluntary, one-time information collection and is due to changes in program requirements and an adjustment to the original estimates.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21185 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0011, FRL–7546–6]

Agency Information Collection Activities; Submission of EPA ICR No. 0222.07 (OMB No. 2060–0086) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Investigation into Possible Noncompliance of Motor Vehicles with Federal Emissions Standards. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Richard W Nash, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Dr, Ann Arbor MI 48105, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On 21 March 2003 (68 FR 13909) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0011, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Title: Investigation into Possible Noncompliance of Motor Vehicles with Federal Emissions Standards (OMB Control Number 2060–0086, EPA ICR Number 0222.07). This is a request to renew an existing approved collection that is scheduled to expire on 31 August 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: As part of an integrated compliance program, EPA occasionally needs to evaluate the emission performance of in-use motor vehicles. In order to perform this function, EPA must solicit certain information from the vehicle owner/lessee. Participation in the information survey, as well as the vehicle evaluation, is strictly voluntary. Typically, a group of 25 potential participants is identified. They are asked to return a postcard indicating their willingness to participate and if so, to verify some limited vehicle information. They are also asked when it would be suitable to contact them. Those willing to participate are called and asked about a half dozen questions concerning vehicle condition, operation and maintenance. Depending on owner/lessee response, additional groups of potential participants may be contacted until a sufficient number of vehicles has been obtained.

Information collected is used to assure that vehicles procured meet certain criteria. For example, since a manufacturer's responsibility to recall passenger cars is limited to 10 years of age or 100,000 miles of use, vehicles tested to establish potential recall liability must also meet those criteria. Other testing programs and vehicle types have different criteria. All information is publicly available.

The previous description generally describes how EPA obtains information on in-use passenger cars and light trucks from individual owners and lessees. Heavy duty trucks, those commonly referred to as over ''¾ ton'' capacity, are usually employed commercially; typically they are part of a ''fleet'' of identical (or very similar) vehicles. Consequently, EPA employs a slightly different method to obtain them. Potential owners/lessees can be found in registration lists; engine manufacturers will also supply identities of their customers. Occasionally, a fleet operator will contact EPA and volunteer to participate. Once potential sources are identified, EPA will make a brief telephone call to the fleet managers to ascertain if they wish to participate. If the response is positive, EPA will visit the fleet to inspect vehicles and review maintenance records. (Fleets typically keep very good records on each vehicle; EPA can quickly determine if a particular unit is acceptable.) A single fleet can supply multiple vehicles and, typically, is quite willing to participate. Therefore, EPA makes far fewer inquiries than with individual owners of light vehicles. Based on comments, EPA may decide to address light and heavy duty vehicles separately.

EPA uses several techniques in selecting the class or category of motor vehicles to be evaluated. First, if based on other information (*e.g.,* defect reports, service bulletins) there is a suspicion that a problem exists; EPA may target a particular group. Second, groups with a large number of vehicles have potential for significant air quality effects; they may be selected for that reason. New emission control technology without a proven history is another factor in making selections. Finally, some vehicle classes are selected on a random basis.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Vehicle owners/lessees.

Estimated Number of Respondents: 1800

Frequency of Response: Once

Estimated Total Annual Hour Burden: 600 hours

Estimated Total Annual Cost: None

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21186 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0058; FRL–7545–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Environmental Radiation Ambient Monitoring System (ERAMS), EPA ICR Number 0877.08, OMB Control Number 2060–0015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0058, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles M. Petko, Office of Radiation and Indoor Air, National Air and Radiation Environmental Laboratory, 540 South Morris Avenue, Montgomery, AL 36115–2601; telephone number: (334) 270–3411; fax number: (334) 270–3454; e-mail address: *petko.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 4, 2003 (68 FR 16505), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0058, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Environmental Radiation Ambient Monitoring System (ERAMS).

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, surface water, and milk. Samples are sent to EPA's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response and ambient monitoring information regarding levels of environmental radiation across the nation. All stations, usually manned by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample collection, *e.g.*, sample type, sample location, length of sampling period, and volume represented.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about a half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: sample collectors.

Estimated Number of Respondents: 249.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 5,727.

Estimated Total Annual Cost: $254,891, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 2,636 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of adjustments to the estimates.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21187 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Proposed Related Services; Farm Management and Agricultural Trust

AGENCY: Farm Credit Administration.

ACTION: Notice; Request for public comment.

SUMMARY: The Farm Credit Administration (FCA or we) requests public comment on an inquiry by a Farm Credit System (System or FCS) institution for approval to offer farm management and agricultural trust services as authorized ''Related Services.'' The requested services are being published for a 60-day public comment period prior to the FCA acting on the request to offer such services.

DATES: Please send your comments to the FCA by October 20, 2003.

ADDRESSES: You may send comments by electronic mail to *reg-comm@fca.gov,* through the Pending Regulations section of the FCA's interactive Web site at *www.fca.gov,* or through the government-wide *www.regulations.gov* portal. You may also send written comments to Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. Copies of all comments we receive can be reviewed at FCA's office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Lori Markowitz, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Joy Strickland, Senior Counsel, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

Consistent with law and safety and soundness principles, the objective of this notice is to request public comment on a request from a FCS institution to offer farm management and agricultural trust services as authorized ''Related Services.''

II. Background

Related services, as defined in 12 CFR 618.8000(b) means ''any service or type of activity provided by a System bank or association that is appropriate to the recipient's on-farm, aquatic, or cooperative operations, including control of related financial matters.'' Any new service not previously authorized and placed on the Related Services List in 12 CFR part 618 requires a prior determination that the service is legally authorized. The FCA also must evaluate whether the service presents excessive risk to the requesting institution or the System as a whole, including whether the service could result in significant conflicts of interest or expose the institution or the System as a whole to significant liability.

III. Proposed Related Services

Under the proposal, the following services would be provided to persons eligible to receive such services from Farm Credit institutions under 12 CFR 618.8005.

1. *Farm Management Services:* Professionals familiar with the market would provide management of agricultural properties for real estate owners in the service area. Farm management includes defining ownership goals, identifying problems, analyzing alternatives, and making recommendations for achieving business goals. Farm managers would present the customer with a full spectrum of lease or custom farming alternatives and help the owner decide how to ultimately get the best return on assets. Key factors of the service would include developing a comprehensive farm operating plan, securing operators and negotiating leases, providing property reporting, including annual budgets and projections, analyzing government programs, formulating and implementing capital improvements and repairs, and handling commodity sales.

2. *Agricultural Trust Services:* The applicant would assist customers in creating a trust and managing the assets of the trust. As the trustee, the applicant would handle the responsibilities involved in settling the estate, including record keeping, asset management, asset disposition, tax filings, and income distributions.

IV. Requesting Comments

In its evaluation of the proposed services, the FCA will focus on systemic issues rather than on institution or program-specific factors. If we authorize the above related services, any System bank or association may develop a program and subsequently offer the same related service(s) to eligible recipients, subject to any special conditions or limitations imposed by the FCA. We may, at the time of approval, impose such special conditions or limitations on any approved service to ensure safety and soundness or compliance with law or regulation. These programs would be subject to review during the examination process.

Because of the complex nature of these proposed services, the FCA solicits public comment prior to acting on the request, in accordance with 12 CFR 618.8010(b)(3). We believe that evaluation of the proposal will be aided by public comment. Specifically, we request comments on the risks inherent in offering these services, such as the

potential for conflicts of interest and liability or environmental concerns, particularly in regard to providing such services to borrowers who may be having financial difficulty or who may be missing loan payments. We request commenters propose how they believe these identified risks might be mitigated, keeping in mind that some of the risks could be addressed by licensing requirements, requiring pertinent disclosure for certain services, and adopting internal controls. We also request comments on the potential benefits to farmers, the impact of such services on the lending function, and any other pertinent issues. In addition, we request comments on what Systemwide issues might be raised by a decision to authorize such services.

Dated: August 13, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–21112 Filed 8–18–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 18, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0307.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Development of SMR Systems in the 800 MHz Frequency Band.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local, and tribal government.

Number of Respondents: 685.

Estimated Time Per Response: .5–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 864 hours.

Total Annual Cost: $43,000.

Needs and Uses: The Commission adopted a Memorandum Opinion and Order (MO&O) on Remand. This action was taken pursuant to an order issued by the United States Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc., et al.* v. *Federal Communications Commission (''Fresno''),* 165 F. 3d 965 (DC Cir. 1999), wherein the Court remanded for further consideration the Commission's prior decision maintaining the requirement that incumbent wide-area Specialized Mobile Radio (SMR) licensees, licensees who had received ''extended implementation'' authorizations, must construct and operate all sites and frequencies by the construction deadline. Upon further reconsideration, the Commission allowed incumbent wide-area 800 MHz SMR licensees who were within their construction periods at the time *Fresno* was decided, to satisfy construction requirements similar to those given to Economic Area (EA) licensees in the 800 MHz band, and required that they may choose to apply the existing site-by-site, frequency-by-frequency construction requirements, or the EA construction requirements. Those who choose the latter were required to certify in a filing with the Commission their compliance with the requirements within the later of 15 days from their applicable construction benchmarks or 60 days from the effective date of the MO&O on Remand. The information will be used by the Commission for the following purposes: (1) To update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the 800 MHz SMR band; and (2) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21165 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 18, 2003. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0917.

Title: CORES Registration Form.

Form No.: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 134,500.

Estimated Time Per Response: .166 hours (ten minutes).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 22,327 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 160 is used for the manual registration of the Commission's Registration System (CORES). This form will collect data that pertains to entity name, address, contact representative, telephone number, e-mail address and fax number. The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. The FCC Registration Number (FRN) is issued by the Commission as a unique business account number for identification purposes only. The Commission is submitting this information collection as an extension (no change) to the Office of Management and Budget for the full three-year clearance.

OMB Control No.: 3060–0918.

Title: CORES Update/Change Form.

Form No.: FCC Form 161.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 21,000.

Estimated Time Per Response: .166 hours (ten minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,486 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 161 is used or the Commission's Registration System (CORES). This form will be used to update/change entity name, address, contact representative, telephone number, e-mail address and fax number. The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. It will also be used to update/change information in the Commission's database. The FCC Registration Number (FRN) is issued by the Commission as a unique business account number for identification purposes only. The Commission is submitting this information collection as an extension (no change) to the Office of Management and Budget for the full three-year clearance.

OMB Control No.: 3060–0919.

Title: CORES Certification Form.

Form No.: FCC Form 162.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 200.

Estimated Time Per Response: .084 hours (five minutes).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 17 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC Form 162 is a form that must accompany any non-feeable manual application form submitted to the Commission. It is used to service public inquiries and comply with the Debt Collection Improvement Act of 1996. It is also used during the transition period to implement the CORES system to certify entities FCC Registration Number (FRN). Finally, the FRN has affected approximately 60 application forms and will require these forms to change to include the FRN. During the transition period, the FCC Form 162 is used until all the forms have been updated. As the forms come up for extension or revision, the FRN will be added on the form(s). The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. The FCC Registration Number (FRN) is issued by the Commission as a unique business account number for identification purposes only. The Commission is submitting this information collection as an extension (no change) to the Office of Management and Budget for the full three-year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21166 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P5–03]

Petition of National Customs Brokers and Forwarders Association of America, Inc., for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984; Notice of Filing

Notice is hereby given that National Customs Brokers and Forwarders Association of America, Inc., (''Petitioner'') has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, 46 CFR 502.67, and 502.69, for an exemption from the provisions of Section 8 and 10 of the Shipping of 1984, which require non-vessel ocean common carriers (''NVOCCs'') to establish, publish, maintain and enforce tariffs setting forth ocean freight rates. Alternatively, the Petitioner requests that the Commission consider a more limited exemption and rulemaking that would allow NVOCCs to establish ''range rates.''

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than September 5, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsels, Edward D. Greenberg, Esq., and David K. Monroe, Esq., Galland Kharasch Greenberg Fellman & Swirsky, P.C., 1054 Thirty-First Street, NW., Washington, DC 20037–4492. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *Secretary@fmc.gov.* Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to secretary@fmc.gov or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the

Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request may be directed to *secretary@fmc.gov.*

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21124 Filed 8–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P6–03]

Petition of Sinotrans Container Lines Co., Ltd., (Sinolines) for Full Exemption from the First Sentence of Section 9(C) of the Shipping Act of 1984, as Amended; Notice of Filing

Notice is hereby given that Sinotrans Container Lines Co., Ltd., (Sinolines)(''Petitioner'') has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.69, for a full exemption from the first sentence of Section 9(c) of the 1984 Act, 46 U.S.C. app. 1708(c). Petitioner seeks an exemption so that it can lawfully publish rate decreases effective upon publication, regardless of whether those rates meet, exceed or are lower than the rates of competing carriers' rates.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than September 5, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Robert B. Yoshitomi, Esq., Nixon Peabody LLP, 2040 Main Street, Suite 850, Irvine, California 92614. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *Secretary@fmc.gov.* Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW, Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request may be directed to *secretary@fmc.gov.*

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21125 Filed 8–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P2–03]

Petition of Sinotrans Container Lines Co., Ltd. (Sinolines) for a Limited Exemption From Section 9(c) of the Shipping Act of 1984, as Amended; Notice of Discontinuance

The Commission has received notice that the Petitioner in this matter is withdrawing its Petition due to changed circumstances. Therefore this proceeding is discontinued.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21126 Filed 8–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the ''agencies''), may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On May 29, 2003, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the currently approved information collection: the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019). The Board, which published the request for comment on behalf of the agencies, did not receive any comments.

DATES: Comments must be submitted on or before September 18, 2003.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments will be shared among the agencies.

Written comments, which should refer to ''Country Exposure Report for U.S. Branches and Agencies of Foreign Banks, 7100–0213,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the agencies:

Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved information collection:

Report title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks

Form number: FFIEC 019.

OMB number: 7100–0213.

Frequency of response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Number of respondents: 185.

Estimated average hours per response: 10 hours.

Estimated Annual reporting hours: 7,400 hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3906 for all agencies; 12 U.S.C. 3105 and 3108 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency. This information collection is given confidential treatment. (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The Agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form or instructions.

Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, August 13, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–21188 Filed 8–18–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Clarence R. Wright, Jr. 2003 Family Trusts and its trustees, Clarence Rankin (''Randy'') Wright, III, Yukon, Oklahoma, and Roger Dean Rinehart, El Reno, Oklahoma; to acquire voting control of International Bancshares of Oklahoma, Inc., Yukon, Oklahoma, and thereby indirectly acquire voting shares of The Yukon National Bank, Yukon, Oklahoma.

Board of Governors of the Federal Reserve System, August 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21135 Filed 8–18–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Trustcompany Bancorp, Jersey City, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Trust Company of New Jersey, Jersey City, New Jersey.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of First California Southern Bancorp, Escondido, California, and thereby indirectly acquire Bank of Escondido (in organization), Escondido, California, and by First California Southern Bancorp, Escondido, California, to become a bank holding company through the acquisition of 51 percent of the voting shares of Bank of Escondido (in organization), Escondido, California.

Board of Governors of the Federal Reserve System, August 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21134 Filed 8–18–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Colorado, New York, Texas, and Utah

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03–3, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This notice announces the new per diem rates for Colorado, New York, Texas, and Utah.

DATES: This notice is effective August 19, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite Notice of Per Diem Bulletin 03–3.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amount published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002, 68 FR 25034, May 9, 2003, and 68 FR 31706, May 28, 2003, is being changed in the following locations:

State of Colorado

- City of Colorado Springs, including El Paso County.

State of New York

- Borough of Brooklyn.

State of Texas

- City of Austin, including Travis County.
- City of Houston, including Harris County.

State of Utah

- City of Salt Lake City, including Salt Lake County.

B. Change in Standard Procedure

Since per diem rates frequently change, effective April 28, 2003 (68 FR 22314), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem.* This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 8, 2003.

G. Martin Wagner,

Associate Administrator.

[FR Doc. 03–21167 Filed 8–18–03; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS/OMH/CSS–0990–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection;

Title of Information Collection: Evaluation of the Office of Minority Health Resource Center;

Form/OMB No.: OS–0990–NEW;

Use: The evaluation will assess the extent to which programmatic improvements made after the previous evaulation have improved service delivery and the impacts that services like HIV/AIDS technical assistance have on monitity communities.

Frequency: On occasion;

Affected Public: Individuals or households, business or other for-profit, State, local or tribal government;

Annual Number of Respondents: 1352;

Total Annual Responses: 1352;

Average Burden Per Response: 10 minutes;

Total Annual Hours: 286.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *John.Burke@hhs.gov,* or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address:

Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: John Burke (OS/OMH/CSS–0990–New), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 8, 2003.

John P. Burke, III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–21127 Filed 8–18–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–110]

Agency for Toxic Substances and Disease Registry; Proposed Data Collections Submitted for

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Collection of Publication Assessment Information—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

This project will collect information from Internet users after they order or download a publication from the Web site of the Department of Health and Human Services/Centers for Disease Control and Prevention/National Center for Injury Prevention and Control. NCIPC produces a variety of publications about injury prevention for a range of audiences, from public health professionals to the general public. Publications include reports to Congress, fact books, brochures, research articles, tool kits, and books. Most of these publications are available to the general public, and the chief distribution method is through the NCIPC Web site, *http://www.cdc.gov/ncipc.* On the Web site, people can order print copies or view electronic copies of the publications.

It is critical for NCIPC to obtain feedback from users of their publications so it can better understand who uses them and how. This will help guide the development of future publications, revisions of current ones, as well as distribution of publications. As part of the effort to gain understanding about the audiences of NCIPC publications, we will collect information through a Web-based form. NCIPC Web site users will have the opportunity to fill out the form after ordering, downloading, or reading online publications through the Web site. The form contains questions about the demographic background of the users, how they found the Web site, how they plan to use the publication, their need for publications in other languages, the degree to which the publication offerings were useful to them, and space for their general comments. The results of the forms will be compiled and studied so NCIPC can better consider the needs of people who use the publications in future publication development, revisions, and distribution plans. There are no costs to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
NCIPC Web site users who access or order publications	360,000	1	5/60	30,000

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21159 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–64–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR).

ATSDR is announcing the request for extension of the OMB-approved Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to consider petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 U.S.C. 9604(i)(6)(B)). The Agency may conduct public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 57 FR 37382–89. There are no costs to the respondents other than the time required for preparing a letter and for postage.

ATSDR anticipates approximately 34 requests will be received each year. This estimate is based on the number of requests received in the past five years

and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives. The annual burden hours are estimated to be 17.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
General public	34	1	30/60

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21156 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–108]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: NIOSH Training Grants, 42 CFR part 86, Application and Regulations (OMB NO. 0920–0261)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Public Law 91–596 requires CDC/NIOSH to provide an adequate supply of professionals to carry out the purposes of the Act to assure a safe and healthful work environment. NIOSH supports educational programs through training grant awards to academic institutions for the training of industrial hygienists, occupational physicians, occupational health nurses, safety professionals and other professionals in related disciplines, such as occupational epidemiologists. Grants are provided to 16 Education and Research Centers (ERCs) which provide multidisciplinary graduate academic and research training for professionals, continuing education for practicing professionals and outreach programs in the Region. There are also 40 Training Project Grants (TPGs), which provide single discipline academic and technical training throughout the country. 42 CFR part 86, ''Grants for Education Programs in Occupational Safety and Health, subpart B—Occupational Safety and Health Training,'' provides guidelines for implementing Public Law 91–596.

The training grant application form (CDC2.145.A) is used by NIOSH to collect information from applicants submitting new competing applications and from existing applicants for submitting competing renewal grants. The information is used to determine the eligibility of applicants for grant review and by peer reviewers during the peer review process to evaluate the merit of the proposed training project. CDC Form 2.145B is used for non-competing awards to judge the annual progress of the applicant during the approved project period.

Extramural training grant awards are made annually following an extramural review process of the training grant applications including a Special Emphasis Panel, review by an internal Training Grants Council, and an internal review of non-competing applicants. The estimated annualized burden is 10,631 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Universities	77	1	8,284/60	10,631

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21157 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–109]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: An Evaluation Survey on the Use and Effectiveness of Internet SAMMEC—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since 1987, the Centers for Disease Control and Prevention (CDC) has used the Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) software to estimate the disease impact of smoking for the nation, states, and large populations. The Internet version of the SAMMEC software was released in 2002, and it contains two distinct computational programs, Adult SAMMEC and MCH SAMMEC, which can be used to estimate the adverse health outcomes and disease impact of smoking on adults and infants.

Since the release of Internet SAMMEC, more than 1230 tobacco control professionals in the State health departments and other tobacco control institutions in the country have used SAMMEC to generate the data they need for their projects. Some of them have provided comments and sent requests for assistance. The purpose of this survey is to evaluate the use and effectiveness of the SAMMEC software and identify ways to improve the system so that it will better meet the needs of the users in tobacco control and prevention.

There are no costs to the respondents except for their time in completing the questionnaire.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Tobacco Control Professionals/Internet SAMMEC users	1000	1	15/60	250

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 03–21158 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0025]

Guidance for Industry and FDA Staff on the Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6.'' This document deals with testing of a mammography unit's Automatic Exposure Control (AEC) component and is intended to provide guidance to mammography facilities and their personnel. It represents FDA's current thinking on this aspect of the final regulations implementing the Mammography Quality Standards Act.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Divison of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–0009.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 19, 2003 (68 FR 8030), FDA published a document entitled ''Medical Devices: Draft Guidance for Industry and FDA;

The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Availability'' for public comment. Before the public comment period closed on May 20, 2003, 2 respondents submitted a total of 14 comments. In addition, the National Mammography Quality Assurance Advisory Committee reviewed the draft guidance during its April 28, 2003, meeting and provided additional comments. In response to those comments, FDA has modified the guidance as follows by:

1. Further clarifying the term ''equipment configuration,''
2. Adding different image receptor sizes as separate equipment configurations,
3. Not recommending that target-filter combinations be tested as separate equipment configurations, and
4. Emphasizing the need to minimize non-AEC component variability when conducting the AEC performance test.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on testing of a mammography unit's AEC component. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6'' by FAX, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1435 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–21114 Filed 8–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council on Minority Health and Health Disparities meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health Disparities.

Date: September 16–17, 2003.

Open: September 16, 2003, 8:30 a.m. to 5:30 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, Presentations include The Role of the Advisory Council, Cancer Health Disparities Report, NIH Committee on Minority Health and Health Disparities Research Definitions and Application Methodology Status Report, Update on the Sullivan Commission, and other Council business.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: September 17, 2003, 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lisa Evans, JD, Senior Advisor for Policy, National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–402–1366, *evansl@ncmhd.nih.gov.*

Dated: August 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21213 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Supplement.

Date: September 30, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, Phd, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training: 93.143. NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21214 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel IADL.

Date: September 24, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21211 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: September 17–18, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: Protocol review, data management, a review and discussion of the RAC informed Consent Working Group (ICWG) draft Guidance Document, and a presentation by Dr. Shawn Burgess, Head of the Developmental Genomics Section, Genome Technology Branch, NHGRI, NIH, on ''Integration Sites of Retroviral Vectors in the Human Genome.''

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Stephen M. Rose, PhD., Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21215 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Radiological Emergency Preparedness: Planning and Preparing for a Fast-Breaking Event

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice with request for comments.

SUMMARY: Pursuant to completion of the Radiological Emergency Preparedness (REP) Program exercise evaluation criteria, the Federal Emergency Management Agency (FEMA) is proposing a means to evaluate the capability of Offsite Response Organizations (ORO) to respond to a fast-breaking event at a commercial nuclear power plant.

DATES: FEMA must receive comments on or before October 20, 2003.

ADDRESSES: You may submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472, or send them by e-mail to

rules@fema.gov. Please reference ''REP: Planning and Preparing for a Fast-Breaking Event'' in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; (202) 646–3664; *vanessa.quinn@dhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to completion of the REP Program exercise evaluation criteria, FEMA is proposing a means to evaluate the capability of OROs to respond to a fast-breaking event at a commercial nuclear power plant. The subject notice contains I. background information, II. the regulatory basis with a chart illustrating the alert and notification timeline, III. considerations when preparing a response to a fast-breaking event, IV. Evaluation Criterion 5.a.2 with the associated extent of play, and V. frequency of evaluation.

I. Background

FEMA published a **Federal Register** notice entitled ''Radiological Emergency Preparedness: Exercise Evaluation Methodology'' at 66 FR 47526, September 12, 2001, containing the REP exercise evaluation areas and associated criteria, effective as of October 1, 2001, for use when evaluating REP exercises. After publication, FEMA clarified some of the information in the September notice and published a notice of correction in the **Federal Register** at 67 FR 20580, April 25, 2002.

In both notices, FEMA deferred publication of proposed Criterion 5.a.2, which would evaluate an ORO's capability for urgent notification of the public in the event of a fast-breaking incident at the plant. FEMA is now going forward with publication of the draft criterion for comment.

II. Regulatory Basis

The aforementioned emergency preparedness-related Nuclear Regulatory Commission (NRC) and FEMA regulations and case law (Atomic Safety and Licensing Appeal Board ALAB–935) provide the regulatory bases for judging the adequacy of the offsite planning and preparedness for a response to a situation requiring urgent action.

Appendix E to 10 CFR Part 50 states:

[t]he licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition.

It further states:

[t]he design objective of the prompt public notification system shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ [emergency planning zone] within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local government officials to make a judgment whether or not to activate the public notification system.

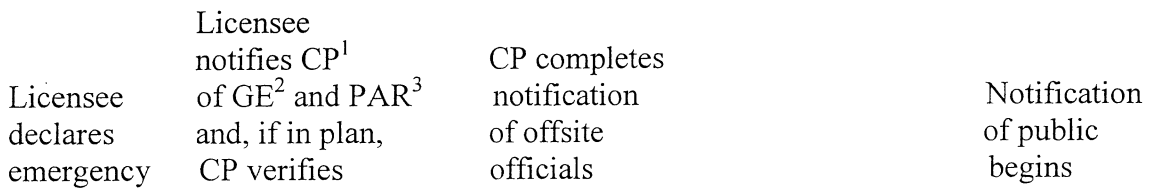
The Atomic Safety and Licensing Appeal Board characterizes the timing requirement in Appendix E as about 15 minutes from the time offsite official(s) are notified and specifies that the ''about 15 minutes'' timeframe concludes when the notification message begins. *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2) ALAB–935, 32 NRC 57 (1990).

FEMA regulation 44 CFR Part 350.5(a)(5) states, in part:

[p]rocedures have been established for notification, by the licensee, of State and local response organizations * * * and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

In order to fulfill the intent of the regulations and case law, that is, to ensure the ability to provide a rapid offsite response in the event of a severe nuclear power plant incident, we believe it is necessary to specify a timeframe for notification of the offsite official(s). Therefore, we have established an approximately 5-minute timeframe between the licensee's notification of the offsite communications point or, if in the plan, the communications point's verification of the notification, and the communications point's notification of offsite official(s).

The chart below illustrates the timeframes, as discussed above and as explained below in Evaluation Criterion 5.a.2, for demonstration of an offsite response to a fast-breaking event:



[1] CP = Offsite Communications Point
[2] GE = General Emergency
[3] PAR = Protective Action Recommendation

III. Considerations When Planning a Response to a Fast-Breaking Event

The licensee's notification will include a Protective Action Recommendation (PAR). The ORO is responsible for considering the recommendation and deciding whether to include a protective action in the initial Emergency Alert System (EAS) message and, if so, what the protective action should be. Some OROs may choose to implement the utility's PAR or a default protective action, pending an independent evaluation by responsible offsite officials. Other OROs—in light of the potential need to modify utility recommendations in

cases of bad weather or other concurrent emergencies—have delegated such decision making authority to appropriate on-call ORO officials.

OROs may also choose to not include a protective action in the initial message. FEMA guidance at 66 FR 47546, September 12, 2001, permits an initial EAS message that does not contain a protective action but notifies the public of the need to stand by for further information. However, in light of the urgency of a fast-breaking event and the need for immediate response, OROs are strongly encouraged to include a protective action in the initial message. In most fast-breaking events the preferred initial protective action—as described in Supplement 3, ''Criteria for Protective Action Recommendations,'' to NUREG–0654/FEMA–REP–1, Rev. 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants''—is to evacuate immediately about two miles around the plant and about five miles downwind. The exception is a situation where there are other conditions, such as severe weather, that would make evacuation dangerous. In that instance the protective action would be to shelter-in-place.

IV. Evaluation Criterion 5.a.2

A. *Criterion 5.a.2:* In a situation that requires urgent action, responsible OROs demonstrate the capability to initiate public alerting and notification within the plume exposure EPZ within the following timeframes: (1) Notifying State and local officials within approximately 5 minutes of licensee's notification of the offsite communications point or, if in the plan, within approximately 5 minutes of the communication point's verification of the notification and (2) alerting the public and beginning notification of the public within about 15 minutes, but not to exceed 20 minutes, from notification of the State and local official(s). The initial instructional message to the public must include, at a minimum, the elements required by current FEMA REP guidance. (10 CFR part 50, Appendix E.IV.D.3, 44 CFR 350.5(a)(5), and NUREG–0654/FEMA–REP–1, E.5, 6, 7).

B. *Demonstration of Fast-breaking Event:* Demonstration of the process can be through a biennial exercise or an unannounced drill, separate from the biennial exercises, and will be scheduled within a seven-day window. Responsible parties may be told of the demonstration schedule window, but will not be told of a specific time for the demonstration. Real-life emergencies may preempt the demonstration, and these interruptions will not adversely affect the evaluation. The Extent of Play, shown below, generally establishes the type and level of detail to be demonstrated in the exercise that FEMA will be evaluating for Criterion 5.a.2.

C. *Extent of Play:* The criterion should be demonstrated using the staff, procedures, and equipment identified in the ORO's plan (for example, the plant notification line, the decision maker's notification system, the actual communications point, and personnel normally assigned to responsible duty locations). Actual activation of the public alerting system or notification system is not necessary. Appropriate simulations may be submitted by the ORO for FEMA's review and approval.

The evaluation begins when the ORO communications point receives the notification in accordance with approved procedures and, if specified in the plan, immediately verifies the notification. The first (approximately 5 minutes) time limit begins. Notification of responsible offsite official(s) should be performed in accordance with approved procedures and evaluated as to its completion within approximately 5 minutes. FEMA will time this period in order to support a judgment as to whether the performance achieved the desired result. The ORO must maintain a duty list showing that appropriate offsite official(s) who are authorized to approve the alerting of the public and broadcast of the EAS message are available at all times. Evaluation as to compliance with the timeframe (about 15 minutes, but no more than 20) begins when the ORO's communications point has completed its notification of the offsite official(s).

Decision making may involve conferring with staff or others, but the amount of time involved must be consistent with achieving the design criterion of about 15 minutes, but not more than 20. The decision making process should result in a decision to alert and notify the public. Activation of the public alerting system and performance of the first sounding cycle should be accomplished in accordance with approved procedures. Completion of the sounding cycle and the beginning of the notification message marks the end of the about 15 minute, but not more than 20, time period. FEMA will time this period in order to support a judgment as to whether the performance achieved the desired result. The information transmitted should be accurate and in accordance with current FEMA guidance.

All activities associated with the response to a fast-breaking event must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise noted above or indicated in the extent of play agreement.

V. Frequency of Evaluation

FEMA will evaluate the initial demonstration of the process, using Evaluation Criterion 5.a.2, at every nuclear power plant site over the two years following final publication of this Criterion in the **Federal Register**. FEMA will assess a Deficiency if the applicable timeframes in the Criterion are not met. FEMA will then evaluate the ORO's capability a minimum of once every two years using Evaluation Criterion 5.a.2. FEMA will assess a Deficiency if the applicable timeframes are not met. In addition, the ORO should conduct a monthly fast-breaker communications drill and provide an annual summary in the Annual Letter of Certification.

Dated: August 12, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–21200 Filed 8–18–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Mycoplasma.

Date: August 20, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7848, Bethesda, MD 20892, (301) 435–1147, *henry@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Epithelial Protein Review.

Date: August 25, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: October 6–7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Surgery and Bioengineering Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Medicinal Chemistry Study Section.

Date: October 8–9, 2003.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert Lees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Tumor Progression and Metastasis Study Section.

Date: October 8–10, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fogarty International Clinical Research.

Date: October 9–10, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Hilary Sigmon, PHD, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neurodegeneration and Biology of Glia Study Section.

Date: October 9–10, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Gillian Einstein, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20817, (301) 435–4433, *einsteig@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Biochemical Endocrinology Study Section.

Date: October 9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael Knecht, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Metallobiochemistry Study Section.

Date: October 9–10, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW, Washington, DC 20009.

Contact Person: Janet Nelson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93,846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21212 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Total Knee Replacement

Notice is hereby given of the National Institutes of Health (NIH) Consensus Development Conference on ''Total Knee Replacement'' to be held December 8–10, 2003, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on December 8 and 9, and at 9 a.m. on December 10, and will be open to the public.

Total knee replacement (TKR) has shown increasing success in relieving knee pain and improving joint function for patients suffering from knee problems due to injury, degenerative disease, and inflammation. Each year, approximately 300,000 TKR surgeries are performed in the United States for end-stage arthritis of the knee joint. As the number of TKR surgeries performed each year increases and the indications for TKR extend to younger patients, a review of available scientific information is necessary to enhance clinical decision making and stimulate further research.

Despite the increased success of TKR, questions remain concerning which materials and implant designs are most effective for specific patient populations and which surgical approach is optimal for a successful outcome. Physical, social, and psychological issues may influence the success of TKR, and understanding patient differences could facilitate the decision making process before, during, and after surgery, thereby achieving the greatest benefit from TKR. Particular attention also must be given to the treatment and timing options related to the revision of failed TKR surgery.

This two-and-a-half-day conference will examine the current state of knowledge regarding total knee replacement and identify directions for future research.

During the first day-and-a-half of the conference, experts will present the latest research findings on total knee replacement to an independent panel. After weighing all of the scientific

evidence, the panel will draft a statement, addressing the following key questions:

—What are the current indications and outcomes for primary TKR?

—How do specific characteristics of the patient, material and design of the prosthesis, and surgical factors affect the short-term and long-term outcomes of primary TKR?

—Are there important perioperative interventions that influence outcomes?

—What are the indications, approaches, and outcomes for revision TKR?

—What factors explain disparities in the utilization of TKR in different populations?

—What are the directions for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow, to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the NIH Office of Medical Applications of Research. The cosponsors of the meeting are: The National Institute of Child Health and Human Development, the U.S. Food and Drug Administration, the National Institute of Standards and Technology, and the NIH Office of Research on Women's Health.

Advance information about the conference and conference registration materials may be obtained from IQ Solutions of Rockville, Maryland, by calling 301–984–1473 or by sending e-mail to *totalknee@iqsolutions.com.* IQ Solutions' mailing address is 11300 Rockville Pike, Suite 801, Rockville, MD, 20852. Registration information is also available on the NIH Consensus Program Web site at *http://consensus.nih.gov.*

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorssecurity.htm.*

Dated: August 12, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 03–21216 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15731]

Great Lakes Pilotage Advisory Committee; Meeting Cancellation

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting cancellation.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) meeting scheduled for August 19 and 20, 2003, and announced in the **Federal Register** on August 1, 2003 (68 FR 45264), is cancelled. A notice will be published in the **Federal Register** when the meeting is rescheduled.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700 or e-mail: *Mhegy@comdt.uscg.mil.*

Dated: August 12, 2003.

T.H. Gilmour,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–21223 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Filamentation.

Date: August 19, 2003.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892–7808, (301) 435–2514, *westnea@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Development.

Date: August 20, 2003.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Plasticity.

Date: August 21, 2003.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chromosome.

Date: August 25, 2003.

Time: 12 PM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21210 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: September 4, 2003.

Place: Building S, Room 113, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 9 a.m.—FICEMS Ambulance Safety Subcommittee; 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Counter-Terrorism Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties. There will be an optional briefing following the afternoon meeting.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, September 2, 2003, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass, which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 9 a.m. until 4 p.m. Members should call in around 9 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''10.'' If you plan to call in, you should just enter the number ''10''—no need to hit any other buttons, such as the star or pound keys.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on December 4, 2003. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the December 4, 2003 FICEMS Committee Meeting.

Dated: August 12, 2003.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 03–21150 Filed 8–18–03; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Fiber Optic Cable Products

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain fiber optic cable products to be offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the countries of origin of products referred to as Glass, Glass Polymer patch cords, Fiber Interconnect Product cable assemblies and Multimode (ST MM) epoxy connectors are the United States, the United States, and Japan, respectively.

DATES: The final determination was issued on August 11, 2003. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8836).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 11, 2003, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain fiber optic cable products to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ 562754. This final determination was issued at the request of 3M Company under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that, based upon the facts presented, the assembly in China of U.S.-origin fiber optic cable and Chinese-origin connectors to create Glass, Glass Polymer (''GGP'') patch cords does not result in a substantial transformation of the components into a product of China. Therefore, the country of origin of the product is the United States. The final determination also concluded that neither the assembly in China of a Japanese-origin ceramic ferrule with U.S.-origin components to create connectors nor the subsequent assembly in China of the connectors with U.S.-origin fiber optic cable to produce Fiber Interconnect Product (''FIP'') cable assemblies results in a substantial transformation of the components into products of China. Accordingly, the origin of the FIB cable assemblies is the United States. Finally, the final determination concluded that the assembly in China of a Japanese-origin ceramic ferrule with U.S., Canadian and Chinese components to produce Multimode (ST MM) epoxy connectors does not result in a substantial

transformation of the components into products of China. Therefore, the country of origin of the ST MM epoxy connectors is Japan.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of August 19, 2003.

Dated: August 13, 2003.

Myles B. Harmon for Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

MAR–2 RR:CR:SM 562754 CW
CATEGORY: Marking

Mr. Robert E. Burke
Counsel, Barnes, Richardson & Colburn, 303 East Wacker Drive, Suite 1100, Chicago, Illinois 60601

Re: Country of Origin of fiber optic cable products; government procurement; final determination

Dear Mr. Burke: This is in response to your letter dated May 9, 2003, on behalf of your client 3M Company (''3M'') requesting a ruling on fiber optic cable products. 3M requests a country of origin determination for the fiber optic cable products in order to comply with the Federal Acquisition Regulations, 48 CFR 25.000 *et seq.*, and the ''Trade Agreements Act,'' 19 U.S.C. 2501 *et seq.* Specifically, this ruling concerns the following three products: Glass, Glass Polymer (''GGP'') patch cords; Fiber Interconnect Product (''FIP'') cable assemblies (also referred to as ''FIP patch cords''); and Multimode (ST MM) epoxy connectors. In accordance with your request, this response constitutes a final determination issued in accordance with 19 CFR 177.22(c).

FACTS

GGP Patch Cord

3M manufactures optical fiber, and further manufactures the fiber into optical fiber cable. These processes, all of which take place in the United States, begin with an imported fiber optic ''seed,'' which 3M uses as raw material in manufacturing the optical fiber. The optical fibers, in turn, are made into optical fiber cable in the United States. Once the optical fiber cable is completed, 3M expects to send the cable to China, where it is to be cut and fitted with connectors. A description of the steps in the production process, beginning with the imported ''seed,'' is as follows:

1. 3M produces optical fiber in the United States from an optic core, called a ''seed,'' which is imported into the U.S. from the Netherlands. The seed is a multi-layered glass rod. The rings, or layers, or glass that comprise the seed are melded together and light travels through the layers of glass, all of which have different refractive indexes.

2. After importation, 3M adds a glass ''sleeve'' to the core. This process is known as ''cladding.'' The seed and the sleeve comprise an optical fiber ''preform,'' measuring approximately 2½ inches in diameter by one meter.

3. 3M then draws the preform, via a drawing tower, into an extremely thin o ptical glass fiber. The resulting diameter of the optical fiber is 0.004 inches. The drawing also melds the core and glass sleeve into one integrated product, giving the optical fibers required optical properties. 3M refers to this optical fiber as ''glass, glass, polymer,'' or ''GGP''. 3M owns a patent, in the U.S. and in several other countries, on the GGP process.

4. 3M then sends the optical fiber to another U.S. company, which adds a thermoplastic jacket and aramid fibers to the final optical fiber. The jacket and the fibers are added solely for the protection of the delicate optical fiber. After jacketing, this company winds the finished optical fiber cable onto spools and sends it to China.

5. In China, the U.S. optical fiber cable in spools is cut to length and molded plastic connectors made in China are applied to the optical fiber cable using the following steps:

a. The spooled cable is cut to length;

b. Each end of the cut cable is threaded through a plastic holder where about two inches of sheathing are removed from each end of the cable and any exposed Kevlar fiber is cut away and the plastic jacketing of the optical fiber is removed;

c. The exposed fiber is cleaned with alcohol and measured;

d. The fiber is threaded through a connector, glued to the connector and excess fiber is trimmed;

e. The connectors are placed into a finishing machine, where the fiber ends are automatically beveled and polished;

f. The metal springs, sourced from the United States, are inserted into a connector and ultrasonically welded into place;

g. The connectors are ultrasonically cleaned and tested and a protective plastic shroud is snapped onto the connector.

FIP Cable Assembly

1. 3M purchases optical fiber cable from an unrelated company in the U.S. This cable is a standard fiber optic cable, and consists of one or more fiber optic fibers, aramid (Kevlar™) for strength, and a thermoplastic coating that provides protection for the very thin fiber(s).

2. 3M purchases a ceramic ferrule in Japan. This ferrule, a hollow cylinder, is used to align the ends of the optical fibers as the fibers are inserted into the connectors. The hollow center of the ferrule contains one channel that is designed to fit the optical fiber and to align the fiber ends, enabling light to pass through the connection.

3. 3M purchases or self-produces plastic parts to be used in the cable connectors. All self-produced parts are molded in the United States.

4. 3M sends the spooled fiber optic cable and plastic parts, along with a small metal ring from the U.S., and the ferrule from Japan, to China.

5. In China, the ceramic ferrule, the metal ring, and the plastic parts are assembled into a connector for the ends of the cable assemblies. The fiber optic cable is also cut-to-length and assembled with the connectors. Specifically, the steps involved in the assembly process are as follows:

a. The spooled cable is cut to length;

b. Each end of the cut cable is threaded through a respective plastic boot and the metal ring;

c. After removing about two inches of sheathing, Kevlar™ fiber, and plastic jacketing of the cable, the exposed fiber is cleaned with alcohol and measured;

d. The fiber is threaded through the ferrule and fastened by adhesive;

e. The metal ring is attached, by crimping, and the fiber is trimmed;

f. The exposed ends of the fiber are scored, machine-polished, and cleaned;

g. The unit is inspected and tested, and a plastic protective dust cap is placed on it.

ST MM Epoxy Connector

3M also separately imports a connector, called an ''ST MM Epoxy Connector'' from China. This connector is similar to the connector used on the FIP Cable Assemblies described above, and the component source and assembly process is also substantially similar. In this case, the assembly consists of the following components:

1. 3M purchases a Japanese made ceramic ferrule which it provides to the assembler. This ferrule is a hollow cylinder, used to align the ends of the optical fibers as the fibers are inserted into the connectors. The hollow center of the ferrule contains one channel that is highly engineered to fit the optical fibers exactly and to provide a precise alignment of the optical fiber ends to minimize the loss of light in the connection.

2. 3M supplies the assembler with an epoxy ring, a spring, a c-clip and tygon tubes from the United States. 3M also supplies the assembler with a small, metal ''backbone'' and a metal ''bayonet'' from Canada. Packing materials and labels are from China.

3. 3M supplies the assembler with a plastic dust cap and a boot, made in China.

The assembly process is as follows:

1. The backbone and epoxy ring are assembled and glued with the ceramic ferrule, bayonet, spring and c-clip to form the ST MM Epoxy Connector.

2. The dust cap is then put over the assembly. This cap is only used for protection of the connector during transit; it is removed before final use.

3. The capped connector is put into the plastic bag, along with the tygon tube and the boot. The boot and tygon tubing is added to the connector by the final user to provide strain relief. (The Tygon tubing is used to protect the fiber when the connector is terminated onto 900um fiber. It is not used 100% of the time). The end user determines if the assembly needs the tygon tubing.

ISSUES

For purposes of government procurement, what is the country of origin of the patch

cords, FIP Cable Assembly and ST MM Epoxy Connector processed as described above?

LAW AND ANALYSIS:

Under Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Bureau of Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

In regard to determining the country of origin of goods intended for government procurement, section 177.22(a), Customs Regulations (19 CFR 177.22(a)), provides, in pertinent part, as follows:

For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

19 CFR 177.22(a)(1) does not apply in the instant case because the fiber optic cable products are not wholly produced in the United States. Therefore, 19 CFR 177.22(a)(2) is applicable.

An article that consists in whole or in part of materials from more than one country is a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, and use distinct from that of the article or articles from which it was so transformed. See *United States* v. *Gibson-Thomsen,* 27 C.C.P.A. 267 (1940); *Uniroyal Inc.* v. *United States,* 542 F. Supp. 1026 (Ct. Int'l Trade 1982), *aff'd,* 702 F.2d 1022 (Fed. Cir. 1983); *Koru North America* v. *United States,* 701 F. Supp 229 (Ct. Int'l Trade 1988); *National Juice Products Ass'n* v. *United States,* 628 F. Supp. 978 (Ct. Int'l Trade 1986); *Coastal States Marketing Inc.* v. *United States,* 646 F. Supp. 255 (Ct. Int'l Trade 1986), *aff'd,* 818 F.2d 860 (Fed. Cir. 1987); *Ferrostaal Metals Corp.* v. *United States,* 664 F. Supp. 535 (Ct. Int'l Trade 1987).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. See *Uniroyal Inc.* v. *United States,* 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

GGP Patch Cords

In the case of the patch cords, a foreign ''seed'' is used in the U.S. in the manufacture of optical fiber cable. The first issue is whether the processing in the United States performed on this imported ''seed'' results in a substantial transformation. In Headquarters' Ruling Letter (''HRL'') 561774 dated January 29, 2001, Customs addressed a similar situation. In HRL 561774, the issue involved the country of origin marking of imported glass rod (''cane'') used in the production of optical fiber preforms in the U.S. The imported cane was subjected to a ''overcladding'' process to create the fiber preform. According to the facts in HRL 561774, [t]he fiber itself consists of two different types of glass—one making up the ''core'' [of the preform, *i.e.*, cane], and the other making up the ''cladding'' surrounded by a protective acrylate coating. The core is the light-guiding region of the fiber, while the cladding, which has a different index of refraction than the core, ensures that the light signal remains within the core as it is carried along the fiber's length.

Customs held that, as the optical properties are imparted at the preform stage of production, the ''essence'' or character of the preform does not derive from the cane, but from the added cladding and its interaction with the core (cane). Therefore, we found that the production of the fiber preform resulted in a substantial transformation of the imported cane.

In the present case, an imported multi-layered glass rod (referred to as a ''seed'') is subjected to a ''cladding'' process in the U.S., involving the addition of a glass ''sleeve'' to the core. The preform is then drawn into optical glass fiber which, in turn, is made into optical fiber cable. Consistent with the holding in HRL 561774, we find that the above processing in the U.S. (specifically, the operations resulting in the preform) substantially transforms the foreign-origin ''seed'' into a ''product of'' the United States.

The second issue involving this first product is whether the operations performed in China result in a substantial transformation of the U.S.-origin optical fiber cable into a ''product of'' China. The U.S.-origin optical fiber cables are sent to China. In China, the optical fiber cable is cut-to-length, two inches of sheathing is removed from each end of the cable, and plastic connectors of Chinese origin are attached to each end of the cable.

In C.S.D. 85–25 (HRL 561392) dated September 25, 1984, Customs held that an assembly does not constitute a substantial transformation unless the operation is ''complex and meaningful.'' The Bureau of Customs and Border Protection (CBP) criteria for determining whether an operation is ''complex and meaningful'' depends upon the nature of the operation, including the number of components assembled and number of different operations involved. Prior CBP rulings raise additional considerations such as processing time, costs, visibility of the imported article after processing, and skill required by the assembly operation.

In HRL 561392 dated June 21, 1999, Customs considered the country of origin marking requirements of an insulated electric conductor which is an electrical cable with pin connectors at each end used to connect computers to printers or other peripheral devices. The cable and connectors were made in Taiwan. In China, the cable was cut to length and connectors were attached to the cable. Customs held that the cutting of the cable to length and assembly of the cable to the connectors in China did not result in a substantial transformation. In HRL 560214 dated September 3, 1997, Customs held that where wire rope cable was cut to length, sliding hooks were put on the rope, and end ferrules were swaged on in the U.S., the wire rope cable was not substantially transformed. Customs concluded that the wire rope maintained its character and did not lose its identity and become an integral part of a new article when attached with the hardware. In HRL 555774 dated December 10, 1990, Customs held that Japanese wire cut to length and electrical connectors crimped onto the ends of the wire was not a substantial transformation.

In the case of the GGP patch cords in this case, it is our opinion that the cutting of the cable to length and assembly of the cable to the Chinese-origin connectors in China does not result in a substantial transformation of the cable. Therefore, as the connectors lose their separate identity when combined with the fiber optic cable, the country of origin of the imported optical fiber cable is the United States.

FIP Cable Assemblies

In the case of the FIP cable assembly, a Japanese-origin ceramic ferrule and fiber optic cable (purchased from an unrelated company in the U.S.), metal ring (purchased in the U.S.), and plastic parts (purchased in the U.S. or self-produced by 3M in the U.S.) are used during the assembly operation in China. First, the connectors are assembled using the ferrule, adhesive, plastic covers, and a metal ring. The ferrule gives the connector its form and function. The connectors are then attached to each end of the fiber optic cable. For purposes of this ruling, we are assuming that those components said to be purchased in the U.S. for use in making the FIP cable assembly are of U.S. origin.

In your submission, you state that the assembly operation for the FIP cable assembly is substantially similar to that described above for the GGP patch cord. You mention that the only major difference is that the FIP connectors include the Japanese-origin ferrule, which provides the structure and the enclosure for the cable at the point of connectivity. According to your submission, the ceramic ferrule is precisely designed to allow the joining of hair-thin fiber optic cables. The other parts of the connector are simply a means of affixing the ferrule in place. You assert that the assembly operation performed in China does not result in a substantial transformation of either the ferrule or the fiber optic cable. Therefore, you contend that the country of origin of the imported FIP cable assembly is the U.S. as the fiber optic cable imparts the essential character to the cable assembly or, alternatively, that the country of origin of the fiber optic portion of the assembly is the U.S. and the origin of the connector portion is Japan.

In HRL 556020 dated July 1, 1991, Customs addressed the issue of whether electrical

connectors produced in a designated beneficiary developing country under the Generalized System of Preferences (GSP) qualified as substantially transformed constituent materials of the electrical cable to which they were attached for purposes of the 35% value-content requirement under the GSP. The production of the connectors involved machining brass rod into contact pins and then joining the contact pins with plastic connector housings. Customs held that, while the initial fabrication of the contact pins from brass rod resulted in a substantial transformation, neither the subsequent assembly of the contact pins with connector housings to create the electrical connectors nor the later assembly of the electrical connectors with the cable resulted in a second substantial transformation. We stated that these are considered simple assembly operations which will not result in a substantial transformation, as they involve a small number of components and do not appear to require a considerable amount of time, skill, attention-to-detail, or quality control.

Similarly, in the instant case, we find that neither the U.S.-origin fiber optic cable nor the Japanese-origin ferrule undergoes a substantial transformation in China as a result of the assembly operations performed there to create the FIP cable assemblies. These are considered simple assembly operations involving only a small number of components. In considering the last country in which the FIP cable assembly underwent a substantial transformation, it is our opinion that the cable assembly's characteristics are primarily imparted at the time that the fiber optic cable is manufactured in the U.S. The fibers making up the cable serve as the transmission medium through which light signals travel. Therefore, the country of origin of the imported FIP cable assemblies is the U.S.

ST MM Epoxy Connector

In your submission, you state that the assembly operation for the ST MM Epoxy Connector is substantially similar to that described above for the FIP cable assembly connector. Based on the reasoning cited above and as found in HRL 556020, it is our opinion that the assembly is relatively simple and only involves a small number of components. Therefore, in considering the last country in which the connectors underwent a substantial transformation, we believe that the connector's characteristics are primarily imparted by the ferrule which provides the structure and enclosure for the fiber optical cable at the point of connectivity. Therefore, the country of origin of the MM Epoxy Connector is Japan.

HOLDING

Based on the facts presented, joining the Chinese-origin connectors to the U.S.-origin fiber optic cable in China to create the GGP patch cords does not constitute a substantial transformation. As a result, the imported GGP patch cord is a product of the United States for government procurement purposes under 19 CFR Part 177, Subpart B.

Based on the facts presented, the assembly of the connectors and the subsequent assembly of the connectors to the fiber optic cable in China to produce the FIP cable assembly does not result in a substantial transformation. Therefore, as the very essence of the cable is imparted by the fiber optical cable, the FIP cable assembly is a product of the United States for government procurement purposes.

Based on the facts presented, the assembly of the ST MM epoxy connector in China does not result in a substantial transformation. Therefore, as the very essence of the connector is imparted by the ferrule, the connector is a product of Japan for government procurement purposes.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Michael T. Schmitz,
Assistant Commissioner, Office of Regulations and Rulings

[FR Doc. 03–21010 Filed 8–18–03; 8:45 am]
BILLING CODE 4820–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–457]

Economywide Simulation Modeling: Technical Analysis of the Free Trade Area of the Americas

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on July 21, 2003, of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–457, *Economywide Simulation Modeling: Technical Analysis of the Free Trade Area of the Americas*.

Background: The USTR stated that the purpose of the investigation and report is to assist the Administration in examining the economic impacts that might result from the Free Trade Area of the Americas (FTAA) by attempting to link large-scale models. As requested by the USTR, the Commission will provide a report to the USTR containing the following:

(1) Changes in production, trade, and prices that may be associated with implementation of the Free Trade Area of the Americas (FTAA) with specified regional and sectoral aggregations, as estimated using the Commission's U.S. CGE (computable general equilibrium) Model, and

(2) trade policy changes to be used with specified regional and sectoral aggregations, as employed in the Global Trade Analysis Project (GTAP) CGE Model.

As requested by the USTR, the Commission will provide its report no later than 6 months from the date of receipt of the letter. The USTR stated that the Commission's analytical products and working papers in this investigation are to be classified as confidential and that the USTR considers the Commission's analytical products to be inter-agency memoranda that will contain pre-decisional advice subject to the deliberative process privilege. Accordingly, the Commission does not plan to issue a public report.

By way of background, the USTR noted the ongoing FTAA negotiations and that the Administration is conducting an environmental review of the proposed trade agreement. The USTR also referenced efforts connected to this review involving the Commission, the Environmental Protection Agency, and the U.S. Department of Agriculture, Economic Research Service, to link large-scale models, on an experimental basis, in order to estimate and examine aspects of the environmental effects of the trade agreement. Additional information on this review process can be found on USTR's Web site *(http://www.ustr.gov/environment/analysis.pdf)*.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT:

(1) Project Manager, William Donnelly (202–205–3225 or *wdonnelly@usitc.gov*)

(2) Deputy Project Manager, David Ingersoll (202–205–2218 or *ingersoll@usitc.gov*)

Mr. Donnelly is in the Commission's Office of Economics and Mr. Ingersoll is in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *wgearhart@usitc.gov*.

Written Submissions: The Commission does not plan to hold a public hearing in this investigation. However, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 1, 2003. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at

the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. The Commission may include such confidential business information in the report it sends to USTR. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.18) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: August 13, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21201 Filed 8–18–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1014 and 1017 (Final)]

Polyvinyl Alcohol From China and Korea

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On March 20, 2003, the Department of Commerce (Commerce) made its preliminary determinations for China (68 FR 13674) and Korea (68 FR 13681). On April 14, 2003, the Commission accordingly established a schedule for the conduct of the final phase of the subject investigations (68 FR 17964). On August 11, 2003, Commerce made its final determinations for China (68 FR 47538) and Korea (68 FR 47540). The Commission, therefore, is revising its schedule to conform with the statutory deadlines established by the date of publication in the **Federal Register** of Commerce's final determinations.

The Commission's new schedule for the investigations is as follows: A supplemental staff report will be placed in the nonpublic record on August 27, 2003, and party comments on the supplemental staff report and on Commerce's final determinations are due on September 4, 2003. Party comments may not exceed 20 pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches, and shall otherwise satisfy the requirements of section 207.30(b) of the Commission's rules.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 13, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21202 Filed 8–18–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption (PTE) 2003–26, Exemption Application Numbers D–11137, 11138, and 11139]

Northwest Airlines Pension Plan for Salaried Employees (Salaried Plan), the Northwest Airlines Pension Plan for Pilot Employees (Pilot Plan), and the Northwest Airlines Pension Plan for Contract Employees (Contract Plan) (Collectively, the Plans), Located in Eagan, MN

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code).

The exemption permits: (1) The in-kind contribution(s) of the common stock of Pinnacle Airlines Corp.[1] (Pinnacle Stock) to the Plans by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans; (2) the holding of the Pinnacle Stock by the Plans; (3) the sale of the Pinnacle Stock by the Plans to Northwest; (4) the acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted to the Plans by Northwest; and (5) the guaranty to the Plans by Northwest Airlines Corporation (NWA Corp.) of Northwest's obligation to honor the Put Option (the Exemption Transactions). The exemption affects participants and beneficiaries of, and fiduciaries with respect to, the Plans.

DATES: This exemption is effective as of January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 17, 2003, the Department published a notice in the **Federal Register** (68 FR 2578) of a proposed individual exemption (the Proposed Exemption). The Proposed Exemption was requested in an application filed on

[1] Pinnacle Airlines Corp. is the holding company of Pinnacle Airlines, Inc.

behalf of Northwest pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The notice set forth a summary of the facts and representations contained in Northwest's November 6, 2002 application for exemptive relief (Application) and referred interested persons to the Application for a complete statement of the facts and representations. The Application has been available for public inspection at the Department in Washington, DC.

The notice also invited interested persons to submit comments on the proposed exemption and/or to request that a public hearing be held. In response to the solicitation of comments from interested persons, the Department received over 1,700 letters, e-mails, faxes and phone calls, of which more than 1,000 requested that a public hearing be held on the Proposed Exemption. Many of the commenters expressed concern about the effect of the Proposed Exemption on the Plans. The concerns expressed generally related to the proposed contribution of Pinnacle Stock instead of a cash contribution to the Plans; the value and method of valuation of the Pinnacle Stock; the effects of the proposed transactions on the Plans; and the adequacy of the proposed safeguards that are intended to protect the Plans' interests. In view of the comments requesting a hearing, on March 11, 2003, the Department published in the **Federal Register** (68 FR 11589) a notice of hearing on the Proposed Exemption. The hearing on the Proposed Exemption was held on May 5 and 6, 2003 at the Department of Labor (the Hearing). Upon consideration of all of the comments received and testimony offered at the Hearing, the Department has determined to grant the proposed exemption subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of the Comments

Northwest March 3, 2003 Comment

By letter dated March 3, 2003, Northwest described the Northwest contribution of Pinnacle Stock made to the Contract Plan on January 15, 2003 (the March 3 Comment). Northwest represents that the contribution was effected after the date on which the Department had completed work on the Proposed Exemption. The details of the Pinnacle Stock contribution were provided in the March 3, 2003 letter. Northwest also provided more detail about the final terms of the transactions as agreed to by Northwest and the Plans' independent fiduciary, Aon Fiduciary Counselors, Inc. (Fiduciary Counselors or Independent Fiduciary). Northwest states that, in this regard, some refinements were made to the provisions of the ''Term Sheet'' when the parties negotiated and entered into the final ''Omnibus Agreement'' (executed on January 15, 2003). The changes incorporated into the Omnibus Agreement were requested and approved by Fiduciary Counselors. In this regard, Northwest believes that this provided even more favorable terms for the Plans than those reflected in the Term Sheet.[2]

Contribution of Pinnacle Stock

Northwest reported that the Omnibus Agreement was executed between Pinnacle Airlines Corporation (Pinnacle), Northwest Airlines, Inc. (Northwest), Northwest Airlines Corporation (NWA Corp.) and Aon Fiduciary Counselors, Inc (Fiduciary Counselors). Pursuant to the terms of the Omnibus Agreement, Northwest contributed Pinnacle Stock to the Contract Plan. The Omnibus Agreement provided for two contributions to be made to the Contract Plan on January 15, 2003. An ''Initial Contribution'' was made in the amount of $41,149,911. The Initial Contribution was comprised of 1,819,833 shares valued at $22.61 per share.[3] The amount of the Initial Contribution is equal to the amount that was required to meet the quarterly funding requirements under ERISA section 302 and Code section 412(l) for the Contract Plan due on January 15, 2003. The Omnibus Agreement also provided for an ''Additional Initial Contribution'' to the Contract Plan in the amount of $2,671,983 (118,167 shares valued at $22.61 per share).

The Term Sheet did not provide for the Additional Initial Contribution. This additional contribution was agreed upon as a result of a technical concern raised by Fiduciary Counselors regarding covenants in Northwest's $1.125 billion Credit and Guarantee Agreement dated October 24, 2000, as amended under which Northwest is the borrower (the Credit Agreement), with Northwest's bank lenders. The Additional Initial Contribution served to provide the Plans with added protection until Northwest obtained written assurances from the bank lenders that the Put Option does not violate the Credit Agreement. On February 14, 2003, Northwest obtained formal written confirmation from the bank lenders that none of the rights afforded to the Plans in the Omnibus Agreement nor the exercise of such rights would violate the Credit Agreement. Accordingly, Northwest notes that, consistent with the Omnibus Agreement's terms, the Additional Initial Contribution will be treated as a credit balance and be applied toward future contributions to the Contract Plan.

The total value of the Initial Contribution and Additional Initial Contributions made to the Contract Plan was $43,821,894. Pinnacle Stock in that amount was transferred to State Street Bank, the trustee for the Northwest Master Trust for Defined Benefit Plans that holds the assets of all of the Northwest Plans (the Master Trust). Northwest instructed State Street Bank to establish an ''Investment Fund'' in connection with the Plans' Master Trust. The Investment Fund holds Pinnacle Stock on behalf of the Contract Plan and the Salaried Plan. As a result of instructions given to State Street, after the contribution was made to the Investment Fund, the Contract Plan owns 83.5% of the Investment Fund, while the Salaried Plan owns 16.5% of the Investment Fund. Each Plan's percentage ownership reflects the relative size of each Plan to each other. At that time, the Pilot Plan did not participate in the Pinnacle Stock Investment Fund.[4]

[2] Northwest notes that the Omnibus Agreement, while consistent with the Term Sheet, provides specific terms for: the contribution transactions; transferability of Pinnacle Stock; corporate governance; voting rights; the Put Option; representations and warranties; and a number of other matters.

[3] Northwest represents that the amount of shares necessary to satisfy the required contribution was based upon a final valuation of Pinnacle by Fiduciary Counselors, relying on a valuation report prepared by Eclat Consulting. Northwest notes that, while Fiduciary Counselors received and reviewed valuation information provided by Morgan Stanley & Co. Inc. (Morgan Stanley), Fiduciary Counselors retained Eclat to provide valuation services.

[4] Northwest states, as noted in the Proposed Exemption, that the Master Trust is established in a manner such that all Plans hold an undivided and commingled interest in the assets of the Trust. Since Northwest was prohibited from investing the Pilot Plan's assets in employer stock, the Pilot Plan at that time, did not participate in the investment fund. However, Northwest notes that it has received the consent of the Air Line Pilots Association (ALPA), the union representing Northwest pilots, to permit the Pilot Plan to hold Pinnacle Stock (see

Continued

Description of the Put Option

Northwest noted that the description of the Put Option in the first and second columns at 68 FR 2580 of the **Federal Register** notice accurately describes the structure of the Put Option as described in Northwest's Application. However, as noted in Northwest's Application, the final terms of the Put Option were subject to negotiation with Fiduciary Counselors. Northwest believes that the final terms for the Put Option, which are more favorable to the Plans, are more completely and accurately stated in the description of the Put Option contained in the description of the Term Sheet as set forth at 68 FR 2587.

Fair Market Value of Pinnacle Stock

Northwest noted that, as reflected in the Term Sheet, Fiduciary Counselors will determine the fair market value of the Pinnacle Stock contributed to the Plans on an annual basis and in advance of each contribution to the Plans. Fiduciary Counselors will also determine fair market value at the time it exercises the Put Option so long as the shares of Pinnacle Stock are not publicly traded. Accordingly, the reference in the first column at 68 FR 2585 to quarterly valuations is no longer correct. Northwest notes that quarterly valuations were contemplated in the Application, but a change to annual valuations was made when Northwest and Fiduciary Counselors agreed to the Term Sheet.

Corporate Governance Rights

Northwest explained that the Omnibus Agreement granted the Plans additional rights in order to protect their interest in the Pinnacle Stock. Omnibus Agreement at section 7.2, Certain Approval Rights. In this regard, beginning at such time as the Plans hold more than 50% of the issued and outstanding Pinnacle Stock, and until the earlier of (i) the date the Plans hold less than 25% of such shares or (ii) the Put Option with respect to such shares has terminated, the affirmative vote of the Plan s director will be required to (1) approve the election, appointment and compensation of any new Chief Executive Officer (CEO), (2) approve any modification or other changes to the Note Pinnacle has issued to Northwest (3) approve any amendment to Pinnacle s bylaws that affects the Plans shares of Pinnacle Stock in a manner different from other shares of Pinnacle Stock or otherwise amends the Series A Preferred Stock, and (4) unless Pinnacle is publicly traded, approve the issuance of shares of capital stock of Pinnacle or otherwise effect changes in the capital structure of Pinnacle. Thus, the fourth bullet point in the second column at 68 FR 2585 (describing certain voting rights) should be modified accordingly.

The requirement (detailed in the last bullet point in the second column of the Proposed Exemption at 68 FR 2585) that Plan shares of Pinnacle Stock be voted in favor of certain corporate actions is now set to expire upon the occurrence of an Early Termination Event. *See* Omnibus Agreement at section 7.3.

Independent Directors

Northwest noted that the second bullet point in the third column at 68 FR 2585 (respecting the obtainment of fairness opinions) has been revised. In this regard, section 11.3(b) of the Omnibus Agreement now provides that at the request of a majority of Pinnacle's independent directors, a fairness opinion will be obtained from an investment bank respecting certain Affiliate Transactions. The Term Sheet originally placed the right to request this fairness opinion solely on the Plans' director, who asked that this duty be placed on the independent directors of which the Plans' director is a member.

Valuation in Connection With the Right of First Refusal

Northwest noted that the Omnibus Agreement added certain valuation details that expand the discussion of the Right of First Refusal at 68 FR 2586. The description of Northwest's right of first refusal with respect to Pinnacle Stock is accurate; however, if the Plans negotiate the sale of Pinnacle Stock to a third party for non-cash consideration, the Omnibus Agreement includes a specific valuation mechanism with respect to such consideration. *See* Omnibus Agreement at section 6.2. First, the Plans must provide Northwest with an ''Offer Notice'' which shall contain an independent valuation of the consideration by a nationally recognized valuation expert acceptable to Fiduciary Counselors and Northwest. If Fiduciary Counselors and Northwest are unable to agree on the valuation expert, the Omnibus Agreement sets forth a dispute mechanism to arrive at a final determination. In this process, Northwest and Fiduciary Counselors each select their own nationally recognized valuation expert (Principals' Experts), which experts submit their appraisals to a third expert chosen by the Principals' Experts. The third expert then determines which of the two assessed values should be assigned to such non-cash consideration.

Modification of Final Deferral Rule

Northwest observed that the Term Sheet, as reflected in the Proposed Exemption, allows Northwest to defer the closing date with respect to Pinnacle Stock repurchased pursuant to the Put Option (such delay, a ''Deferral''). The length of the Deferral varies based upon a function of (1) the ''liquidity'' of Northwest (as defined in the Omnibus Agreement) and (2) the value of Pinnacle Stock contributed to the Plans. In the Proposed Exemption, it was noted that the length of the Deferral would be shortened if Pinnacle Stock was publicly traded at the time that the Put Option is exercised. As with the Term Sheet, the final Omnibus Agreement provides that the Deferral shall be shortened if Pinnacle Stock is publicly traded. However, the Omnibus Agreement revises this provision to provide that, if Pinnacle Stock is publicly traded, the Deferral will be reduced, in each case, by thirty days except that in no event shall Northwest have less than a 30 day Deferral in which to close the transactions contemplated by the Put Option. This change generally reduces the length of the available Deferral when the Plans hold more than $325 million in Pinnacle Stock (measured as of the date of each contribution). *See* Omnibus Agreement at section 8.2.

Fiduciary Counselors March 5, 2003 Comment

On March 5, 2003, Jones Day submitted comments on behalf of Fiduciary Counselors, the Independent Fiduciary (the March 5 Comment).

Restrictions on Transfer and Voting

The Independent Fiduciary notes that the Proposed Exemption, in the first column of 68 FR 2580 (first full paragraph), makes reference to voting restrictions and limits on the ability of the Plans to dispose of the Pinnacle Stock, except pursuant to an initial public offering (IPO) initiated by Northwest or by exercise of the Put Option. In addition, as reflected in the Omnibus Agreement, the Independent Fiduciary has negotiated a lapse of all transfer restrictions on the Pinnacle Stock held by the Plans on July 1, 2006, and upon an ''Early Termination Event'' (including a breach of the Omnibus Agreement by Northwest or Pinnacle or Northwest's failure to honor its Put Option obligations, but excluding violations of the ''scope clause'' limitations in certain of Northwest's collective bargaining agreements [5]). A

below for discussion of the Northwest and ALPA Letter Agreement).

[5] Section 1C of the Northwest Pilots Agreement, the Collective Bargaining Agreement between

breach of the Omnibus Agreement by Pinnacle constitutes an Early Termination Event if such breach continues because Northwest fails to exercise its rights as a stockholder to cause the Pinnacle directors to cure the breach or to replace such directors. *See* Omnibus Agreement, Definition of ''Early Termination Event'' at section 1.1.

Eclat Consulting Valuation

The Independent Fiduciary represents that the description of the valuation by Eclat Consulting (Eclat) of Pinnacle in the Proposed Exemption commencing in the second column of 68 FR 2580 (the Eclat Report) should be updated to reflect Eclat's valuation of Pinnacle as of January 15, 2003. The January 15, 2003 Eclat valuation report (January 15, 2003 Valuation) was attached to the Independent Fiduciary's report submitted to the Department on April 25, 2003 (*see* below for a discussion of these documents).

Put Option

As previously mentioned in the March 3 Comment, the changes to the description of the Put Option in the Proposed Exemption are noted by the Independent Fiduciary who adds that the Proposed Exemption should be revised in accordance with the definition of ''Market Value'' in section 1.1 and the language of section 8.3 of the Omnibus Agreement. In particular, subparagraph (i) at 68 FR 2580 of the Proposed Exemption should reflect that, prior to an IPO, the Plans will be entitled to the greatest of (1) the value of the stock when contributed, (2) the fair market value of the stock on the date that the determination of fair market value is made (*e.g.*, with respect to the Put Option, the date the Put Option is exercised), or, if greater, (3) the value as of the closing date of the Put Option.

Similarly, subparagraph (iii) at 68 FR 2580 should reflect that, after an IPO, the Plans will be entitled to the greatest of the value of the stock at the time of the contribution, or the average of the closing price for the Pinnacle Stock on the public market for the 10 trading days (or such other number if fewer than 10) preceding the exercise date, or as of the last trading day before the closing date of the Put Option.

In addition, in the paragraph immediately following subparagraph (iii) in the second column of 68 FR 2580, the reference to the price of Pinnacle Stock being determined as of the exercise date should be expanded to reflect these concepts. Similarly, in the second column of 68 FR 2588 (third full paragraph), the reference in subclause (II) to the closing price of Pinnacle shares on the closing date should refer to the last trading day before the closing date.

Plan Director

As also mentioned in the March 3 Comment, the Independent Fiduciary notes that at the fifth paragraph of the ''Voting Provisions'' section in the Proposed Exemption at column 2 of 68 FR 2585, the description of the required affirmative vote of the director designated by the Plans should be expanded to include the approval of: amending the Note, amending Pinnacle's charter or by-laws in certain respects, implementing certain changes in Pinnacle's capital structure, or issuing capital stock prior to an IPO, as set forth in the Omnibus Agreement. *See* Omnibus Agreement at section 7.2. Additionally, the Independent Fiduciary corrects language in the fifth paragraph of the ''Voting Provisions'' of the Proposed Exemption that states a majority of Pinnacle's board is needed for the approval of compensation of Pinnacle's CEO. Section 7.2(b) of the Omnibus Agreement requires only that the appointment of a new CEO be approved by a majority of Pinnacle's board (excluding the Northwest Director), and does not make reference to the compensation of Pinnacle's CEO.

Additional Comments

The Independent Fiduciary reports that it negotiated the following additional requirements.

1. A comprehensive set of representations and warranties relating to both Pinnacle, Northwest and its affiliates. *See* Omnibus Agreement at sections 5.1 and 5.2.

2. An additional provision that would prohibit Northwest from using its rights under the Series A Preferred Share to block a Transfer of Pinnacle Stock following an Early Termination Event. *See* Omnibus Agreement at section 6.3.

3. Northwest Airlines Corporation (NWA Corp.) will guarantee Northwest's obligations under the Omnibus Agreement, including the Put Option. *See* Omnibus Agreement at section 8.8.

4. The right to engage an investment banker on behalf of the Plans in an IPO, at Northwest's expense. *See* Omnibus Agreement at section 9.1(d).

5. A provision providing that the exercise price of any options on Pinnacle Stock granted to its executive employees under its stock incentive plan at the time of an IPO would be at the greater of the value of the stock at the time it was contributed to the Plans or the IPO price. *See* Omnibus Agreement at section 11.2.

Finally, Fiduciary Counselors requests that in Section III. Definitions at (a) of the Proposed Exemption in column 1 of 68 FR 2590, the reference to ''5 percent (5%) of such fiduciary's gross income, for Federal income tax purposes, in its prior tax year, will be paid by Northwest'' should read ''5 percent (5%) of such fiduciary's annual gross revenue in the year of its engagement, will be paid by Northwest.''

The Department has determined that it would be appropriate to modify the definition of independent fiduciary as follows:

''(3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year.''

Fiduciary Counselors and Eclat April 25, 2003 Submissions

On April 25, 2003, Fiduciary Counselors provided to the Department the Independent Fiduciary Report on Contribution of Pinnacle Airlines Corp. Stock to the Northwest Airlines Pension Plan For Contract Employees dated March 16, 2003 (the IF Report), the January 15, 2003 Eclat valuation of Pinnacle (the January 15, 2003 Valuation), and an explanation of the valuation of the Put Option.

The Independent Fiduciary Report

The Independent Fiduciary represents that after extensive negotiations during November and December, 2002, and January, 2003, Fiduciary Counselors and Northwest, along with Pinnacle and NWA Corp., Northwest's ultimate parent company, entered into an Omnibus Agreement, dated January 15, 2003, which sets forth the terms and conditions pursuant to which Fiduciary Counselors will accept the Pinnacle Stock (the Contribution).[6]

Northwest and the Air Line Pilots Association dated as of September 13, 1998, as amended, or any successor agreement. This Section requires that all ''revenue flying'' for Northwest and its affiliates must be performed by pilots on the integrated Pilots System Seniority List in accordance with the collective bargaining agreement, except for revenue flying by an airline that at all times operates only aircraft that are certified with a maximum passenger capacity of 60, and a maximum gross takeoff weight of less than 70,000 pounds.

[6] Fiduciary Counselors notes that immediately prior to the transaction, NWA Inc. (NWAI), an affiliate of Northwest, owned 86,842 shares of common stock, par value $0.01 per share, of Pinnacle Airlines, Inc., a Georgia corporation, constituting all of the issued and outstanding

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The IF Report states that on January 15, 2003, Fiduciary Counselors determined that the Master Trust could accept a contribution by Northwest of 1,938,000 shares of Pinnacle Stock, valued at $43,821,894.00, on behalf of the Contract Plan on terms and conditions set forth in the Omnibus Agreement. Pursuant to its engagement letter with Northwest, the scope of Fiduciary Counselors' engagement includes determining whether to accept the Contribution on behalf of the Plans, and if so, to value the Pinnacle Stock for Plan funding purposes. Fiduciary Counselors' duties also include the discretionary authority to manage the Pinnacle Stock as investment manager.

The IF Report notes that the Independent Fiduciary drew upon the resources of its affiliate, Aon Investment Counseling, Inc. (AIC), to assist it in its financial analysis and valuation of the Pinnacle Stock. The Independent Fiduciary also engaged the law firm of Jones Day as legal counsel to advise it in connection with its negotiations with Northwest regarding its engagement and Eclat, to provide financial expertise and to value the Pinnacle Stock. Eclat furnished to the Independent Fiduciary its report and opinion as to the value of the contributed Pinnacle Stock at the time of the Initial Contribution on January 15, 2003 (January 15, 2003 Valuation). Eclat will furnish a similar valuation report with respect to each subsequent contribution. In negotiating the terms of the Contributions and determining whether to accept the Initial Contribution, the Independent Fiduciary, with its financial advisors and legal counsel, reviewed those documents that it deemed relevant, participated in meetings and telephone conferences with officers and other representatives of Northwest, and considered aspects of the Contribution that it deemed pertinent to its engagement, including without limitation Northwest's current and future ability to honor the Put Option. Because the value of the Pinnacle Stock is based on the financial performance of Pinnacle, the Independent Fiduciary reviewed and considered the business of Pinnacle, and the contractual relationship between Pinnacle and Northwest. The Independent Fiduciary and its advisors also met with the senior officers of Pinnacle.

The Independent Fiduciary and its advisors reviewed various documents relevant to the Contribution, including without limitation, Northwest's certificate of incorporation; Northwest's corporate bylaws; the certificate of incorporation of Pinnacle; the Master Trust agreement pursuant to which the Plan assets are currently held and managed; audited financial statements of the Plans for 2000 and 2001; the current Plan documents; the Plans' annual reports on Forms 5500 for 2000 and 2001; other information provided by Northwest regarding the Plans' assets (including the Plans' investment guidelines and portfolio composition); a statement prepared by the Plans' actuaries of the Plans' liquidity needs to pay benefits and administrative expenses in the near future and the sources of funds (other than the Pinnacle Stock) available to satisfy such liquidity needs; and certain of Pinnacle's collective bargaining agreements. In addition, the Independent Fiduciary reviewed a number of other documents, including SEC Form S–1 filed with the Securities Exchange Commission on February 25, 2002 registering shares of Pinnacle Stock for an IPO and the Airline Services Agreement dated March 1, 2002. As a result of its review, certain changes were incorporated in the new Airline Services Agreement entered into on January 14, 2003 (ASA).

The IF Report provides that the Independent Fiduciary and its advisors participated in numerous telephone conferences with representatives of Northwest and Pinnacle through November, December and early January concerning the Independent Fiduciary's engagement, the proposed Contribution, the status of Northwest's minimum funding waiver applications to the Internal Revenue Service and the Proposed Exemption. On January 11, 2003, the Independent Fiduciary and its advisors conducted a telephone interview with Pinnacle's chief executive officer and chief financial officer as part of its due diligence.

The Independent Fiduciary and its advisors analyzed the voting, transfer and put right features of the Pinnacle Stock and engaged in significant negotiations on those features with Northwest. The Independent Fiduciary was also advised on the requirements of the U.S. Department of Transportation regarding restrictions on directors of airlines. In its determinations, the Independent Fiduciary has also taken into account Northwest's request for a minimum funding waiver with respect to Plan contributions in 2003 and 2004, and considered the likelihood that such waiver will be granted.

The IF Report states that under the ASA, Northwest has committed 95 regional jet aircraft financed by Bombardier to be delivered to Pinnacle by December 31, 2004. As of December 31, 2002, the carrier had taken possession of 51 regional jets. The addition of the regional jets has more than doubled the size of the airline. According to the IF Report, Eclat estimates that Pinnacle's value to the Northwest domestic system is between $520 million and $540 million annually as the carrier exists today. Pinnacle itself had revenues of approximately $345.2 million for 2002.

The IF Report explains that, because Pinnacle's operations are so entwined with Northwest's, Eclat evaluated Northwest as well as Pinnacle in its November 27, 2002 report to the PBGC (The Eclat Report). Despite the turmoil in the industry in recent years, Eclat felt that Northwest has emerged as, perhaps, the most stable airline in the industry. While all of the ''Big 6'' network airlines are losing money, Northwest has suffered the smallest loss of any carrier. Northwest reported a net loss of $46 million, with operating income of $8 million in the 3rd quarter of 2002. Northwest ended the 3rd quarter with over $2.5 billion in cash and short-term receivables.

The IF Report notes that Northwest is a global carrier through its alliance with KLM and its Amsterdam hub, and its own hub in Tokyo. While the U.S. market has suffered tremendous losses due to the slowdown in the U.S. economy and the terrorist attacks of 9/11, the global market has rebounded much quicker. Northwest's presence in international markets has helped offset the losses in the U.S. domestic market. As with all domestic U.S. carriers, Northwest has been hit by the drop in revenue due to lower overall yields and depressed passenger levels. The drop-off in premium passenger traffic, the weak U.S. economy, and the increased presence of low-cost carriers has impacted the ability of the network carriers to generate high yield revenue. Through reduced employment levels and other cost-cutting measures, Northwest has been able to minimize the ongoing impact of reduced revenue levels, which the Independent Fiduciary believes are likely a permanent change in the industry. The labor situation is

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capital stock of Pinnacle Airlines, Inc. Pursuant to the transaction, Pinnacle Airlines, Inc. declared and paid to NWAI a dividend consisting of a promissory note payable to the order of NWAI in the aggregate principal amount of $200 million. NWAI then transferred the shares of Pinnacle Airlines, Inc. to Pinnacle in exchange for its issuance to NWAI of (i) 15,000,000 shares of Pinnacle's common stock, par value $0.01 per share (Pinnacle Stock), and one share of Series A Preferred Stock, par value $0.01 per share, of Pinnacle (the ''Series A Preferred Share''), which, upon issuance and together with the Pinnacle Stock, constitutes all of the issued and outstanding capital stock of Pinnacle. NWAI then transferred the Pinnacle Shares and the Series A Preferred Share to Northwest as a contribution to the capital of Northwest.

stable. One of the strengths of the Northwest network is that the airline has the least exposure of any major carrier to low-cost carriers in the industry. This is primarily due to the fact that Southwest Airlines does not serve 2 of the 3 Northwest hubs—Memphis (Pinnacle's largest market) and Minneapolis. Southwest has a small operation in Detroit with only 2 gates. The IF Report states that Eclat expects that low-cost carriers will expand and gain share in the future but feels that Northwest is in the best shape of any network carrier to compete.

The Eclat Report and the January 15, 2003 Valuation

Fiduciary Counselors and Eclat represent that Eclat was originally retained by PBGC to value Pinnacle and to evaluate the financial viability of Northwest. Eclat is an aviation-consulting firm that specializes in detailed analysis of the economic and financial issues that surround the industry. The IF Report states that Eclat's clients come from almost every sector of the aviation industry—airports, airlines, labor organizations and aerospace/aeronautics corporations. With PBGC's consent, Eclat was subsequently retained by the Independent Fiduciary to value the Pinnacle Common Stock.

Eclat states in the January 15, 2003 Valuation that the valuation includes competitive, operational and financial elements essential to validating Pinnacle's current market viability as a Northwest regional partner and as a stand-alone airline and that the valuation describes the state of the regional airline industry, delves into some of the more important issues surrounding Pinnacle specifically, provides a brief financial review of the carrier, explains the valuation methodology, compares Pinnacle to Continental Express, and comments on the stability of Northwest. Appendices were attached that illustrate the valuation model used and highlight some of the additional information used to conduct the analysis.

The IF Report summarizes that, in order to determine the value of Pinnacle, Eclat created a model based on the Three-Stage Free Cash Flow to Equity valuation technique. This model is designed to value firms, like Pinnacle, that are expected to go through three phases of growth—an initial phase of high growth, a transitional period where the growth rate declines, and a steady-state period where growth is stable. Once these growth assumptions are made, the present value of expected free cash flow is calculated.

The IF Report notes that in the Eclat Report, Eclat's valuation of the Pinnacle Common Stock was considerably lower than the value it ultimately determined for the Independent Fiduciary in the January 15, 2003 Valuation. Eclat's original valuation for PBGC was based on publicly available information, primarily a draft S–1 Registration Statement which contained financial information only for the first nine months of 2002. As a result of its engagement by the Independent Fiduciary, Eclat was given access to non-public information including the ASA, Pinnacle's full 2002 revenue figures and information concerning the delivery schedule for delivery of regional jets to Pinnacle. The IF Report represents that, in the January 15, 2003 Valuation, Eclat determined that the net equity value (before discounts) of Pinnacle was $412,923,928.00. Based on input from AIC, Eclat then applied a 15 percent liquidity discount and a 5 percent minority discount. AIC valued the Put Option at $20,680,684 using a Black-Scholes American option-pricing model. The value of the transaction was also adjusted for the period between the exercise of the put and the Plan's receipt of the funds. This period could range between 30 and 180 days depending on Northwest's liquidity position. The result was a net value of $339,178,820.00 for the purposes of determining the value of the stock contributed on January 15, 2003.

Negotiation of the Term Sheet and Omnibus Agreement

The Independent Fiduciary recognizes that all aspects of its engagement involved fiduciary actions, and, for that reason, representatives of the Independent Fiduciary and its financial and legal advisors actively participated in the negotiations relating to the Omnibus Agreement and in the evaluation of the decision of whether to accept the Contribution. From a fiduciary standpoint, Independent Fiduciary was required to determine whether the terms it negotiated in the Omnibus Agreement and its decision whether to accept the Contribution were prudent, for the benefit of, and in the interest of, Plan participants and their beneficiaries. In this regard, the Independent Fiduciary represented that it negotiated terms that it determined were no less favorable to the Plans than terms negotiated at arm's length with an unrelated third party under similar circumstances.

The terms of the transaction negotiated between the Independent Fiduciary and Northwest were embodied in a Term Sheet, which was provided to the Department on January 10, 2003. The Term Sheet formed the basis for the Omnibus Agreement, which was executed on January 15, 2003, after the Independent Fiduciary received confirmation from the Department that the Proposed Exemption had been issued.

Fiduciary Counselors states that the Omnibus Agreement provides:

- For purposes of the funding standard account of each Plan, the value of the shares of Pinnacle Stock contributed to each Plan will be determined by the Independent Fiduciary. In addition to determining the value of Pinnacle Stock at the time of a proposed contribution, the Independent Fiduciary will provide an annual written valuation of the per share value of all Pinnacle Stock held by the Plans as of each December 31 and at any time the Independent Fiduciary exercises the Put Option described below.
- Subject to the further conditions and restrictions set forth in the Omnibus Agreement, the Plans may transfer the Pinnacle Stock prior to July 1, 2006, (1) only in the event of an IPO or sale to a third party initiated by Northwest, (2) by exercise of the Put Option (as described below), or (3) because of an Early Termination Event (including a breach of the Omnibus Agreement by Northwest or Pinnacle which is not cured timely or Northwest's failure to honor the Put Option).
- The Plans will be granted a Put Option with respect to each share of Pinnacle Stock contributed to the Plans, which may be exercised by the Independent Fiduciary at any time. To exercise the Put Option, the Independent Fiduciary must provide written notice to Northwest of its election to put to Northwest any or all of the shares of Pinnacle Stock then held by the Plans. The closing date of the purchase and sale of shares with respect to which the Put Option has been exercised will be the 30th calendar day after such notice is given. However, if Pinnacle has not yet consummated the IPO by the date that would otherwise be the closing date, Northwest will have the right to defer such closing date for up to 150 days, depending on Northwest's liquidity. The closing date may be further deferred and deferred payments may be made by Northwest as agreed to by the Independent Fiduciary if Northwest posts collateral in an amount and on terms satisfactory to the Independent Fiduciary. Alternatively, Northwest may arrange for the stock to be purchased by a third party.
- If the Pinnacle Stock is not publicly traded, the Plans will receive the

greatest of (i) the initial contribution value (the ''Floor Price''), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected for the Plans (under the limited circumstances described above) and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.

• Once Pinnacle Stock is publicly traded, the Put Option will be suspended if all of the remaining shares of Pinnacle Stock held by the Plans have a market value not less than 110% of the Floor Price and such shares are freely tradable. Fiduciary Counselors and its advisors negotiated with Northwest and Pinnacle concerning the ability of the Plans to transfer the Pinnacle Stock and the rights of the Plans to cause Northwest to register the shares of Pinnacle Stock under Federal and State securities laws for resale to third parties. In negotiating the rights and restrictions set forth in the transfer and registration rights provisions of the Omnibus Agreement, Fiduciary Counselors balanced the need of the Plans to achieve greater diversification in light of the anticipated holdings of shares of Pinnacle Stock with the need to maximize the value of the investment in such stock.

• In addition, the Independent Fiduciary negotiated that Northwest Airlines Corporation (NWA Corp), Northwest's ultimate parent company, will guarantee Northwest's obligations under the Omnibus Agreement, including the consummation of the Put Option.

• As a condition to any such contribution by Northwest, the Independent Fiduciary must determine on behalf of the Plans that the acceptance of the contributed shares is prudent and in the interests of the Plans' participants and beneficiaries and otherwise consistent with the fiduciary standards of ERISA. In addition, the Independent Fiduciary will monitor on an ongoing basis the prudence of the Plans' continued holding of Pinnacle Stock consistent with the fiduciary standards of ERISA. The appropriate fiduciary of the Plans (other than the Independent Fiduciary) will determine that such investment will not impair the liquidity of the Plans such that the Plans would not be able to pay benefits and expenses when due. If such appropriate Plan fiduciary determines the liquidity of the Plans is impaired, such fiduciary shall direct the Independent Fiduciary to dispose of all or a portion of the Pinnacle Stock consistent with the terms of the Omnibus Agreement to the extent commercially reasonable.

• All transactions involving the Plans in connection with the contribution of Pinnacle shares will be no less favorable to the Plans than arm's length transactions involving unrelated parties.

• No commissions, fees, costs, charges or other expenses will be borne by the Independent Fiduciary or the Plans in connection with any acquisition, holding or disposition of Pinnacle shares to or from the Plans, other than the underwriters' discount or other broker-dealer fees or commissions charged in any sale of such shares. In addition, the Independent Fiduciary negotiated the right to engage an investment banker on behalf of the Plans in an IPO, at Northwest's expense.

• Northwest will provide at least quarterly notice to the Independent Fiduciary of its cash liquidity. More frequent notice will be required based on Northwest's liquidity and the value of the Pinnacle Stock contributed to the Plans. In addition, Northwest will provide the Independent Fiduciary with the information required to be provided to its lenders under its credit agreement. In addition, Northwest shall provide it with copies of any amendments to the credit agreement.

• The Independent Fiduciary negotiated a comprehensive set of governance rights accorded to the Plans as a condition of acceptance of Pinnacle Stock. In this regard, as long as the Plans hold at least 5 percent of the Pinnacle Stock, the Plans will have the right to designate one nominee to Pinnacle's board of directors, and Northwest will vote the Series A Preferred Share held by it in favor of such designee. The director designated by the Plans will have the right to serve on Pinnacle's audit committee to the extent permitted under applicable SEC and stock exchange rules. Once the Plans hold more than 50 percent of the Pinnacle Stock, the affirmative vote of the director designated by the Plans shall be required to approve the appointment of any new CEO of Pinnacle and compensation of any CEO, any amendments to the $200 million Note of Pinnacle Airlines, Inc. held by Northwest, the amendment of Pinnacle's charter or by-laws in certain respects, or the implementation of certain changes in Pinnacle's capital structure or the issuance of capital stock prior to an IPO. The Independent Fiduciary negotiated further powers with respect to the Plan director, including the right to object to Business Combinations involving Northwest's affiliates.

• Any change to the ASA, including any early termination of the ASA by Pinnacle, must be approved by a majority of Pinnacle's independent directors, which majority must include the director designated by the Plans. Any transaction involving Northwest outside the ordinary course of business that involves more than $2 million and any ordinary course transaction that involves more than $5 million must be approved by a majority of the independent directors. In this event, a majority of the independent directors may require a fairness opinion from a nationally recognized investment banking firm.

• The Independent Fiduciary negotiated a comprehensive set of representations and warranties relating to both Pinnacle Corp. and Northwest and its affiliates relating to Northwest's ability to honor the Put Option and to the value of Pinnacle Corp. The representations and warranties must be true at the time of any Contribution. The Independent Fiduciary negotiated the survival of the representations and warranties in general for 24 months after the Closing Date and indefinitely with respect to those relating to Northwest's ownership of the Pinnacle Stock and Pinnacle's ownership of the outstanding shares of Pinnacle Airlines, Inc. prior to the Initial Contribution; Northwest's ownership of the Pinnacle Stock prior to any subsequent Contribution; and Northwest's and NWA's representation that the contemplated transactions do not violate or result in a default under any of their material contracts, including without limitation, the Credit Agreement.

Valuation of the Put Option

Fiduciary Counselors stated that, in conjunction with Northwest's contribution of Pinnacle stock to the Plans, Northwest has provided the Plans with a Put Option to protect them from a possible decline in Pinnacle's shares' value. The value of the transaction is enhanced due to the downside protection that this Put Option provides. In valuing the Pinnacle shares, it was necessary to assign a value, not only to Pinnacle, but also to the Put Option.

Prior to valuing the put option, Eclat's estimate of the value of Pinnacle was $333,436,072, after application of an illiquidity discount of 15% and a minority discount of 5%. This value was further discounted by 4.48%, to

$318,498,136, to reflect Northwest's ability to delay payment on the put for up to 6 months. Although the Plan's option is exercisable at anytime, unlike a normal option, Northwest does not have to immediately settle. Northwest has from 30 to 180 days to settle the option. The 4.48% discount represents what Eclat used for Pinnacle's pre-tax cost of debt (9.6%) adjusted for a six-month period. Fiduciary Counselors assumed that since Northwest could take up to 180 days to settle the option that it would. Although Eclat cannot know what market conditions might be like during this settlement period, this rate also exceeds the Plan's assumed asset earnings rate.

The value was then increased to reflect the value of the put. The Put Option is exercisable at any time by the Plan. Eclat used the Black-Scholes option-pricing model to determine the value of the Put Option. Using the Black-Scholes American option pricing model, Eclat determined the value of the Put Option to be $20,680,684.

The Independent Fiduciary's Determinations

Fiduciary Counselors notes that under section 404(a)(1) of ERISA, a fiduciary must discharge its duties with respect to a plan solely in the interest of plan participants and beneficiaries. In addition, a fiduciary must act for the exclusive purpose of providing benefits to participants and beneficiaries; must act prudently; and must diversify the investment of plan assets to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. For the reasons set forth below, the Independent Fiduciary has concluded that it is prudent for the Plans to accept the Contribution and that the Contribution is in the interest of the Plans and their participants and beneficiaries:

- Participants and beneficiaries of the Plans stand to benefit from an IPO of the Pinnacle Stock. The ASA provides a range of revenues to be paid by Northwest to Pinnacle, and Eclat valued the Company based on the minimum revenues, which would result from the ASA. If Pinnacle in fact achieves the maximum operating margin provided under the ASA, Eclat estimated that the value of Pinnacle would be approximately 20 percent greater than the value used for purposes of the contribution.
- In valuing Pinnacle Stock, the Independent Fiduciary specifically applied a 15% liquidity discount and a 5% discount to take into account that, for some period, the Plans would be a minority shareholder.
- The Independent Fiduciary negotiated the terms of the Put Option which provide downside protection by permitting the Plans to sell the Pinnacle Stock back to Northwest for the greater of the original value at which it was credited to the funding standard account or its fair market value at the time it is sold back to Northwest.

Transfer restrictions on Pinnacle Stock held by the Plans are reasonable in light of the Put Option. Specifically, the Independent Fiduciary negotiated a limited period for the transfer restrictions (until July 1, 2006) and the elimination of such restrictions upon the occurrence of an Early Termination Event.

- The Independent Fiduciary negotiated voting and governance rights to be accorded to the Plans that protect the interests of the Plans (*e.g.* protect the plans from adverse changes in the ASA, in Pinnacle's capital structure, *etc.*).
- Registration rights and Plan director's rights preserve the value of the Pinnacle Stock while held by the Plans.
- The Independent Fiduciary retained an independent, expert airlines valuation firm, Eclat, to provide valuation services. Eclat determined that Pinnacle and Northwest are healthy companies, even in light of current economic conditions in the airline industry.
- The terms of the ASA and related agreements are more favorable to Pinnacle than an arm's length transaction between unrelated parties, and substantially determine and enhance the value of Pinnacle. The requirement that the director nominated by the Plans approve any changes in the ASA will ensure that any modification of those terms is done only if the changes, taken as a whole, are favorable to Pinnacle and its shareholders, including the Plans.
- Participants and beneficiaries of the Plans benefit from Northwest's improved liquidity and continued viability and competitiveness in the current economic environment.
- The Independent Fiduciary considered, and determined, that the Plans' holding of Pinnacle Stock was consistent with the Plans' investment guidelines and would not impair the Plans' diversification. The Pension Investment Committee informed the Independent Fiduciary that the holding of Pinnacle Stock constituting the Initial Contribution to the Plans would not and was not expected in the foreseeable future to impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due.
- Based on the Eclat and AIC valuations, the Independent Fiduciary determined that the contribution of 1,938,000 shares of Pinnacle Stock should be valued at $43,821,894 as of January 15, 2003, the date the contribution occurred.

Duties of the Independent Fiduciary

The Department notes that the appointment of an independent fiduciary to represent the interests of the Plans with respect to the transactions that are the subject of the exemption request was a material factor in its determination to propose exemptive relief. In response to the commenters' concerns about the role of the independent fiduciary, the Department believes that it would be helpful to provide its views on the responsibilities of an independent fiduciary in connection with the in-kind contribution of property to an employee benefit plan.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d) (59 FR 66736, December 28 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in-kind contribution is consistent with ERISA's general standards of fiduciary conduct. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of ERISA. In this regard, section 404(a)(1)(A) and (B) of ERISA requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act ''prudently,'' ''solely in the interest'' of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in-kind contribution. If accepting an in-kind contribution is not ''prudent,'' not ''solely in the interest'' of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan

would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of ERISA.

The selection of an independent qualified appraiser to determine the value of an in-kind contribution and the acceptance of the resulting valuation are fiduciary decisions governed by the provisions of Part 4 of Title I ERISA. In discharging its obligations under section 404(a)(1), the independent fiduciary must take steps calculated to obtain the most accurate valuation available. In addition, the fiduciary obligation to act prudently requires, at a minimum, that the independent fiduciary conduct an objective, thorough, and analytical critique of the valuation. In conducting such verification, the independent fiduciary must evaluate a number of factors relating to the accuracy and methodology of the valuation and the expertise of the independent qualified appraiser. Reliance solely on the valuation provided by the appraiser would not be sufficient to meet this prudence requirement.

In considering whether to accept an in-kind contribution, the Independent Fiduciary's responsibilities include the following:

1. The Independent Fiduciary must prudently determine the fair market value of the Pinnacle Stock as of the date it is contributed to the Plans. In determining the fair market value of the stock, the Independent Fiduciary must obtain an appraisal by a qualified independent appraiser, and must ensure that the appraisal is consistent with sound principles of valuation.

2. The Independent Fiduciary must ensure that each appraisal, at a minimum, includes the following elements:

(a) A summary of the appraiser's qualifications to evaluate Pinnacle Stock,

(b) A statement that the appraiser is independent of Pinnacle and Northwest, and that the appraiser has no interest in the securities issued by Pinnacle or Northwest,

(c) A statement that the appraisal is being conducted to determine the fair market value of Pinnacle Stock, which is defined as the price at which the stock would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the stock and the market for the stock,

(d) A statement of the stock's value, the methodologies used in determining the value, the reasons for the valuation in light of the methodologies, and the reasons that the appraiser chose to apply particular valuation methods rather than others,

(e) A statement of the relevance or significance accorded to the valuation methodologies taken into account,

(f) The effective date of the valuation,

(g) a description of the nature of Pinnacle's business and history,

(h) A description of the economic outlook in general, and of the condition and outlook of Pinnacle's industry in particular,

(i) An analysis of Pinnacle's financial condition and earning capacity,

(j) A description of all of the factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the Plans' ability to dispose of the stock,

(k) A statement of past transactions involving Pinnacle Stock, including dates, amounts, price, and whether the transactions were at arms-length, as well as a description of any attempts to buy or sell Pinnacle Stock over the last five years, including a description of any previous plans for initial public offerings,

(l) An analysis of the market price of securities of corporations engaged in the same or similar lines of business as Pinnacle, which are actively traded on a recognized exchange or automated broker-dealer quotation system,

(m) An analysis of the marketability, or lack thereof of the Pinnacle Stock, with specific reference to any restrictions, understandings, agreements, or obligations limiting the Plans' ability to dispose of the Pinnacle Stock,

(n) An analysis of the degree to which actual control (both in form and in substance) will pass to any of the Plans as a result of any of the contemplated transactions,

(o) To the extent that Pinnacle's current or projected revenues and expenses are related to, or dependent upon, contracts, agreements, or understandings between Northwest and Pinnacle, an analysis of Northwest's financial condition, the likelihood of a Northwest bankruptcy, and the potential impact of a Northwest bankruptcy on those contracts, agreements, or understandings, and on the market value of Pinnacle Stock, and

(p) Any other factors necessary for a prudent determination of the market value of Pinnacle Stock.

3. The Independent Fiduciary must investigate the facts and assumptions underlying the appraisals to ensure that stock contributions are not valued at more than fair market value. The Independent Fiduciary must not simply defer to the conclusions reached by the appraiser, but rather will take appropriate action to ensure:

(a) That the appraisal is based upon complete, accurate, and current data;

(b) That the appraiser is appropriately qualified to conduct the valuation;

(c) That the valuation methodologies are appropriate and adequately explained and that the appraiser has adequately justified its decision not to use alternative methodologies;

(d) That any variables used in the valuation analysis such as projected revenues, expenses, operating margins, depreciation, discount rates, capitalization rates, and multipliers are adequately supported by market data;

(e) That the stock's value is calculated with appropriate discounts for lack of marketability and control after a reasoned evaluation of the relevant market data concerning such discounts, as well as of each Plan's actual ability to effectively dispose of its stock or to control Pinnacle;

(f) That the appraisal's reasoning and assumptions are consistent, logical, and supported by appropriate financial and economic data and that any calculations are accurate;

(g) That the valuation is based on complete, accurate, and audited financial statements, which have been properly analyzed;

(h) That the assumptions underpinning the valuation are properly identified, and a careful analysis is performed of the impact of changes in those assumptions on the value of Pinnacle Stock;

(i) That the valuation has appropriately considered Northwest's financial condition in valuing Pinnacle Stock, as well as the impact of a Northwest bankruptcy on the value of Pinnacle Stock; and

(j) That the fair market value of the stock has been determined by way of a prudent investigation.

4. The Independent Fiduciary must ensure that all of the conditions above are satisfied with respect to any past contributions of Pinnacle Stock, as well as any future contributions. If previous valuations or analyses do not comport with these conditions, the Independent Fiduciary must perform any additional work necessary to make the valuations and analyses consistent with the conditions of this exemption. In no circumstance, however, may the parties treat Pinnacle Stock previously contributed to the Plans as if it had a higher value than was attributed to it at the time of the original contribution.

Northwest represents that, if the Independent Fiduciary determines that the Pinnacle Stock previously contributed to the Plans was worth less at the time of the contribution than the amount attributed to it at the time of the contribution, Northwest shall contribute additional Pinnacle Stock or cash in amounts sufficient to make up the shortfall.

Lastly, the Department notes that the above described responsibilities to be undertaken by the Independent Fiduciary are material factors in the Department's determination to grant a final exemption.

Additional Comments and Submissions

Northwest April 10, 2003 Submission

On April 10, 2003, Northwest submitted additional documentation to the Department in connection with the January 15, 2003 contribution of Pinnacle Stock to the Contract Plan (April 10 Submission Documents). Northwest noted that the Pinnacle Stock is being held in an Investment Fund established in connection with the Master Trust, and the amounts were allocated to the Contract Plan and Salaried Plan consistent with the provisions of the Master Trust, as described in the Proposed Exemption. Northwest appointed Fiduciary Counselors investment manager of the Investment Fund and Fiduciary Counselors has accepted this appointment.

Northwest April 26, 2003 Comment

By letter dated April 26, 2003, Northwest responded to many of the comments the Department had received concerning the Proposed Exemption (April 26 Comment). Northwest observed that the comments submitted to the Department raised several concerns regarding the contribution of Pinnacle Stock to the Plans, as contemplated by the Proposed Exemption. Because many of the comments raise common concerns, Northwest organized its responses to address these common concerns.

Airline Industry and Northwest Financial Condition

Comment: A number of comments noted that the airline industry is experiencing significant financial troubles and that some other airlines are in bankruptcy. The comments expressed concern that Northwest is exposed to bankruptcy risk and that the Pinnacle Stock would have greatly reduced value if Northwest were to file for bankruptcy, because Pinnacle serves Northwest.

Northwest Response: Northwest responded that Northwest recognizes that it and the airline industry face significant financial challenges. Northwest sought the exemption to permit the Pinnacle Stock contribution as part of its overall strategy of managing the current economic uncertainty. By permitting the contribution of Pinnacle Stock, Northwest is able to preserve needed cash so that it can withstand several years of losses. Maintaining liquidity is key to Northwest's strategy for avoiding bankruptcy.

Northwest strongly believes that Pinnacle Stock has significant value and that the value of Pinnacle Stock will increase when the IPO market improves for regional airlines. Regional airlines play an indispensable role in providing major airlines with important access to passengers, largely from markets too small to be serviced by a major airline. Pinnacle contributed over $500 million in revenue to Northwest in 2002 and is expected to grow its regional jet flying approximately 30 percent per year through 2005. As Pinnacle grows to 95 aircraft, the number of passengers and revenue will more than double.

Northwest has entered into a 10-year ASA with Pinnacle through 2012 that provides substantial value. Pinnacle's compensation formula within the ASA contractually provides for a target operating margin of 14 percent from 2003 through 2007, with a guaranteed floor of 12 to 13 percent during this period. In 2008, the target operating margin will be reset to a market-based percentage, but it will be no less than 10 percent and no higher than 14 percent. Northwest will no longer guarantee a minimum operating margin in 2008. The target margin will be reset after 2008 based on historical and expected operating costs.

Northwest asserts that its beliefs in this regard have been independently verified. In connection with the Exemption Transactions, Northwest does not determine the value of Pinnacle Stock. The value of Pinnacle Stock is determined by an independent fiduciary, Fiduciary Counselors, based on the valuation provided by their independent valuation firm, Eclat. The valuation prepared by Eclat took into consideration current industry conditions. If the markets return, substantial upside will benefit the Plans. Future contributions of Pinnacle Stock will continue to be subject to independent review and valuation.

Northwest adds that under ERISA sections 406 and 407, Northwest could have contributed the stock of its parent company (traded under the symbol NWAC) to satisfy its funding obligations without seeking an exemption. However, Northwest has proposed to contribute Pinnacle Stock because it believes that it is a superior investment for the Plans. The stock has long term upside potential because of the planned IPO. Indeed, the January 15, 2003 Valuation indicates that the Plans could receive a 20 percent IPO premium in connection with the Pinnacle Stock investment.

Finally, Northwest notes that regional airline stocks have generally been less volatile and better performing than the stocks of major airlines. Since September 10, 2001, regional airlines have lost 48% of their value while the major airlines have lost 78% (excluding U.S. Airways and United that have filed for Chapter 11 bankruptcy protection). Northwest also believes that the value of Pinnacle Stock is less exposed to bankruptcy risk than Northwest stock. This is because a regional airline derives its value from the value of its ASA with the major carrier and the major carrier is unlikely to terminate the ASA in bankruptcy because it would severely disrupt the flow of high yield passengers. In the case of United Airlines, for example, the airline has not rejected the ASAs it has entered into with its regional airline partners Atlantic Coast Airlines, SkyWest and Air Wisconsin. Similarly, U.S. Airways did not reject its ASA with its regional airline partners Mesa and Chautauqua. In addition, U.S. Airways has recently signed an agreement with Mesa for more regional aircraft. Wall Street analysts also look favorably on ExpressJet, the Continental Airlines regional airline partner. However, Northwest understands that some of United's airline services agreements have been renegotiated and that it has been reported that the airline services agreement between United and Atlantic Coast Airlines is the subject of current negotiations. Moreover, in connection with the Omnibus Agreement entered into between Fiduciary Counselors and Northwest, Fiduciary Counselors negotiated for limitations on Northwest's ability to unilaterally amend or terminate the ASA.

Valuation of Pinnacle Stock

Comment: A number of comments expressed concerns that Pinnacle Stock is a risky and illiquid investment and hard to value because there is no established market for the security.

Northwest Response: Northwest represents that it did not value Pinnacle Airlines for purposes of the Exemption Transactions. As a condition of the Proposed Exemption, Fiduciary Counselors, using the services of its independent appraisal firm Eclat,

determined the value of Pinnacle Stock. In doing so, Fiduciary Counselors' legal obligations run exclusively to the Plans, not to Northwest. As the Plans' independent fiduciary, Fiduciary Counselors must act prudently and in the interests of the Plans and their participants.

Northwest asserts that in valuing Pinnacle Stock, there are well-established valuation methodologies available to the valuation experts to assess the value of non-public securities like Pinnacle Stock. Such techniques were employed by Fiduciary Counselors and Eclat in this circumstance. In particular, the risk and the liquidity of the Pinnacle Stock were taken into account and are explained in the reports issued by Fiduciary Counselors and Eclat. Equally important, Fiduciary Counselors negotiated for special rights associated with the Plans' acquisition of Pinnacle Stock that limit the risks associated with Pinnacle Stock. For example, the Plans obtained a Put Option, corporate governance rights, voting rights in Pinnacle and the right to initiate an IPO or sale of Pinnacle Stock.

Collateral for Pinnacle Stock Contribution

Comment: Some comments suggested that Northwest be required to post collateral in order to contribute Pinnacle Stock to the Plans.

Northwest Response: Northwest explains that, while the Proposed Exemption and the Omnibus Agreement negotiated with Fiduciary Counselors do not require collateral, the Proposed Exemption and the Omnibus Agreement include provisions designed to limit the need for collateral. The purpose of collateral would be to protect the Plans from declines in the value of Pinnacle Stock and secure the Put Option accorded to the Plans. In this case, the Omnibus Agreement provides the Plans with a Put Option that allows Fiduciary Counselors at any time to ''put'' Pinnacle Stock back to Northwest at the greater of the price at the time the stock was contributed or the price at the time of the put.[7] The Omnibus Agreement further requires that Northwest provide regular notice of its liquidity to Fiduciary Counselors. Thus, the Put Option serves to protect the Plans from declines in the value of Pinnacle Stock and the liquidity notice feature ensures that the Independent Fiduciary has sufficient notice so that it may exercise the Put Option at a time when Northwest has sufficient financial resources to meet its obligation under the Put Option.

Northwest asserts that, while the Department has required collateral for some similar exemptions in the past, it has not required collateral in all cases. Here, they assert, the purpose of the exemption, to provide the Plans with a valuable security while maintaining Northwest's liquidity, would be undermined if assets were required to be used as collateral in connection with contributions of Pinnacle Stock. Moreover, to the extent that Northwest has assets to secure the contributions, such assets will be used to maintain the liquidity necessary for Northwest to weather the ongoing economic challenges.

Conflicts of Interest

Comments: Commenters expressed a concern that the contribution of Pinnacle Stock involves a conflict of interest on the part of Northwest.

Northwest Response: Northwest states that, because there is a potential for a conflict of interest, the Proposed Exemption required that Northwest appoint an independent fiduciary who is vested with the discretion to determine whether the Plans should acquire, hold or dispose of Pinnacle Stock. The Proposed Exemption included specific conditions that ensure that the independent fiduciary is free from conflicts of interest. The Proposed Exemption further required that the independent fiduciary obtain expert valuation advice from an independent valuation firm. Thus, to eliminate the potential for a conflict of interest, two parties completely independent of Northwest—Fiduciary Counselors and Eclat—represented the interests of the Plans in connection with the transaction.

Northwest represents that the final terms of the Omnibus Agreement reflect the fact that Fiduciary Counselors has represented the Plans' interests. In this regard, the Plans acquired Pinnacle Stock at a favorable price and the Plans obtained voting and management rights, anti-dilution rights, limits on Northwest's ability to terminate the ASA, rights to sell the Pinnacle Stock or dispose of it in an IPO in a variety of circumstances, and a protective Put Option. In addition, Pinnacle has an independent Board of Directors with one member appointed by Fiduciary Counselors, and the Fiduciary Counselors-appointed Board member is entitled to special voting rights on certain matters.

Exposure to Future Underfunding

Comment: Several commenters expressed concern that the exemption would expose the Plans to increased underfunding in the future.

Northwest Response: Northwest notes that it has never before sought a prohibited transaction exemption and has never missed a pension funding payment. Indeed, during the 1990's, Northwest contributed to its pension plans millions of dollars more than the required amount of contributions. As Northwest's track record demonstrates, Northwest agrees that the Plans need to be soundly funded. The Proposed Exemption is part of Northwest's strategy to achieve that goal. Through the contribution of Pinnacle Stock, Northwest will be able to meet up to $330 million (based on the current valuation) in near term funding obligations while maintaining the airline's ability to weather difficult times, to the benefit of all concerned. Moreover, when the IPO of Pinnacle Stock occurs, the Plans may benefit from a potentially significant IPO premium with respect to their holdings of Pinnacle Stock. In the absence of the contribution of Pinnacle Stock, the Plans could suffer from increased underfunding. This is because a cash contribution is not a viable alternative given the company's liquidity needs.

Preference for Cash Contribution

Comment: A number of commenters expressed a preference that pension contributions be made with cash rather than Pinnacle Stock.

Northwest Response: Northwest notes that like other major airlines, Northwest is in a temporary period of extraordinary airline revenue weakness and volatility. In this environment, it is necessary to maintain high liquidity reserves to ensure the viability of the airline and protect the long-term interests of the pension plans and plan participants.

Northwest asserts that, if its current cash needs were not so great, Northwest would make its pension contributions in cash as it has in the past. However, because of its liquidity needs, a cash contribution is not a viable alternative.

[7] Northwest notes that specifically, if the Pinnacle Stock is not publicly traded, the Plans will receive the greatest of (i) the initial contribution value (the Floor Price), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected by the Plans and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.

Northwest stated ''[i]n the absence of an exemption, Northwest would have to consider the contribution of NWA Corp. stock or an IRS waiver. Alternatively, Northwest could consider filing for bankruptcy, which would suspend most pension contributions, and could result in termination of some or all of the Plans.''

The goal of the Pinnacle Stock contribution is to (1) provide the Plans with a valuable security, (2) meet near term pension funding obligations, and (3) allow Northwest to preserve cash to withstand the current economic environment. Northwest believes this is the best outcome for all Plan participants and beneficiaries.

Eclat May 16, 2003 Response

On May 16, 2003, Mr. William S. Swelbar, Managing Director of Eclat, responded to the Department concerning questions on the two valuations of Pinnacle. Eclat provided additional information in support of its view that the discount rates, and other factors used in determining the fair market value of the Pinnacle Stock were reasonable and theoretically sound.

Northwest May 20 and June 10, 2003 Comment Letters

On May 20 and June 10, 2003, Northwest responded to certain issues raised during the Hearing that were not responded to in the April 26 Comment.

1. During the Hearing, the Department asked Northwest to provide information concerning the funded status of the Pilot Plan, Contract Plan and Salaried Plan at the end of 2002. Northwest provided the funded status of each Plan as of 1/1/03 as shown in the following table.

NORTHWEST AIRLINES, INC.—CURRENT LIABILITY FUNDED STATUS AT JANUARY 1, 2003

	Pilots plan	Contract plan	Salaried plan
Current Liability using 6.65% interest rate (IRC § 412(l))	$3,665,896,686	$2,673,540,738	$425,037,585
Market Value of Assets (with PY02 accrued contributions)	2,253,513,119	[2] 1,385,832,156	[3] 254,670,253
Actuarial Value of Assets (with PY02 accrued contributions) [1]	2,704,215,743	[2] 1,662,998,587	[3] 305,604,304

[1] Actuarial value of assets smoothes investment gains and losses over a five-year period.
[2] Accrued contribution of $202,626,983 for PY02.
[3] Accrued contribution of $20,083,879 for PY02.

2. During the Hearing, employees of Northwest referenced an employee stock program that was established by the company in 1993. Northwest explained that, as part of labor agreements reached in 1993, Northwest's parent company, NWA Corp., issued to trusts for the benefit of participating employees 9.1 million shares of a new class of Series C cumulative, voting, convertible, redeemable preferred stock, par value of $.01 per share (the Series C Preferred Stock), and 17.5 million shares of Common Stock and provided the union groups with three positions on the Board of Directors. The Series C Preferred Stock ranks senior to Common Stock with respect to liquidation and certain dividend rights. As long as the Common Stock is publicly traded, no dividends accrue on the Series C Preferred Stock.

The Northwest Airlines Corporation Employee Stock Plan (Employee Stock Plan) was established in 1993. The Employee Stock Plan is a profit sharing plan that is tax qualified under section 401(a) of the Code and subject to ERISA.[8] The Employee Stock Plan was established through labor negotiations between Northwest and its unions in 1993 to hold contributions of Northwest Airlines Corporation Series C Preferred Stock. These negotiations resulted in agreements (Agreements) between Northwest and each of its unions under which Northwest would contribute to the Employee Stock Plan a newly created, special class of stock (the Series C Preferred Stock) in an amount that would equal the monetary value of certain wage and other concessions agreed to by the unions. Each of Northwest's three main unions at the time of the Agreements also was granted the right to appoint one director to the Northwest board of directors.

The Employee Stock Plan covers in general terms Northwest's employees employed from August 1, 1993 through 1996, including employees represented by Air Line Pilots Association (ALPA), International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Teamsters (IBT), Airline Technical Support Association (ATSA), Northwest Airlines Meteorologists Association (NAMA), Transport Workers Union of America (TWUA) and management employees. In 1994 through 1997, Northwest made annual contributions of Series C Preferred Stock to the Employee Stock Plan for the benefit of employees represented by the IAM and IBT (the other labor groups had converted their right to receive Series C Preferred Stock into Common Stock under the Special Conversion Option described below). The shares were then allocated to individual accounts established on behalf of each eligible employee. A total of 9.1 million shares of Series C Preferred Stock were contributed to the Employee Stock Plan.

Each share of the Series C Preferred Stock is convertible at any time into 1.364 shares of NWA Corp. Common Stock (Common Stock). At the time a participant exercises conversion rights, the Series C Preferred Stock is converted to Common Stock, the Common Stock is sold and cash is allocated to participant accounts. In addition, under the Agreements, the trustee of each plan was given a one time Special Conversion Option that, if elected, resulted in the relevant trusts receiving Common Stock at the rate of 1.9096 shares of Common Stock for each share of the Series C Preferred Stock that they would have otherwise received. The Special Conversion Option expired on February 9, 1994. On that day, ALPA, TWUA, NAMA, ATSA and the Company on behalf of its management and non-contract employees exercised the Special Conversion Option, with the IAM and IBT electing not to exercise the Special Conversion Option (63 shares are still owned by the ALPA trust). Thus, almost all of the Series C Preferred Stock that remains in the Employee Stock Plan is allocated to the accounts of employees represented by the IAM and IBT. As of December 31, 2002, 4.3 million shares of Series C Preferred Stock have been converted into Common Stock and the remaining

[8] The original Employee Stock Plan was established in 1993. On December 2, 2002, the Employee Stock Plan was divided into three components, which were then merged into the existing Northwest Airlines Retirement Savings Plan for Pilot Employees, Northwest Airlines Retirement Savings Plan for Contract Employees and Northwest Airlines Retirement Savings Plan for Salaried Employees. Each of these plans is a Code section 401(k) plan that is tax qualified under section 401(a) of the Code and subject to ERISA. For ease of reference, Northwest refers to the Employee Stock Plan, but the factual discussion of the Series C Preferred Stock remains accurate after the merger with the Northwest 401(k) plans.

4.8 million shares outstanding are convertible into 6.6 million shares of Common Stock.

The holders of outstanding Series C Preferred Stock have a ''put right'' in 2003 to require NWA Corp. to repurchase such shares for an amount equal to the actual wage savings achieved under the 1993 labor agreement (projected to be $226 million at the August 1, 2003 put date). NWA Corp. has the option to repurchase such shares in cash, by the issuance of additional Common Stock, or by the use of cash and stock. A decision to issue only additional Common Stock must be approved by a majority of the three directors elected by the holders of the Series C Preferred Stock. If NWA Corp. decides not to repurchase the Series C Preferred Stock, quarterly dividends will accrue beginning August 1, 2003, at 12% per annum and the employee unions will receive three additional Board of Directors positions. If, on August 1, 2003, NWA Corp. decides not to repurchase the Series C Preferred Stock, beginning on August 1, 2003 and on each succeeding quarter end date, NWA Corp. must use all ''Available Cash'' (a defined term in the Agreements) to effect partial repurchases of the Series C Preferred Stock, but only if and to the extent NWA Corp. is not prohibited from making such repurchases under applicable Delaware corporate law or any loan agreement to which NWA Corp. is a party. Any decision not to use all Available Cash to effect such partial purchases must be approved by a majority of the directors elected by the holders of the Series C Preferred Stock.

On August 1, 2003, Northwest issued a press release that announced its decision on the Series C Preferred Stock. The Northwest board of directors determined that at this time the company could not legally redeem the 4.8 million shares of its Series C Preferred Stock still outstanding and made the following statement:

> After a thorough review of the legal restrictions applicable to the company, the board concluded that Northwest was not able to buy back the Series C Preferred Stock, at this time. As a board, we recognize the valuable contributions our employees made to the company during the 1993–1996 wage reduction period and acknowledge the company's obligation to buy back the Series C Preferred Stock. We want to do so as soon as possible. We devoted substantial time and effort to this issue. We discussed the Series C Preferred Stock buy back at length in our regularly scheduled April and June board meetings, and held two special meetings in July devoted exclusively to the Series C issue * * *. At the conclusion of these deliberations, it was clear that the legal restrictions applicable to stock buy backs under Delaware Law did not permit Northwest to proceed at this time with the buy back of the Series C Preferred Stock.

The board noted that the company's obligation to the holders of the Series C Preferred Stock continues until Northwest has the ability to repurchase the Series C Preferred Stock. Until the Series C stock is repurchased, each share will accrue a 12% per year dividend on the $46.96 per share buy back price.

On August 1, 2003, in response to the Department's questions concerning the ''legal restrictions'' that prevented Northwest from repurchasing the Series C Preferred Stock and whether these legal restrictions were tied to Northwest's financial condition, Northwest explained that in making the Series C stock repurchase decision, the board of NWA Corp. was subject to a Delaware law that applies only to NWA Corp.'s repurchase of its own stock. The Delaware law does not apply to the repurchase of Pinnacle Stock, which is not treated as NWA Corp.'s own stock. The Delaware law applicable to the repurchase of the Series C stock requires the Board to make a finding that NWA Corp. has adequate surplus, defined as the net asset value of the corporation in excess of its capital. At the present time, the Board was unable to make this finding.

The Department also questioned whether such restrictions would similarly preclude Northwest from honoring the Put Option. Northwest responded that no similar legal restriction would apply to the repurchase of Pinnacle Stock pursuant to the exercise of the Put Option. Minnesota law would not restrict the repurchase of Pinnacle stock by Northwest, a Minnesota corporation, which issued the Put Option. In addition, Delaware law would not restrict NWA Corp., a Delaware corporation, from repurchasing the Pinnacle Stock as the guarantor of the Put Option. Both the Minnesota law and the Delaware law relate to the repurchase of the stock issued by Northwest Airlines, Inc. and NWA Corp., respectively, and would not apply to the repurchase of stock of Pinnacle (the Pinnacle Stock). Northwest notes that the board previously approved the Omnibus Agreement, which includes the Put Option, and no further action would be required of the board in the event that the Put Option is exercised by the Independent Fiduciary.

Northwest stated that the language at section 5.1(b) of the Omnibus Agreement contains a representation that Northwest has the corporate and legal authority to meet its obligations under the agreement, including the Put Option. Northwest asserts that it couldn't make this representation if there were restrictions that limited its ability to honor the Put Option or other aspects of the Omnibus Agreement and this representation was the product of the negotiations between the Independent Fiduciary and Northwest (as noted above).

Fiduciary Counselors' July 11, 2003 Submission

Additional Information

Fiduciary Counselors sent additional information to the Department on July 11, 2003. The information addressed, among other issues, how the possibility of a Northwest bankruptcy was factored into the valuation, how the valuation was ''stress'' tested for other assumptions contained in the valuation, and the reasons for the selection of a 15% liquidity discount.

Fiduciary Counselors, AIC and Eclat represent that the ASA between Northwest and Pinnacle provided the framework for the final valuation. There were significant changes made to the original valuation performed for the PBGC (the Eclat Report) based on this agreement that proved to be more conservative with respect to the ultimate valuation. Fiduciary Counselors, AIC and Eclat also noted that some of the information used by Eclat for the January 15, 2003 Valuation was not available during the initial valuation in the Eclat Report.

Additionally, by letter dated July 15, 2003, Fiduciary Counselors represents that in preparing the valuation for subsequent contributions, Eclat will reexamine the assumptions used in preparing the initial valuation and will continue to stress test the assumptions in its valuation model to reflect the credit-worthiness of Northwest and changing conditions in the regional jet market.

Change of Affiliation of Fiduciary Counselors

On July 11, 2003, Fiduciary Counselors informed the Department that Fiduciary Counselors Inc. (formerly Aon Fiduciary Counselors, Inc.) (Fiduciary Counselors) is no longer a subsidiary of Aon Corporation. As of June 30, 2003, Fiduciary Counselors was acquired by Fiduciary Group, Inc., in a management-led buyout.

Fiduciary Counselors notes that there will be no change in its providing objective and independent investment management. Ellen A. Hennessy will

continue as President of Fiduciary Counselors and, as majority shareholder of Fiduciary Group, will continue to control management decisions with respect to Fiduciary Counselors. Ellen A. Hennessy will continue to be the primary person at Fiduciary Counselors handling its responsibilities as independent fiduciary to the Northwest Airlines defined benefit plans.

Fiduciary Counselors adds that AIC, which remains a subsidiary of Aon, will continue to act as advisor in connection with this engagement. There will be no change in their personnel assigned to this engagement or in the manner in which the fees are split between the two organizations.

As described in the Fiduciary Counselors letter to the Department on January 6, 2003, Northwest has agreed to pay Fiduciary Counselors an annual fee that covers both the independent fiduciary and investment management services provided by Fiduciary Counselors and the investment advisory services provided by AIC. The initial fee was remitted directly to Aon Consulting, Inc., then a parent company of both Fiduciary Counselors and AIC. Aon Consulting internally allocated 25% of the fee to Fiduciary Counselors, which comprised less than 5% of its annual gross revenue in 2002. In connection with the change in ownership of Fiduciary Counselors, Fiduciary Counselors and AIC have agreed that future payments will be allocated in the same proportions. Payment will be made to Fiduciary Counselors, which will remit 75% to AIC. Based on current client engagements, Fiduciary Counselors anticipates that the portion retained by it will comprise less than 5% of Fiduciary Counselors' gross revenue for 2003.

Fiduciary Counselors asserts that the sale of Fiduciary Counselors will, if anything, increases their independence. As reflected in the Proposed Exemption, another Aon affiliate does provide non-plan services to Northwest, albeit services representing less than 1% of Aon's total annual revenue. In contrast, under its new ownership, neither Fiduciary Counselors nor any affiliate will accept any other engagement from Northwest while it is independent fiduciary for the Plans.

Termination of the Independent Fiduciary Agreement

The Department notes that the Preamble to the Proposed Exemption stated that either party may terminate the Independent Fiduciary Agreement for any reason upon 60 days notice and that the Agreement may be terminated immediately for cause. As further noted in the Preamble, the parties to the Agreement shall notify the Department within 30 days of any decision regarding the resignation, termination or change in control of the Independent Fiduciary. The Department wishes to clarify that any replacement Independent Fiduciary must be acceptable to the Department and must assume its responsibility prior to the effective date of the removal of the predecessor Independent Fiduciary.

Northwest and ALPA Agreement Regarding Pinnacle Stock

On June 27, 2003, ALPA and Northwest provided the Department with a Letter of Agreement between Northwest and the Northwest airline pilots represented by ALPA (the Letter Agreement) regarding the acquisition and holding of Pinnacle stock by the Northwest Pension Plan for Pilot Employees (the Pilot Plan). ALPA and Northwest informed the Department that the Letter Agreement will be executed by the parties in connection with a proposed voluntary contribution of Pinnacle Stock (described below).

The Letter Agreement provides that:

1. Northwest will make a voluntary contribution to the Pilot Plan on or before September 15, 2003 so that the funded current liability percentage for the Plan is at least 80% for the 2003 Plan Year. This voluntary contribution will eliminate the funding requirements under the Code and ERISA for the 2003 Plan Year that would otherwise be payable with respect to the Pilot Plan.

2. The voluntary contribution to the Pilot Plan will consist entirely of Pinnacle Stock. At the time the voluntary contribution is made to the Pilot Plan, Northwest also will contribute Pinnacle Stock to the Salaried Plan in an amount such that the amount of the Pinnacle Stock held by the Salaried Plan equals the required minimum funding contribution due under ERISA and the Code on September 15, 2003. Any remaining Pinnacle stock will then be contributed to the Contract Plan.

3. The Pinnacle Stock contributed to the Pilot Plan will be held in a separate, segregated subaccount of the Master Trust and held for the exclusive benefit of the Pilot Plan. Contributions of Pinnacle Stock to the Salaried Plan and the Contract Plan will likewise be held in a separate segregated subaccount of the Master Trust and held for the exclusive benefit of each respective plan.

4. Northwest will obtain an amendment of the Omnibus Agreement so that the Independent Fiduciary will have first priority to sell Pinnacle Stock in an initial public offering, if certain conditions exist.

5. The Contract Plan, the Salaried Plan and the Pilot Plan will have the same registration rights provided in the Omnibus Agreement dated January 15, 2003 between Pinnacle Airlines Corp., Northwest and Fiduciary Counselors.

6. Northwest may not terminate Fiduciary Counselors as the Independent Fiduciary without the consent of ALPA and may not appoint a new Independent Fiduciary without the consent of ALPA. The Independent Fiduciary will have the sole responsibility to determine whether to acquire, hold or dispose of Pinnacle Stock on behalf of the Plans and whether to exercise the Put Option with respect to Pinnacle Stock.

7. The monthly contributions required to be made to the Pilot Plan pursuant to the pilot collective bargaining agreement are waived for the 2004 and 2005 Plan Year.

As described in the Proposed Exemption, the current provisions of the Pilot Plan and the pilot collective bargaining agreement prohibit the Pilot Plan from acquiring or holding employer securities. Without modifications to the pilot collective bargaining agreement, the Proposed Exemption contemplated that the other two Plans would receive a contribution of Pinnacle Stock in an amount equal to the maximum amount permitted under section 407(a)(2) of ERISA, while the Pilot Plan would receive no contributions of Pinnacle Stock.

ALPA represents that it recognizes the need for Northwest to preserve liquidity so ALPA has agreed to modify the collective bargaining agreement and the Pilot Plan to permit the Pilot Plan to acquire and hold employer securities through a voluntary contribution to the Pilot Plan. The Proposed Exemption contemplates both voluntary and required contributions to the Northwest Plans, as did the Application filed by Northwest on November 6, 2002 and the Omnibus Agreement.

Northwest and ALPA assert that the voluntary contribution gives Northwest the liquidity it needs, and thereby the ability to maintain all of its Plans, by eliminating the funding requirement for the Pilot Plan for the 2003 Plan Year, possibly reducing the funding requirements for future plan years, and by waiving the monthly contribution requirement under the pilot collective bargaining agreement for the 2004 and 2005 Plan Years. The Pilot Plan and its participants benefit from the voluntary contribution by providing an early contribution of an asset with significant

value to more adequately fund the benefits promised under the Pilot Plan.

The allocation method made pursuant to the Letter Agreement will result in a modest change in the percentage of the Contract and Salaried Plans' assets invested in Pinnacle Stock compared to the ratable allocation contemplated by the Proposed Exemption. Without modification to the pilot collective bargaining agreement, the Proposed Exemption contemplated that the Salaried and Contract Plans could hold Pinnacle Stock equal up to 10% of each Plan's assets. Under the Letter Agreement, the Salaried and Contract Plans will instead hold Pinnacle Stock with a value equal to approximately 8% of their respective assets.

Northwest and ALPA believe that the Letter Agreement also enhances protections for participants in all three Plans by giving the Independent Fiduciary first priority to sell Pinnacle Stock in an IPO where the number of shares sought to be sold exceeds the number that can be sold.

The Department asked whether Northwest intends to contribute cash or some other asset to satisfy the balance of the calendar year 2003 funding requirements of the Salaried and Contract Plans that will not be met by the Pinnacle Stock contribution as a result of the Letter Agreement. Northwest represents that it will make any such contributions in cash. Additionally, Northwest will maintain a subaccount for each Plan within the Master Trust for so long as that Plan holds Pinnacle Stock. Once all of the Pinnacle Stock in such an account has been liquidated, that subaccount may be dissolved.

As noted in the June 27, 2003 letter from Northwest and ALPA to the Department, Northwest states that the Letter Agreement will be executed in connection with the voluntary contribution. Thus, the ALPA agreement will be formally entered into and effective on the date of the voluntary contribution.

August 6, 2003 Northwest and Independent Fiduciary Response

Audited Financial Statements

The Department asked the Independent Fiduciary if the January 15, 2003 Valuation was based on audited financial statements.

Fiduciary Counselors stated that Eclat's valuation took into account a variety of financial data. Eclat was provided with Pinnacle's audited financial statements for the years 2000 and 2001. Eclat was also provided with unaudited interim and full year financial information for 2002. However, audited 2002 financial statements were not available at the time of Eclat's valuation for the January 15, 2003 contribution.

Enhanced Communication with Plan Participants

Several commenters requested that Northwest provide for enhanced communication with the Plan participants concerning the Exemption Transactions. Additionally, ALPA requested that it be involved in the monitoring of the Independent Fiduciary.

In this regard, Fiduciary Counselors plans to hold periodic conference calls to report to the representatives of the participants covered by collective bargaining agreements on developments with respect to the Pinnacle Stock held by the plans. Additionally, Northwest notes that the Letter Agreement between Northwest and ALPA relating to a voluntary contribution of Pinnacle Stock would provide ALPA with a role in reviewing and approving the termination, and any replacement, of the independent fiduciary. This, together with the reporting planned by Fiduciary Counselors, will permit ALPA to monitor the Independent Fiduciary.

Plan Asset Investment Guidelines

A number of commenters asked, if Pinnacle Stock is contributed to the Plans, how would this affect the manner in which other Plan assets are invested?

Northwest noted that, as is the case for sponsors of defined benefit plans, Northwest has adopted investment guidelines and asset allocation strategies that guide the investment of the Plans' assets. These guidelines contemplate that a certain amount of assets will be allocated to securities with risk and return characteristics similar to Pinnacle Stock. Thus, Northwest notes that the holding of Pinnacle Stock by the Plans can fit within the overall investment strategy adopted for the Plans.

Fiduciary Counselors notes, as described in its report, in accepting the Pinnacle Stock contribution, Fiduciary Counselors determined that Pinnacle Stock fit within the Plans' investment guidelines and diversification needs. Fiduciary Counselors also obtained a determination from Northwest's Pension Investment Committee that the holding of Pinnacle Stock would not impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due. Similar considerations will be taken into account by Fiduciary Counselors in determining whether to accept any future contribution of Pinnacle Stock.

Minimum Rate of Return

Some commenters asked if Northwest would be willing to guarantee the Plans a minimum rate of return on the Pinnacle Stock such as a rate equal to the inflation rate.

Northwest stated that it would not. Northwest provided that the Omnibus Agreement guarantees that the Plans always receive the greater of the initial contribution value of Pinnacle Stock or the value of the stock at the time of an IPO or the exercise of the Put Option. Northwest guarantees the ''principal'' attributable to the investment in Pinnacle Stock. According to Northwest, the Omnibus Agreement provides the Plans substantial investment risk protection, protection that would not be available to the Plans when investing in securities with similar risk and return characteristics. Moreover, the Plans will receive all of any investment gains attributable to their shares of Pinnacle Stock at the time of an IPO. Northwest also noted that it assumes the investment risk associated with any investment by the Plans, including the investment in Pinnacle Stock, and must make up any investment losses through future contributions to the Plans.

The IPO

Several commenters asked whether the Plan trustees should decide when to initiate a public offering since the Plans will own a majority of Pinnacle Stock.

Northwest noted that under the terms of the Omnibus Agreement, Northwest is responsible for making up the difference, if any, between the IPO price and the original contribution value. As a result, Northwest has a strong interest in ensuring that maximum value is obtained in connection with an IPO and Northwest believes that it is appropriate for it to determine the timing of an IPO. Additionally, Fiduciary Counselors agreed only to a limited period during which Northwest has the exclusive right to cause an IPO. Under the Omnibus Agreement, Northwest controls the timing of the IPO until the earlier of July 1, 2006 or the occurrence of an early termination event. After that date, the Omnibus Agreement provides Fiduciary Counselors with the right to cause an IPO of Pinnacle Stock.

Pinnacle Management

Several commenters asked if Northwest would manage Pinnacle in a manner that maximizes its value.

Northwest replied that Northwest does not manage Pinnacle. Except for one director appointed by Northwest, Pinnacle's board is independent of Northwest. Northwest expects that the

board, like any board fulfilling its fiduciary duties, will seek to maximize the value of the enterprise. In addition, Fiduciary Counselors negotiated comprehensive voting and governance rights specifically for the Plans under the Omnibus Agreement. For example, Fiduciary Counselors appointed a director to Pinnacle's board who sits on the board's audit committee. Once the Plans own 50% of the Pinnacle Stock, the Plans' director will exercise additional approval rights relating to the company's bylaws and capital structure. In addition, changes to the ASA and other significant transactions must be approved by a majority of Pinnacle's directors, which majority must include the Plans' director.

Modifications to the ASA

On July 23, 2003, Northwest confirmed to the Department that the modifications to the ASA referred to in the Proposed Exemption have been made. The ASA was revised to provide that the acquisition or disposition of shares of Pinnacle Stock pursuant to the terms of the Omnibus Agreement does not constitute a Change of Control (as defined in the ASA). The ASA also was revised to eliminate the unilateral right of Northwest to terminate the ASA in the event of the bankruptcy of Northwest.

10% Limitation

In the March 5 Comment, Fiduciary Counselors corrected previous information provided to the Department in the Proposed Exemption with reference to ''employer securities or employer real property'' in the last sentence of paragraph 14 in column 1 of 68 FR 2584 (emphasis added) and each other place it occurs. This phrase should be changed to ''employer securities and employer real property''.

In this regard, the Department wishes to note that Northwest has not requested, and the Department is not providing, any relief for any contribution of Pinnacle Stock that, when aggregated with any employer securities and employer real property currently held by any of the Plans, represents more than 10 percent of the value of that Plan's assets.

Best Interest Standard

In the March 5 Comment, Fiduciary Counselors noted that, consistent with the statutory requirements of section 404(a) of ERISA, the reference in the Proposed Exemption to ''the *best* interests of the Plans' participants and beneficiaries'' (emphasis added) should be changed to ''the interests of the Plans' participants and beneficiaries''.

Entity References

In the March 3 Comment, Northwest observed that there are three references to NWA Inc. in the second column at 68 FR 2584 that should reference Northwest (Northwest Airlines, Inc.), the wholly-owned subsidiary corporation of NWA Inc. The references appear almost halfway down the column beginning in the fourth full paragraph, and in the last paragraph in the column.

Jones Day

The March 5 Comment noted that due to the firm's recent name change, the reference to ''Jones, Day, Reavis & Pogue'' in the first column of the Proposed Exemption at 68 FR 2584 should be changed to ''Jones Day''.

Determination of the Department

Accordingly, based upon the representations made by the Applicant, the written comments received in response to the Proposed Exemption, the record of the public hearing, and the analysis conducted by the Independent Fiduciary, the Department has determined to grant the exemption. The Department has, in transactions of this nature, placed emphasis on the need for an Independent Fiduciary and on such Independent Fiduciary's considered and objective evaluation of the transactions. In its deliberations, which included its analysis of all aspects of the transactions, the Independent Fiduciary has consistently represented for the record that no contribution of Pinnacle Stock will be accepted on behalf of the Plans unless such transactions are found by the Independent Fiduciary to be in the interests of the Plans. Finally, the Department notes that the Independent Fiduciary's satisfaction of its obligations in connection with the determination of the fair market value of the Pinnacle Stock as previously described by the Department in the Preamble to the final exemption is a critical factor in the Department's decision to grant a final exemption.

The Application pertaining to the exemption, the Proposed Exemption, the comments submitted to the Department and the responses to the comments, the transcript of the Hearing, and all other documents submitted to the Department concerning this exemption have been included as part of the public record of the Application. The complete Application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the January 17, 2003 Notice of Proposed Exemption at 68 FR 2578.

General Information

The attention of interested person is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plans;

(4) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transactions, which are the subjects of the exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is:

(a) Administratively feasible;

(b) In the interests of the plans and their participants and beneficiaries; and

(c) Protective of the rights of the participants and beneficiaries of the plans.

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(1) The transfer of the common shares of Pinnacle Airlines Corp. (Pinnacle Stock) to the Northwest Airlines Pension Plan for Salaried Employees, the Northwest Airlines Pension Plan for Pilot Employees, and the Northwest Airlines Pension Plan for Contract Employees (the Plans) through the in-kind contribution(s) of such shares by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans;

(2) The holding of the Pinnacle Stock by the Plans;

(3) The sale of the Pinnacle Stock by the Plans to Northwest;

(4) The acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted by Northwest which permits the Plans to sell the Pinnacle Stock to Northwest; and

(5) The guaranty to the Plans by Northwest Airlines Corporation of Northwest's obligation to honor the Put Option.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) The Plans acquire the Pinnacle Stock through one or more contributions by Northwest during the calendar years 2003 and 2004;

(b) An independent qualified fiduciary (the Independent Fiduciary), acting on behalf of the Plans, represents the Plans' interests for all purposes with respect to the Pinnacle Stock, and determines, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Pinnacle Stock, is in the interests of the Plans;

(c) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plans and Northwest that relate to the Pinnacle Stock;

(d) The Independent Fiduciary manages the holding and disposition of the Pinnacle Stock and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Pinnacle Stock;

(e) The terms of any transactions between the Plans and Northwest are no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties;

(f) The Independent Fiduciary determines the fair market value of the Pinnacle Stock contributed to each plan as of the date of each such contribution. In determining the fair market value of the Pinnacle Stock, the Independent Fiduciary obtains an appraisal from an independent qualified appraiser selected by the Independent Fiduciary, and ensures that the appraisal and the Independent Fiduciary's analysis of the appraisal are consistent with sound principles of valuation and with the elements described by the Department in the Preamble to this final exemption in the section entitled Duties of the Independent Fiduciary;

(g) The terms of (1) the Put Option granted by Northwest; (2) any exercise of the Put Option by the Plans; and (3) any sale of the Pinnacle Stock by the Plans to Northwest other than through the exercise of the Put Option will be in accordance with the terms set forth in the Term Sheet and the Omnibus Agreement;

(h) Immediately after each contribution, employer securities and employer real property, including the Pinnacle Stock, will represent no more than 10 percent (10%) of the value of each Plan's assets. For purposes of this requirement, the term ''employer real property'' means real property leased to, and the term ''employer securities'' means securities issued by, an employer any of whose employees are covered by the Plans or by an affiliate of such employer; and

(i) The Plans incur no fees, costs or other charges as a result of their participation in any of the transactions described herein.

Section III. Definitions

(a) The term ''independent fiduciary'' means a fiduciary who is: (1) independent of and unrelated to Northwest and its affiliates, and (2) appointed to act on behalf of the Plans for all purposes related to, but not limited to, (A) the in-kind contribution of the Pinnacle Stock by Northwest to the Plans, (B) the holding of the Pinnacle Stock by the Plans; (C) the acquisition, holding, and exercise by the Plans of the Put Option, and (D) any sale of the Pinnacle Stock by the Plans. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northwest if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northwest, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation for acting as an independent fiduciary from Northwest in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year.

(b) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Date: This exemption is effective as of January 15, 2003.

Signed at Washington, DC this 14th day of August 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–21162 Filed 8–18–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Proposed Information Collection Request Submitted for Public Comment and Recommendations Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference (USERRA/VP)

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with The Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 C (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed information collection request for the VETS USERRA/VP Form 1010.

DATES: Comments are to be submitted by October 20, 2003.

ADDRESSES: Comments are to be submitted to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–4711. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4728.

FOR FURTHER INFORMATION CONTACT: Contact David Pafford, Division of Investigation and Compliance, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW, Washington, DC 20210, telephone: (202) 693–4728 (Voice) or (800) 670–7008 (TTY/TDD). Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Mr. David Pafford at (202) 693–4728.

SUPPLEMENTARY INFORMATION:

I. Background: The VETS/USERRA/VP Form 1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service (VETS) under either the Uniformed Services Employment and Reemployment Rights Act (USERRA) or laws/regulations related to veterans' preference (VP) in Federal employment. The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and this information collection requirement include: to protect and facilitate the prompt reemployment of members of the uniformed services (to include National Guard and Reserves); to minimize disruption to the lives of persons who perform service in the uniformed services and their employers; and to encourage individuals to participate in non-career uniformed service. Also, to prohibit discrimination in employment and acts of reprisal against persons because of their obligations in the uniformed services, prior service, intention to join the uniformed services, filing of a USERRA claim, seeking assistance concerning an alleged violation, testifying in a proceeding, or otherwise assisting in an investigation.

The purposes of Veterans' Preference laws and regulations and this information collection requirement include: to provide preference for certain veterans (preference eligibles) over others in Federal hiring from competitive lists of applicants; and to provide preference eligibles with preference over others in retention during reductions in force in Federal agencies.

II. Desired Focus of Comments: Currently VETS is soliciting comments concerning the proposed information collection request for the VETS/USERRA/VP Form 1010. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements for VETS/USERRA/VP Form 1010.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: VETS/USERRA/VP Form 1010.

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Total Respondents: Approximately 1,500.

Average Time per Response: 15 minutes.

Total Burden Hours: 375 hours.

Total Annualized Capital/Startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Dated: August 11, 2003.

Charles S. Ciccolella,

Deputy Assistant Secretary, Veterans' Employment and Training.

[FR Doc. 03–21160 Filed 8–18–03; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 18, 2003. This

application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant

[Permit Application No. 2004–011]

William Gilmore, Environmental Manager, Raytheon Polar Services Company, 7400 South Tucson, MS29, Centennial, CO 80112–3938.

Activity for Which Permit is Requested

Enter Antarctic Specially Protected Area. The applicant proposes to enter the Cape Crozier Antarctic Specially Protected Area (ASPA #124) to remove debris collected from the old campsite last season. In addition, the application plans annual visits to the campsite at Cape Crozier to conduct an Environmental Field Camp audit and document the camp's environmental footprint, as well as compliance with applicable waste and environmental, health and safety protocols. Each season audits are conducted to ensure that research activities comply with environmental impact assessment requirements.

Location

ASPA #124—Cape Crozier, Ross Island.

Dates

October 1, 2003 to February 28, 2007.

2. Applicant

[Permit Application No. 2004–012]

David Caron, 3616 Trousdale Parkway, AHF 301, Los Angeles, CA 90089–0371.

Activity for Which Permit is Requested

Introduction of a non-indigenous plant and importation into the U.S. The applicant proposes to introduce cultures of marine phytoplankton to Antarctica for use in various shipboard experiments to study the feeding rates of Antarctic protistan grazers. There will be no live release of any cultures into Antarctic waters or onto the continent. In addition, the applicant proposes to collect water samples containing marine phytoplankton and microscopic zooplankton for use in experiments, for preservation for future examination, and for developing new cultures. These samples will be transported back to the United States for further study.

Location

At sea in Antarctic waters.

Dates

October 20, 2003 to December 20, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–21128 Filed 8–18–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06563]

Notice of Consideration of Amendment Request Mallinckrodt Inc., St. Louis, Missouri, and Opportunity for Providing Comments and Requesting a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for partial decommissioning and opportunity to provide comments and request a hearing.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Possession Only License No. STB–401, issued to Mallinckrodt Inc., (Mallinckrodt or the licensee), to authorize Phase 2 decommissioning of its former Columbium-Tantalum (C-T) processing facility in St. Louis, Missouri.

On May 14, 2003, the licensee submitted the C-T Phase 2 Decommissioning Plan (DP) to NRC for review. The Phase 2 DP summarizes the decommissioning activities that will be undertaken to remediate the C-T process building slabs, sewerage, wastewater neutralization basins, and soil affected by C-T processing at the St. Louis, Missouri facility. Radioactive contamination in the soil and debris exists in the form of U–238, U–235, U–234 (and their progeny Th-230 and Ra-226 and others) and Th-232 (and its progeny Ra-228 and Th-228 and others) resulting from licensed operation that occurred from 1961 to 1985. The NRC will require the licensee to remediate the C-T processing facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable. An NRC administrative review, documented in a letter to Mallinckrodt dated July 29, 2003, found the DP acceptable to begin a technical review.

If the NRC approves the Phase 2 DP, the approval will be documented in an amendment to NRC License No. STB–401. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity to Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398, e-mail: *JTB@NRC.gov.*

Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity to Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudication in Material Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile (301–415–1101) addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Mallinckrodt Inc., Mallinckrodt and Second Streets, P.O. Box 5439, St. Louis, MO 63147, Attention: Mr. Mark Puett, and;

2. The NRC staff, by delivery to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 p.m., Federal workdays, or by mail, addressed to General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in section 2.1205(h);

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with section 2.1205(d).

IV. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic reading Room at; *http://www.nrc.gov/NRC/ADAMS/index.html.* The ADAMS Accession No. for the license amendment request and DP is ML032110490.

Dated at Rockville, Maryland, this 8th day of August, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21147 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 10, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, September 10, 2003—8:30 a.m.–10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Richard P. Savio (telephone: 301–415–7363) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: August 12, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–21145 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on September 9, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 9, 2003—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss 10 CFR 50.48 rulemaking to permit licensees to voluntarily adopt National Fire Protection Association (NFPA) Standard 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition,'' as an alternative to existing fire protection requirements; the staff's approach for resolution of issues related to post-fire safe shutdown circuit analysis; development of fire dynamics tools for inspectors; a proposed rulemaking plan for post-fire operator manual actions; and related matters. The Subcommittee will hear presentations by and hold discussions

with representatives of the NRC staff, the Nuclear Energy Institute (NEI), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (Telephone: 301–415–6927) or the Cognizant Staff Engineer, Mr. Marvin D. Sykes (Telephone: 301–415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or the Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 13, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–21146 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of August 18, 25, September 1, 8, 15, 22, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of August 18, 2003

There are no meetings scheduled for the Week of August 18, 2003.

Week of August 25, 2003—Tentative

Monday, August 25, 2003

9:30 a.m. Discussion of Investigatory and Enforcement Issues (Closed—Ex. 7 & 5)

Thursday, August 28, 2003

2 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of September 1, 2003—Tentative

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–410–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

3 p.m. Discussion of Security Issues (Closed—Ex. 1)

Thursday September 11, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

There are no meetings scheduled for the Week of September 22, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recoding)—(301) 415–1292. Contact person for more Information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 14, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary

[FR Doc. 03–21291 Filed 8–15–03; 11:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 25, 2003, through August 7, 2003. The last biweekly notice was published on August 5, 2003 (68 FR 46239).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 18, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: July 14, 2003.

Description of amendments request: The proposed amendment would revise the Technical Specifications to eliminate Surveillance Requirement (SR) 3.6.6.8. This SR is a 10-year flow test to verify that the containment spray nozzles are unobstructed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the surveillance requirement to verify that the Containment Spray System spray nozzles are unobstructed every ten years. The spray nozzles are not initiators of any previously analyzed accident. Therefore, this proposed change does not increase the probability of any accident previously evaluated.

The spray nozzles are assumed in the accident analysis to mitigate design basis accidents. Calvert Cliffs' system design Foreign Material Exclusion practices during maintenance and material accountability following maintenance, and post-maintenance testing practices ensure that the system is free of foreign material that could significantly reduce its ability to perform its intended function. These controls are considered adequate to ensure continued operability of the spray system. Since the system will be able to perform its accident mitigation function, the consequences of accidents previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change eliminates the surveillance requirement to verify that the Containment Spray System spray nozzles are unobstructed every ten years. The proposed change does not introduce a new method of plant operation, does not involve a physical modification to the plant, nor does it introduce any accident initiators.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety in this case is the assurance of operability of the Containment Spray System. Calvert Cliffs' system design, Foreign Material Exclusion practices during maintenance and material accountability following maintenance, and post-maintenance testing practices ensure that the system is free of foreign material that could significantly reduce its ability to perform its intended function. These requirements, along with the remote physical location and the simple construction of the spray nozzles, provide assurance that the nozzles will remain operable.

Therefore, this proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 5th floor, Baltimore, MD 21202.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: May 29, 2003.

Description of amendments request: The proposed license amendments request approval to remove the current Brunswick Steam Electric Plant (BSEP) reactor material specimen surveillance schedule from the Updated Final Safety Analysis Report and specify that BSEP, Units 1 and 2, will participate in an integrated surveillance program (ISP) developed by the Boiling Water Reactor Vessel and Internals Project.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adopts an integrated surveillance program (ISP) for reactor vessel material specimen surveillances. The ISP ensures that the reactor pressure vessel will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change. The initial conditions and methodologies used in accident analyses remain unchanged. The proposed change does not revise the design assumptions for systems or components used to mitigate the consequences of accidents. The accident analyses results are not affected by this proposed change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adopts an integrated surveillance program (ISP) for reactor vessel material specimen surveillances. The ISP ensures that the reactor pressure vessel will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change. The proposed change does not affect the design or operation of any system, structure, or component in the facilities. The safety functions of the related systems, structures, or components are not changed in any manner, nor is the reliability of any system, structure, or component reduced. The change does not affect the manner by which the facilities are operated and does not change any facility, structure, or component. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The proposed change does not affect any plant safety parameters or setpoints. No physical or operational changes to the facilities will result from the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: June 24, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18295). The licensee affirmed the applicability of the NSHC determination below in its application dated June 24, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead or requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 14, 2002.

Description of amendment request: Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) § 50.90, Duke Energy Corporation requested an amendment to the McGuire Nuclear Station Facility Operating Licenses and Technical Specifications (TS). The proposed change would revise TS 3.3.2, Engineered Safety Features Actuation System Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed license amendment against the three required standards of 10 CFR 50.92(c). A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard. Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of the changes contained in this amendment will have no effect on accident probabilities or consequences. The proposed changes apply to Technical Specifications 3.3.2, Engineered Safety Features Actuation System, and the equipment referenced in this Technical Specification are not accident initiating equipment. Therefore, there will be no impact on any accident probabilities caused by the NRC approval of this license amendment request. Additionally, since the design of the equipment is not being adversely modified by these proposed changes, there will be no impact on any accident consequences.

Second Standard. Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of the NRC approval of this license amendment request. No changes are being made to the plant which will introduce any new accident causal mechanism. This amendment does not impact any plant systems that are accident initiators; therefore, no new accident types are being created.

Third Standard. Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. The equipment referenced in the proposed change to Technical Specification 3.3.2 will remain capable of performing as designed. No safety margins will be impacted.

Conclusion. Based upon the preceding discussion, Duke Energy Corporation has concluded that this proposed license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 10, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications to eliminate requirements that are no longer applicable due to the completion of the automatic feedwater system modifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Energy Corporation (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated: The proposed change to the Oconee Technical Specifications removes obsolete requirements associated with the Main Steam Line Break (MSLB) detection circuitry that are no longer necessary because of the completion of the Automatic Feedwater Isolation System (AFIS) modification on all three Oconee Units. AFIS replaced the MSLB detection system. As such, the proposed change is administrative. No actual plant equipment, operating practices, or accident analyses are affected by this change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated: The proposed change to the Oconee Technical Specifications removes obsolete requirements associated with the MSLB detection circuitry that are no longer necessary because of the completion of the AFIS modification on all three Oconee Units. AFIS replaced the MSLB detection system. As such, the proposed change is administrative. No actual plant equipment, operating practices, or accident analyses are affected by this change. No new accident causal mechanisms are created as a result of this change. The proposed change does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety: The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. The proposed change eliminates obsolete requirements and is administrative in nature. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois and Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: October 10, 2002, as supplemented March 21 and March 28, 2003.

Description of amendment request: The proposed amendment revises the licensing bases and Technical Specifications by utilizing an alternative source term in the design-basis radiological analyses in accordance with 10 CFR 50.67, with the exception that Technical Information Document 14844 will continue to be used as the radiation dose basis for equipment qualification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of alternative source term (AST) assumptions has been evaluated in revisions to the analyses of the following limiting design basis accidents at Dresden Nuclear Power Station (DNPS) and Quad Cities Nuclear Power Station (QCNPS):

Loss-of-Coolant Accident,
Main Steam Line Break Accident,
Fuel Handling Accident, and
Control Rod Drop Accident.

Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events is within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1.

Requirements for secondary containment operability, secondary containment isolation valves, the Standby Gas Treatment (SGT) System, the Control Room Emergency Ventilation (CREV) System, and the Control Room Emergency Ventilation Air Conditioning (AC) System during movement of irradiated fuel assemblies that have decayed at least 24-hours and during core alterations are being eliminated. This is acceptable because, with the application of AST, none of these systems are credited in mitigating the consequences of a fuel handling accident after a 24-hour decay period.

The proposed change also increases the maximum allowable primary containment leakage and the maximum allowable main steam isolation valve leakage limits. This is acceptable due to the new assumptions, used in calculating control room and offsite dose following a design basis loss-of-coolant accident, related to application of AST.

The proposed changes do not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequence. The radiological consequences of the above design basis accidents have been evaluated with application of AST assumptions. The results conclude that the radiological consequences remain within applicable regulatory limits. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The application of AST does not affect the design, functional performance or operation of the facility. Similarly, it does not affect the design or operation of any structures, systems or components involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Approval of the basis change from the original source term developed in accordance with Technical Information Document (TID) 14844 to a new AST, as described in Regulatory Guide 1.183, is requested. The results of the accident analyses revised in support of the proposed changes, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies.

Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences due to design basis accidents comply with the requirements of 10 CFR 50.67 and the guidance of Regulatory Guide 1.183.

The margin of safety is considered to be that provided by meeting the applicable regulatory limits. Relaxation of these Technical Specification requirements results in an increase in dose following certain design basis accidents. However, since the doses following these design basis accidents remain within the regulatory limits, there is not a significant reduction in a margin of safety. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, operation of DNPS and QCNPS in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 27, 2003.

Description of amendment request: The proposed amendments revise Technical Specification 4.0.5.f and associated Bases, and Bases Section 3/4.4.8, with regard to the commitment to perform piping inspections in accordance with Generic Letter 88–01, by adding the words ''or in accordance with alternate measures approved by the NRC staff.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

No physical changes to the facilities will result from the proposed changes. The initial conditions and methodologies used in accident analyses remain unchanged. The proposed changes do not revise or alter the design assumptions for systems or components used to mitigate the consequences of accidents. Thus, accident analyses results are not affected by these changes. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of any system, structure, or component in the plants. No new or different type of equipment will be installed by these proposed changes. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

The changes do not affect any plant safety parameters or setpoints. No physical or operational changes to the facility will result from the proposed changes. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Nuclear Management Company (NMC), LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 11, 2003, as supplemented July 16, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.5.9, ''Ventilation Filter Testing Program (VFTP),'' by (1) incorporating filter test face velocity limits for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system, and shield building ventilation system; and (2) making editorial changes. The proposed amendments would also delete the additional conditions in Appendix B of the Operating Licenses which require the licensee to complete an evaluation of the maximum test face velocity for the ventilation systems in TS 5.5.9. The additional conditions would also require the licensee to submit a license amendment request for a TS amendment to specify the maximum test face velocity if the maximum actual face velocity is greater than 110 percent of 40 feet per minute.

In its July 16, 2003, supplemental letter, NMC withdrew the portion of its original request to revise the penetration and system bypass limit from 0.05 percent to 0.5 percent for the ventilation systems. The proposed amendments were previously noticed in the **Federal Register** on April 15, 2003 (68 FR 18279).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Addition of Filter Test Face velocities

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These ventilation systems are included in the plant design to mitigate accident consequences and are not assumed accident initiators, thus, this change does not involve a significant increase in the probability of an accident. This change will assure that the subject ventilation systems will perform within their intended design ranges thus, this change assures that the consequences of an accident are not increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed Technical Specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new

or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These additional Technical Specification limits on system performance assures these ventilation systems are tested and maintained within their designed function limits and may increase the margin of safety for these systems. Therefore this change does not involve a significant reduction in the margin of safety.

Editorial and administrative changes

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 25, 2003.

Description of amendment request: The proposed amendment modifies Technical Specification 2.1.4, ''Reactor Coolant System (RCS) Leakage Limits.'' The proposed amendment will: (1) Add a requirement for no RCS pressure boundary leakage, (2) combine the existing RCS leakage limits into a format similar to the Improved Standard Technical Specification (ISTS), and (3) replace the existing basis associated with this specification with a basis similar in format and content of the ISTS. The proposed changes will assure that the design criteria of no RCS pressure boundary leakage is maintained and bring the Fort Calhoun Station, Unit 1 (FCS) RCS leakage specifications into alignment with the Improved Standard Technical Specifications. This amendment is modeled after the Improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications 2.1.4 establish a limit on reactor coolant system pressure boundary leakage and provide an allowed outage time and actions required for restoring operability. The proposed Technical Specifications address the regulatory requirements for equipment required for FCS Design Criterion 16 (similar to 10 CFR 50 GDC [General Design Criterion] 30). The change will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the reactor coolant system or related systems. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the reactor coolant system, any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications will retain requirements for the reactor coolant system. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the reactor coolant system as defined by FCS Design Criterion 16 (similar to 10 CFR 50 GDC 30). The times established are within those invoked by the present Technical Specifications or equal to those previously reviewed and approved for use by the NRC. The proposed changes will not alter any physical or operational characteristics of the reactor coolant system and associated systems and equipment. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 25, 2003.

Description of amendment request: The proposed amendment modifies Technical Specifications (TS) 3.0.2, Table 3–2, Table 3–5, 3.6, 3.7, 3.8, and the Definitions Section. This proposed change provides a risk-informed alternative to the existing surveillance interval for the integrated engineered safety features (ESF) and loss-of-offsite power (LOOP) testing required to be performed on each ESF equipment train each outage. The proposed change modifies the surveillance interval requirement for these refueling interval surveillance requirements to go to a staggered test-basis scheme. Using a staggered test basis, only one train would be tested each refueling outage. This amendment is modeled after the

Improved Standard Technical Specifications (ISTS) and is based on a study conducted by the Westinghouse Electric Company, on behalf of the Combustion Engineering Owners Group (CEOG) in Topical Report WCAP–15830–P, ''Staggered Integrated ESF Testing,'' and Technical Specification Task Force (TSTF) 450.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only the Frequency at which integrated ESF testing should be performed. This testing provides assurance that the integrated ESF response will occur as assumed in the accident analyses. Testing of the components will continue to be performed as currently specified in the Technical Specifications. The only change will be for the integrated test. This test will continue to be performed on each train of ESF equipment, however, it will be performed on a Staggered Test Basis. This means that the testing will be less frequent than currently required. However, testing seldom shows failure of the equipment to perform its safety function. Because of the complexity of performing the test, the test is most likely to be repeated for some discrepancy in the set up of the test. The detailed risk review and assessment of a longer test interval shows that the change in risk is low or unchanged for equipment covered by the topical report. Licensees will provide acceptable risk reviews for plant specific equipment.

This test does not increase the probability of an accident previously evaluated because it is not a precursor to an accident. In addition, the test is performed in a shutdown mode, where these types of accidents are not assumed to occur. The proposed change also does not increase the consequences of an accident previously evaluated because the equipment is still demonstrated to perform its safety function in an integrated manner. One complete train of equipment will be tested every refueling interval for each train. Successful completion of the test is still required.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change affects only the Frequency at which integrated ESF testing should be performed. All more frequently performed testing is unaffected by this proposed change. No changes are being made to the equipment or to the method of equipment operation as a result of this change. No changes are being made to the tests addressed by this proposed change except the frequency.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change affects only the surveillance interval at which integrated ESF testing should be performed. It does not impact safety system design criteria; safety system setpoint calculations or assumptions made in the safety analyses. All of the affected systems will continue to perform their safety functions as designed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: July 28, 2003.

Description of amendment requests: The proposed amendments would revise Technical Specification 3.3.1, ''RPS Instrumentation—Operating,'' and 3.3.5, ''ESFAS Instrumentation.'' Specifically, the proposed changes would replace the requirement for the Steam Generator Pressure—Low allowable value from its current value of 729 psia to a revised value of 717 psia.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report use an analytical value of 675 psia for Steam Generator Pressure—Low and for the Main Steam Isolation Signal/Emergency Feedwater Actuation Signal, which is the basis for the proposed change to the allowable value. The current and proposed Allowable Values are 729 psia and 717 psia respectively, which means that a 12 psi reduction in margin between the Allowable Value and the Analytical Value is being proposed. Since the Trip Setpoint may not be below 717 psia (it would be at 725 psia as required by the supporting calculation), the proposed reduction in margin between the Allowable Value and the Analytical Value does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed amendment has no effect on the probability of occurrence of accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There will be no change to the design basis of the plant. There are no new anticipated operational occurrences, or design basis accidents. No changes to any other analytical limits are being made. The current Analytical Value for Steam Generator Pressure—Low is being retained, and no changes to any of the assumptions in the accident analyses are being proposed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The change in allowable value will not adversely affect the design analysis. The plant would trip on Steam Generator Pressure—Low at values at, or above, the analysis limit. The proposed change in the Allowable Value does not involve any change to the Analytical Value, so that the design bases limit is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Southern California Edison concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: July 21, 2003.

Brief description of amendments: The proposed change would revise Technical Specification 5.5.9, ''Steam Generator (SG) Tube Surveillance Program'', to allow the use of Westinghouse Electric LLC (Westinghouse) leak limiting Alloy 800 sleeves to repair defective SG tubes as an alternative to plugging these tube.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Westinghouse Alloy 800 leak limiting repair sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code [Code] and, therefore, meet the design objectives of the original steam generator tubing. The applied stresses and fatigue usage for the repair sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, emergency, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by NRC's [U.S. Nuclear Regulatory Commission] Regulatory Guide 1.121, ''Bases for Plugging Degraded PWR [Pressurized Water Reactor] Steam Generator Tubes.'' Burst testing of sleeve/tube assemblies has confirmed the analytical results and demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

The Alloy 800 repair sleeve depth-based structural limit is determined using NRC guidance and the pressure stress equation of ASME Code, Section III, with additional margin added to account for configuration of long axial cracks. A bounding detection threshold value has been conservatively identified and statistically established to account for growth and determine the repair sleeve/tube assembly plugging limit. A sleeved tube is plugged on detection of degradation in the sleeve/tube assembly.

Evaluation of the repaired steam generator tube testing and analysis indicates no detrimental effects on the sleeve or sleeved tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Comanche Peak Steam Electric Station (CPSES), Unit 1 and Unit 2. Corrosion testing and historical performance of sleeve/tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeve/tube assembly is bounded by the current steam generator tube rupture (SGTR) analysis described in CPSES Updated Final Safety Analysis Report. Due to the slight reduction in the inside diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis and, therefore, would result in a lower total primary fluid mass release to the secondary system. A main steam line break or feedwater line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the CPSES safety analysis. The minimal repair sleeve/tube assembly leakage that could occur during plant operation is well within the Technical Specification leakage limits when grouped with current alternate plugging criteria calculated leakage values.

Therefore, TXU Energy has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Alloy 800 leak limiting repair sleeves are designed using the applicable ASME Code as guidance; therefore, it meets the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeve. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR accident analysis. The continued integrity of the installed sleeve/tube assembly is periodically verified by the Technical Specification requirements and the sleeved tube will be plugged on detection of degradation.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant, or the manner in which it is operated. Therefore, TXU Energy concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The repair of degraded steam generator tubes with Alloy 800 leak limiting repair sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions and thereby maintains current core cooling margin as opposed to plugging the tube and taking it out of service. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original steam generator design. The portions of the installed sleeve/tube assembly that represent the reactor coolant pressure boundary can be monitored for the initiation of sleeve/tube wall degradation and the affected tube plugged on detection of degradation. Use of the previously identified design criteria and design verification testing assures that the margin of safety is not significantly different from the original steam generator tubes.

Therefore, TXU Energy concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 12, 2002, as supplemented on February 28, 2003.

Brief description of amendment: The amendment changes the surveillance requirements for the emergency diesel generators (EDGs) in Technical Specification (TS) 3/4.8.1.1, ''Electrical Power Systems—A.C. Sources—Operating'' and TS 3/4.8.1.2, ''Electrical Power Systems—Shutdown.'' In addition, TS Section 6.0, ''Administrative Controls,'' has been revised to add a new TS to define the program requirements for testing the EDG fuel oil.

Date of issuance: July 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 277.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58639). The supplement dated February 28, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 14, 2002, as supplemented on April 7, 2003.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) related to Containment Systems. Specifically, the amendment: (1) Adds a new requirement for a Containment Tendon Surveillance Program to TS Section 6.0, ''Administrative Controls;'' (2) deletes TS 3/4.6.1.6, ''Containment Structural Integrity;'' (3) revises TS 3/4.6.1.1, ''Containment Integrity,'' to add a new surveillance requirement that requires that containment structural integrity be verified in accordance with the Containment Tendon Surveillance Program; (4) revises TS 3/4.6.3.1, ''Containment Isolation Valves,'' to add a new action statement that increases the allowed outage time from 4 hours to 72 hours for Containment Isolation Valves (CIVs) in closed systems; (5) makes other changes to the TSs for Containment Integrity and CIVs to provide clarity to the TSs; and (6) makes other administrative changes. In addition, the TS Bases have been revised to address the proposed changes.

Date of issuance: July 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 278.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58640). The supplement dated April 7, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 12, 2002, as supplemented on October 21, 2002, and January 15, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.8.2.3, ''Electrical Power Systems, D.C. Distribution—Operating;'' TS 3.8.2.4, ''Electrical Power Systems, D.C. Distribution—Shutdown;'' and TS 3.8.2.5, ''Electrical Power Systems, D.C. Distribution Systems (Turbine Battery)—Operating'' to use standard TS terminology in order to provide enhanced readability and usability. The amendment also provides additional criteria for determining battery operability upon restoration from a recharge or equalizing charge.

Date of issuance: July 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 279.

Facility Operating License No. DPR–65: This amendment revises the TSs.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61677). The supplements dated October 21, 2002, and January 15, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 20, 2002, as supplemented by letters dated January 21 and June 4, 2003.

Brief description of amendments: The amendments revised the Technical Specifications Required Actions requiring suspension of operations involving positive reactivity additions and various Notes that preclude reduction in boron concentration.

Date of issuance: July 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 207 & 201.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003, (68 FR 18273). The supplement dated June 4, 2003, provided clarifying information that did not change the scope of the November 20, 2002, application and its supplement dated January 21, 2003, nor

the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket No. 50–370, McGuire Nuclear Station, Unit 2, Mecklenburg County, North Carolina

Date of application for amendments: January 31, as supplemented by letter dated May 1, 2003.

Brief description of amendments: The amendment authorizes a revision to the Updated Final Safety Analysis Report to allow the degassing and straightening of a bent Mark–BW irradiated fuel rod in the McGuire spent fuel pool.

Date of issuance: August 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 198.

Facility Operating License Nos. NPF–17: Amendment authorized revision of the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18274). The supplement dated May 1, 2003, provided clarifying information that did not change the scope of the January 31, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 20, 2002, as supplemented by letters dated January 21 and June 4, 2003.

Brief description of amendments: The amendments revise the Technical Specifications Required Actions requiring suspension of operations involving positive reactivity additions and various Notes that preclude reduction in boron concentration.

Date of issuance: July 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 216 & 197.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18273). The supplement dated June 4, 2003, provided clarifying information that did not change the scope of the November 20, 2002, application and its supplement dated January 21, 2003, nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 24, 2002, as supplemented on June 23, 2003.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement (SR) 3.7.7.2 to require all city water header isolation valves be open rather than only the one header supply isolation valve. On June 23, 2003, the licensee withdrew its request for changes to SR 3.7.7.1 pertaining to the city water tank volume.

Date of issuance: August 4, 2003.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 218.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50952). The June 23, 2003, letter provided clarifying information that did not enlarge the scope of the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendment: January 31, 2003.

Brief description of amendment: The amendment revises the Technical Specification allowable values for two isolation condenser system isolation functions, namely the Steam Flow—High and Return Flow—High, for Units 2 and 3.

Date of issuance: July 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 200.

Facility Operating License No. DPR–19: The amendment revised the Technical Specifications.

Amendment No.: 192.

Facility Operating License No. DPR–25: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Brief description of amendment: The amendment revised Technical Specifications (TS) 2.1.6, 3.2 (Table 3–5), and 5.9.1c as follows:

(1) TS 2.1.6(1), the ''as-found'' pressurizer safety valve (PSV) lift setting tolerance band of ±1% is increased to +1%/−3% to allow for normal setpoint variance for Modes 1 and 2. The Basis of TS 2.1.6 is revised to clarify that the PSVs are still operable and capable of performing their safety function with the wider tolerance band. The other revisions to TS 2.1.6 are administrative in nature to change defined terms to upper case text.

(2) TS 3.2, Table 3–5, Item 3 is revised to require an ''as-left'' PSV lift setting tolerance band of ±1%.

(3) TS 5.9.1c is revised to remove the requirement to provide a statement in the Monthly Operating Report (MOR) concerning failures or challenges to power operated relief valves or safety valves. Generic Letter 97–02, ''Revised Contents of the Monthly Operating Report,'' does not require the MOR to provide this information.

Date of issuance: July 25, 2003.

Effective date: July 25, 2003, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 129.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68 FR 12956).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: May 23, 2002.

Brief description of amendment: The proposed amendment revises the Unit 2 Operating License and several sections of Technical Specifications to delete information differentiating between Unit 1 and Unit 2 specific to Model E steam generators.

Date of issuance: July 21, 2003.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment Nos.: Unit 1–154; Unit 2–142.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42831). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant (SQN), Unit 2, Hamilton County, Tennessee

Date of application for amendment: June 5, 2003.

Description of amendment: The amendment revised the reactor coolant system heatup and cooldown curves (pressure-temperature (P-T) limits). The revision replaced the P-T limits that were analyzed for 14.5 Effective Full Power Years (EFPYs) with new limits analyzed for 32 EFPYs. In addition, the amendment included corresponding changes to the Technical Specification (TS) figure associated with the Low Temperature Over Pressure Protection and the TS Bases.

Date of issuance: July 31, 2003.

Effective date: As of the date of issuance and shall be implemented within 15 days of issuance.

Amendment No.: 277.

Facility Operating License No. DPR–79: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** June 24, 2003 (68 FR 37583).

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 18, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for

Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One (ANO), Units 1 and 2, Pope County, Arkansas

Date of amendment request: February 24, 2003, as supplemented by letters dated March 25, June 30, and July 21, 2003.

Description of amendment request: The amendments allow the licensee to use the spent fuel crane (L–3 crane) to lift heavy loads in excess of 100 tons. Specifically the licensee received approval to use the upgraded L–3 crane for loads up to 130 tons.

Date of issuance: July 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 220/248.

Facility Operating License Nos. (DPR–51 and NPF–6): Amendments allow use of the upgraded L–3 crane to lift loads up to 130 tons.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (68 FR 11157, dated March 7, 2003, and 68 FR 41020, dated July 9, 2003). The notices provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notices also provided an opportunity to request a hearing by April 7, 2003, and July 23, 2003, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The July 21, 2003, supplemental letter provided clarifying information that did not change the scope of the **Federal Register** notice or the NSHC determination published July 9, 2003 (68 FR 41020).

The Commission's related evaluation of the amendments, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated July 25, 2003.

Attorney for licensee: Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Dated at Rockville, Maryland, this 11th day of August 2003.

For The Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–20839 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48319; File No. SR–Amex–2003–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Limitation of Liability under the Options Intermarket Linkage

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Amex Rule 945 for the purpose of limiting liability for the Options Clearing Corporation (''OCC'') with respect to members' use of the Options Intermarket Linkage (the ''Linkage'').

The text of the proposed rule change is below. Proposed additions are in *italics*.

* * * * *

Rule 945. Liability for the Options Intermarket Linkage

Rule 945. (a) The Linkage as used to send orders and other information to or from the Exchange is a facility or service afforded by the Exchange for purposes of Article IV, Section 1(e) of the Amex Constitution. It is the responsibility of each member, member organization or associated person of such member or member organization to verify the accuracy of transactions sent and received through the Linkage.

(b) *The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively, ''OCC'') shall not be liable to members, member organizations or associated persons of members or member organizations for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades or otherwise.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add a new rule, Amex Rule 945, for the purpose of limiting the liability of OCC with respect to member and member organization use of the Linkage. Proposed Amex Rule 945(a) provides that the Linkage, as used to send orders and option information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Article IV, Section 1(e) of the Amex Constitution. In addition, the proposed Amex Rule 945(b) provides that OCC will have no liability to members of the Exchange or to persons associated with such members with respect to the use, non-use or inability to use the Linkage, including without limitation, the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage or otherwise.

2. Statutory Basis

The Amex believes that its proposal is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Amex neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR-Amex-2003–54 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21174 Filed 8–18–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48324; File No. SR–CBOE–2003–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

August 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The text of the proposed rule change is set forth below.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)–(b) No change.

(c) Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book

Market participants, as defined in Rule 6.45A(a)(i), may submit quotes or orders electronically to trade with orders in the electronic book. A floor broker market participant may only represent as agent customer orders *or orders from unaffiliated broker-dealers.* When a market participant's quote or order interacts with the order in the book, a trade occurs, CBOE will disseminate a last sale report, and the size of the book order will be decremented to reflect the execution. Allocation of the book order shall be as follows:

(i)–(iv) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.45A(c) governs the interaction of market participants' quotes/orders with orders in the electronic book.[3] In short, under the rule, multiple market participants submitting orders to access the book within a period of time not to exceed N-seconds (the ''N-second group'') are entitled to receive an allocation of the book order pursuant to an allocation algorithm.[4] CBOE Rule 6.45A(c) limits the orders that floor brokers may represent as agent to customer orders. In adopting this restriction, the Exchange recognized that allowing floor brokers to represent certain broker-dealer orders could raise issues under section 11(a) of the Act.[5]

The Exchange proposes to delete this restrictive language from the text of CBOE Rule 6.45A and instead allow floor brokers to represent as agent broker-dealer orders from unaffiliated parties (in addition to customer orders) as part of the N-second group. By limiting floor brokers' representation of broker-dealer orders to non-affiliated entities, the CBOE believes that the requirements of section 11(a) of the Act will be satisfied by reason of the exemption provided in Rule 11a2–2(T) under the Act.[6]

The Exchange believes that the proposed rule change is consistent with the manner in which ''Electronic Book Executions'' occur in PCX Plus.[7] Pursuant to PCX Rule 6.76(b)(4), when a market maker's quote interacts with a public customer order in the book, that market maker receives an allocation of the book order while the balance of that order is allocated on a size pro rata basis to all ''crowd participants'' who respond within a designated time. The term ''crowd participants'' includes floor brokers representing orders for both customers and broker-dealers.[8] Accordingly, the PCX rule allows floor brokers to submit orders to buy (sell) the book on behalf of public customers and broker-dealers, as proposed by the CBOE.

The CBOE believes that this proposal enhances the ability of floor brokers to represent unaffiliated broker-dealer orders, which will serve to increase depth and liquidity in those affected classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission recently approved CBOE Rule 6.45A as part of the Hybrid filing. *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

[4] *See* CBOE Rule 6.45A(c)(ii).

[5] 15 U.S.C. 78k(a).

[6] 17 CFR 240.11a2–2(T).

[7] *See* Securities Exchange Act Release 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

[8] PCX Rule 6.1(b)(38) defines ''crowd participants'' as ''market makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.'' It is the CBOE's understanding that Floor Brokers on PCX acting under this Rule are limited by section 11(a) to representing broker-dealer orders from non-affiliated entities.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2003–27 and should be submitted by September 9, 2003.

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21133 Filed 8–18–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48320; File No. SR–CBOE–2003–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Options Clearing Corporation Liability

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 11, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In connection with the implementation of the Intermarket Options Linkage (the ''Linkage''), the CBOE hereby proposes to add an interpretation to CBOE Rule 6.7.

The text of the proposed rule change, as amended, is below.[4] Proposed additions are in *italics.*

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.7 Exchange Liability

(a) Except to the extent provided in paragraph (b) of this Rule, and except as otherwise expressly provided in the Rules, neither the Exchange nor its directors, officers, committee members, employees or agents shall be liable to the members of the Exchange or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing and subject to the same exception, the Exchange shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of Article Thirteenth of the Exchange's Certificate of Incorporation.

* * * * *

*** * * Interpretations and Policies**

.01–.03 (No change.)

.04 The Intermarket Options Linkage (the ''Linkage''), as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 6.7, and the Clearing Corporation shall have no liability to members of the Exchange or to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Tim Fox, Attorney, Division of Market Regulation (''Division''), Commission, dated August 11, 2003 (''Amendment No. 1''). In Amendment No. 1, the CBOE replaced the phrase ''persons associated therewith'' with the phrase ''associated persons.''

[4] The text of the proposed rule change appearing below incorporates a technical correction to the rule text of CBOE Rule 6.7(a) that was filed with the Commission. Telephone conversation between David Doherty, Attorney, Legal Division, CBOE and Tim Fox, Attorney, Commission, on July 30, 2003.

associated persons with respect to the use, non-use or inability to use the Linkage, including, without limitation, the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the implementation of the Linkage, the Exchange proposes to add an interpretation to CBOE Rule 6.7. The proposed Interpretation .04 would provide that the Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of CBOE Rule 6.7, and that the Options Clearing Corporation (''Clearing Corporation'') shall have no liability to members of the Exchange or to associated persons of the members with respect to the use, non-use or inability to use the Linkage, including, without limitation, the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

2. Statutory Basis

The CBOE believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that by limiting certain types of liability against the Exchange and Clearing Corporation with respect to the Linkage, Clearing Corporation will have the capability to continue to develop and enhance the Linkage, thereby facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

(A) by order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–22 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21175 Filed 8–18–03; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48327; File No. SR–CHX–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Member Entry of Trade Information for Reporting and Dissemination

August 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2003, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The CHX filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend CHX Article XXI, Rule 3, which governs delivery of trade tickets for reporting and dissemination. The proposed rule change would modify the rule to give members the alternative of entering trade information directly, rather than having to deliver the trade tickets to CHX personnel. The text of the proposed rule change is available at the CHX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CHX Article XXI, Rule 3 governs delivery of trade tickets for reporting and dissemination. The rule currently permits trades executed on the CHX floor to be reported in two ways: (1) Executions initiated through the CHX's MAX® system are automatically reported to the CHX for dissemination; and (2) other executions that occur on the trading floor must be written on a ticket and delivered to CHX personnel for entry into the CHX's systems. The proposed rule change would amend CHX Article XXI, Rule 3 to give members the alternative of entering trade information themselves, using technological enhancements that the CHX has approved, rather than delivering the trade tickets to CHX personnel for entry.

The CHX believes that the proposed rule change would modernize the rule by enabling a CHX member to report a transaction by inputting the trade information into a CHX-approved system. As an initial matter, this proposal would allow CHX floor brokers to enter trades themselves via the Brokerplex™ stations that the CHX has provided to them.[5] In the future, the CHX may develop additional technological enhancements that permit other CHX floor members to report transactions in a more automated manner.[6] In short, the proposed rule change makes it clear that CHX members may make use of this new technology to enter information about a transaction directly for dissemination to the market.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX neither solicited nor received written comments with respect to this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(5) thereunder[10] because it constitutes a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–26 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21130 Filed 8–18–03; 8:45 am]

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[5] The Brokerplex system is a front-end system that allows a floor broker to keep an automated record of his or her orders. It is not an order execution system, although it can send orders to the CHX's MAX system for execution in accordance with applicable order execution rules.

[6] The CHX states that the development of these additional technologies is not currently a significant systems priority.

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48321; File No. SR–ISE–2003–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the International Securities Exchange, Inc., Relating to Limitations on Liability

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On July 30, 2003, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mike Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 30, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a technical correction to the rule text.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a rule disclaiming liability for The Options Clearing Corporation (''Clearing Corporation'') with respect to the Options Intermarket Linkage (''Linkage'').

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics.*

* * * * *

Rule 1905. Limitation of Liability

The Clearing Corporation shall have no liability to Members with respect to the use, non-use or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a rule to limit the liability of the Clearing Corporation with respect to the Members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement (''Agreement''),[4] the parties to the Agreement who are Participants in the Intermarket Option Linkage Plan, including the ISE, are required to file a proposed rule change with the Commission providing the Clearing Corporation with limited liability with respect to Participant Members' use of the Linkage within four months following the Linkage's effective date. Hence, the ISE proposes this rule change to fulfill its obligation under the Agreement.

2. Statutory Basis

The ISE believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it seeks to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The ISE neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the ISE.

All submissions should refer to File No. SR-ISE–2003–15 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21176 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48317; File No. SR–PCX–2003–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend its Schedule of Fees and Charges for the Archipelago Exchange Facility

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its fee schedule for services provided to ETP Holders[3] and

[4] Linkage Project and Facilities Management Agreement (January 30, 2003).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 1.1(n) (defining ''ETP Holder'').

Sponsored Participants [4] that use the PCX's equities trading facility, the Archipelago Exchange (''ArcaEx''), by: (1) Reducing the per-share transaction fee for NYSE-listed securities to zero; (2) reducing the per-share User Transaction Credit for NYSE-listed securities to zero; and (3) eliminating the Tape A rebate for all transactions in NYSE-listed securities with the exception of Cross Orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposal. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements. The text of the proposed rule change is available at the PCX and at the Commission.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX, through its wholly owned subsidiary PCXE, proposes to reduce the per-share round lot transaction fee for NYSE-listed securities charged to ETP Holders and Sponsored Participants (collectively, ''Users'') that execute trades on ArcaEx. The PCX currently charges all Users in NYSE-listed securities a transaction fee of $0.003 per share for orders executed in the ArcaEx limit order book. The PCX is proposing to reduce this transaction fee to zero but to leave unchanged its current odd-lot fee for NYSE-listed securities.[5] According to the PCX, the rationale for this change is to make the pricing for executions on the ArcaEx in NYSE-listed securities more competitive. The PCX evaluated the costs and the other changes proposed in this filing and determined that it was feasible to lower the transaction fee for NYSE-listed securities traded on the ArcaEx facility.

The PCX also proposes to reduce the per-share User Transaction Credit for NYSE-listed securities to zero from $.002 per share. With respect to the PCX's market data revenue credit for NYSE listed securities (or ''Tape A Securities''), the PCX proposes to eliminate the Tape A rebate for all transactions but Cross Orders.[6] A Cross Order on the ArcaEx will continue to receive a 50% tape revenue credit per qualifying trade.

2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[7] particularly Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [9] of the Act and Rule 19b–4(f) [10] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–40 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21131 Filed 8–18–03; 8:45 am]

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[4] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.'' *See* PCXE Rule 1.1(tt).

[5] Odd-lot orders that are created as a result of a partial fill of a round lot would continue to be excluded from this fee.

[6] A Cross Order is defined in PCXE Rule 7.31(s).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48322; File No. SR–PCX–2003–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Limitation of Liability of the Options Intermarket Linkage

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 28, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On August 4, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On August 7, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 1, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced the original filing in its entirety. In Amendment No. 1, the PCX clarified in proposed PCX Rule 13.5(a) that Options Intermarket Linkage (''Linkage''), as used to send orders and other information to or from the Exchange, is a facility or service of the Exchange for the purpose of PCX Rule 13.2. In addition, the Exchange amended PCX Rule 13.2(b) to clarify that this Rule does not apply to Linkage.

[4] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn,

Continued

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to add PCX Rule 13.5 in order to establish a provision limiting liability for the Options Clearing Corporation (''OCC'') with respect to Exchange members'' use of the Linkage.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics.*

* * * * *

Rule 13 Liability of Governors and Exchange

* * * * *

Rule 13.2(a), Liability of Exchange

(a)—(No change.)

(b) Whenever custody of an unexecuted order is transmitted by a member to or through the Exchange's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Exchange, *excluding the Options Intermarket Linkage system,* whereby the Exchange assumes responsibility for the transmission or execution of the order, provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph, (b), and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the following limits:

(i)–(iii)—(No change.)

(c)–(No change.)

* * * * *

13.5(a), Liability for Options Intermarket Linkage

(a) The Exchange operates the Options Intermarket Linkage (''Linkage'') for its Members or persons associated therewith pursuant to Rules 6.92–6.96. It shall be the responsibility of each Member or person associated therewith to verify the accuracy of transactions sent and received through the Linkage. The Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 13.2.

(b) The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively ''OCC''), shall not be liable to Members or persons associated therewith for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades, or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its liability rules by creating PCX Rule 13.5 in order to establish a provision limiting liability for the OCC with respect to PCX members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement (''Agreement''),[5] the participating Self-Regulatory Organizations (''SROs''), including the Exchange, are required to file a proposed rule change with the Commission to provide the OCC with limited liability with respect to the Members' use of the Linkage. Under the Agreement, the SROs are required to file a proposed rule change with the Commission within four months following the Linkage's effective date of January 31, 2003. Hence, the Exchange filed this proposed rule change to fulfill its obligation under the Agreement.

The Exchange also proposes to add clarifying language in proposed PCX Rule 13.5(a) stating that the Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of PCX Rule 13.2. In addition to such clarifying language, the PCX proposes to carve out an exception for the Linkage system in existing PCX Rule 13.2(b), as the Exchange believes that this rule is not intended to apply to the Linkage system.

2. Statutory Basis

The PCX believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it should promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

Assistant Director, Division, Commission, dated August 7, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange removed a disclaimer provision contained in the proposed rule text, PCX Rule 13.5(c).

[5] Linkage Project and Facilities Management Agreement (January 30, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–20 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21177 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48313; File No. SR–Phlx–2003–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Member Voting

August 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Certificate of Incorporation, Article Fifth (e) as well as Exchange By-Law Article III, Sections 3–7(a), 3–10(c), and 3–13; Article XII, Section 12–1(b); and Article XXII, Sections 22–1 and 22–2, to provide that for each matter submitted to a vote of the membership,[3] except as provided by Article Thirteenth of the Certificate of Incorporation, each regular member shall be entitled to one vote for each regular membership, the legal title[4] of which is registered in the name of such regular member. The text of the proposed rule change is below. Additions are *italicized;* deletions are in brackets.

* * * * *

Certificate of Incorporation of Philadelphia Stock Exchange

First–Fourth: No change.

Fifth (a)–(d): No change.

(e) Except as otherwise provided in Article Thirteenth hereof, on each matter submitted to a vote of the membership, each Regular Member shall be entitled to one vote for each Regular Membership the legal title of which is registered in the name of such Regular Member.

* * * * *

By-Laws of Philadelphia Stock Exchange

Article III—Nominations-Annual Election-Meetings

Sec. 3–1–3–6: No change.

Members May File Independent Nominations—Requirements

Sec. 3–7. (a) Independent nominations for the positions of On-Floor, and Off-Floor Governors on the Board of Governors may be made by a written petition filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating and Elections Committee. No such nomination shall be valid unless it is signed by [not less than fifty (50)] members *holding legal title to not less than fifty (50) regular memberships.* No member shall endorse more than one (1) nominee; provided, however, that [seventy-five (75)] members *holding legal title to seventy-five (75) regular memberships* may, by petition, propose an entire ticket, or any portion thereof, for the vacancies on the Board of Governors to be filled at the ensuing election. A person is not eligible for an independent nomination for a position on the Board of Governors if one (1) or more persons associated with his member or participant organization, as defined in By-Law Section 3–6(c), would be serving an unexpired term or terms on the Board upon the commencement of his term of office. No more than one (1) person associated with the same member or participant organization, as defined in Section 3–6(c), shall be certified by the Nominating and Elections Committee for independent nomination to a position on the Board of Governors. In the event more than one such nomination is received, the Nominating and Elections Committee shall not certify any such candidates. A person who has previously accepted nomination by the Nominating and Elections Committee for one (1) category of Governor (*e.g.* On-Floor or Off-Floor Governor) is not eligible to qualify as an independent candidate in any category. There may be no independent nominations of incumbent Governors whose terms do not expire following the next election. The Nominating and Elections Committee and the Secretary of the Exchange shall open such envelopes, and if found eligible for election, the persons nominated by petition conforming with the foregoing provisions shall be deemed nominees for such positions on the Board of Governors. The names of all nominees for membership on the Board of Governors, whose nominations conform with By-Law requirements, shall be sent to all members of the Exchange by the Secretary as promptly after the third Monday of February as is reasonably possible. The order of nominees' names on notices and on the ballot shall be determined through a drawing by lot conducted by the Nominating and Elections Committee.

Sec. 3–7 (b)–(c): No change.

Sec. 3–8–3–9: No change.

Special Meetings

Sec. 3–10. Except as otherwise specifically provided by law, special meetings of the members may be called at any time:

(a) By the Chairman of the Board of Governors; or

(b) By a majority of the Board of Governors; or

(c) By *members holding legal title to a* majority of all *regular* members*hips* entitled to vote.

Upon the written request of any person entitled to call a special meeting, which request shall set forth the purpose for which the meeting is desired, it shall be the duty of the Secretary to give prompt written notice of such meeting to be held at such time as the Secretary may fix, subject to the provisions of Section 3–11 hereof. If the Secretary shall fail to fix such date and give such notice within ten (10) days

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For instance, members vote for industry governors. *See* Phlx By-Law Article 3–2.

[4] Legal title is registered in the name of a member pursuant to a lease agreement or under an A–B–C agreement (membership title and use agreement) pursuant to Phlx Rules 930 and 940.

after receipt of such request, the person or persons making such request may do so.

Sec. 3–11: No change.

Sec. 3–12: No change

Quorum

Sec. 3–13. At all meetings of the Exchange for the transaction of business other than dealings in securities, each member may vote in person or by proxy[; provided that no action shall become effective unless the number of members participating therein exceeds one-half of the number of voting memberships outstanding and any proposed action is approved]. *At any such meeting of the Exchange, the members holding legal title to a majority of the regular memberships entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law, and all matters shall be determined* by a majority of the votes cast. The members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a meeting cannot be organized because of the absence of a quorum, those present may, except as otherwise provided by law, adjourn the meeting to such time and place as they may determine. In the case of any meeting for the election of Governors, those members who attend the second of such adjourned meetings, although less than a quorum as fixed in this Section, shall nevertheless constitute a quorum for the purpose of electing Governors.

Article XII—Membership-Eligibility-Election-Initiation-Fee Membership

Membership

Sec. 12–1.

(a): No Change.

(b) A regular membership confers upon and subjects the holder to all the privileges and obligations of active membership. Only regular members shall be entitled to vote and to conduct business on the exchange facility conducted by the Exchange. *Except as otherwise provided in Article Thirteenth of the Certificate of Incorporation of the Exchange, on each matter submitted to a vote of the membership,* [E]*e*ach regular member shall be entitled to one vote [on] *for* each [matter submitted to a vote of the membership] *regular membership the legal title of which is registered in the name of such regular member.*

Sec. 12–1 (c)–(f): No change.

Sec. 12–2–12–11: No change.

Article XXII—Amending The By-Laws

Amendments to By-Laws

Sec. 22–1. Whenever [seventy-five] members *holding legal title to seventy-five regular memberships* [of the Exchange] shall offer, in writing, any amendment to the By-Laws, it shall be submitted to the Secretary of the Exchange, who shall submit it to the membership for vote thereon by ballot. The vote shall be conducted within four weeks of the date of such submission. The record date for determining members entitle to vote on such amendment shall be set as the date of the submission. Each member of the Exchange in good standing may vote in person or by proxy. If [the number of] members *holding legal title to a majority of the regular memberships entitled to vote thereon* participate[ing] in the balloting [exceeds one-half of the number of memberships then outstanding] and the proposed amendment is approved by the affirmative vote of a majority of the votes cast, it shall thereupon become a part of the By-Laws.

How Proposed

Sec. 22–2. Any amendment to the By-Laws originating in the Board of Governors shall be proposed at a regular or special meeting of the Board. If approved by twelve of the Governors, it shall be announced to the members of the Exchange forthwith by sending copies thereof to each member of the Exchange.

Special meeting

If, within a period of ten days, a written request of *members holding legal title to* not less than seventeen *regular* member*ships* of the Exchange is filed with the Secretary for a special meeting of the Exchange to consider the amendment, the Chairman of the Board shall call such meeting, at which meeting each member of the Exchange in good standing may vote in person or by proxy. If [the number of] members *holding legal title to a majority of the regular memberships entitled to vote thereon* participate[ing] in the balloting [exceeds one-half of the number of memberships then outstanding,] and the proposed amendment is approved by the affirmative vote of a majority of the votes cast, it shall thereupon become a part of the By-Laws.

Method of adoption

In the absence of such request for a special meeting of the Exchange, the Board of Governors, after the expiration of such period of ten days, may consider the proposed amendment at any regular or special meeting of the Board, and, if the proposed amendment is adopted by a vote of fifteen members of the Board, it shall thereupon become a part of the By-Laws.

All changes in the By-Laws shall be printed and posted for ten days, and copies thereof shall be sent to each member of the Exchange.

Sec. 22–3: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make the voting process more fair by entitling each member to cast one vote for each regular membership to which he or she holds legal title. The result of the proposed amendments would be that any one member would be entitled to cast multiple votes if he or she held legal title to more than one regular membership. Today, a regular member is permitted to cast only one vote, regardless of the number of memberships to which he or she holds legal title. This is due to the current language in the By-Laws and the Certificate of Incorporation, as well as the applicable provisions of the Delaware General Corporate Law.

The Exchange believes that the proposed amendment to Article Fifth of the Exchange's Certificate of Incorporation would better enfranchise all legal titleholders with respect to each regular membership to which they hold legal title, thereby allowing them the opportunity to participate fully in Exchange governance with respect to each such regular membership. The Exchange believes that this is a desirable result as the Exchange will allow all legal titleholders to cast ballots

and/or give proxies [5] for each and every membership. Additionally, the amendments would allow titleholders to sign multiple times representing each regular membership they hold legal title to with respect to independent nominations for industry governors, to be counted for quorum purposes, to be counted for purposes of calling a special membership meeting, and to be counted for purposes of offering any amendment to the By-Laws or requesting the calling of a special meeting of the membership to vote on a proposed By-Law amendment. Finally, the Exchange believes that these amendments would allow all legal titleholders to participate fully in Exchange governance opportunities whereas under current interpretation of the By-Laws legal titleholders with multiple legal titles to regular memberships registered in their name are allowed only one vote.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(3) of the Act [7] in particular, in that the rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs by providing for legal titleholders that own more than one regular membership to participate more fully in Exchange governance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2003–49 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21132 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Exchange By-Law Article III, Section 3–12 (Right to Vote) provides as follows: Each regular member of the Exchange in good standing shall be entitled to vote at any election of the Exchange. Each such member may vote in person or by proxy under such regulations as the Nominating and Elections Committee, with the approval of the Board of Governors, may direct.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48323; File No. SR–Phlx–2003–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to By-Law Article 12–11, Use of Facilities

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its By-Laws to limit the liability of The Options Clearing Corporation (''OCC'') to members and member organizations resulting from their use of the Intermarket Options Linkage (''Linkage'').

The text of the proposed rule change is below. Proposed additions are in *italics.*

* * * * *

Sec. 12–11 Use of Facilities of Exchange

SEC. 12–11. The Exchange shall not be liable for any damages sustained by a member or a member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. *The Options Clearing Corporation shall not be liable to members and member organizations with respect to the use, non-use or inability to use the Intermarket Options Linkage, including without limitation the content of orders, trades, or other business facilitated through the Intermarket Options Linkage, the truth or accuracy of the content of messages or other information transmitted through the Intermarket Options Linkage, or otherwise.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to limit the liability of OCC to Phlx members and member organizations resulting from their use, non-use or inability to use the Linkage. The Phlx, along with the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., and the Pacific Exchange, Inc. (together with the Phlx, known as the ''Exchanges''), entered into an agreement with OCC regarding the construction and on-going maintenance and operation of the Linkage (the ''Agreement''). In the Agreement, the Exchanges consented to each file a proposed rule change with the Commission limiting OCC's liability to the respective Exchanges' members. The Phlx believes that the present proposed rule change satisfies its respective obligation.

The Phlx believes that the proposed rule change is a reasonable extension of the existing limitation of liability enjoyed by the Exchange in Phlx By-Law Article XII, Section 12–11 (the ''By-Law'') to OCC. Both the OCC and the Exchange are performing functions related to the on-going maintenance and operation of the Linkage, the benefits of which are enjoyed by the Exchange's members. While the Phlx believes that the By-Law would afford the Exchange protection from liability from members' and member organizations' use of Exchange facilities regarding Linkage, the By-Law, in its current form, does not extend similar protection to OCC. The proposed By-Law amendment would extend that protection to OCC, which should prevent OCC from being the target of liability claims made by members and member organizations who may look for satisfaction to an otherwise unprotected OCC. The Phlx believes that this protection should contribute to the efficient operation of the Linkage.

2. Statutory Basis

The Phlx believes that its proposal is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4] in particular, in that it is intended to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest by promoting efficient operation of the Linkage by extending liability protection to OCC, which provides functions related to the Linkage's on-going maintenance and operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Phlx neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–43 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21178 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4450]

Consular Affairs, Overseas Citizen Services, Office of Children's Issues; 30-Day Notice of Proposed Information Collection: Form DS–3013, Application for Assistance Under The Hague Convention on the Civil Aspects of International Child Abduction; OMB Control Number 1405–0076

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Overseas Citizen Service, Office of Children's Issues, CA/OCS/CI

Title of Information Collection: Application for Assistance Under The Hague Convention on the Civil Aspects of International Child Abduction.

Frequency: On occasion.

Form Number: DS–3013.

Respondents: Individuals.

Estimated Number of Respondents: 500.

Average Hours Per Response: 1.

Total Estimated Burden: 500 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Office of Children's Issues, CA/OCS/CI, U.S. Department of State, Washington, DC 20520–4818, 202–312–9700. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: August 8, 2003.

Dianne M. Andruch,

Deputy Assistant Secretary, Bureau of Consular Affairs,

[FR Doc. 03–21204 Filed 8–18–03; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2003–2004 Allocations of the Tariff-rate Quotas for Raw Cane Sugar, Refined Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocations of the in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined sugar, and sugar-containing products for the period that begins October 1, 2003 and ends September 30, 2004.

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: Inquiries may be mailed or delivered to Sharon Sydow, Director of Agricultural Trade Policy, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Sydow, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. Pursuant to additional U.S. Note 8 to chapter 17 of the HTS, the United States also maintains a tariff-rate quota for certain sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

The in-quota quantity of the tariff-rate quota for raw cane sugar for the period October 1, 2003–September 30, 2004, has been established by the Secretary of Agriculture at 1,117,195 metric tons, raw value (1,231,497 short tons), the minimum to which the United States is committed under the World Trade Organization Agreement. The quantity of 1,117,195 metric tons, raw value is being allocated to the following countries:

Country	FY 2004 allocation
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,583
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	15,796
Dominican Republic	185,335
Ecuador	11,583
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,583
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad-Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the United States. The allocations of the raw cane sugar tariff-rate quota to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin.

This allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 2003–September 30, 2004, has been established by the Secretary of Agriculture at 39,000 metric tons, raw value (42,990 short tons), of which the Secretary has reserved 18,656 metric tons (20,565 short tons) for specialty sugars. Of the quantity not reserved for specialty sugars, a total of 10,300 metric tons (11,354 short tons) is being allocated to Canada and 2,954 metric tons (3,256 short tons) is being allocated to Mexico. The remaining 7,090 metric tons (7,815 short tons) of the in-quota quantity not reserved for specialty sugars may be supplied by any country on a first-come, first-served basis, subject to any other provision of law. The 18,656 metric tons (18,360 short tons) reserved for specialty sugars is also not being allocated among supplying countries and is available on a first-come, first-served basis, subject to any other provision of law.

With respect to the tariff-rate quota of 64,709 metric tons (71,329 short tons) for certain sugar-containing products maintained pursuant to additional U.S. Note 8 to chapter 17 of the HTS, 59,250 metric tons (65,312 short tons) of sugar-containing products is being allocated to Canada. The remaining in-quota quantity for this tariff-rate quota is available to other countries on a first-come, first-served basis.

Conversion factor: 1 metric ton=1.10231125 short tons.

Allen F. Johnson,

Chief Agricultural Negotiator.

[FR Doc. 03–21129 Filed 8–18–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program 14 CFR Part 150, Toledo Express Airport, Toledo, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Toledo-Lucas county Port Authority under the

provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. l96–52 (1980). On January 24, 2003 the FAA determined that the noise exposure maps submitted by the Toledo-Lucas County Port Authority under Part 150 were in compliance with applicable requirements. On, July 18, 2003 the FAA approved the Toledo Express Airport noise compatibility program. All of the recommendations of the program were approved.

DATES: The effective date of the FAA's approval of the Toledo Express Airport noise compatibility program is July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Jones, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–606, Metro Airport Center, 11677 S. Wayne Road, Ste. 107, Romulus, Michigan 48174, (734) 229–2958. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Toledo Express Airport, effective July 18, 2003.

Under Section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against all types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Romulus, Michigan.

Toledo-Lucas County Port Authority submitted to the FAA on January 21, 2003 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1999 through 2002. The Toledo Express Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 24, 2003. Notice of this determination was published in the **Federal Register** on February 14, 2003.

The Toledo Express Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the 2002 to the year 2007. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 47504 of the Act. The FAA began its review of the program on January 24, 2003 and was required by provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained ten proposed actions for noise mitigation on and/or off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective July 18, 2003.

Outright approval was granted for all of the specific program elements. The approved measures were to Establish Runway 25 as preferred for departure by all aircraft, 24 hours per day; Establish Runway 7 as preferred for nighttime arrivals, 10 p.m. to 6:59 a.m.; Straight-in approaches to Runway 7/25 on final approach course beyond the outer marker; Runway heading departures from Runway 7/25 for aircraft to fly runway handing until 6 nautical miles from brake release; Install sound insulation improvements at Swanton Township Elementary School; Establish a noise program office; Establish a noise complaint system; Coordinate and communicate with key agencies; Monitor aircraft activity and evaluate the plan; and Update the plan on a regular basis, as needed.

These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator for Airports on July 18, 2003. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Toledo-Lucas County Port Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Romulus, Michigan, July 21, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 03–21225 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: City and County of Denver, CO

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Deparmtent of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: FHWA and FTA are issuing this notice to advise the public that an environmental impact statement/Section 4(f) Evaluation will be prepared for transportation improvements in the city and County of Denver, Adams County, and the City of Aurora, Colorado.

FOR FURTHER INFORMATION CONTACT: Shaun Cutting, Senior Operations Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lockwood, CO, 80228, Telephone: (303) 969–6730 extension 369. Dave Beckhouse, Community Planner, FTA, 216 16th Street, Suite 650, Denver, CO, 80202, Telephone: (303) 844–3242. Sharon Lipp, Colorado Department of Transportation, Region 6, 2000 South Holly Street, Denver, CO, 80222, Telephone: (303) 984–5260. Mike Turner, Regional Transportation District, 1600 Blake Street, Denver, CO, 80202, Telephone: (303) 299–2366.

SUPPLEMENTARY INFORMATION: The FHWA and FTA in cooperation with the Colorado Department of Transportation (CDOT), Regional Transportation District (RTD), and the City and County of Denver (Denver) will prepare an environmental impact statement (EIS)/Section 4(f) Evaluation for transportation improvements on the Interstate 70 (I–70) Corridor (the Corridor) between Interstate 25 (I–25) and Pena Boulevard and a transit connection between downtown Denver and Denver International Airport (DIA).

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Project scoping will be accomplished through coordination with affected parties, stakeholders, organizations, Federal, State, and local agencies; agency scoping meetings; and through community outreach and public meetings in the project corridor. Agency scoping meetings will be conducted late summer, and public scoping meetings will be conducted this fall (2003). Information on the time and place of the public scoping meetings will be provided in the local newspapers. In advance of the corridor-wide public scoping meetings this fall (2003), a variety of grassroots outreach techniques will be used including a door-to-door campaign for some of the neighborhoods, flyers, block and neighborhood meetings, and business and community-organization outreach meetings. To be placed on the public mailing list to receive additional project information, contact either Sharon Lipp or Mike Turner at the addresses previously provided.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/Section 4(f). Evaluation should be directed to Shaun Cutting or Dave Beckhouse at the addresses previously provided.

The EIS/Section 4(f) Evaluation will evaluate improvement alternatives and the No-Action alternative based on the Purpose and Need. Alternatives will be developed through an extensive agency and community outreach process. A full range of potential alignments and corridors will be considered for both highway and transit alternatives.

The I–70 East Corridor EIS will result in a decision about which transportation projects, if any, will be built to improve safety and address congestion in the Corridor. The purpose of the proposed action is to improve safety, access, and mobility and to decrease congestion. Currently, the I–70 East Corridor is one of the most heavily traveled and congested corridors in the region and State. Downtown Denver is the center for rail and bus transit in the region. DIA is a critical link in the regional and national transportation network. Safety issues revolve around the age and design features of the interchanges and roadway.

The alternatives evaluated in the Draft EIS (DEIS) and Section 4(f) Evaluation will include, but not be limited to, variations of the horizontal and vertical alignment of I–70 as well as capacity and safety improvements. Existing and future interchanges will also be evaluated. Transit alternatives will include, but not be limited to, bus and rail technologies as well as evaluating rail transit along the Union Pacific Railroad corridor from downtown Denver to DIA. As part of the transit evaluations, station locations will be studied and identified as appropriate. The DEIS/Section 4(f) Evaluation will also fully evaluate the No-Action alternative.

FHWA and FTA will evaluate social, economic, and environmental impacts of the various alternatives. A major concern is environmental justice. The Corridor passes through three older communities that have been affected by several actions on I–70 beginning with the initial construction of I–70 and subsequent actions including reconstruction of the I–70 viaduct and roadway widening on the western segment of the Corridor. Other major issues to be evaluated include air quality, noise, aesthetics, community cohesion impacts, and possible disruption of neighborhoods and business and commercial activities.

The DEIS will be available for public and agency review and comment. Information concerning the availability of the DEIS will be published.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Doug Bennett,

Assistant Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

Lee O. Waddleton,

Regional Administrator, Federal Transit Administration, Denver, Colorado.

[FR Doc. 03–21122 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road

[Waiver Petition Docket Number FRA–2003–15638]

Long Island Rail Road (LIRR) seeks a waiver of compliance with the *Passenger Equipment Safety Standards*, 49 CFR 238.303 (e)(15)(i), for their fleet of ''M–7–EMU'' passenger locomotives, as it pertains to MU type locomotives equipped with dynamic brakes found not to be in operating condition during performance of the exterior calendar day inspection. LIRR states these EMU

locomotive braking systems operate differently than more traditional style MU equipment. The LIRR letter of request indicates that the braking system on this equipment utilizes axle mounted disk brakes which provide 80% of friction braking effort, tread brakes which provide 20% of friction braking effort, and additional dynamic braking effort to a speed of 3 mph. If the waiver is granted , LIRR would treat any failure of dynamic braking system on the EMU equipment as if it were a traditional locomotive with defective dynamic brakes [49 CFR 238.303(e)(15)(ii)].

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–15638) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on August 12, 2003.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 03–21138 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Yreka Western Railroad Company

[Docket Number FRA–2003–15637]

The Yreka Western Railroad Company (YW) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR part 223, that require certified glazing for one locomotive. The YW is located in Yreka, California. The YW states that they operate over seven miles of track in extreme northern California. These seven miles of track have no exposure to any main highway and there is no record of vandalism or rock throwing. Furthermore, it hauls only wood chips and wood products and about eight to ten cars per trip.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15637) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on August 12, 2003.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 03–21139 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2003–15145]

Notice of Public Hearing; Burlington Northern and Santa Fe Railway

The Burlington Northern and Santa Fe Railway has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the automatic block signal system, between Hettinger, North Dakota, milepost 926.0 and Terry, Montana, milepost 1078.9, on the Montana Division, Hettinger Subdivision, a distance of approximately 153 miles, and govern train movements by Track Warrant Control.

This block signal application proceeding is identified as Docket No. FRA–2003–15145.

The FRA has issued a public notice seeking comments of interested parties and has conducted its own field investigation in this matter. After examining the carrier's proposal and letters of protest, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. Mountain Daylight Time, on Thursday, September 18, 2003, in the Hettinger Research Extension Center, located at 102 Highway 12 West,

Hettinger, North Dakota 58639. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a non adversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on August 12, 2003.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 03–21137 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15701; Notice 1]

Bridgestone/Firestone North America Tire, LLC; Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North America Tire, LLC (BFNT) has determined that approximately 1,228 P235/75R15 Peerless AMBASSADOR tires do not meet the labeling requirement mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), BFNT has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Bridgestone/Firestone's Oklahoma City, Oklahoma plant produced approximately 1,228 tires with incorrect markings during the U.S. Department of Transportation's weeks of 17, 18, and 19 in 2003 (from April 20, 2003, through May 10, 2003). The tires were marked: ''Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester.'' The correct marking required by FMVSS No. 109 is ''Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 2 Polyester.''

The labeling requirements of FMVSS No. 109, *New Pneumatic Tires,* S4.3, paragraphs (d) and (e), mandate that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

Bridgestone/Firestone argues that the noncompliance described herein is inconsequential to motor vehicle safety. The noncompliant subject tires were constructed with more tread plies than indicated on the sidewall marking (two instead of one). BFNT states that this noncompliance is unlikely to have an adverse impact on motor vehicle safety since the actual construction of the subject tires is more robust than that identified on the sidewall. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and, the noncompliance will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 18, 2003.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21220 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15644; Notice 1]

Freightliner LLC; Receipt of Application for Determination of Inconsequential Noncompliance

Freightliner LLC (Freightliner), on behalf of Thomas Built Buses, Inc. (Thomas) of High Point, North Carolina, has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. chapter 301 ''Motor Vehicle Safety'' for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. Freightliner has filed a report of noncompliance pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application. See 49 U.S.C. 30118 (d) and 30120 (h).

Freightliner submitted the following information in accordance with the requirements of 49 CFR part 556, ''Exemption for Inconsequential Defect or Noncompliance.''

Summary of the Petition

Freightliner has determined that approximately 700 Thomas Built Conventional, MPV–EF, and HDX buses manufactured between September 22, 2002, and February 24, 2003, do not meet the labeling requirements of Paragraph S6 of FMVSS No. 205, ''Glazing Materials,'' specifically section 6 of ANSI Z26 as incorporated by reference. The driver side windows were not marked with the DOT symbol, manufacturer's number, and the AS 2

code mark. According to Freightliner, the glazing otherwise met all the material, performance, and marking requirements of FMVSS No. 205, and it supplied a supporting compliance test report.

Freightliner believes that there is no safety risk associated with the glazing. The buses containing this glazing are maintained by professional transportation facilities and personnel that would be expected to correctly replace this glazing because they have experience in such maintenance. Freightliner maintains that, although this failure to label the driver side windows with the DOT number and AS2 code constitutes a noncompliance with the marking requirements of FMVSS No. 205, it is inconsequential to motor vehicle safety. Therefore, Freightliner believes Thomas should be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2003–15644. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 7th Seventh Street, SW., Washington, DC 20590 (10 a.m. to 5 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''Simple Search.''

(3) On the next page (*http://dms.dot.gov/searchform.simple.cfm/*), type in the docket number, ''15644.'' After typing the docket number, click on ''Search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments: You may submit comments by DOT DMS Docket Number NHTSA 2003–15644, by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent practicable. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 18, 2003.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21219 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34384]

The Railroad Co., Inc. and WV Southern Railway Co.—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.

The Railroad Co., Inc. (RRC) and its wholly owned subsidiary, WV Southern Railway Co. (WVSR), both noncarriers, have jointly filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 12-mile rail line owned by CSX Transportation, Inc. extending from milepost 0.0 at Thurmond, to milepost 12.0 at Mt. Hope, in Fayette County, WV.

RRC and WVSR certify that their projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.[1]

The transaction was scheduled to be consummated on or after August 1, 2003, the effective date of the exemption (7 days after the notice was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34384, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Marc A. Monteleone, Bowles Rice McDavid Graff & Love, PLLC, 600 Quarrier St., P.O. Box 1386, Charleston, WV 25301–1386.

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.*

Decided: August 7, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–20760 Filed 8–18–03; 8:45 am]

BILLING CODE 4915–00–P

[1] WVSR will be the operator of the line.

Corrections

Federal Register

Vol. 68, No. 160

Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

Correction

In notice document 03–20179 beginning on page 47311 in the issue of Friday, August 8, 2003, make the following corrections:

1. On page 47311, in the second column, under the **SUMMARY** heading, in the last line, ''January 6, 2004'' should read ''December 8, 2003''.

2. On the same page, in the same column, under the **DATES** heading, in the third line, ''January 6, 2004'' should read ''December 8, 2003''.

[FR Doc. C3–20179 Filed 8–18–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 237R]

Controlled Substances; Proposed Revised Aggregate Production Quotas for 2003

Correction

In notice document 03–19954 beginning on page 46664 in the issue of Wednesday, August 6, 2003 make the following correction:

On page 46664, the table is corrected in part to read as set forth below.

Basic class	Previously established initial 2003 quotas	Proposed revised 2003 quotas
Schedule I		
2,5-Dimethoxyamphetamine	9,501,000	9,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	4	4
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	15	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10	10
3,4-Methylenedioxymethamphetamine (MDMA)	19	19
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2	2
4-Methoxyamphetamine	7	7
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	3

* * * * *

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Standardization of Generator Interconnection Agreements and Procedures; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000; Order No. 2003]

Standardization of Generator Interconnection Agreements and Procedures

July 24, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act to require public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs containing standard generator interconnection procedures and a standard agreement that the Commission is adopting in this order and to provide interconnection service to devices used for the production of electricity having a capacity of more than 20 megawatts, under them. Any non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting these procedures and this agreement.

EFFECTIVE DATE: This final rule will become effective October 20, 2003.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Background
1. Need for Standard Generator Interconnection Procedures and Agreement
2. Interconnection ANOPR
3. Interconnection NOPR
a. Overview of the NOPR
b. Severing of Small Generator Issues from the NOPR
B. Legal Authority
1. The Federal Power Act and Order No. 888
2. Commission Interconnection Case Law
C. Differences Between the Proposed and Final Rules
II. Discussion
A. Issues Related to the Standard Large Generator Interconnection Procedures (LGIP)
1. Overview
2. Section-by-Section Discussion of the Proposed LGIP
Section 1—Definitions
Section 2—Scope and Application
Section 3—Interconnection Request
Section 4—Queue Position
Section 5—Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures
Section 6—Interconnection Feasibility Study
Section 7—Interconnection System Impact Study
Section 8—Interconnection Facilities Study
Section 10—Optional Interconnection Study
Section 9—Engineering & Procurement (''E&P'') Agreement
Section 11—Standard Large Generator Interconnection Agreement
Section 12—Construction of Transmission Provider's Interconnection Facilities and Network Upgrades
Section 13—Miscellaneous
Appendices
B. Issues Related to the Standard Large Generator Interconnection Agreement (LGIA)
1. Overview
2. Article-by-Article Discussion of the Proposed LGIA
Article 1—Definitions
Article 2—Effective Date, Term and Termination
Article 3—Regulatory Filings
Article 4—Scope of Service
Article 5—Interconnection Facilities Engineering, Procurement, and Construction
Article 6—Testing and Inspection
Article 7—Metering
Article 8—Communication
Article 9—Operations
Article 10—Maintenance
Article 11—Performance Obligation
Article 12—Invoice
Article 13—Emergencies
Article 14—Regulatory Requirements and Governing Law
Article 15—Notices
Article 16—Force Majeure
Article 17—Default
Article 18—Indemnity
Article 19—Assignment
Article 20—Severability
Article 21—Comparability
Article 22—Confidentiality
Article 23—Environmental Releases
Article 24—Information Requirements
Article 25—Information Access and Audit Rights
Article 26—Subcontractors
Article 27—Disputes
Article 28—Representations, Warranties and Covenants
Article 29—Joint Operating Committee
Article 30—Miscellaneous
Appendices
C. Other Significant Policy Issues
1. Interconnection Pricing Policy
Concerns about the Fairness and Efficiency of the Commission's Crediting Policy
Interconnection Pricing and the Transition to Standard Market Design
The Inability of a Transmission Owner To Recover the Costs of Network Upgrades
Responsibility for Line Outage Costs Resulting from Interconnection
Issues Concerning the Five Year Refund Period and the Payment of Interest
Rules Governing the Payment of Credits
Responsibility for the Costs Incurred by Affected Systems
Policies Regarding Previously Approved Cost Allocations and Pricing Arrangements
Miscellaneous Pricing Issues
2. Interconnection Products and Scope of Service
Definition of Interconnection Products
Pricing of Network Resource Interconnection Service
Study Requirements for Network Resource Interconnection Service
Identification of Types of Interconnection Services to be Studied
Revisions to the Final Rule LGIP and Final Rule LGIA
3. ''Distribution'' Interconnections
4. Issues Relating to Qualifying Facilities
5. Variations from the Final Rule
6. Waiver Availability for Small Entities
7. OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA
8. General Comments/Clarifications
a. Insurance
b. Liquidated Damages

c. Consequential Damages
d. Two vs. Three Party Agreements
D. Compliance Issues
1. Amendments to Transmission Providers' OATTs
2. Grandfathering of Existing Interconnection Agreements (ISOs and non-ISOs)
3. Order No. 2001 and the Filing of Interconnection Agreements
III. Information Collection Statement
IV. Environmental Impact Statement
V. Regulatory Flexibility Act
VI. Document Availability
VII. Effective Date and Congressional Notification
Regulatory Text
Appendix A—Flow Chart of the Large Generating Facility Interconnection Process
Appendix B—Commenter Acronyms
Appendix C—Standard Large Generator Interconnection Procedures (LGIP), including Standard Large Generator Interconnection Agreement (LGIA)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. This Final Rule requires all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for interconnecting generators larger than 20 MW. The Commission expects that this Final Rule will prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market.

2. This Final Rule requires public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs (OATTs) to add Standard Large Generator Interconnection Procedures (Final Rule LGIP)[1] and a Standard Large Generator Interconnection Agreement (Final Rule LGIA).[2] Any non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting this Agreement and these procedures.

3. The Final Rule LGIP sets forth the procedures that Interconnection Customers and Transmission Providers are required to follow during the interconnection process.[3] The Final Rule LGIA sets forth the legal rights and obligations of each Party, addresses cost responsibility issues, and establishes a process for resolving disputes.

4. The Federal Energy Regulatory Commission's (Commission's) authority to require the addition of the Final Rule LGIA and Final Rule LGIP to the OATT derives from its findings of undue discrimination in the interstate electric transmission market that formed the basis for Order No. 888.[4] The Commission here adopts standard procedures and a standard agreement to be used by Transmission Providers with Interconnection Customers proposing to interconnect a generator of more than 20 MW to sell energy at wholesale in interstate commerce. The Final Rule LGIP and Final Rule LGIA apply to any new Interconnection Request to a Transmission Provider's Transmission System.[5] The Commission is not requiring any retroactive changes to individual (versus generic) interconnection agreements filed with the Commission prior to the effective date of this Final Rule.

A. Background

5. The electric power industry continues to be in transition. Where the industry once comprised mainly large, vertically integrated utilities providing bundled power at cost-based rates, companies selling unbundled wholesale power at rates set by competitive markets have now become common. Balanced market rules and sufficient infrastructure are essential for achieving power markets that will provide customers with reasonably priced and reliable service.

6. The Commission continues to work to encourage fully competitive bulk power markets. The effort took its first major step with Order No. 888, which required public utilities to provide other entities comparable access to their facilities for transmitting electricity in interstate commerce, and continued with Order No. 2000,[6] which encouraged the development of Regional Transmission Organizations (RTOs).

7. In this proceeding the Commission, pursuant to its responsibility under Sections 205 and 206 of the Federal Power Act (FPA) to remedy undue discrimination, requires all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs a Final Rule LGIP and Final Rule LGIA. The Commission believes that these documents will provide just and reasonable terms and conditions of transmission service while ensuring that reliability is protected and that they will provide a reasonable balance between the competing goals of uniformity and flexibility.

1. Need for Standard Generator Interconnection Procedures and Agreement

8. In April 1996, in Order No. 888, the Commission established the foundation necessary to develop competitive bulk power markets in the United States: non-discriminatory open access transmission services by public utilities and stranded cost recovery rules to provide a fair transition to competitive markets. Order No. 888 did not directly address generator interconnection issues.

9. In *Tennessee Power Company*[7] (*Tennessee*) the Commission clarified that interconnection is a critical component of open access transmission service and thus is subject to the requirement that utilities offer comparable service under the OATT. In *Tennessee* the Commission encouraged, but did not require, each Transmission Provider to revise its OATT to include interconnection procedures, including a

[1] Readers may note that provisions of the Final Rule LGIP are referred to as ''Sections'' whereas provisions of the Final Rule LGIA are referred to as ''Articles.''

[2] Such filings must be made within 60 days of publication of this Final Rule in the **Federal Register**.

[3] Unless otherwise defined in this Preamble, capitalized terms used in this Final Rule have the meanings specified in Section 1 of the Final Rule LGIP and Article 1 of the Final Rule LGIA. The term Generating Facility means the specific device for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the Interconnection Customer. The entity (or entities) with which the Generating Facility is interconnecting is referred to as the Transmission Provider. The term Large Generator is intended to refer to any energy resource having a capacity of more than 20 megawatts, or the owner of such a resource.

[4] 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 relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[5] New Interconnection Requests include those submitted after the effective date of this Final Rule and include requests to increase the capacity of, or modify the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

[6] Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Util. Dist. No. 1* v. *FERC,* 272 F.3d 607 (DC Cir. 2001).

[7] Tennessee Power Company, 90 FERC ¶ 61,238 (2002).

standard interconnection agreement and specific criteria, procedures, milestones, and time lines for evaluating Interconnection Requests.[8]

10. The Commission to date has addressed interconnection issues on a case-by-case basis. Although a number of Transmission Providers have filed interconnection procedures as part of their OATTs,[9] many industry participants remain dissatisfied with existing interconnection policy and procedures. With the increasing number of interconnection-related disputes, it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues.

11. Interconnection plays a crucial role in bringing much-needed generation into the market to meet the growing needs of electricity customers. Further, relatively unencumbered entry into the market is necessary for competitive markets. However, requests for interconnection frequently result in complex, time consuming technical disputes about interconnection feasibility, cost, and cost responsibility. This delay undermines the ability of generators to compete in the market and provides an unfair advantage to utilities that own both transmission and generation facilities. The Commission concludes that there is a pressing need for a single set of procedures for jurisdictional Transmission Providers and a single, uniformly applicable interconnection agreement for Large Generators.[10] A standard set of procedures as part of the OATT for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.

12. Interconnection is a critical component of open access transmission service, and standard interconnection procedures and a standard agreement applicable to Large Generators will serve several important functions: They will (1) Limit opportunities for Transmission Providers to favor their own generation, (2) facilitate market entry for generation competitors by reducing interconnection costs and time, and (3) encourage needed investment in generator and transmission infrastructure. The Commission expects that the Final Rule LGIP and Final Rule LGIA (as well as the documents that will be developed in the Small Generator Interconnection proceeding—*see* footnote 10, *supra*) will resolve most disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and protect system reliability. Therefore, the Commission adopts the Final Rule LGIP and Final Rule LGIA, which will be required as an amendment to the OATT of each public utility that owns, controls, or operates facilities for transmitting electric energy in interstate commerce. As discussed below, more flexibility is available to independent transmission entities in the procedures and agreement they must adopt as compared with the standard provisions adopted herein.

2. Interconnection ANOPR

13. The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) regarding generator interconnection on October 25, 2001.[11] As a point of departure, the ANOPR presented the Standard Generator Interconnection Procedures and Standard Generation Interconnection Agreement of the Electric Reliability Council of Texas (ERCOT).[12] The Commission supplemented and modified the ERCOT documents with various ''best practices'' that were identified in Attachment A to the ANOPR. These ''best practices'' were based, in part, on generator interconnection procedures and agreements that had been approved by the Commission in past cases. The ANOPR instructed the commenters and parties to assume that the Commission's current pricing policy, as described in ANOPR Attachment B, would remain in effect.

14. The ANOPR initiated a consensus-making process in which members of various segments of the electric power industry, government, and the public had an opportunity to provide input. This effort resulted in two documents that largely shaped the Notice of Proposed Rulemaking (Large Generator Interconnection NOPR) that followed.[13] These two documents are referred to as the Consensus LGIP and Consensus LGIA (although a consensus was not reached on all issues). The Commission received numerous comments, primarily from Transmission Providers, Transmission Owners, generators (herein called Interconnection Customers), and state regulators, on the ANOPR and the Consensus LGIP and Consensus LGIA.

3. Interconnection NOPR

a. Overview of the NOPR

15. Although the negotiators did not reach consensus on every issue, the Consensus LGIP and LGIA reflect substantial agreement among diverse interests. The Commission used these documents and the comments on them to create the proposed standard LGIP and LGIA documents (NOPR LGIP and NOPR LGIA). Generally, the NOPR used the Consensus LGIP and LGIA provisions where there was agreement. Where the participants could not reach consensus on a particular issue and options were presented in the Consensus LGIP and LGIA, the Commission chose between those options guided by the principle of minimizing barriers to entry of new generation without increasing the risk of reliability problems. Where an issue remained unresolved and no option was presented, the Commission generally proposed the ERCOT provision.

b. Severing of Small Generator Issues From the NOPR

16. In their comments on the interconnection NOPR, supporters of Small Generators (which are defined herein as devices for the production of electricity having a capacity no more than 20 MW) requested that the Commission adopt separate rules and procedures for interconnecting Small Generators. They argued that use of a Final Rule LGIP and Final Rule LGIA

[8] *See, e.g.,* Commonwealth Edison Co., 91 FERC ¶ 61,083 (2000).

[9] *See, e.g.,* American Electric Power Service Corp., 91 FERC ¶ 61,308 (2000), *order denying reh'g and granting clarification,* 94 FERC ¶ 61,166, *order dismissing request for clarification,* 95 FERC ¶ 61,130 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC,* No. 01–1194 (DC Cir. Apr. 23, 2001); Southwest Power Pool, Inc., 92 FERC ¶ 61,109 (2000); Carolina Power & Light Co., 93 FERC ¶ 61,032 (2000), *reh'g denied,* 94 FERC ¶ 61,165 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC,* No. 01–1195 (DC Cir. Apr. 23, 2001); Virginia Electric & Power Co., 93 FERC ¶ 61,307 (2000), *order on clarification,* 94 FERC ¶ 61,045, *reh'g denied,* 94 FERC ¶ 61,164 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC,* No. 01–1196 (DC Cir. Apr. 23, 2001); Consumers Energy Co., 93 FERC ¶ 61,339 (2000), *order on reh'g and clarification,* 94 FERC ¶ 61,230, *order on clarification and denying reh'g,* 95 FERC ¶ 61,131 (2001).

[10] In another rulemaking, the Commission proposes a separate set of procedures and an agreement applicable to Small Generators (any energy resource having a capacity of no larger than 20 MW, or the owner of such a resource) that seek to interconnect to jurisdictional Transmission Providers. *See* Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, Docket No. RM02–12–000 (issued concurrently with this Final Rule). 104 FERC ¶ 61,104.

[11] Standardizing Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 66 FR 55140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2001).

[12] The ERCOT agreement and procedure were appended to the ANOPR as Appendix A.

[13] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 FR 22250 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 (2002).

designed for Large Generators would unduly hinder the development of Small Generators. They sought streamlined procedures and requirements that would allow an Interconnection Customer with a Small Generator to avoid delays caused by studying sequentially the effects of interconnecting its generator with the Transmission Provider's electric system.

17. Persuaded by this request, the Commission decided to propose separate Small Generator interconnection procedures and an agreement (SGIP and SGIA) to provide the right incentives for both Transmission Providers and Interconnection Customers with Small Generators.[14] To that end, the Commission severed the issues related to interconnecting generators no larger than 20 MW from this proceeding and initiated another rulemaking docket, RM02–12–000, for the former.[15]

B. Legal Authority

1. The Federal Power Act and Order No. 888

18. In fulfilling its responsibilities under Sections 205 and 206 of the Federal Power Act,[16] the Commission is required to address, and has the authority to remedy, undue discrimination. The Commission must ensure that the rates, contracts, and practices affecting jurisdictional transmission do not reflect an undue preference or advantage for non-independent Transmission Providers and are just and reasonable. Additionally, as discussed in Order No. 888, the Commission's regulatory authority under the Federal Power Act ''clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] Sections 202 and 203, and under like directives contained in Sections 205, 206, and 207.''[17]

19. The record underlying Order No. 888 showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.[18] The Commission in Order No. 888 also thoroughly discussed the legislative history and case law involving Sections 205 and 206, concluded that it had the authority and responsibility to remedy the undue discrimination it had found by requiring open access, and decided to do so through a rulemaking on a generic, industrywide basis.[19] The Supreme Court affirmed the Commission's decision to exercise this authority by requiring non-discriminatory (comparable) open access as a remedy for undue discrimination.[20]

20. The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT.[21] Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under Sections 205 and 206 of the Federal Power Act.

2. Commission Interconnection Case Law

21. Unless expressly changed in this Final Rule, the holdings in the Commission's existing interconnection precedents will remain a useful guide during the implementation of this Final Rule. The Commission's interconnection cases have drawn the distinction between Interconnection Facilities and Network Upgrades. Interconnection Facilities are found between the Interconnection Customer's Generating Facility and the Transmission Provider's Transmission System. The Commission has developed a simple test for distinguishing Interconnection Facilities from Network Upgrades: Network Upgrades include only facilities at or beyond the point where the Interconnection Customer's Generating Facility interconnects to the Transmission Provider's Transmission System.[22] The Commission has made clear that Interconnection Agreements are evaluated by the Commission according to the just and reasonable standard.[23] Most improvements to the Transmission System, including Network Upgrades, benefit all transmission customers, but the determination of who benefits from such Network Upgrades is often made by a non-independent transmission provider, who is an interested party. In such cases, the Commission has found that it is just and reasonable for the Interconnection Customer to pay for Interconnection Facilities but not for Network Upgrades. Agreements between the Parties to classify Interconnection Facilities as Network Upgrades, or to otherwise directly assign the costs of Network Upgrades to the Interconnection Customer, have not been found to be just and reasonable and have been rejected by the Commission.[24]

22. Regarding pricing for a non-independent Transmission Provider, the distinction between Interconnection Facilities and Network Upgrades is important because Interconnection Facilities will be paid for solely by the Interconnection Customer, and while Network Upgrades will be funded initially by the Interconnection Customer (unless the Transmission Provider elects to fund them), the Interconnection Customer would then be entitled to a cash equivalent refund (*i.e.,* credit) equal to the total amount paid for the Network Upgrades, including any tax gross-up or other tax-related payments. The refund would be paid to the Interconnection Customer on a dollar-for-dollar basis, as credits against the Interconnection Customer's payments for transmission services, with the full amount to be refunded, with interest within five years of the Commercial Operation Date. The Commission has clarified that transmission credits may be used whether or not a Generating Facility is being dispatched and that credits must be accepted for all network transmissions by the Interconnection Customer, regardless of whether the plant from which the credits originated is dispatched.[25] Credits are not tied to any particular Generating Facility.[26] The Commission has stated that peaking facilities, for instance, must be allowed to use credits even when the Generating

[14] The Small Generator Interconnection ANOPR proposed adopting two Small Generator Interconnection Procedures documents and two Small Generator Interconnection Agreements, with the distinction between the two sets of documents being the size of the Small Generator.

[15] *See* Standardization of Small Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 67 FR 54749 (Aug. 26, 2002), FERC Stats. & Regs. ¶ 35,544 (2002).

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

[17] *Gulf States Utils. Co.* v. *FPC,* 411 U.S. 747, 758–59 (1973); *see City of Huntingburg* v. *FPC,* 498 F.2d 778, 783–84 (D.C. Cir. 1974) (noting the Commission's duty to consider the potential anticompetitive effects of a proposed interconnection agreement).

[18] Order No. 888, FERC Stats. Regs ¶ 31,036 at 31,679–84; Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,209–10.

[19] Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,668–73, 31,676–79; Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,201–12; *TAPS* v. *FERC,* 225 F.3d 667, 687–88 (DC Cir. 2000).

[20] New York v. FERC, 535 U.S. 1 (2002).

[21] *See* Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761, *reh'g dismissed,* 91 FERC ¶ 61,271 (2000).

[22] Entergy Gulf States, Inc., 98 FERC ¶ 61,014 at 61,023, *reh'g denied,* 99 FERC ¶ 61,095 (2002); *see* Public Service Co. of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied,* 62 FERC ¶ 61,013 at 61,061 (1993).

[23] Pacific Gas & Electric Company, *et al.,* 102 FERC ¶ 61,070 (2003).

[24] *See, e.g.* Illinois Power Co., 103 FERC ¶ 61,032 (2003); American Electric Power Service Corp., 101 FERC ¶ 61,194 (2002).

[25] Entergy Services, Inc., 101 FERC ¶ 61,289 (2002).

[26] *Id.*

Facility is not dispatched.[27] The Commission has also allowed Transmission Providers to require several Interconnection Customers to share the costs of Network Upgrades, under certain circumstances.[28]

23. The Commission has also clarified that an Interconnection Customer need not enter into an agreement for the delivery component of transmission service to interconnect with a Transmission Providers' Transmission System.[29] At the same time, Interconnection Service or an interconnection by itself does not confer any delivery rights from the Generating facility to any points of delivery.[30]

24. The Commission has clarified that ownership of the Interconnection Facilities does not have a direct effect on reliability of the system. Therefore, as long as the Transmission Provider operates the Interconnection Facilities, the Commission will allow an Interconnection Customer to own part, or all, of those facilities.[31]

C. Differences Between the Proposed and Final Rules

25. The Final Rule LGIP and Final Rule LGIA largely track the proposed documents. Changes made in the Final Rule tend to be specific to an individual LGIP section or LGIA article, and do not require fundamental changes to the documents. That being said, there are a few significant issues, some substantive and others organizational, that the Commission summarizes here.

26. Most importantly, we note that the Final Rule applies to independent and non-independent Transmission Providers alike, but non-independent Transmission Providers are required to adopt the Final Rule LGIP and Final Rule LGIA into their OATTs, with deviations from the Final Rule justified using either the ''regional differences'' or ''consistent with or superior to'' standard. We also allow Regional Transmission Organizations (RTOs) and ISOs more flexibility to customize an LGIP and LGIA to meet their regional needs. This applies to terms and conditions as well as pricing. While RTOs and ISOs are required to submit compliance filings, they may submit LGIP and LGIA terms and conditions that meet an ''independent entity variation'' standard that is more flexible than the ''consistent with or superior to'' standard and the regional differences standard.

27. We are also including in the Final Rule LGIA an article addressing insurance requirements and limiting liability for consequential damages, both of which were absent from the NOPR. Provision for liquidated damages had been removed from the Final Rule LGIP but remains an option in the Final Rule LGIA. Also, in the Final Rule LGIP, when a Transmission Provider elects to study Interconnection Requests in Clusters, it would simultaneously study all Interconnections Requests received within a 180 day window, rather than a 90 day window as proposed.

28. On pricing, we clarify the approach set forth in the NOPR. We continue our current policy of requiring a Transmission Provider that is not an independent entity to provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection. For a Transmission Provider that is an independent entity, such as an RTO or ISO, we allow flexibility as to the specifics of the interconnection pricing policy. Also, an RTO or ISO may propose participant funding for Network Upgrades for a generator interconnection, and, for a transitional period not to exceed a year, a region may use participant funding as soon as an independent administrator has been approved by the Commission and the affected states.

29. Where the policy of transmission credits for upgrades required as a result of the interconnection applies, the Commission provides several clarifications in this Final Rule. For example, the Interconnection Customer should receive transmission credits only if its Generating Facility has achieved commercial operation. Transmission credits are to be paid to the Interconnection Customer when upgrades to an Affected System[32] are constructed and the Interconnection Customer has paid for them. Finally, the Transmission Provider may decline to award credits for only those transmission charges that are designed to recover out-of-pocket costs, such as the cost of line losses, associated with the delivery of the output of the Generating Facility.

II. Discussion

30. In part A of this discussion we address the Standard Large Generator Interconnection Procedures (Final Rule LGIP) that specify the details of the uniform process a prospective Interconnection Customer and its Transmission Provider shall use to initiate, evaluate, and implement an Interconnection Request pursuant to the Final Rule.

31. In part B we discuss the details of the Standard Large Generator Interconnection Agreement (Final Rule LGIA) to be executed by the prospective Interconnection Customer, the Transmission Provider and, where appropriate, the Transmission Owner. This document is incorporated as Appendix 6 to the Standard Large Generator Interconnection Procedures and covers the related rights and obligations of the Parties.[33]

32. In part C, we discuss a number of other significant policy issues in connection with this rulemaking, including pricing policies; the required Interconnection Services; the treatment of ''Distribution'' level interconnections; Qualifying Facility matters; variations from the Final Rule and accommodation of regional differences; the availability of waivers for small entities; OATT reciprocity implications for interconnection requests; assorted clarifications to the NOPR's proposals; insurance and liquidated damages matters; two- versus three-party interconnection agreements; and consequential damage issues.

33. In part D, we address Compliance Issues pertaining to the requirement for a Transmission Provider to file conforming amendments to its existing OATT; the treatment to be accorded existing interconnection agreements (grandfathering); and the method a Transmission Provider is to use to file executed and unexecuted interconnection agreements in accord with this Final Rule.

A. Issues Related to the Standard Large Generator Interconnection Procedures (LGIP)

1. Overview[34]

34. The Final Rule Standard Large Generator Interconnection Procedures (LGIP) document specifies the steps that must be followed and deadlines that must be met when an Interconnection

[27] Colton Power, LP, 101 FERC ¶ 61,150 (2002).

[28] *Id.*

[29] Entergy Services, Inc., 101 FERC ¶ 61,016 (2002); Southern Company Services, Inc., 95 FERC ¶ 61,307 at 62,049, *order dismissing reh'g,* 96 FERC ¶ 61,168 (2001); Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761 (2000).

[30] *See* Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,076, *order on reh'g,* 94 FERC ¶ 61,267 (2001).

[31] Arizona Public Service Company, 102 FERC ¶ 61,303 (2003).

[32] An Affected System is an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

[33] The Final Rule LGIP and Final Rule LGIA define Party or Parties as ''Transmission Provider, Transmission Owner, Interconnection Customer, or any combination of the above.''

[34] For the convenience of the reader, a flow chart depicting the interconnection process is appended to this preamble as Appendix A.

Customer requests interconnection of either a new Generating Facility or the expansion of an existing Generating Facility with the Transmission Provider's Transmission System.[35] The Commission directs each public utility to amend its OATT with a single compliance filing to incorporate the Final Rule LGIP and the Standard Large Generator Interconnection Agreement (LGIA) documents. RTOs and ISOs must also make compliance filings, but as discussed above, will have more flexibility to propose different procedures and a different agreement.

35. The Final Rule LGIP sets forth the following steps to secure an interconnection. First, the prospective Interconnection Customer will submit an Interconnection Request to the Transmission Provider along with a $10,000 deposit, preliminary site documentation, and the expected In-Service Date.[36] The Transmission Provider will acknowledge receipt of the request and promptly notify the Interconnection Customer if its request is deficient. When the Interconnection Request is complete, the Transmission Provider will place it in its interconnection queue with other pending requests. The Transmission Provider will assign a Queue Position to each completed Interconnection Request based on the date and time of its receipt.[37] Queue Position is used to determine the order of performing the various Interconnection Studies and the assignment of cost responsibility for the construction of facilities necessary to accommodate the Interconnection Request.[38] The Transmission Provider will also maintain a list of all Interconnection Requests [39] on its OASIS.[40]

36. The Parties will then schedule a Scoping Meeting to discuss possible Points of Interconnection and exchange technical information, including data that would reasonably be expected to affect such interconnection options.[41] The Scoping Meeting is followed by a series of Interconnection Studies to be performed by, or at the direction of, the Transmission Provider to evaluate the proposed interconnection in detail, identify any Adverse System Impacts on the Transmission Provider's Transmission System or Affected Systems, and specify the facility modifications that are needed to safely and reliably complete the interconnection.[42] These studies include:

(1) *Interconnection Feasibility Study* to evaluate on a preliminary basis the feasibility of the proposed interconnection, using power flow and short-circuit analyses (to be completed within 45 Calendar Days from the date of signing of an Interconnection Feasibility Study Agreement) (study requires a $10,000 deposit);

(2) *Interconnection System Impact Study* to evaluate on a comprehensive basis the impact of the proposed interconnection on the reliability of Transmission Provider's Transmission System and Affected Systems, using a stability analysis, power flow, and short-circuit analyses (to be completed within 60 Calendar Days from the date of signing of an Interconnection System Impact Study Agreement) (study requires a $50,000 deposit);[43]

(3) *Interconnection Facilities Study* to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System (to be completed within 90–180 Calendar Days from the date of signing of an Interconnection Facilities Study Agreement) (study requires a $100,000 deposit or an estimated monthly cost developed by the Transmission Provider for conducting the Interconnection Facilities Study); and

(4) *Optional Interconnection Study* or sensitivity analysis of various assumptions specified by the Interconnection Customer to identify any Network Upgrades that may be required to provide transmission delivery service over alternative transmission paths for the electricity produced by the Generating Facility and (study requires a $10,000 deposit).

37. The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study must be performed in the above order, with completion of each study before the next begins.[44] An Interconnection Customer may also request a restudy of any of the above if a higher-queued project either drops out of the queue, is subjected to Material Modifications, or changes its Point of Interconnection.[45] The Interconnection Customer will pay the actual costs for performing each of the Interconnection Studies and restudies.

38. The Transmission Provider's Interconnection Facilities Study report [46] will include a best estimate of the costs to effect the requested interconnection which are to be funded up-front by the Interconnection Customer. At the same time as the report is issued, the Transmission Provider shall also give the Interconnection Customer a draft interconnection agreement completed to

[35] Any Transmission Provider with an Interconnection Request outstanding at the time this Final Rule becomes effective shall transition to the Final Rule LGIP within a reasonable period of time. This is further described in Final Rule LGIP Section 5.1.

[36] The standard form of Interconnection Request is Appendix 1 of the LGIP document.

[37] For example, the first complete Interconnection Request, assigned an earlier Queue Position, is ''higher-queued'' relative to the second complete Interconnection Request that is assigned a later Queue Position and is ''lower queued.'' The withdrawal of a complete Interconnection Request causes it to lose its Queue Position and all succeeding complete Interconnection Requests to advance, accordingly.

[38] Any Interconnection Customer assigned a Queue Position before the effective date of this Final Rule would retain that Queue Position.

[39] We emphasize that the Final Rule LGIP requires the Transmission Provider, the Transmission Owner, and such entities' officers, employees, and contractors to maintain proper procedures for Confidential Information provided by an Interconnection Customer related to the Interconnection Request, the disclosure of which could harm or prejudice the Interconnection Customer or its business.

[40] Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,590 (1996), *order on reh'g,* Order No. 889–A, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *reh'g denied,* Order No. 889–B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[41] The Scoping Meeting will address technical matters such as facility loadings, general instability issues, general short-circuit issues, general voltage issues, and general reliability issues that would affect the Interconnection Customer's designation of its Point of Interconnection.

[42] The standard forms of agreement for the Interconnection Feasibility Study, the Interconnection System Impact Study, the Interconnection Facilities Study, and the Optional Interconnection Study, are included at Appendices 2–4 to the Final Rule LGIP, respectively.

[43] At the Transmission Provider's option, Interconnection System Impact Studies for multiple Generating Facilities may be conducted serially or in clusters.

[44] These Interconnection Studies are typical of the kinds of studies undertaken by Transmission Providers to evaluate Interconnection Requests. The Interconnection Facilities Studies and Interconnection System Impact Studies also correspond to transmission service studies described in the *pro forma* open access tariff. *See* Order No. 888–A (Tariff Part II, 19 Additional Study Procedures for Firm Point-To-Point Transmission Service Requests; and Tariff Part III, 32 Additional Study Procedures for Network Integration Transmission Service Requests), FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000), ¶ 31,048 at 30,524–26 and 30,535–36.

[45] An Interconnection Feasibility Restudy must be completed within 45 Calendar Days of such request. Similarly, the Transmission Provider has 60 Calendar Days to complete either an Interconnection System Impact Restudy or an Interconnection Facilities Restudy.

[46] Upon the completion of each of the Interconnection Studies, a report is prepared which presents the results of the analyses.

the extent practicable.[47] The Transmission Provider and the Interconnection Customer will then negotiate the schedule for constructing and completing any necessary Transmission Provider Interconnection Facilities and Network Upgrades, and incorporate this schedule into the interconnection agreement that is signed by the Parties.[48]

2. Section-by-Section Discussion of the Proposed LGIP

39. What follows is a discussion of the standard interconnection procedures the Commission proposed, the comments received, and the Commission's conclusion. The order of discussion follows the organization of the proposed LGIP, covering Sections 1–13. Only subsections for which issues are raised are presented. For example, we discuss Section 2.3, but not Sections 2.1 or 2.2 because no significant issues were raised regarding Sections 2.1 or 2.2. Readers should note that section numbers referred to in the following discussion are the numbers contained in the proposed LGIP. Some proposed sections are renumbered in the Final Rule; mention of that fact will be made in the Commission Conclusions discussion, where appropriate. Also, note that Proposed LGIP Section 14 is eliminated from the Final Rule in its entirety because provisions for interconnection procedures and an interconnection agreement for Small Generators have been severed from this proceeding, as discussed, *supra.*

40. *Section 1—Definitions*—Section 1 of the NOPR LGIP and Article 1 of the NOPR LGIA contained defined terms that appeared in the respective documents. For the sake of consistency, the Final Rule LGIP and Final Rule LGIA contain one common set of terms. Included in the list of defined terms are a number of new terms which were not included in the NOPR LGIP and NOPR LGIA. Comments relating to the definition of terms in both documents are discussed below.

41. *Ancillary Services* (In the NOPR: Ancillary and Other Services)—The NOPR proposed that Ancillary and Other Services would have the same meaning as defined in the Transmission Provider's OATT and include some other services such as generator balancing, black start, and automatic generation control.

Comments

42. Cinergy and Entergy claim that this term is not used in the LGIA and that its definition should be deleted.

Commission Conclusion

43. The Commission disagrees that the definition should be deleted. The term is used in Article 9 of the NOPR LGIA and elsewhere. However, to be consistent with the OATT, the Commission here adopts the definition of Ancillary Services in Order No. 888: ''Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.''

44. *Commercial Operation Date*—The NOPR proposed to define Commercial Operation Date as the date on which the Generating Facility commences commercial operation of a unit at the Generating Facility after Trial Operation of the unit is completed, as confirmed in writing, in accordance with proposed Appendix F to the NOPR LGIA.

Comments

45. Central Maine points out that when a Generating Facility consists of more than one generating unit, under the NOPR, the Commercial Operation Date depends on the operability of a generating unit after its testing. Central Maine requests that the Commission define the term Commercial Operation Date as the date on which the Generating Facility as a whole commences commercial operation, not the individual generating units.

Commission Conclusion

46. The Commission is not adopting Central Maine's proposal. The Generating Facility (referred to as the Facility in the NOPR LGIP and NOPR LGIA) could consist of multiple generating units with substantially different Commercial Operation Dates. Under Central Maine's proposal, all of the Generating Facilities at the complex would be required to undergo a pre-commercial Trial Operation each time a new generating unit at the Generating Facility is ready to commence commercial operation. Central Maine gives no reason why this should be required. Furthermore, revising the NOPR LGIP is unnecessary because Article 6.1 of the NOPR LGIA (Pre-Commercial Operation Date, Testing and Modifications) addresses testing of the Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation.

47. *Generating Facility* (In the NOPR: Facility)—The NOPR proposed to define the term Facility as the Interconnection Customer's generator, as identified in the Interconnection Request, but excluding the Interconnection Customer's Interconnection Facilities. In this Final Rule, the Commission has renamed Facility to Generating Facility to avoid confusion between other facilities and equipment.

Comments

48. Central Maine states that a full description of the Generating Facility should be attached to the interconnection agreement as an appendix.

Commission Conclusion

49. The Commission concludes that it is unnecessary to append a description of the Generating Facility to the interconnection agreement because Appendix 1 of the Final Rule LGIP (Interconnection Request) already provides detailed information about the Generating Facility. Accordingly, the Commission adopts the proposed definition but changes the defined term from Facility to Generating Facility.

50. *Generator*—In the NOPR, the Commission proposed to define the term Generator to mean any Generating Facility, regardless of ownership.

Comments

51. Dairyland Power points out that the term Generator is used in the NOPR LGIP to refer to the entity that owns the Generating Facility, as well as the facility itself. It asks for clarification.

Commission Conclusion

52. To clarify, we use the term Interconnection Customer in this preamble and the Final Rule to refer to the owner of the Generating Facility. The terms Small Generator and Large Generator refer to the class of energy producing devices no larger than 20 MW and larger than 20 MW, respectively.

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[47] The draft interconnection agreement shall include: Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades; Appendix B, Milestones; Appendix C, Interconnection Details; Appendix D, Security Arrangements Details; Appendix E, Commercial Operation Date; and Appendix F, Addresses for Delivery of Notices and Billings.

[48] In general, the In-Service Date of an Interconnection Customer's Generating Facility or Generating Facility expansion will determine the sequence of construction of Network Upgrades. An Interconnection Customer, in order to achieve its expected In-Service Date, may request that the Transmission Provider advance the completion of Network Upgrades necessary to support such In-Service Date that would otherwise not be completed pursuant to a contractual obligation of an entity other than the Interconnection Customer. The Transmission Provider will use Reasonable Efforts to advance the construction if the Interconnection Customer reimburses it for any associated expediting costs and the cost of such Network Upgrades. The Interconnection Customer is entitled to transmission credits for the expediting costs that it pays.

53. *Good Utility Practice*—In the NOPR, the Commission defined Good Utility Practice to mean any of the practices, methods and acts generally accepted in the region, including Applicable Reliability Standards and the National Electrical Code.

Comments

54. NERC states that although the terms Good Utility Practice and Applicable Reliability Standards have separate definitions, they have often been used interchangeably. It notes that the Commission has defined Applicable Reliability Standards to include NERC and regional reliability council requirements while Good Utility Practice is a broader term that includes Applicable Reliability Standards. NERC comments that it is important that these terms be used consistently.

55. Cinergy notes that Good Utility Practice is defined to include compliance with the National Electrical Code. It states that because it is not subject to the National Electrical Code, it would be improper to attempt to bind it to such compliance.

Commission Conclusion

56. The Commission agrees with NERC that there is some overlap in the proposed definitions of Good Utility Practice and Applicable Reliability Standards. To remove any misunderstanding in the definition of Good Utility Practice, the Commission is adopting in the Final Rule the Order No. 888 definition, which contains no references to Applicable Reliability Standards and National Electrical Code. This also addresses Cinergy's concern.

57. *Interconnection Guidelines*—The NOPR stated that the technical requirements to be followed by the Parties are set forth in the proposed Appendix G (Interconnection Guidelines).

Comments

58. Southern observes that proposed Appendix G is blank, inferring that the Interconnection Customer and Transmission Provider negotiate the technical and operational requirements. Southern believes that this is inappropriate because interconnection guidelines should be established by the Transmission Provider, not by negotiation. Southern contends that requiring a Transmission Provider to negotiate the technical and operational requirements with each Interconnection Customer is inconsistent with the goal of uniform interconnection procedures.

Commission Conclusion

59. Proposed Appendix G was intended to set forth uniform technical and operational requirements applicable to all Interconnection Customers established by the Transmission Provider, not to be a vehicle for the Parties to negotiate technical and operational requirements on a case-by-case basis. The Commission concludes, however, that most, if not all, of the generic technical and operational requirements are already set forth in the Final Rule LGIA. We are therefore not defining the term Interconnection Guidelines as well as not including proposed Appendix G in the Final Rule LGIA.[49]

60. *Joint Operating Committee*—The NOPR proposed to define Joint Operating Committee to mean a committee comprised of members of individual operating committees that addresses issues arising out of the duties, roles, and responsibilities of individual operating committees described in Article 29 of the NOPR LGIA.

Comments

61. FirstEnergy and PSNM state that the Joint Operating Committee would impose additional administrative costs on the Transmission Provider and is also unnecessary.

Commission Conclusion

62. The Commission is not deleting the term. As discussed later, the Final Rule does not require the Parties to form individual operating committees. Instead, the Final Rule requires a Joint Operating Committee comprising the Transmission Provider and all of its Interconnection Customers. Among other things, the committee will address issues arising out of the duties, roles, and responsibilities of the Parties under their interconnection agreements.

63. *Network Upgrades*—In the NOPR, Network Upgrades were defined as additions, modifications, and upgrades to the Transmission System required beyond the Point of Interconnection in order to accommodate the interconnection of the Generating Facility. Network Upgrades are identified by the Parties in Appendix A to the interconnection agreement (including any modifications, additions or upgrades made to such facilities). The NOPR also stated that Network Upgrades benefit all users of the Transmission System, without distinction or regard as to the purpose of the upgrade.

[49] *See, e.g.,* Article 7 (Metering), Article 8 (Communications) and Article 9 (Operations).

Comments

64. Several commenters, including Calpine and SoCal Water District, request that the definition of Network Upgrades be clarified and made as specific as possible. Calpine and Nevada Power propose that Network Upgrades should include only facilities shown to be ''integrated'' to the Transmission System, that is, likely to be used by entities other than the Interconnection Customer. Some commenters[50] contend that circuit breakers are not Network Upgrades, since they benefit only the new Interconnection Customer.

Commission Conclusion

65. The Final Rule revises the definition of Network Upgrade to include the phrase ''at or beyond the Point of Interconnection,'' instead of ''beyond the Point of Interconnection,'' to make it consistent with established Commission precedent. The network begins at the point where the Interconnection Customer connects to the Transmission System, not somewhere beyond that point.[51] Facilities beyond the Point of Interconnection are part of the Transmission Provider's Transmission System and benefit all users. We are also removing the concept of beneficiary from the definition so as to avoid implying a pricing policy in the definition.

66. We disagree with the comments stating that the term is not well defined. The Commission has defined Network Upgrades as those facilities ''at or beyond the Point of Interconnection'' partially in order to clarify to all entities exactly what is a Network Upgrade. We are removing references to beneficiaries from the definition, because our well-established precedent regarding what constitutes Network Upgrades does not require a case-specific determination that all users benefit from Network Upgrade; instead we look only as whether the upgrade is at or beyond the Point of Interconnection.[52]

67. *Reasonable Efforts*—The NOPR proposed to define Reasonable Efforts as actions that are timely and consistent with Good Utility Practice and are substantially equivalent to those a Party would use to protect its own interests.

[50] *E.g.,* Edison Mission, Georgia Transmission, MidAmerican, and SoCal Water District.

[51] *See* Entergy Gulf States, Inc., 99 FERC ¶ 61,095 (2002).

[52] *E.g., Entergy Services, Inc.* v. *FERC,* 319 F.3d 536 (DC Cir. 2003); Southern Company Services, Inc., 101 FERC ¶ 61,309 (2002); American Electric Power Service Corp., 101 FERC ¶ 61,194 (2002); Tampa Electric Company, 99 FERC ¶ 61,192 (2002).

Comments

68. Some commenters including Central Maine found this definition to be vague. They also contend that only Good Utility Practice should be required.

Commission Conclusion

69. The Commission adopts the proposed definition. The standard in the NOPR is necessary to ensure comparable treatment. If a Party normally exceeds Good Utility Practice when it protects its own interests, it must do so for others as well.

70. *System Protection Facilities*—The NOPR proposed to define System Protection Facilities as the equipment required to protect the Transmission System from faults and other electrical disturbances occurring at the Interconnection Customer's Generating Facility, and vice versa.

Comments

71. NERC proposes that the definition of System Protection Facilities should include ''necessary protection signal communications equipment'' in addition to the other equipment mentioned in the definition. It argues that such communications equipment is needed to coordinate and monitor the operation of protective devices.

Commission Conclusion

72. The Commission agrees with NERC and adopts the recommended language.

73. *Transmission Owner and Transmission Provider*—In the NOPR, the Commission proposed to define Transmission Owner to mean any entity that owns, leases or otherwise possesses an interest in the Transmission System at the Point of Interconnection. It proposed to define Transmission Provider to mean the entity that provides transmission service under its OATT.

Comments

74. EEI proposes that the definition of Transmission Provider be revised to include Transmission Owner. National Grid states that the proposed LGIA should clearly delineate the rights and responsibilities of Transmission Owners that are not Transmission Providers.

Commission Conclusion

75. We agree with EEI. Accordingly, the definition of Transmission Provider in the Final Rule includes the Transmission Owner as well. While we recognize that the Transmission Provider and the Transmission Owner may be distinct entities in some cases, throughout the Final Rule we will refer to both the Transmission Provider and the Transmission Owner generically as the Transmission Provider. There are a few instances in which the distinction between Transmission Owner and Transmission Provider becomes relevant and there we use the appropriate terms.

76. *Section 2—Scope and Application*—Section 2 of the NOPR LGIP provided that the Transmission Provider receive, process, and analyze all Interconnection Requests in the same manner as it does for itself, its subsidiaries or Affiliates.

77. *Section 2.3—Base Case Data*—Section 2.3 of the NOPR LGIP required the Transmission Provider to provide base case power flow, short-circuit and stability databases to the Interconnection Customer upon request so that the Interconnection Customer may independently study its Interconnection Request.

Comments

78. Mirant notes that certain of the language from the Consensus LGIP Section 2.3 concerning confidentiality provisions and the makeup of the Base Case data appears to have been unintentionally left out of the NOPR LGIP Section 2.3.[53]

79. Dominion Resources asks that the Commission revise LGIP Section 2.3 to state that Base Case data is subject to a confidentiality provision between the Parties. Sempra comments that the Transmission Provider should protect the confidentiality of other Interconnection Customers' information that is part of those databases. Entergy states that this Section should apply only to information that is not commercially sensitive, so as to avoid providing a competitive advantage to other Interconnection Customers.

80. Calpine argues that the Transmission Provider should provide, in addition to the stated databases, all underlying assumptions, data files and documents used to create the Base Case, because otherwise the provision could be interpreted as a narrow set of data files that are meaningless.

81. The Ohio PUC contends that the Commission should ensure that rules for handling critical energy infrastructure information (CEII) are not abused by utilities that seek to withhold from public disclosure commercial information that is not really CEII and that has historically been central to public regulatory proceedings. It believes that there must be procedures to ensure protection of critical public interests. The Ohio PUC recommends that the procedures be carried out by an entity, such as the newly formed Department of Homeland Security, that has specific experience in CEII and is qualified to review the Commission's CEII decisions.

Commission Conclusion

82. As Mirant correctly notes, segments of the Consensus LGIP Section 2.3 relating to confidentiality and the makeup of the Base Case data were inadvertently omitted from the NOPR; this text is included in the Final Rule. Both confidentiality and the Base Case data format were significant topics in the Commission Staff Queuing Technical Conference held on January 21, 2003. Most conference participants agreed that providing this Base Case data was reasonable in that it would help the Interconnection Customer and its subcontractor conduct Interconnection Studies independently, expedite the evaluation process, and free up the Transmission Provider's resources, and reduce the time that would otherwise be devoted to performing Interconnection Studies or acting as the Interconnection Customer's consultant. The Commission believes that adding the missing text addresses other commenters' concerns regarding the need for confidential treatment of the Base Case data and other commercially sensitive information that may be provided to the Interconnection Customer.

83. In response to Calpine, we clarify that Transmission Providers must provide all underlying assumptions and data files so that the Interconnection Customer or its subcontractor can independently conduct Interconnection Studies.

84. As to the concerns of the Ohio PUC and others regarding the security of critical energy infrastructure information, the security of the energy infrastructure is essential. The Commission expects that all Transmission Providers, market participants, and Interconnection Customers will comply with the recommendations of the President's Critical Infrastructure Protection Board, as well as any best practice recommendations or requirements that may be issued by NERC or any other electric reliability authorities. In particular, all public utilities are expected to meet basic standards for system infrastructure and operational

[53] Mirant states that the following language was left out of Section 2.3 of the NOPR LGIP: ''and contingency lists upon request subject to confidentiality provisions. Such databases and lists, herein referred to as Base Cases, shall include all (I) generation projects and (ii) transmission projects, including merchant transmission projects that are proposed for a Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.''

security, including physical, operational, and cyber-security practices. However, they are not to abuse security requirements in an effort to withhold from public disclosure commercial information that lacks legitimate CEII status.

85. *Section 3—Interconnection Request*—In NOPR LGIP Section 3, the Commission proposed that each Interconnection Request include, among other things, a refundable deposit of $10,000 that would be applied toward the cost of the Interconnection Feasibility Study.

86. *Section 3.1—General*—NOPR LGIP Section 3.1 would have required that the Interconnection Customer submit to the Transmission Provider an Interconnection Request and a refundable deposit of $10,000 to be applied toward the cost of an Interconnection Feasibility Study. The Interconnection Customer would submit a separate Interconnection Request for each site to be studied and may submit multiple Interconnection Requests for a single site. At the Interconnection Customer's option, the Parties could identify alternative Points of Interconnection and configurations at the Scoping Meeting and attempt to eliminate alternatives from further consideration. The Interconnection Customer would be required to select the Point of Interconnection no later than the execution of the Interconnection Feasibility Study Agreement.

Comments

87. Some commenters, including Entergy and PJM, state that an initial evaluation of several alternative interconnection sites is inconsistent with regional planning and can be accomplished only at the expense of Transmission Providers and lower queued Interconnection Customers seeking swift interconnection.

88. Cal ISO raises several questions related to the possibility of multiple Interconnection Requests for a single site: (1) Do multiple Interconnection Requests refer only to routing and interconnection arrangements? (2) If so, how many alternatives are acceptable under one submittal? (3) Is an Interconnection Request for one site that is to be evaluated at two different voltage levels, one or two Interconnection Requests? and (4) Is the $10,000 deposit required for each Interconnection Request, resulting in multiple deposits for multiple requests at a single site?

89. ISO New England recommends revising this section to give an RTO or ISO authority to set reasonable interconnection deposit amounts, taking into account the requested study's complexity. It also states that concerns about discriminatory treatment of Interconnection Customers should be alleviated because the RTO or ISO is independent.

Commission Conclusion

90. Except as noted below, we are adopting Section 3.1 in the Final Rule as proposed. Allowing the Interconnection Customer the option to have the Parties evaluate alternative interconnection sites and configurations at the Scoping Meeting will greatly reduce the need to conduct detailed analyses of interconnection options that are found to have little merit. Providing the Interconnection Customer with more information prior to authorizing an Interconnection Feasibility Study should lead to more efficient use of the Transmission Provider's planning resources and higher quality Interconnection Studies.

91. With regard to Cal ISO's first question, multiple Interconnection Requests at a single site could involve more than just alternative routing and interconnection arrangements. For example, they could also involve substantially different Generating Facility designs. Regarding Cal ISO's second question, we do not set a generic limit on the number of Interconnection Requests that may be included in a single submittal, but leave it to the Parties to reach agreement at the Scoping Meeting, or, if they fail to agree, pursue dispute resolution. As to the third question, a request to evaluate one site at two different voltage levels would be two Interconnection Requests. With respect to Cal ISO's fourth question, the Interconnection Customer must submit a deposit with each Interconnection Request when more than one request is submitted for a single site. However, if an Interconnection Request is withdrawn before the execution of an Interconnection Feasibility Study Agreement, perhaps as a result of discussions at the Scoping Meeting, the Transmission Provider must promptly return the deposit to the Interconnection Customer. Finally, the Commission is clarifying Section 3.1 to eliminate the uncertainty underlying Cal ISO's questions 3 and 4.

92. The Commission is not revising proposed LGIP Section 3.1 to provide the flexibility that the New England ISO seeks. The proposed study deposit requirements appropriately balance the interests of the Transmission Provider and the Interconnection Customer. However, as explained elsewhere in this preamble, we will entertain proposals by an RTO or ISO to adopt alternative interconnection procedures that reflect regional differences.

93. *Section 3.2—Identification of Types of Interconnection Services*—Section 3.2 of the NOPR LGIP stated that, when the Interconnection Customer submits its Interconnection Request, it must identify the type of Interconnection Service it desires. The Final Rule provides for two service products: (1) Energy Resource Interconnection Service, which is a basic or minimal interconnection service, and (2) Network Resource Interconnection Service, which is a more flexible and comprehensive service. However, any Interconnection Customer requesting Network Resource Interconnection Service may request that it also be studied for the less comprehensive Energy Resource Interconnection Service up to the point when an Interconnection Facility Study Agreement is executed. Comments and conclusions relating to Section 3.2 of the NOPR LGIP are discussed in part II.C.2 (Interconnection Products and Scope of Service).

94. *Section 3.3.1—Initiating an Interconnection Request*—According to NOPR LGIP Section 3.3.1, in order to initiate an Interconnection Request, the Interconnection Customer would be required to submit a $10,000 deposit, a completed Interconnection Request, and either a demonstration of Site Control (*e.g.,* securing land rights, air permit, *etc.*) or an additional deposit of $10,000, with the deposits applied toward any required Interconnection Studies. The latter deposit would be refundable only if the Interconnection Customer demonstrates Site Control within the time period specified in the proposed LGIP Section 3.3.3.

95. Proposed LGIP Section 3.3.1 would allow the expected In-Service Date of the Generating Facility to be no later than the completion date of the relevant region's expansion planning period, not to exceed seven years from the date of the Interconnection Request, unless the Interconnection Customer can demonstrate that engineering, permitting and construction of the Generating Facility will take longer. Under the proposal, the In-Service Date may not exceed ten years from the date the Interconnection Request is received by the Transmission Provider.

Comments

96. Some commenters contend that an Interconnection Customer should be required to demonstrate Site Control when it submits an Interconnection

Request.[54] They disagree with the proposed LGIP Section 3.3.1 provision that allows for the posting of an additional $10,000 deposit in lieu of the demonstration of Site Control. For example, PJM states that Site Control is a strong indication of a serious project and is essential for establishing a queue that will consist of projects that are likely to be completed. PJM claims that this is not a burdensome requirement, and that every one of the 285 requests for generator interconnection that it has received since 1999 has included evidence of Site Control at the Interconnection Feasibility Study stage. Edison Mission believes that the Interconnection Customer must have uninterrupted Site Control throughout the interconnection process. It states that a $10,000 deposit is not sufficient to discourage Interconnection Customers from filing premature Interconnection Requests (in order to secure a favorable Queue Position) and only later find themselves to be unable to secure Site Control. Edison Mission further contends that such a minimal deposit requirement may encourage Interconnection Customers, not acting in good faith, to speculate in interconnection rights by placing deposits for Interconnection Requests at promising locations. It believes that such speculation will frustrate other Interconnection Customers that obtain a site but are locked out of interconnection due to the superior Queue Position of a Party that merely posted a deposit. Edison Mission predicts that this will become an even greater issue as market designs based on locational marginal pricing become the norm.

97. Cleco believes that the only deposit that should be refundable is the $10,000 deposit paid in lieu of demonstrating Site Control, not the original deposit initiating an Interconnection Request. Moreover, Cleco states that the Commission should make clear that the $10,000 deposited in lieu of Site Control should be refundable if the Interconnection Customer demonstrates Site Control within the time period specified in Section 3.3.3.

98. Central Maine takes exception to allowing an Interconnection Customer to remain in the queue for a period not to exceed ten years from the date of receipt of the Interconnection Request; it says this period is too long. FirstEnergy recommends replacing ''Regional Expansion Planning Period'' with ''Transmission Provider Expansion Planning Period.'' Salt River Project seeks clarification as to how to reconcile a situation where the original In-Service Date is ten years out and there is then a three year extension.

99. Some commenters, including American Wind Energy, Edison Mission, NMA, Peabody, and WEPCO, contend that the development time for certain large scale coal, wind power, and other types of projects raise special issues. For example, they want the ten year restriction eliminated because their equipment is not ''off-the-shelf,'' and siting and permitting can exceed ten years. Some commenters also want the Commission to revise Section 3.3.1 to allow them up to nine months after the Interconnection Request is made to submit final design specifications. They contend that because large non-gas-fired generators are unique and not ''off-the-shelf,'' completion of the final design specifications requires nine or more months after the Interconnection Request is submitted.

Commission Conclusion

100. We retain the proposed text that requires a demonstration of Site Control or a posting of an additional deposit of $10,000. There may be instances when requiring Site Control could unduly delay the interconnection process.

101. We also share Edison Mission's concern that some participants may attempt to game the system by filing Interconnection Requests at multiple sites knowing that Site Control is unlikely to be obtainable at every site. However, under NOPR LGIP Section 11.3, the Interconnection Customer must provide reasonable evidence of Site Control within 15 Business Days after the receipt of the Final Interconnection Agreement or post additional security of $250,000, which will be applied toward future construction costs when the demonstration of Site Control is made. This is sufficient incentive for an Interconnection Customer to refrain from engaging in the speculative behavior suggested by Edison Mission.

102. With respect to the ten-year period for allowing an Interconnection Customer to remain in the queue, we believe that ten years should be adequate time to complete the siting, permitting and construction requirements for all plants unless major permitting delays are encountered. Large non-gas-fired projects (*e.g.,* coal or oil projects) generally take eight years or less to complete. Thus, a ten-year period gives large projects at least a two year buffer. Moreover, we note that numerous Interconnection Customers and Transmission Providers negotiated this time limit during the Consensus process. Finally, if an Interconnection Customer believes it needs additional time to complete its project, it should seek the approval of the Transmission Provider to extend the In-Service Date. Accordingly, the Commission clarifies that the term of the Final Rule LGIP Section 3.3.1 is ten years, or longer if the Parties agree, with such agreement not to be unreasonably withheld.

103. Regarding the need for additional time for some Interconnection Customers to complete design specifications, the Commission is not convinced that an exception should be made in the Final Rule LGIP to allow an Interconnection Customer proposing to construct a large non-gas-fired Generating Facility to submit final design specifications nine months after the Interconnection Request is made. The Interconnection Customer should have its design substantially completed prior to submitting its Interconnection Request so that it does not block or disrupt the queuing process. The Transmission Provider is not able to act on an Interconnection Request unless it includes all necessary information, and to give one class of Interconnection Customers extra time to submit design specifications would be unfair to other Interconnection Customers in the queue.

104. As to FirstEnergy's recommendation, the Commission clarifies that, in the absence of a regional expansion planning period, the appropriate expansion planning period would be that of the Transmission Provider.

105. *Section 3.3.4—Scoping Meeting* (In the NOPR: Initial Scoping Meeting)—Proposed LGIP Section 3.3.4 would have required the Transmission Provider to hold a Scoping Meeting with the Interconnection Customer no later than 30 Calendar Days from receipt of the Interconnection Request. The purpose of the Scoping Meeting would be to discuss alternative interconnection options, including potential feasible Points of Interconnection. The Interconnection Customer would designate its Point of Interconnection and one or more alternative Points of Interconnection on the basis of information gathered at the Scoping Meeting. Section 3.3.4 would also provide that the Interconnection Customer may forgo the Interconnection Feasibility Study and proceed directly to an Interconnection System Impact Study.

Comments

106. Several commenters, including El Paso, Entergy, FirstEnergy, and

[54] *E.g.,* BPA, Central Maine, Cleco, Edison Mission, Georgia Transmission, NYTO, PJM, PJMTO, and Salt River Project.

Georgia Transmission, state that the Parties should be able to agree to schedule a Scoping Meeting outside the 30-day window.

107. El Paso believes that the Interconnection Customer should not make the final decision on designation of the Point of Interconnection; instead, the Transmission Provider should designate the Point of Interconnection with the Interconnection Customer's consent. At a minimum, El Paso recommends that Section 3.3.4 be modified to state that the Transmission Provider must consent to the designation of Point of Interconnection and that such consent will not be unreasonably withheld. El Paso explains this is because the designation of Point of Interconnection has serious cost consequences for the Transmission Provider and its customers.

108. PJM states that the Interconnection Feasibility Study is an important first step in evaluating an Interconnection Request and that about one-third of the Interconnection Requests are withdrawn after the Interconnection Feasibility Study. PJM adds that the Interconnection Customer should not be allowed to skip the Interconnection Feasibility Study and go directly to the Interconnection System Impact Study because this omission would have serious implications for the Clustering of Interconnection of Studies and would create the need for a large number of restudies. PJM proposes that this provision be deleted from the Final Rule LGIP.

Commission Conclusion

109. In the Final Rule LGIP, the Commission is revising Section 3.3.4 to allow the Parties to hold the Scoping Meeting outside the 30 Calendar Day window upon agreement of the Parties, since either Party can object to the postponement. With respect to El Paso's concern regarding the designation of the Point of Interconnection, the purpose of the Scoping Meeting is to discuss alternative interconnection options, including potential Points of Interconnection. The Commission notes that the Transmission Provider will have an opportunity to voice its concerns at the Scoping Meeting and assess the likely cost consequences of interconnecting at various points. It is appropriate that the Interconnection Customer decide its Point of Interconnection based on input from the Transmission Provider because the former must consider its investment in the Generating Facility and its site selection criteria, as well as its initial funding of Network Upgrades. For these reasons, we adopt Section 3.3.4 as proposed.

110. Regarding PJM's concern about allowing the Interconnection Customer to skip the Interconnection Feasibility Study and proceed directly to the Interconnection System Impact Study, the Commission agrees with PJM that the Interconnection Feasibility Study is an important first step in evaluating an Interconnection Request and should not be skipped. The Commission is therefore deleting this text from the Final Rule LGIP Section 3.3.4.

111. *Section 3.4—OASIS Posting*—Proposed LGIP Section 3.4 required that the Transmission Provider post on its OASIS a list of all Interconnection Requests. It must post the following information for each Interconnection Request: the location by county and state; the station or transmission line or lines where the interconnection will be made; and the projected In-Service Date. The list will not disclose the identity of the Interconnection Customer until the Interconnection Customer executes an interconnection agreement or requests that the Transmission Provider file an unexecuted Agreement with the Commission. The Transmission Provider also must post deviations from the study time lines set forth in the interconnection procedures. Interconnection Study reports and Optional Interconnection Study reports also must be posted after the Parties meet to discuss the applicable study results.

Comments

112. Avista states that listing the location of a Generating Facility by county and state is not sufficient. The location should be specified in greater detail, because some counties cover hundreds of square miles. Mirant and NYTO state that the identity of the Interconnection Customer should be posted on the OASIS when the Interconnection Request is made because it will help identify Interconnection Customers that are unlikely to see their projects through completion and drop out of the queue. Mirant claims that the identity of the Interconnection Customer is important for conducting meaningful Optional Interconnection Studies.

113. NSTAR seeks clarification about whether entire studies consisting of base case data are to be posted on the OASIS, or just the interpretive analysis contained in the study reports. Salt River Project seeks clarification as to whether the posting of deviations refers to the study time lines in proposed LGIP Section 6.3 (Interconnection Feasibility Study Procedures) or the study time lines that were agreed to by the Parties in advance. MidAmerican recommends that changes in the Generating Facility's In-Service Date should also be posted on the OASIS.

Commission Conclusion

114. The Commission is not requiring that the location of a Generating Facility be specified in any greater detail than proposed because the OASIS posting also includes the substation or transmission line where the interconnection is to be made. We are also not requiring that the identity of the Interconnection Customer be posted when the Interconnection Request is made because disclosing the identity at that early stage may put the Interconnection Customer at a competitive disadvantage and its project at risk. With regard to Mirant's assertion that the identity of the Interconnection Customer is important in conducting meaningful Optional Interconnection Studies because it helps identify who may drop out of the queue, we note that the Optional Interconnection Studies are to be performed after the Interconnection System Impact Study, at which point only serious projects are likely to remain in the queue.

115. The Commission clarifies that the study reports are to be posted, not the actual studies. Regarding deviations from the study time lines, the Commission clarifies that the Transmission Provider is to post deviations from the study time lines as projected by the Transmission Provider for completing future Interconnection Studies. For example, Section 6.3 (Interconnection Feasibility Study Procedures) calls for the Interconnection Feasibility Study to be completed within 45 Calendar Days after the Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement. If the Transmission Provider anticipates that it will not be able to complete the Interconnection Feasibility Study within 45 Calendar Days, it should post its deviation along with an explanation for the delay (*e.g.*, backlog). Finally, we adopt MidAmerican's recommendation, and Final Rule LGIP Section 3.4 requires the posting of any expected deviation from a Generating Facility's In-Service Date.

116. *Section 3.5—Coordination with Affected Systems*—Proposed LGIP Section 3.5 dealt with interconnections that may affect a Transmission System other than that of the Transmission Provider. A third party Transmission System was proposed to be defined in the NOPR LGIA as an Affected System. Section 3.5 also proposed obligations and rights of the Affected System, the

Transmission Provider, and the Interconnection Customer, including a requirement to coordinate Interconnection Studies.

Comments

117. Interconnection Customers including Duke Energy, Independent Producers, Norton Energy, and Peabody support requiring the Transmission Provider (rather than the Interconnection Customer) to coordinate and perform all necessary Interconnection Studies and Network Upgrades with an Affected System. Duke Energy agrees that the Affected System Operator should be required to cooperate with the Transmission Provider in completing necessary studies. Duke Energy also wants the Affected System Operator to enter into an agreement with the Interconnection Customer. Other commenters, predominately Transmission Providers, oppose placing these responsibilities on the Transmission Provider.[55] They contend that (1) a contract cannot bind a third party that is not a signatory to it, (2) it is unfair to impose liability for liquidated damages for an incomplete study on the Transmission Provider where the Transmission Provider has no control over the Affected System, (3) the Transmission Provider should be required to use only ''reasonable efforts'' to coordinate with an Affected System, (4) the Interconnection Customer should pay any costs of conducting Interconnection Studies on an Affected System, including all costs of delays caused by the studies, (5) the Interconnection Customer should be required to pay for the necessary upgrades on the Affected System and not be allowed to operate until such upgrades are completed, and (6) the Transmission Provider should not be responsible for actions (or inactions) of third parties either with regard to funding or construction of Network Upgrades.

Commission Conclusion

118. The Commission continues to treat interconnection and delivery as separate aspects of transmission service, and an Interconnection Customer may request Interconnection Service separately from transmission service (delivery of the Generating Facility's power output). In the majority of circumstances, interconnection alone is unlikely to affect the reliability of any neighboring Transmission System. However, in those rare instances in which the interconnection alone may cause a reliability problem on an Affected System, the Commission adopts the approach of Order No. 888 for Network Upgrades required to protect an Affected System from a reliability problem due to delivery service.[56] Under Order No. 888, the Transmission Provider is required to assist the Transmission Customer in coordinating with the Affected System on any Network Upgrades needed to protect the reliability of that system.[57] We will also allow the Transmission Provider to coordinate the timing of construction of Network Upgrades to its Transmission System with the construction required on the Affected System.[58] As provided in the OATT, the Commission's Dispute Resolution Service is available should the Interconnection Customer wish to challenge the Transmission Provider's decision to delay construction pending completion of the Affected System's upgrades.[59]

119. The Commission reiterates that under Order No. 888, economic losses from having to redispatch generation do not justify delaying the provision of the delivery component of transmission service.[60] The Commission adopts the same standard here for interconnections.

120. Thus, unless the interconnection alone will endanger the reliability of an Affected System, a Transmission Provider may not require an Interconnection Customer, as a condition of interconnection, to accept responsibility for Network Upgrades on other systems. To hold new Interconnection Customers responsible for upgrades to all interconnected systems, including not only the system to which the Generating Facility interconnects, but other, more distant systems as well would create an unreasonable obstacle to the construction of new generation.[61] We reiterate that requiring a Transmission Provider to coordinate intermediate studies and upgrades with other systems is just and reasonable.

121. Although the owner or operator of an Affected System is not bound by the provisions of the Final Rule LGIP or LGIA, the Transmission Provider must allow any Affected System to participate in the process when conducting the Interconnection Studies, and incorporate the legitimate safety and reliability needs of the Affected System. However, the Affected System is not required to participate in the interconnection of the Generating Facility, as proposed by Duke Energy. If the Affected System declines to work with the Transmission Provider, or fails to provide information in a timely manner, the Transmission Provider may proceed in the interconnection process without taking into account the information that could have been provided by the Affected System. Neither the Final Rule LGIP nor the Final Rule LGIA is intended to expose the Transmission Provider to liability as a result of delays by the Affected System.

122. In addition, we note that NERC Planning Standards require Transmission Providers to work together to minimize effects on each others' systems. When a Transmission Provider adds its own new generation to its system, this may have a reliability effect on other systems, requiring coordination among systems. Such coordination must extend to new generation of any Interconnection Customer because, as stated in this provision, a Transmission Provider must offer all generators service that is comparable to the service that it provides to its own generation or that of its Affiliates.

123. *Section 3.6—Withdrawal*—Proposed LGIP Section 3.6 provided that the Interconnection Customer would have the option to withdraw its Interconnection Request at any time with written notice to the Transmission Provider. If the Interconnection Customer fails to adhere to the requirements of the interconnection procedures, its request would be deemed withdrawn and the Transmission Provider would provide written notice of the deemed

[55] *E.g.,* AEP, Ameren, BPA, Cal ISO, Central Maine, Central Vermont PSC, Cleco, the Construction Issues Coalition, Dairyland Power, Dominion Resources, Entergy, Georgia Transmission, Imperial Irrigation, ISO New England, MidAmerican, the Midwest ISO, National Grid, Nevada Power, NYTO, PGE, PJM, Salt River Project, SoCal Edison, TANC, and TVA.

[56] *See* Section 21 of the OATT. *See also* Tampa Electric Co., 103 FERC ¶61,047 (2003), and Nevada Power, 97 FERC ¶61,227 (2001), *reh'g denied,* 99 FERC ¶61,347 (2002); *but see* American Electric Power Service Corporation, 102 FERC ¶61,336 (2003).

[57] Section 21.1 of the OATT states that: ''The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, provided any information or data required by such other Transmission System pursuant to Good Utility Practice.''

[58] Section 21.2 of the OATT states that: ''Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner.''

[59] *See* Section 21.2 of the OATT.

[60] *See* Section 13.2 of the OATT.

[61] Nevada Power, 97 FERC ¶61,227 (2001), *reh'g denied,* 99 FERC ¶61,347 at 62,294 (2002).

withdrawal along with a written explanation. In either instance, the Interconnection Customer would lose its Queue Position and pay all of the Transmission Provider's prudently incurred costs up to the withdrawal. The Transmission Provider would be required to update its OASIS queue posting and to refund the Interconnection Customer any portion of the Interconnection Customer's deposits or study costs that exceeds the costs that the Transmission Provider has incurred, including interest. In the event of a withdrawal, the Interconnection Customer would be able to request all information the Transmission Provider developed for any completed Interconnection Studies, up to the date of withdrawal of the Interconnection Request, subject to the confidentiality provisions of Section 13.1.

Comments

124. FirstEnergy and WEPCO assert that an Interconnection Customer should be given a reasonable amount of time to address purported deficiencies before a Transmission Provider deems a request withdrawn because the purported deficiency may not have been adequately communicated to the Interconnection Customer.

125. Cinergy requests that this section be modified to require that a Transmission Provider provide written notice to the Transmission Owner of any Interconnection Customer withdrawal notice it receives or, alternatively, that the Interconnection Customer provide notice to both the Transmission Provider and the Transmission Owner.

126. When an Interconnection Customer withdraws its application, NYTO supports having the Interconnection Customer pay the Transmission Provider all monies due to the Transmission Provider before it is allowed to obtain any Interconnection Study data or results. Duke Energy argues that an Interconnection Customer's responsibility for prudently incurred costs terminates either when the Transmission Provider receives the Interconnection Customer's notice of withdrawal or, in the event the Interconnection Customer is deemed to have withdrawn its application for interconnection, when the Transmission Provider provides notice of withdrawal.

127. PJM believes that the proposed language implies that if an Interconnection Customer disputes its loss of Queue Position, it would remain in the queue pending Dispute Resolution. PJM advocates instead the approach the Commission has accepted in the PJM Tariff, that is, when an Interconnection Customer is disqualified from the queue, it is eliminated from the queue unless and until a Dispute Resolution process restores its position.

Commission Conclusion

128. The Commission agrees with FirstEnergy and WEPCO that Interconnection Customers should be given an opportunity to address any deficiencies before their requests are deemed withdrawn by the Transmission Provider. Proposed LGIP Section 3.6 is revised in the Final Rule LGIP accordingly.

129. The Commission agrees with Duke Energy that an Interconnection Customer's responsibility for a Transmission Provider's prudently incurred cost terminates at the earlier of either when the Transmission Provider receives the Interconnection Customer's notice of withdrawal or when the Transmission Provider provides a notice of withdrawal after deeming an Interconnection Request to be withdrawn. The Commission also agrees with NYTO that when the Interconnection Customer withdraws its application, it must pay all monies due to the Transmission Provider before it is allowed to obtain any Interconnection Study data or results.

130. We agree with PJM that it is unreasonable for an Interconnection Customer to maintain its Queue Position pending Dispute Resolution. In most cases, Dispute Resolution and any related litigation would create delays, and it would be unfair to delay the projects of lower queued Interconnection Customers while a higher-queued Interconnection Customer's Queue Position is in dispute. The Commission clarifies this section in the Final Rule LGIP accordingly.

131. *Section 4—Queue Position*—Proposed LGIP Section 4 would establish the Interconnection Customer's Queue Position (*i.e.*, the chronological priority assigned to an Interconnection Request), which would be used to determine both the order in which studies are performed and the cost responsibility for the facilities necessary to accommodate the Interconnection Request. At the Transmission Provider's option, Interconnection System Impact Studies would be performed serially as Interconnection Requests are received or in clusters, as discussed below. Proposed LGIP Section 4 also described when a Queue Position can be transferred to another entity, and when an Interconnection Customer could modify its Interconnection Request without losing its Queue Position.

132. *Section 4.1*—General—Proposed LGIP Section 4.1 required the Transmission Provider to assign a Queue Position to the Generating Facility based on the date and time of receipt of a valid Interconnection Request. However, if the sole reason that an Interconnection Request is deemed invalid is lack of information required in the Interconnection Request, and if the Interconnection Customer provides such information in accordance with Section 3.3.3 of the proposed LGIP, the Transmission Provider would then be required to assign the Interconnection Customer a Queue Position based on the date and time that the Interconnection Request was initially filed. The Queue Position of each Interconnection Request would be used to determine the order of performing the Interconnection Studies, which would determine the cost responsibility for the facilities necessary to accommodate the Interconnection Request. This is because the facilities needed for one Interconnection Customer are affected by the facilities needed for other generators that come before it in the queue.

Comments

133. TVA observes that the level of commitment by Interconnection Customers to complete an interconnection varies. A change in the request of a higher queued Generating Facility will affect lower queued generators because it may require restudies. It states that the ''first-come, first-served'' method rewards an Interconnection Customer that simply is the first in line, even if it has not done the preparation to make a complete and legitimate Interconnection Request. According to TVA, this is costly and unfair to other Interconnection Customers. It also asserts that if an Interconnection Customer seeks to change its Point of Interconnection, it should be placed in a lower position in the queue. Ameren has similar concerns and states that it has a high withdrawal rate for Interconnection Requests. It claims that fewer restudies would be needed if a Transmission Provider could study only ''serious'' requests.

134. American Wind Energy believes that projects in the queue when the Final Rule takes effect should receive equal treatment under the new rule. It states that since summer 2000 several developers have accelerated their projects and have executed interconnection agreements. These developers should be able to have their

interconnection agreements revised to be consistent with the Final Rule LGIA.

135. PJM believes that the proposed procedures do not help eliminate projects that are not economically feasible. Accordingly, the Interconnection Customer should be required to meet milestones to show significant commitment to a project. The fixed schedule approach (which fixes a time period for completing an Interconnection Study after the receipt of an Interconnection Request) undermines integrated regional planning, since it forces planners to study each Interconnection Request independently of other Interconnection Requests that are located in close electrical proximity. PJM also notes that such projects could have related effects on the Transmission System and overall expansion alternatives.

136. PacifiCorp believes that there will be problems in the queuing and the Interconnection System Impact Study process if an Interconnection Customer is allowed to request an Interconnection Study when it does not expect to begin construction or operations for a long time. According to PacifiCorp, long lead times substantially increase the uncertainty that the project will be completed. An independent Transmission Provider should be given more flexibility in addressing these issues.

137. TECO Energy states that the Interconnection Request must provide a demonstration of Site Control for the Generating Facility at the time of the initial request before it may enter the queue. It states that it is inefficient to commit a Transmission Provider's resources to the study of a request until the project achieves a level of certainty and specificity that justifies the commitment of resources, even though the Interconnection Customer pays for the Interconnection Studies.

138. EEI, PSEG, and SoCal Edison all state that they generally support establishing a single integrated queue per RTO region.

139. EEI states that Interconnection Service and delivery service are separate and that there is no need to combine them. It believes that any combination of the two services requires a single Interconnection Feasibility Study for several generators, would likely overly complicate the queuing process, and subsequently delay study completions. It contends that the separation of interconnection and delivery services is critical to designing a queue that is appropriate for both non-Standard Market Design and Standard Market Design service.

140. Xcel observes that the ''first-come, first-served'' queue process does not take into account either the transmission planning requirements of RTOs or state integrated resource planning statutes and rules, which often require the use of a ''portfolio approach'' whereby state-regulated load-serving entities select between competing generation providers based on the total cost of generation and transmission.

141. Xcel supports a process similar to the periodic ''open season'' used for gas pipelines, in which the Transmission Provider or RTO would periodically solicit market interest in incremental transmission capacity and then develop a transmission plan that serves the various market needs at the lowest overall cost.

142. TXU wants the Final Rule to allow a Transmission Provider, RTO, or ISO to create queues that are periodically opened and closed, based on a predetermined time period. Proposed projects should be placed into a queue according to the date of the Interconnection Request.

143. American Wind Energy, NYISO, and Tenaska believe that Queue Position should not be used exclusively to determine the cost responsibility for the facilities necessary to accommodate the Interconnection Request. American Wind Energy states that the first wind project in the queue should not be required fund the Network Upgrades for what logically will be a long term large scale build-out of an entire wind resource area. NYISO also contends that the Commission's proposal is not workable in the NYISO system because its interconnection cost allocation rules are not based on Queue Position. Instead, Interconnection Facility costs are determined each year and allocated on the basis of pro-rata electrical impact among the members of a group of projects that have reached a specified point in the New York State project permitting process.

Commission Conclusion

144. The Commission understands Ameren's and PJM's concerns that uncertainty about project withdrawal creates difficulties for a Transmission Provider in planning for necessary Network Upgrades. Having an Interconnection Customer and a Transmission Provider establish agreed upon milestones at the Scoping Meeting should help to ensure that the Transmission Provider's planning process reflects only the interconnection of Generating Facilities that are making satisfactory progress toward completion. Also, a Transmission Provider facing difficulties of this sort may wish to consider conducting Interconnection Studies on a clustered basis (see discussion below). Factors other than Queue Position also must be considered in determining the cost responsibility of an Interconnection Customer, especially when a Transmission Provider conducts Interconnection Studies on a clustered basis. However, we believe that Queue Position must play a critical role in determining cost responsibility, and expect the Transmission Provider to give appropriate recognition to Queue Position when it develops its cost allocation rules.

145. We agree with TVA's comment that moving the proposed Point of Interconnection should lead to a lower Queue Position if it is a Material Modification under Final Rule LGIP Section 4.4.3. Section 4.1 is revised accordingly in the Final Rule.

146. With respect to TECO Energy's comments on the need to demonstrate Site Control in the initial application, the Commission notes that LGIP Section 3.3.1 and the definition of Site Control in the Final Rule already require early demonstration of Site Control or posting a deposit of $10,000. Section 7.2 of the Final Rule LGIP requires a demonstration of Site Control prior to executing the Interconnection System Impact Study Agreement. We conclude that these provisions adequately demonstrate Site Control.

147. There must be a single integrated queue per geographic region. We note that it was the method generally agreed upon during the Commission staff's Technical Conference on Queuing. However, we will afford an RTO or ISO the flexibility to propose queues and queuing rules designed to meet its regional needs.

148. Xcel's and TXU's comments are addressed in the Commission Conclusions discussion for Section 4.2 (Clustering), which follows.

149. *Section 4.2*—Clustering—For the purpose of the Interconnection System Impact Study, Section 4.2 of the NOPR LGIP permitted the Transmission Provider to study Interconnection Requests serially or in clusters. The Transmission Provider would be allowed to simultaneously study all Interconnection Requests received during a period not to exceed 90 Calendar Days (''the queue cluster window'') except requests for Energy Resource Interconnection Service, which would be studied serially. The Transmission Provider would be permitted to study an Interconnection Request separately if warranted by Good Utility Practice based upon the

electrical remoteness of the proposed Generating Facility.

Comments

150. Various Transmission Providers including BPA, NYTO, and PJM recommend that the queue cluster window be extended from 90 to 180 days so that the study process may be fully integrated into the Transmission Provider's planning process, and to ensure that one set of Interconnection Studies can be completed before the next round begins. PJM states that a 180-day window reasonably balances the competing objectives of completing Interconnection Studies as rapidly as possible and ensuring that the study process produces meaningful regional expansion plans that induce economically efficient decisions by generation developers. PSEG sees merit in the clustering approach, but states that it should be tied to the planning process and have specified start and end dates. PJM opposes the requirement to study requests for Energy Resource Interconnection Service serially, arguing that most of the tests applied to Energy Resource Interconnection Service and Network Resource Interconnection Service are the same.

151. The Midwest ISO seeks clarification whether a cluster refers to a group of Interconnection Requests that were submitted during a specified time period, such as 90 Calendar Days, or to a group of Generating Facilities that are located in geographic proximity to one other, or both. The Midwest ISO seeks further clarification whether each Interconnection Request is to be studied serially within the cluster in order to determine the cost of Network Upgrades for each, or all of the Interconnection Requests are to be studied simultaneously, which will determine only the total cost of Network Upgrades. It argues that if the latter is the case, the Commission will need to prescribe a way to allocate the total cost of Network Upgrades to each Interconnection Customer within the cluster.

152. American Wind Energy states that clustering is the best method to interconnect both large and small generators in a balanced regional planning process, and also facilitates the coordinated completion of a useful Interconnection System Impact Study.

Commission Conclusion

153. In the Final Rule, we are setting the queue cluster window for conducting Interconnection System Impact Studies at 180 Calendar Days. As the commenters make clear, the principal benefit of studying Interconnection Requests in clusters is that it allows the Transmission Provider to better coordinate Interconnection Requests with its overall transmission planning process, and, as a result, achieve greater efficiency in both the design of needed Network Upgrades and in the use of its planning resources. We are persuaded by the arguments of PJM and others that the proposed 90-day cluster window is too short to achieve this result, and that a 180-day window is more appropriate.

154. We are also persuaded by PJM that if the Transmission Provider elects to study Interconnection Requests in clusters, requests for both Energy Resource Interconnection Service and Network Resource Interconnection Service should be included in the clustered Interconnection Studies. Requiring the Transmission Provider to perform System Impact Studies for Energy Resource Interconnection Service requests on a serial basis would mean that many of the efficiency benefits of clustering would be lost. When a Transmission Provider conducts Interconnection Studies on a clustered basis, the Interconnection Customer may have to wait longer to obtain study results than it would if its request were studied serially. However, some of the information that an Interconnection Customer needs is provided by the Interconnection Feasibility Study, which is conducted serially and early in the study process.

155. Clustering is strongly encouraged in queue management and the Interconnection Study process for all Transmission Providers. We vigorously support the use of queue windows to manage the Interconnection Study process. In response to the Midwest ISO's comments, Final Rule IP Section 4.2 has been modified to better explain the clustering process. Queue windows with regular, fixed opening and closing dates are essential to an orderly process. Once fixed, any changes to these dates should be announced with a posting on the Transmission Provider's OASIS at least 180 days in advance of the change. Cluster windows enable the Transmission Provider to evaluate all pending Interconnection Requests periodically and systematically in light of the Transmission Systems's capabilities at the time of each clustered Interconnection System Impact Study.

156. Clustering (by queue position and electrical location) ensures that the regional expansion plan considers all uses of the Transmission System and enables expansion of the system to be accomplished in the most efficient manner reasonably achievable. However, projects that are electrically isolated can still be studied independently. Additionally, allocation of cost responsibility for system upgrades and jointly used facilities is more readily managed by studying requests in clusters. Absent the ability to cluster interconnection requests, it is difficult to distinguish the Transmission Provider's cost responsibility for baseline reliability upgrades from the responsibility of Interconnection Customers and other developers for the costs of upgrades required to accommodate their Interconnection Requests since each request would have to be studied serially. Equally important, Interconnection Studies for smaller generators can be more easily expedited. These efficiencies are best obtained using clustered queue windows, not through the sequential processing of Interconnection Requests.

157. *Section 4.3—Transferability of Queue Position*—The Commission proposed in Section 4.3 of the NOPR LGIP that an Interconnection Customer may transfer its Queue Position to another entity if such entity acquires the Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change.

Comments

158. National Grid states that the Commission should resist requests from those that propose to make Queue Position a tradable commodity to gain flexibility over the timing of their proposed projects. National Grid offers several arguments against allowing this: (1) It would create an unnecessary commodity that would encourage gaming in competitive markets, (2) it would render the interconnection queue process unmanageable because the trading of Queue Positions would make it impossible to build sets of assumptions on which to base studies, (3) it would add another layer of administrative burdens for Transmission Providers; and (4) the disputes over Queue Position that are likely to arise would divert the Transmission Provider's attention away from facilitating reasonably prompt interconnections. Instead, the Commission should adopt a subordinate application process like the one implemented in NEPOOL, which allows a project sponsor to accelerate the construction and operation of its facilities application ahead of other projects in the queue in return for the sponsor's assumption of the risks associated with building the facilities in a sequence different from the study order of the queue.

159. The CPUC believes that changes resulting from an Interconnection Customer selling its Queue Position

could harm subsequent Interconnection Customers in the queue, since it could affect the portfolio of technologies in the queue and the diversity of the Transmission System as a whole. According to the CPUC, an Interconnection Customer wishing to sell its position should be required to provide assurances that it will pay not only for any Interconnection Studies needed as a result of the change, but also for the costs to subsequent Interconnection Customers in the queue as a result of the change. The seller of the Queue Position should also be liable for any obligations that the buyer of the position is unable to fulfill in the event of a Default.

Commission Conclusion

160. While the commenters raise legitimate concerns with Queue Position trading in general, we conclude that the restrictions on transferability that are already contained in Section 4.3 address these concerns. Section 4.3 of the Final Rule LGIP permits an Interconnection Customer to transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change. These limitations on transferability greatly reduce the potential impact on lower queued Interconnection Customers. The new Interconnection Customer would also be required to show, under Section 4.4.3 of the Final Rule LGIP, that any proposed change is not a Material Modification.

161. *Section 4.4—Modifications*—Proposed LGIP Section 4.4 would have required that the Interconnection Customer submit to the Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. Either the Interconnection Customer or the Transmission Provider would be permitted to identify changes to the planned interconnection that may reduce the costs and increase the benefits (including reliability) resulting from the interconnection. If the changes are acceptable to the Transmission Provider and Interconnection Customer (such acceptance not to be unreasonably withheld), the Transmission Provider would make the necessary changes and proceed with interconnection restudies in accordance with Sections 6.4, 7.6 and 8.5 of the LGIP, as applicable. Accordingly, the Generating Facility would retain its Queue Position.

162. *Section 4.4.1*—Proposed LGIP Section 4.4.1 LGIP would allow an Interconnection Customer to make the following modifications to its Interconnection Request, provided that it makes them before returning the executed Interconnection System Impact Study Agreement to the Transmission Provider: (1) A reduction of as much as 60 percent in the megawatt output of the proposed project, (2) modification of the technical parameters associated with the Generating Facility technology or the step-up transformer impedance characteristics, (3) modification of the interconnection configuration, or (4) any other type of change except to the proposed Point of Interconnection. Any increase in the Generating Facility's megawatt output would be placed at the end of the queue.

Comments

163. Dynegy argues that item (4) is confusing, makes the other items in the list redundant, and does not belong in this section. Several commenters, including Duke Energy and WEPCO, advocate allowing an Interconnection Customer to increase the output of its Generating Facility by up to ten percent of the voltage level of the line to which it is interconnecting without affecting its Queue Position.

Commission Conclusion

164. We agree with Dynegy that item (4) does not belong in this section. The item more appropriately belongs in Section 4.4.3. Accordingly, Final Rule LGIP Section 4.4.3 includes the following sentence: ''Any change to the Point of Interconnection shall constitute a Material Modification.''

165. We reject the other commenters' proposal to allow an Interconnection Customer to increase the output of its Generating Facility by up to ten percent. The percentage by which the capacity of the proposed Generating Facility could be increased without substantially changing the size and configuration of necessary Network Upgrades needed to accommodate the change in output would depend on the size and location of the Generating Facility and the voltage level at the Point of Interconnection, among other things. This could vary significantly from case to case, and may well be less than ten percent.

166. *Section 4.4.3*—Proposed LGIP Section 4.4.3 would have required that, prior to making a modification other than one specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5, the Interconnection Customer may first ask the Transmission Provider to evaluate whether the modification is actually a Material Modification. A Material Modification would be a modification that has a material effect on the cost or timing of a lower queued Interconnection Customer. The Transmission Provider would be required to evaluate the proposed modification and inform the Interconnection Customer in writing whether the modification would considered be a Material Modification. The Interconnection Customer could then either withdraw the proposed modification or submit a new Interconnection Request for such modification.

Comments

167. SoCal Water District and Dynegy ask the Commission to clarify the definition of Material Modification to avoid disputes between the Parties regarding the Generating Facility's Queue Position. Ameren argues that a modification that is proposed as not being ''material'' may in fact be a Material Modification. FirstEnergy opposes giving the Transmission Provider the discretion to determine whether a request is a Material Modification. El Paso observes that reading proposed LGIP Sections 4.4.3 and 4.4.5 together implies that the Transmission Provider will be forced to judge whether an extension of three years or more is material and to determine if a cost effect or other project change is material. El Paso supports defining a Material Modification as: (1) A change greater than 12 months in Commercial Operation Date, (2) an increase of greater than $100,000 or 10 percent in the Transmission Provider's cost that a later queued Interconnection Customer would bear; or (3) a change greater than five miles in the location of, or any change in the voltage level at, the Point of Interconnection. Edison Mission believes that the Final Rule LGIP should clarify the effect of material improvements and modifications to existing Generating Facilities on the interconnection status and the rights of such Generating Facilities. The Bureau of Reclamation expresses concern that the NOPR does not define how or when an existing Interconnection Customer would be affected by Material Modifications. The Bureau of Reclamation is concerned because design and approval of its generator refurbishment is a federal responsibility and would be subject to the federal appropriation process.

Commission Conclusion

168. It is not necessary to revise proposed LGIP Section 4.4.3 to define precisely what constitutes a Material Modification. The impact of a modification depends in large part on the size, location, type of project and the

configuration of the Transmission Provider's Transmission System. The various Interconnection Studies will identify the modification's impact on other Interconnection Customers. This impact determines if the change is indeed a Material Modification. We leave it to the Transmission Provider to make that determination; however, it must do so on a reasonable basis.

169. *Section 4.4.4*—Proposed LGIP Section 4.4.4 in the NOPR LGIP provided that, upon receipt of an Interconnection Customer's request for modification permitted under Section 4.4, the Transmission Provider would perform any necessary additional Interconnection Studies as soon as practicable, but in no event later than 30 Calendar Days after receiving notice of the Interconnection Customer's request. Any additional Interconnection Studies resulting from such modification would be done at the Interconnection Customer's expense.

Comments

170. Exelon asserts that this section is not practical and is punitive to all lower queued Interconnection Customers. It contends that each time a modification is requested, a Transmission Provider or Transmission Owner must begin studying the modification within 30 Days and all work on the Interconnection Studies of all lower queued Interconnection Customers must be halted.

Commission Conclusion

171. We adopt Section 4.4.4 as proposed. While any modification that requires additional study can pose a challenge to the Transmission Provider's schedules and resources, the modifications that are permitted under Section 4.4 occur early enough in the study process that their effect on Interconnection Customers lower in the queue should be limited. Furthermore, since all Interconnection Requests are evaluated in the same restudy, this provision appropriately balances the Interconnection Customer's need for flexibility to change the project with the Transmission Provider's need for certainty in resource costs and schedules.

172. *Section 4.4.5*—Section 4.4.5 of the NOPR LGIP provided that an extension of less than three cumulative years in the Commercial Operation Date of the Generating Facility should not be considered a Material Modification and should be treated in the same manner as in Section 12.3 (Construction Sequencing).

Comments

173. Salt River Project seeks clarification on what to do when the original In-Service Date is at the maximum allowable ten years (under Proposed LGIP Section 3.3.1) and there is a request for a three year extension. Duke Energy supports allowing an Interconnection Customer to request an extension of all dates, including the In-Service Date, for periods of less than three cumulative years. Sempra believes that the Transmission Provider needs greater flexibility to manage and evaluate its Transmission System for delays of more than one year.

174. Westconnect RTO finds that two provisions in this Section contradict Western Electricity Coordinating Council (WECC) procedures. They are allowing the Interconnection Customer to decide to extend its Generating Facility's Commercial Operation Date for up to a total of three cumulative years and providing that such extensions are not material and should be handled through construction sequencing. Westconnect RTO asserts that regional practices concerning transmission planning and reliability should be honored.

175. SoCal PPA and El Paso believe that a three year period is an unreasonably long time to permit suspension of interconnection because it interferes with the Transmission Provider's ability to manage the queue and plan its system.

Commission Conclusion

176. With respect to Salt River Project's request, we clarify that the term contained in Final Rule LGIP Section 3.3.1 is ten years, or longer if the Transmission Provider agrees. Furthermore, such agreement shall not be unreasonably withheld. This clarification also addresses Duke Energy's and Sempra's concerns.

177. With respect to Westconnect RTO's assertion that this section contravenes WECC procedures, as stated above, we would permit modifications to the Final Rule LGIA and Final Rule LGIP where the Transmission Provider shows that there are legitimate regional differences, such as the WECC procedures, that would support such modifications. As to other arguments that three years is an unreasonably long time to permit extensions of the Commercial Operation Date, the Commission recognizes that such flexibility places a burden on the Transmission Provider's expansion planning process, but these extensions in most cases are well within the scope of other unforeseen changes that affect the planning process. The Final Rule therefore adopts Section 4.4.5 as proposed.

178. *Section 5—Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures*—Section 5 of the proposed LGIP described the procedures for assigning a Queue Position prior to the effective date of the Final Rule LGIP. It also proposed a transition process for a Transmission Provider with an Interconnection Request that is outstanding when the Final Rule takes effect.

179. *Section 5.1—Queue Position for Pending Requests*—Proposed LGIP Section 5.1 provided that any Interconnection Customer assigned a Queue Position prior to the effective date of the Final Rule LGIP would retain that Queue Position. Also, if an Interconnection Study Agreement has not been executed as of the Final Rule effective date, then that Interconnection Study and subsequent Interconnection Studies would be processed in accordance with the Final Rule. However, an executed Interconnection Study Agreement would be completed in accordance with the terms in place at the time of execution of that agreement. The proposed section also provided that if an interconnection agreement has been tendered as of the Final Rule effective date, the Transmission Provider and Interconnection Customer would finalize its terms. To the extent necessary, outstanding requests would transition to the Final Rule procedures within a reasonable period of time, not to exceed 60 Calendar Days. Reasonable extensions would be granted.

Comments

180. The Midwest ISO recommends adding a subsection to the LGIP that permits Interconnection Requests in existing queues of non-RTO Transmission Providers to be merged into the queue of the RTO or ISO based on the original request dates at the time the Transmission Provider joins the RTO.

181. Central Maine supports the grandfathering of existing interconnection agreements that are filed with and accepted by the Commission as of the effective date of the Final Rule LGIP and Final Rule LGIA.

182. Sempra argues that it is inappropriate to mandate Parties to agree to an interconnection agreement tendered but not fully negotiated prior to the issuance of the Final Rule because, otherwise, the tendering Party could tender them on the eve of the Final Rule going into effect and the

other Party would be compelled to negotiate under the Final Rule's terms and conditions. Therefore, either Party should be permitted to set aside unexecuted but tendered interconnection agreements prior to the effective date of the Final Rule.

183. MidAmerican states that the proposed provision of Section 5.1.2, which established a transition period from the old queue processes to the new Final Rule provisions that should not exceed 60 days, is practical only for projects that are in their early stages. It proposes adding the phrase ''provided that any existing interconnection agreement or Interconnection Study Agreement shall remain in full force and effect'' for projects that have an executed interconnection agreement. MidAmerican also states that the Commission should clarify that this transition period is only for those outstanding requests for which Interconnection Studies Agreements and interconnection agreements have yet to be executed prior to the Final Rule going into effect. Similarly, Central Maine seeks clarification of the meaning of pending or outstanding requests.

184. BPA states that this provision should be clarified with regard to the circumstances under which an Interconnection Customer with an existing Interconnection Request may request an extension of applicable deadlines.

Commission Conclusion

185. The purpose of Proposed LGIP Section 5.1 was to ensure that a Generating Facility that has an established Queue Position prior to the Final Rule taking effect will continue to hold its position. This is also the case mentioned by the Midwest ISO for merging new members into the RTO's queue when the Transmission Provider joins an RTO. However, on compliance, discretion will be granted to RTOs or ISOs to propose queuing rules customized to their needs, in accordance with the ''independent entity standard'' (described in part II.C.5).

186. Under proposed LGIP Section 5.1.1, the Interconnection Studies for which the Parties have an executed Interconnection Study Agreement would be completed under the Interconnection Study Agreement's terms, but any remaining studies would be completed under the Final Rule LGIP study procedures. The Commission concludes that this situation may cause confusion and unnecessary complications in the event that the Transmission Provider's existing study procedures conflict with those in the Final Rule LGIP. To provide further clarification, and to prevent situations in which an Interconnection Customer may be forced to comply with conflicting or redundant study requirements, the Commission modifies this section to give the Interconnection Customer a choice. Under the Final Rule LGIP Section 5.1.1.2, if an Interconnection Customer has signed an Interconnection Study Agreement as of the effective date of the Final Rule, the Interconnection Customer will have the option to either continue with the rest of its Interconnection Studies under the Transmission Provider's existing study process or complete those remaining studies for which it does not have a signed Interconnection Study Agreement under the Final Rule LGIP.

187 .In response to Central Maine, we clarify that existing interconnection agreements that are filed with and accepted by the Commission prior to the effective date of this Final Rule will remain in effect. Regarding Sempra's request to allow the Parties to set aside interconnection agreements tendered but not executed before the issuance of the Final Rule, the Commission concludes that this decision is best left to the discretion of the Parties. If the Parties decide to continue their negotiations, they have until the Final Rule's effective date to submit their agreement to the Commission to qualify for grandfathering. Accordingly, Final Rule LGIP Section 5.1.1.3 states that an executed or unexecuted interconnection agreement submitted for approval by the Commission before the effective date of the Final Rule will be grandfathered and will not be rejected simply for failing to conform to the Final Rule LGIA.

188. With respect to Central Maine's and MidAmerican's requests for clarification of the term ''outstanding requests'' in Section 5.1.2, we clarify that the term refers to any request for interconnection that has been submitted to a Transmission Provider but has not yet been submitted to the Commission for approval prior to the effective date of this Final Rule.

189. There is no need to adopt MidAmerican's proposed language regarding the adequacy of a 60 day transition period in Section 5.1.2 since the Final Rule allows an Interconnection Customer to extend deadlines, and the 60 day period applies only to Interconnection Requests with outstanding studies for which an Interconnection Study Agreement has not been executed. We expect the Parties to work together during the transition period to ensure that no Interconnection Request is unreasonably delayed.

190. Finally, we deny BPA's request to explain the circumstances under which an Interconnection Customer may request an extension because these circumstances are likely to differ in each case. However, we expect that a Transmission Provider will grant an extension if it can be reasonably accommodated in a nondiscriminatory manner in the transition to the Final Rule LGIP.

191. *Section 5.2—New Transmission Provider*—Proposed LGIP Section 5.2 provided that if the Transmission Provider transfers control of its Transmission System to a successor Transmission Provider while an Interconnection Request is pending, the original Transmission Provider would also transfer to the successor any deposit or payment that exceeds the cost that it has incurred. The original Transmission Provider would be required to coordinate with the successor to complete any appropriate Interconnection Study. If an Interconnection Agreement has not been executed or if an unexecuted Interconnection Agreement has been filed with the Commission, the Interconnection Customer would have the option to complete negotiations with either the initial Transmission Provider or the successor.

Comments

192. Dairyland Power observes that the initial Transmission Provider should provide interest to the successor when the balance of deposits or payments is transferred. Also, if the study costs of the new Transmission Provider exceed the amount of the deposit, it is reasonable that the Interconnection Customer make up the difference.

193. Without explanation, NYTO states that the Interconnection Customer should not have the option of negotiating with a successor Transmission Provider.

Commission Conclusion

194. With respect to Dairyland Power's comment, the Commission clarifies that any additional costs incurred by the successor in excess of the deposit amounts must be treated in accordance with the Final Rule and paid upon completion of the Interconnection Studies. The Commission does not adopt NYTO's position and instead permits the Interconnection Customer to negotiate with the successor Transmission Provider.

195. Section 6—Interconnection Feasibility Study; Section 7—Interconnection System Impact Study; Section 8—Interconnection Facilities Study; Section 10—Optional

Interconnection Study—Proposed LGIP Sections 6, 7 and 8 describe (1) the analyses that would be conducted for each of the Feasibility, System Impact, and Facilities Studies, (2) the Interconnection Customer's responsibility regarding the actual cost of each study and of any restudies that may be required; and (3) the right an Interconnection Customer would have to maintain its Queue Position and substitute a Point of Interconnection, identified by either the Transmission Provider or the Interconnection Customer, if any of these Interconnection Studies uncovers a result that the Interconnection Customer and Transmission Provider did not contemplate during the Scoping Meeting. These sections would also allow an Interconnection Customer to direct that one of the alternative Points of Interconnection specified in the related Interconnection Feasibility Study Agreement and Scoping Meeting be used if the Transmission Provider cannot agree on a substitute Point of Interconnection.

196. Section 10 proposed that the Interconnection Customer may ask the Transmission Provider to perform a reasonable number of Optional Interconnection Studies. An Optional Interconnection Study would be a sensitivity analysis based on assumptions provided by the Interconnection Customer. The scope of the Optional Interconnection Study would be to identify the Interconnection Facilities, Network Upgrades and the costs that may be required to provide transmission service or Interconnection Service.

197. The following paragraphs group together discussions of Sections 6, 7, 8, and 10 because of the relationships among the topics and provisions.

General Comments Related to the Feasibility Study, the System Impact Study, the Facilities Study and the Optional Interconnection Study

198. A number of commenters, including El Paso, FirstEnergy, the Midwest ISO, National Grid, and PJM, are concerned that the proposed Interconnection Studies will take longer to complete than the Interconnection Studies that a Transmission Provider typically performs today, and will lead to delays in the development of new generation projects. TVA believes that the study deadlines are unrealistic, particularly for Transmission Providers with medium to large interconnection queues. It opposes having to study the Energy Resource Interconnection Service and Network Resource Interconnection Service during each phase of the Interconnection Study process. Instead, TVA proposes that the Interconnection Customer should be able to designate only one Interconnection Service for study purposes or adjusting the time lines in Sections 6, 7, 8, and 10 to reflect the increased scope of work required by giving the Interconnection Customer such alternatives. Imperial Irrigation opposes the NOPR's proposed Interconnection Studies because it does not have enough resources to conduct them. NYISO urges the Commission to allow for regional differences in the Final Rule.

199. Entergy opposes giving the Interconnection Customer the ability to continually modify its selected Point of Interconnection throughout the study process. TVA opposes an Interconnection Customer maintaining its position in the queue if the Interconnection Customer changes its Point of Interconnection in any of the Interconnection Studies. PJM believes that to allow the Interconnection Customer to require restudies throughout the Interconnection Study process is inconsistent with a workable regional planning process.

200. Sempra opposes setting a dollar figure for good faith estimates of Interconnection Study costs in the standardized study agreements that are attached as appendices to the Final Rule LGIA. It supports leaving the cost estimates blank in the appendices, with the expectation that the Transmission Provider would provide the timely good faith estimate later. Sempra also supports limiting the Transmission Provider's ability to pass on cost overruns to the Interconnection Customer.

201. Central Maine notes that the proposed Interconnection Study agreements would fix the ''good faith estimated cost for performance'' of each particular study. It argues that this is inappropriate because Interconnection Study costs vary greatly from one Generating Facility to another. It believes that Transmission Providers should be able to tailor each Interconnection Study agreement to the particular Generating Facility, and to include the good faith Interconnection Study cost estimate in each such agreement. If prepayment of Interconnection Study costs is not required, the deposit should be a percentage of the estimated total Interconnection Study cost, as opposed to a fixed dollar amount.

202. Several commenters seek additional requirements in assigning cost responsibility for Interconnection Studies to the Interconnection Customer. Central Maine notes that there are no proposed payment terms governing restudies, and supports clearly stating that the Interconnection Customer should bear full cost responsibility for a restudy. BPA supports requiring the Interconnection Customer to pay the estimated cost of the Interconnection Feasability Study in advance under Sections 6.1 and 7.2. National Grid's position is that the Interconnection Customer should prepay the costs of all Interconnection Studies because the Transmission Provider is exposed to the risk of nonpayment. Central Vermont PSC believes that the Interconnection Customer should bear study costs involving an Affected System.

203. Several entities seek clarification on the proper scope of, and standards for, the Interconnection Studies. Cal ISO believes that a study should encompass conditions that include off-peak scenarios and contingency conditions. Entergy and Westconnect RTO argue that the NOPR LGIP does not mention types of Interconnection Studies other than load flow, short circuit, and stability studies. They suggest that the scope of the Interconnection Studies not be limited to these named analyses, but be expanded to include additional Interconnection Studies conducted in accordance with Good Utility Practice. PSNM supports expanding the scope of Interconnection Studies to encompass any analyses dictated by Good Utility Practice and allow for additional time on specialized Interconnection Studies, if needed. PacifiCorp supports permitting the Transmission Provider to require additional Interconnection Studies recommended or required by a regional reliability council, including remedial action margin studies. Georgia Transmission believes that the Transmission Provider's obligation under Sections 6.2 and 6.3 is inconsistent with the limited scope of the Interconnection Feasibility Study, which is defined to consist only of a power flow study and a short circuit analysis.

204. Southern asks whether, if one Interconnection Request is required to be restudied by a date certain, all other lower queued requests would have to be restudied by that same date. Southern believes that this would be unworkable and unrealistic.

205. NYTO seeks details on specific study procedures for each of the Interconnection Studies.

Comments Related to Interconnection Feasibility Studies

206. SoCal Water District argues that an Interconnection Customer should

lose its position in the queue when the Interconnection Feasability Study uncovers a result that was not contemplated during the Scoping Meeting, instead of being allowed to designate a different site for the Point of Interconnection, as proposed. It says that this will encourage the Interconnection Customer to make the right choice at the beginning. It also comments that the Interconnection Customer should not be assigned a Queue Position until after the completion of the Interconnection Feasability Study.

207. NSTAR believes that Interconnection Feasibility and Interconnection Facilities Studies should be at the option of the Interconnection Customer.

208. The Midwest ISO points out that it is not always possible to determine accurately when an Interconnection Customer in a high Queue Position will actually come on line and that this could affect the accuracy of the Interconnection Feasability Study requested by a lower queued Interconnection Customer.

209. Sempra supports allowing a Transmission Provider or Transmission Owner to consider in its Interconnection Studies the In-Service Dates of all proposed generation projects, even those lower in the queue. This is so that the studies produce sound results for reliability purposes and consider all projects that will come on line at approximately the same time.

Comments Related to Interconnection System Impact Studies

210. FirstEnergy opposes as unreasonably short the proposed three day period of time during which a Transmission Provider must give an Interconnection Customer a non-binding good faith estimate of the cost and time frame for completing an Interconnection System Impact Study.

Comments Related to Optional Interconnection Studies

211. Proposed LGIP Section 10.1 would allow the Interconnection Customer to ask the Transmission Provider to perform a reasonable number of Optional Interconnection Studies on or after the date the Interconnection Customer receives the results of the Interconnection System Impact Study associated with its Interconnection Request. A Transmission Provider would have five days from the date it receives a request for an Optional Interconnection Study to give the Interconnection Customer an Optional Interconnection Study Agreement. Commenters raise concerns with the requirement to perform Optional Interconnection Studies, cost responsibilities for such studies, and the proposed deadlines.

212. Southern opposes allowing an Interconnection Customer to require that a Transmission Provider perform Optional Interconnection Studies. Southern believes that Optional Interconnection Studies will delay the process by tying up Transmission Provider resources that could be dedicated to performing the required studies. BPA contends that allowing the Interconnection Customer to require an unspecified number of Optional Interconnection Studies, while requiring that the standard Interconnection Studies be performed within the standard deadlines, places an unreasonable burden on the Transmission Provider.

213. Nevada Power opposes having to conduct Optional Interconnection Studies on the grounds that allowing changes to the original Interconnection Request violates the queue rights of other Interconnection Customers by giving additional study time and priority to the Optional Interconnection Study request. Dominion Resources makes a similar point.

214. SoCal Edison believes that the Final Rule should provide for Optional Interconnection Studies (1) that are performed outside the NOPR LGIP time line, (2) if it is understood by the Interconnection Customer who elects to implement a study that implements Material Changes, that it could impact the Generating Facility's Queue Position; and (3) may not exceed for each requester a maximum of two Optional Interconnection Studies. NYISO urges the Commission to delete Section 10.1 to reduce the number of studies that the Transmission Provider must perform. The Midwest ISO believes that the Interconnection Feasibility Study may be elected and can serve as the Optional Interconnection Study described in Section 10.

215. On the issue of cost responsibility, Central Vermont PSC supports having the Interconnection Customer compensate the Transmission Provider for the costs of an Optional Interconnection Study, including all charges incurred by an Affected System.

216. With respect to the deadlines associated with Optional Interconnection Studies, FirstEnergy believes that the five day turnaround period for the Transmission Provider to provide an Optional Interconnection Study Agreement, as called for in Section 10.1, is too short and that a ten day period would be better. Cal ISO also supports a ten day turnaround time.

Commission Conclusion—General Comments

217. The proposed time frames for completing Interconnection Studies are reasonable. For each of the studies, the NOPR LGIP allows for the possibility that the Transmission Provider will not be able to complete the study within the allotted time. In these cases, the NOPR LGIP provides that the Interconnection Customer and the Transmission Provider will come to an acceptable accommodation. As to Imperial Irrigation's concern that it lacks sufficient resources to conduct the Interconnection Studies, Section 13.4 gives the Parties the option of using a contractor to complete the required studies at the Interconnection Customer's expense and Section 4.2 allows the Transmission Provider to cluster Interconnection Studies, thereby saving time and money.

218. We believe that the proposed Interconnection Study deposit amounts are high enough to ensure that an Interconnection Customer is serious about its Interconnection Request. In the absence of standardized Interconnection Study cost estimates, a Transmission Provider could set the Interconnection Study costs at such high levels so as to discourage entry by competing generators.

219. Central Maine does not identify the benefits of making Interconnection Study deposits a percentage of the estimated Interconnection Study costs. Because the proposed dollar amounts are reasonable and are the result of the consensus process, the Commission adopts them for the Final Rule LGIP.

220. We find that the proposed provisions regarding the payment of study costs by the Interconnection Customer are adequate. The NOPR LGIP makes clear that the Interconnection Customer is responsible for the actual costs of all Interconnection Studies. We reject the proposal that the Interconnection Customer fully prepay the costs of Interconnection Studies because the advance payment would be based on Transmission Provider estimates rather than actual costs. The Commission recognizes that the costs of performing Interconnection Studies may vary by Interconnection Customer because each interconnection is unique. The unique features of each interconnection should be identified either in the Scoping Meeting or early in the Interconnection Study process so that the Transmission Provider can offer the Interconnection Customer a reasonable estimate of what the actual

study costs will be. However, we will require the Transmission Provider to provide a detailed and itemized accounting of the Interconnection Study costs in the relevant invoices. If the Interconnection Customer disputes the study cost, it may pursue dispute resolution procedures as described in Section 13.5 of the Final Rule LGIP.

221. With regard to commenters' various concerns about the proper scope of, and standards for, the Interconnection Studies, the Commission emphasizes that the Final Rule LGIP should not be interpreted as preventing the Transmission Provider from studying Interconnection Requests in accordance with Good Utility Practice and regional reliability requirements. The Transmission Provider may conduct necessary Interconnection Studies using any standards that are generally accepted within the region and consistently applied to all generation projects, including those of the Transmission Provider. If these standards differ from those specified in the LGIP, the Transmission Provider must include them in its compliance filing and may implement them only upon approval of the Commission. For this reason, we decline to specify detailed study procedures for each Interconnection Study beyond what is specified in the Final Rule LGIP.

Commission Conclusion—Interconnection Feasibility Studies

222. With regard to the concern that allowing changes to original Interconnection Requests would be unworkable and would violate the rights of lower queued Interconnection Customers due to the need to conduct numerous restudies, the Final Rule allows the Transmission Provider to take additional time to complete the necessary work. In addition, although lower queued Interconnection Customers may be harmed when their Interconnection Requests must be restudied due to actions of an Interconnection Customer higher in the queue, they also benefit from the flexibility to request that the Transmission Provider study a substitute Point of Interconnection. In this respect, the Commission finds that the NOPR LGIP strikes an appropriate balance and, accordingly, adopts it in the Final Rule.

223. Regarding Sempra's question about which projects within the queue should be considered when performing Interconnection Studies, the Commission requires the Transmission Provider to consider in its Interconnection Studies all generators with both higher and lower queued Interconnection Requests that could affect the Network Upgrades associated with integrating these generators with the Transmission System, as specified in the Final Rule LGIP.

Commission Conclusion—Interconnection System Impact Studies

224. In response to FirstEnergy's comment that there is insufficient time to provide cost and time estimates for completing an Interconnection System Impact Study, we find that three Business Days is reasonable. We note that prior to the Interconnection System Impact Study, the Transmission Provider will have conducted the Interconnection Feasibility Study and the Parties will have met to discuss the study results. Accordingly, through this ongoing process, the Transmission Provider will have had ample time to anticipate and prepare such estimates.

Commission Conclusion—Optional Interconnection Studies

225. The Commission finds that commenters' concerns about allowing an Interconnection Customer to request Optional Interconnection Studies are misplaced. Such studies are for informational purposes only and are to be completed within an agreed upon time period using Reasonable Efforts. If Optional Interconnection Studies place too great a burden on the resources of the Transmission Provider, the Final Rule permits the use of a contractor at the Interconnection Customer's expense. The Commission is neither eliminating these provisions nor, as SoCal Edison proposes, limiting the number of Optional Interconnection Studies an Interconnection Customer may request. These studies may provide information needed by the Interconnection Customer. Since the Interconnection Customer pays for the Optional Interconnection Study and a contractor may be used for this purposes, the impact on a Transmission Provider is minimal.

226. Section 9—Engineering & Procurement (''E&P'') Agreement (In the NOPR: Agreements)—Proposed LGIP Section 9 provided a mechanism for the Transmission Provider and the Interconnection Customer to enter into an Engineering & Procurement Agreement prior to executing the LGIA. An Interconnection Customer may ask that the Transmission Provider begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. The Transmission Provider is not obligated to offer an agreement if the Interconnection Customer is in Dispute Resolution as a result of an allegation that the Interconnection Customer has failed to meet any milestones or comply with any other sections of the LGIP. This section also specifies the cost and other obligations of the Interconnection Customer.

Comments

227. Calpine and Duke Energy propose that Section 9.1 be expanded to cover situations where the construction of certain Network Upgrades takes place prior to the execution of the LGIA. Duke Energy states that the Transmission Provider should be prohibited from refusing to enter into an interim Engineering & Procurement Agreement unless the Interconnection Customer's failure to meet milestones directly affects the Transmission Provider's ability to meet its obligation under the Engineering & Procurement Agreement. FirstEnergy states that it is inappropriate to enter into an Engineering & Procurement Agreement prior to the execution of an LGIA, or the filing of an unexecuted LGIA with the Commission.

Commission Conclusion

228. We disagree with Calpine and Duke Energy regarding construction. The Final Rule does not require the construction of Network Upgrades prior to the execution of the LGIA; nor do we see why the Transmission Provider should be placed at risk by committing to the construction of such Network Upgrades prior to the execution of an LGIA. Regarding FirstEnergy's comments, we conclude that it is reasonable to allow the Parties to enter into an Engineering & Procurement Agreement for long lead-time items necessary to accommodate the interconnection as long as the Interconnection Customer bears the cost risk. Likewise, in response to Duke Energy and consistent with the language in the NOPR, we conclude that it is reasonable to require a Transmission Provider to offer an Engineering & Procurement Agreement only if the Interconnection Customer has met its obligations under the Final Rule LGIP. Accordingly, we adopt Section 9 in the Final Rule as proposed.

229. *Section 11—Standard Large Generator Interconnection Agreement* (In the NOPR: Interconnection Agreement)—Proposed LGIP Section 11 includes procedures for tendering, negotiating, executing, and filing an interconnection agreement.

230. *Section 11.1—Tender*—Proposed LGIP Section 11.1 provided that the Transmission Provider simultaneously submit to the Interconnection Customer

the draft Interconnection Facilities Study Report and a draft LGIA, to the extent practicable, in the form of the *pro forma* LGIA. Within 30 Calendar Days after the issuance of the draft Interconnection Facilities Study report and a draft pro forma LGIA, the Transmission Provider shall submit the completed draft of the LGIA.

Comments

231. Central Maine believes that 30 days is an unreasonable time frame in which to prepare such technically detailed documents as the appendices to the interconnection agreement, and it should therefore be increased to 60 days.

Commission Conclusion

232. Central Maine has not convinced us of the difficulty of preparing the interconnection agreement appendices in 30 Calendar Days or shown a need to extend the time in which to prepare them to 60 Calendar Days. Accordingly, the Commission retains the proposed 30 Calendar Day requirement for the Transmission Provider to tender the completed interconnection agreement.

233. *Section 11.2—Negotiation*—Proposed LGIP Section 11.2 provided that the Transmission Provider and the Interconnection Customer be required to negotiate the terms contained in the appendices to the interconnection agreement for up to 60 Calendar Days after tender of the final Interconnection Facilities Report. If the Interconnection Customer determines that negotiations are at an impasse, it could either request termination of the negotiations and request submission of the unexecuted interconnection agreement to the Commission, or initiate Dispute Resolution procedures. If the Interconnection Customer requests termination of the negotiations, but within 60 Calendar Days thereafter fails to request either the filing of the unexecuted LGIA or initiate Dispute Resolution, it would be deemed to have withdrawn its Interconnection Request.

Comments

234. FirstEnergy contends that the provisions of this section unduly restrict the ability of the Parties to negotiate a resolution. It argues that proposed LGIP Section 11.2 provides no recourse for the Transmission Provider in circumstances where the negotiations are at an impasse and the Interconnection Customer neither terminates the Interconnection Request nor continues to negotiate in good-faith. FirstEnergy recommends that Section 11.2 of the NOPR IA be revised to include the following language: ''Unless otherwise agreed to by the Parties, if the Interconnection Customer has not executed the Interconnection Agreement, requested the filing of an unexecuted [interconnection agreement], or initiated Dispute Resolution procedures within 60 days of the tender of the completed draft of the LGIA Appendices, the Interconnection Customer will have been deemed to have withdrawn its Interconnection Request.

Commission Conclusion

235. The Commission agrees with FirstEnergy that there could be circumstances where the Parties could be unduly restricted in their negotiations and therefore adopts the language proposed by FirstEnergy in the Final Rule LGIP.

236. *Section 11.3—Execution and Filing*—Proposed LGIP Section 11.3 would have the Interconnection Customer demonstrate Site Control to the Transmission Provider, and provides specific milestones as evidence of Site Control. It would also provide that the Transmission Provider file the LGIA as soon as practicable, but not later than ten Business Days after receiving either the two executed originals of the LGIA, or the request by the Interconnection Customer to file an unexecuted LGIA.

Comments

237. Mirant does not oppose requiring an Interconnection Customer to maintain Site Control and provide reasonable evidence that the Interconnection Customer has met some of the specified milestones. However, it asks the Commission to clarify what constitutes ''reasonable evidence'' of Site Control. Other commenters, including PJM and PJMTO, assert that the Commission should give the Interconnection Customer more milestones to meet.

238. PJM opposes letting an Interconnection Customer deposit $250,000 instead of demonstrating meaningful progress and believes that doing so can lead to clogging and gaming of the queue.

239. Central Maine requests that the Commission extend from ten to 30 days the obligation to file, as additional time is needed to prepare the filing. It claims that neither Party would be adversely affected by such an extension.

Commission Conclusion

240. We shall modify Proposed LGIP Section 11.3 to better reflect the Commission's unexecuted agreement procedure in the OATT.[62] Accordingly, the unexecuted agreement should contain terms and conditions deemed appropriate by the Transmission Provider for the Interconnection Request. But the LGIA approach differs from the OATT approach, since the Parties' obligations may be significantly different in the LGIA context. The OATT unexecuted agreement provision requires the Transmission Provider to commence providing service as long as the Transmission Customer agrees to compensate the Transmission Provider at the rate the Commission ultimately determined to be just and reasonable. Since the LGIA involves obligations different from those in the OATT, including facilities construction that may be undertaken by either Party, it is appropriate to give both Parties more flexibility to determine whether to proceed under the non-disputed terms of their unexecuted agreement. Once the unexecuted agreement is filed, if the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed upon terms of the unexecuted agreement, they may proceed pending Commission action.

241. In response to Mirant's request to clarify what constitutes ''reasonable evidence'' of Site Control, the Commission notes that the Final Rule definition of the term specifically lists the types of documentation that reasonably demonstrates evidence of Site Control.

242. PJM proposes to eliminate the $250,000 additional deposit if the Interconnection Customer is unable to provide evidence of Site Control. It would also have the Generating Facility lose its place in the queue if the Interconnection Customer misses a milestone. We find that the deposit is a sufficient showing that the Interconnection Customer is serious about the project and will continue to work to meet the requirements of Site Control and other milestones. Finally, this section provides sufficient milestones and penalties to reasonably ensure that the Interconnection Customer is intent on completing the project.

243. Central Maine has not provided any support for its request to extend the time from ten to 30 days to meet the filing obligations. Accordingly, the Final Rule retains the ten Business Days requirement.

244. *Section 12—Construction of Transmission Provider's Interconnection Facilities and Network Upgrades*—Proposed LGIP Section 12 required the

[62] *See* Section 15.3 of the OATT.

Transmission Provider and the Interconnection Customer to agree to a schedule for the construction of Interconnection Facilities and Network Upgrades that are needed to accommodate the Interconnection Request. It also provided for an Interconnection Customer to request the acceleration of Network Upgrades that are needed for a higher-queued Interconnection Customer that would not have otherwise been completed in time to support the lower queued Interconnection Customer's In-Service Date as long as it commits to pay any costs associated with expediting the project, including the cost of any Network Upgrades assigned to the higher-queued Interconnection Customer.

245. *Section 12.1—Schedule*—Proposed LGIP Section 12.1 provided that the Transmission Provider and Interconnection Customer negotiate in good faith to develop a schedule for the construction of the Transmission Provider's Interconnection Facilities and Network Upgrades.

Comments

246. Duke Energy and FirstEnergy contend that this section should be deleted, since it is already covered in Article 5 of the NOPR LGIA.

Commission Conclusion

247. The Commission finds no reason to delete Section 12.1. It merely states that the Parties must negotiate a construction schedule in good faith. The fact that the negotiated construction schedule is in Appendix B (Milestones) of the LGIA does not require us to delete Section 12.1 from the Final Rule LGIP.

248. *Section 12.2—Permits*—Proposed LGIP Section 12.2 provided that the Parties specify in the LGIA each Party's responsibility for obtaining permits, licenses, and authorizations necessary to construct the Interconnection Facilities and Network Upgrades needed to accommodate the proposed interconnection in conformance with all Applicable Laws and Regulations.

Comments

249. Duke Energy states that the first sentence of Section 12.2 should be stricken because it duplicates NOPR LGIA Article 14.1. FirstEnergy contends that the entire section should be deleted because the topic is more properly addressed in the LGIA. Cinergy asks the Commission to clarify that nothing in the section requires the Transmission Provider to exercise its power of eminent domain. Central Maine argues that the phrase ''nothing in this Section 12.2 shall be construed to waive any rights under Applicable Laws and Regulations'' should be either deleted or applied to the entire Final Rule LGIP, because its inclusion in just one provision creates confusion.

Commission Conclusion

250. The Commission disagrees with Duke Energy. Proposed LGIP Section 12.2 merely requires the Parties to specify in the LGIA each Party's responsibility for obtaining permits, licenses, and authorizations necessary to construct the Interconnection Facilities and Network Upgrades. Article 14.1 of the NOPR LGIA, on the other hand, states that each Party's obligations under the LGIA are conditioned upon regulatory approval from relevant Governmental Authorities.

251. In response to Cinergy's assertion, while the Commission does not require that the Transmission Provider exercise its right of eminent domain in all instances, we do not prohibit it from doing so. Rather, in the Final Rule, consistent with the Commission's discussion of NOPR LGIA Article 5.11 (now Final Rule LGIA Article 5.13), Lands of Other Property Owners, we require that a Transmission Provider or Transmission Owner use efforts similar to those it typically undertakes on its own behalf (or on behalf of an Affiliate), which may include use of eminent domain rights, to secure permits for the Interconnection Customer, unless restricted from doing so by state law.

252. We agree with Central Maine's arguments and are therefore not incorporating into this section the proposed text dealing with the waiving of rights under Applicable Laws and Regulations.

253. Finally, the Commission agrees with FirstEnergy that the issues contained in this section are more appropriately discussed in the Final Rule LGIA. Accordingly, proposed LGIP Section 12.2 is being deleted from the Final Rule LGIP and is being incorporated into the Final Rule LGIA as Article 5.14.

254. *Section 12.3—Construction Sequencing* (In the Final Rule LGIP: Section 12.2)—Proposed LGIP Section 12.3 stated that an Interconnection Customer may ask the Transmission Provider to advance construction of Network Upgrades supporting other generators that were assumed to be completed in time to support the Interconnection Customer's Generating Facility's In-Service Date. The Transmission Provider would have to use Reasonable Efforts to advance the construction of such Network Upgrades, provided that the Interconnection Customer commits to pay the Transmission Provider the cost of the Network Upgrades and any associated expediting costs. The Transmission Provider must refund to the Interconnection Customer the costs of any expedited Network Upgrades after the Transmission Provider receives payment from the entity for which the Network Upgrades were to be originally constructed. Until such costs are refunded, the Transmission Provider must provide the Interconnection Customer with transmission credits for the costs of the expedited Network Upgrades.

Comments

255. Duke Energy seeks clarification that (1) the Interconnection Customer earlier in the queue is obligated to pay the Transmission Provider only the amount not refunded, through credits, to the Interconnection Customer requesting the acceleration (and thus is eligible for transmission credits only for that amount), (2) the Interconnection Customer requesting the accelerated construction is reimbursed for Network Upgrade costs only up to the amount of the transmission credits not received, (3) the Transmission Provider is not required to advance funds for construction or to pay total credits in excess of the cost of the Network Upgrades; and (4) the higher-queued Interconnection Customer must pay for the expedited Network Upgrades on the date that it would have been required to pay were it not for the request for acceleration. Duke Energy also notes that there may be circumstances when acceleration requires greater expenditures than would be required to meet a reasonable construction schedule. It therefore recommends that if a Transmission Provider believes that the Commission would not allow such expenditures to be included in the revenue requirement under traditional ratemaking principles, the Transmission Provider should have the opportunity to challenge the provision of credits for these costs.

Commission Conclusion

256. The Commission affirms that an Interconnection Customer higher in the queue is obligated to pay the Transmission Provider for only that portion of the costs of the expedited Network Upgrades not already paid to the Interconnection Customer that requested expedition through transmission credits. The Transmission Provider can then forward this amount to the expediting Interconnection Customer as a lump sum payment for

the balance of costs that the higher-queued Interconnection Customer is owed. At this point, the payment of credits will cease and the payment of credits to the higher-queued Interconnection Customer can begin. The latter credits will continue until the higher-queued Interconnection Customer has been reimbursed for the portion of the Network Upgrade costs that it has paid. The Transmission Provider is also not required to advance funds for construction or to pay total credits in excess of the cost of the Network Upgrades, including any interest that may be due. Finally, the higher-queued Interconnection Customer is responsible for paying the costs of the advanced Network Upgrade on the date that it would have been required to pay had there been no request for accelerated construction.

257. In response to Duke Energy's final concern, the Commission recognizes that there may be circumstances under which the Transmission Provider, in attempting to accommodate the Interconnection Customer's request to accelerate the project, may have to incur costs that would exceed what would normally be required to meet a reasonable construction schedule. However, we will consider such costs to have been prudently incurred unless it is demonstrated in a rate proceeding that the Transmission Provider could have met the Interconnection Customer's requested In-Service Date at a lower cost through the construction of alternative Network Upgrades, or by other means. Consequently, the Transmission Provider should have no reason to challenge the provision of credits for any costs that it prudently incurs.

258. Consistent with the above discussion, the Final Rule clarifies Section 12.3 and removes certain text that is largely redundant.

259. This section is designated Section 12.2 in the Final Rule LGIP.

260. *Section 13—Miscellaneous*—Proposed LGIP Section 13 included a variety of provisions, described below.

261. *Section 13.1—Confidentiality*—Proposed LGIP Section 13.1 would have required that the Transmission Provider afford confidential treatment to all information it receives from the Interconnection Customer to process its request for Interconnection Service except for information that is in the Interconnection Request and information that is or becomes generally available to the public. The Transmission Provider would be permitted to use this information only for the Interconnection Study and to share it only with those who need it for Interconnection Studies and actions to interconnect the Generating Facility. The Transmission Provider would not be permitted to share such information with the merchant generation or marketing functions of the Transmission Provider or its Affiliates' merchant functions or as otherwise prohibited by Order No. 889.

262. The Transmission Provider would be liable to the Interconnection Customer for any Breach of confidentiality caused by its agent or contractor. If requested by the Interconnection Customer, the Transmission Provider would be required to destroy or return to the Interconnection Customer information no longer needed. If the Transmission Provider is required to disclose the information to any regulatory body, it would be obligated to request confidential treatment of the information. The Transmission Provider must provide the Interconnection Customer with prompt written notice if it receives a request for the Confidential Information to allow the Interconnection Customer an opportunity to contest the disclosure. The confidentiality provisions would not require the Transmission Provider or Interconnection Customer to disclose information in violation of any confidentiality obligations to third parties.

Comments

263. Several commenters, including Central Maine and MidAmerican, argue that these confidentiality protections should be extended to the Transmission Provider as well. Central Maine seeks a clear policy about what information may be disclosed, what information must be disclosed, the manner of disclosure, and what information must remain confidential as part of the interconnection process.

264. Lakeland seeks reconciliation of the differences between the confidentiality provisions of the NOPR LGIA and the NOPR LGIP. Specifically, the Final Rule LGIP should accommodate compliance with state Open Records laws, including Florida's, as in the NOPR LGIA.

265. Entergy opposes requiring a Transmission Provider to provide Confidential Information, or disclose anything not public, to an Interconnection Customer. If that disclosure is required by the Final Rule, the confidentiality requirements should be reciprocal and a Party should be required to designate which materials warrant confidential treatment.

266. The Midwest ISO agrees with the proposal that Confidential Information only be shared among employees of the Transmission Provider (including Transmission Owners of Affected Systems) and third parties that need the information to perform or review Interconnection Studies. Moreover, in accordance with Order No. 889, the information should not be shared with individuals responsible for merchant or marketing functions. The Midwest ISO also requests that the Commission clarify what type of planning information should be kept confidential for security reasons and what information should be made available, perhaps under a non-disclosure agreement executed by the Parties. Proposed LGIP Section 13.1 would have required that the Transmission Provider keep confidential all information provided by the Interconnection Customer related to Interconnection Service that is not provided in the Interconnection Request; the Midwest ISO and NERC state that some information in the Interconnection Request may be commercially sensitive, such as unit-specific data, and should be kept confidential.

267. GE Power notes that developers generally prefer to look at alternative project scenarios before going ''on the record'' with their plans. GE Power requests that the Commission address the balance between commercial confidentiality or security-based secrecy and the need to make the data available so that studies and business forecasting can be completed.

268. NERC comments that the information provided by Interconnection Customers that may be considered confidential under Section 13.1 is needed to protect reliability because it generally is shared not only with directly affected neighboring systems, but also with regional and NERC study groups for modeling inter-regional and interconnection reliability effects. NERC states that this data is generally provided in a manner that masks ownership and other commercial terms and that NERC has standards of conduct for Reliability Coordination and a data confidentiality agreement. It requests that mechanisms remain in place to ensure the availability and confidentiality of such data so that Interconnection Customers will provide data needed for reliability assessment. NERC proposes that an Interconnection Customer identify specific information to be protected as confidential and that the Transmission Provider share this information only with parties to confidentiality agreements.

Commission Conclusion

269. In response to Central Maine's and several others' requests that the confidentiality provision in the NOPR LGIP be made more specific, the Commission is incorporating into Section 13.1 certain aspects of the confidentiality provisions in Article 22 of the LGIA. These include a definition of Confidential Information, procedures for the release of Confidential Information, and guidance regarding how Confidential Information should be treated when it is requested by the Commission as part of an investigation. Both Parties are eligible to use the protection afforded by the revised section as long as the information is identified as Confidential Information in accordance with the section. This revision should satisfy commenters that sought greater specificity regarding procedures for maintaining and disclosing information in the confidentiality provisions in the LGIP. It also eliminates any significant conflicts between the LGIP and LGIA confidentiality provisions. The Final Rule LGIP Section 13.1 differs from Final Rule LGIA Article 22 only with respect to the provisions in Article 22 that address the fact that the confidentiality obligations arise under a signed Interconnection Agreement.

270. This revision eliminates from the Section 13.1 the exception for information that appears in the Interconnection Request. Under the revised provision, it is the Interconnection Customer's responsibility to designate the information submitted in its Interconnection Request that should remain confidential.

271. Lakeland requests that the Commission adopt provisions that accommodate compliance with state open records laws. Public utilities also may be subject to information restrictions arising from national security concerns. As noted above, the Commission expects all public utilities to meet basic standards for system infrastructure and operational security. In addition, if state laws indeed conflict with the confidentiality and information sharing addressed in this provision, the Commission expects that public utilities will make conforming changes to these provisions in their compliance filings and explain the statutory basis for such changes.

272. The Commission agrees with the Midwest ISO and NERC that the Final Rule must allow information to be shared with Transmission Provider representatives of NERC and other regional planning groups, since to deny them this information may undermine Transmission System reliability and modeling efforts. Section 13.1 of the Final Rule allows the Parties to share Confidential Information with an independent transmission administrator or reliability organization as long as the disclosing party agrees to promptly notify the other Party in writing and to seek to protect the Confidential Information from public disclosure by separate confidentiality agreement or other reasonable measures. We do not, as the Midwest ISO requests, specify the planning information that may be made available, as it is likely that the data will vary by region.

273. Finally, GE Power proposes that this rulemaking address what information a Transmission Provider should make available to a would-be Interconnection Customer before the submission of an Interconnection Request. We decline to do so. This Final Rule addresses interconnection, not the general availability of information to all those who have not yet submitted an Interconnection Request.

274. *Section 13.3—Obligation for Study Costs*—Proposed LGIP Section 13.3 would have required the Interconnection Customer to pay the actual costs of the Interconnection Studies. If any deposit exceeds the actual cost of the study, that amount would be refunded to the Interconnection Customer or offset against the cost of any future Interconnection Studies associated with the Interconnection Request. Proposed LGIP Section 13.3 also stated that the Transmission Provider would not be obligated to perform or continue to perform any Interconnection Studies unless the Interconnection Customer has paid all undisputed amounts under this section.

Comments

275. PJM argues that the absence of significant milestones in Section 13.3 amplifies the opportunities for an Interconnection Customer to dispute its bill and string its project along at little cost. Any refusal to pay an invoiced study cost should be a Default that triggers withdrawal of the Interconnection Request.

276. The Midwest ISO believes that the Transmission Provider should be permitted to collect interest on any unpaid amounts not in dispute, and Duke Energy believes that deposits in excess of the actual study cost should be entitled to earn interest from the day a deposit is credited to an account.

277. Sempra would require the Interconnection Customer to pay for simple and inexpensive Interconnection Studies up front, and to pay for expensive and complicated studies through periodic payments.

Commission Conclusion

278. The Commission declines to adopt any of the proposed changes to Section 13.3 in the Final Rule. While an Interconnection Customer could delay the interconnection process merely by disputing its bill, the Commission is not convinced that a significant number of Interconnection Customers will to act in this manner, since most Interconnection Customers presumably will want to have their projects on line as soon as possible. Furthermore, requiring the Interconnection Customer to pay all invoiced amounts, no matter how unreasonable, or lose its Queue Position would invite abuse on the part of the Transmission Provider.

279. In response to the Midwest ISO and Duke Energy, the payment of interest on study deposits and unpaid study costs tend to offset one another over time. Moreover, the Commission is not persuaded that the interest costs would be large enough to warrant the additional administrative expense that the Transmission Provider would incur in tracking the amounts due. Also, the requirement to pay a deposit and then additional amounts as they come due will generally achieve the result that Sempra seeks.

280. Finally, to ensure that the Interconnection Customer is adequately informed regarding the actual costs of Interconnection Studies, we revise Section 13.3 to require the Transmission Provider to provide a detailed and itemized accounting of the Interconnection Study costs in the relevant invoices.

281. *Section 13.4—Third Parties Conducting Studies*—Proposed LGIP Section 13.4 provided that the Interconnection Customer be able to require the Transmission Provider, within 30 days of its notification, to use a consultant to complete the Interconnection Study at issue if (1) the Parties cannot agree to the timing of the completion of the Interconnection Study, or (2) the Interconnection Customer receives notice from the Transmission Provider that the Transmission Provider will not complete an Interconnection Study within the applicable time frame, or (3) the Interconnection Customer receives from the Transmission Provider neither the Interconnection Study nor a notice about not completing the Interconnection Study. In such situations, the Interconnection Study would be conducted at the Interconnection Customer's expense and

in the case of (3), the Interconnection Customer could submit a claim to Dispute Resolution to recover the costs of the third party study. The consultant would be required to follow the LGIP protocols and use the information it receives to do the Interconnection Study for the sole purpose of completing the study. The Transmission Provider would be required to cooperate with the consultant to complete and issue the Interconnection Study in the shortest reasonable time.

Comments

282. Some commenters, including Duke Energy, EPSA, NYISO, and Sunflower Electric, endorse the NOPR proposal to allow an Interconnection Customer to request a consultant to undertake or complete an Interconnection Study, while others advocate the Transmission Provider being allowed to initiate use of a consultant to accelerate completion of Interconnection Studies, as well. Sunflower Electric sees use of a consultant as a short-term means to alleviate a Transmission Provider's backlog. Central Maine seeks clarification of the process for selecting the consultant. It argues that a 30 day deadline for a Transmission Provider to issue an RFP and select a consultant is not realistic.

283. BPA, MidAmerican, and PJM question whether use of a consultant will speed up the study process, whether it will significantly reduce a Transmission Provider's overall study effort, and whether it will help a Transmission Provider to more efficiently study multiple Interconnection Requests. They are concerned that any benefits may be limited to situations in which Interconnection Customers' projects are studied individually, on a non-integrated basis, in isolation from other higher-queued Interconnection Requests and system improvements and expansions. Others recommend allowing a Transmission Provider to complete pending Interconnection Studies for higher-queued Interconnection Requests before turning its databases, workpapers, and study results over to the consultant to help it move forward with its study. In addition, PJM observes that an independent Transmission Provider, such as an RTO or ISO, has no incentive to delay completion of an Interconnection Study. NYISO would have the ISO direct and review any consultant Interconnection Studies.

284. BPA proposes allowing a Transmission Provider to ignore the consultant's study if it is not completed by the deadline. BPA also wants sufficient time for the Transmission Provider, as ''the expert'' in regard to its system, to review the study to ensure that it is adequate and to make necessary changes to it.

Commission Conclusion

285. Based on the foregoing comments and a balancing of the interests of an Interconnection Customer (to obtain the results of any necessary Interconnection Studies as soon as possible) and the responsibility of Transmission Provider (to efficiently and effectively plan its Transmission System), the Commission will permit use of a consultant upon the request of an Interconnection Customer at any time during the Interconnection Study process. This is subject to the Transmission Provider deciding that such use will (1) help maintain or accelerate the study process for the Interconnection Customer's pending Interconnection Request and (2) not interfere with the Transmission Provider's planning processes or hamper the Transmission Provider's progress on any other Interconnection Studies for pending Interconnection Requests. Moreover, a consultant hired to perform an Interconnection Study must follow the same rules and procedures as does a Transmission Provider that conducts the study in-house.

286. The Commission will not specify in Section 13.4 all the terms, conditions, and selection processes that would be applicable. Instead, the Final Rule leaves it up to the Parties to negotiate the details of the timing and process for selecting the consultant, the deadlines for the consultant's work, the Transmission Provider's direction and review of the consultant's work, the contingency rights and obligations of the Parties if the consultant fails to timely deliver a study of adequate quality, and any other relevant matters. This added flexibility may increase opportunities for the use of a consultant to accelerate the completion of necessary Interconnection Studies when it is feasible to do so.

287. *Section 13.6—Disputes*—Proposed LGIP Section 13.6 detailed requirements for the Dispute Resolution process. Upon written notice of a dispute arising out of the Interconnection and Operating Agreement or its performance, a senior representative or representatives of each Party would be required to try to resolve the dispute informally. Failing informal resolution within 30 Calendar days, by mutual agreement the dispute would be submitted to arbitration, or each Party would exercise its other legal or equitable rights. Section 13.6.2 specified external arbitration procedures, and Section 13.6.3 stated that unless otherwise agreed, the arbitrator would be required to render a decision within 90 Calendar Days of its appointment that shall be binding upon each Party. Final decision affecting jurisdictional rates, terms, and conditions would be filed with the Commission. Finally, Section 13.6.4 delineated responsibility for costs related to the resolution of disputes.

Comments

288. Central Maine believes that the Parties should be precluded from settling by binding arbitration matters that are under the Commission's jurisdiction.

Commission Conclusion

289. Although Section 13.6 proposed making Dispute Resolution available only for disputes arising under the LGIA, the Final Rule extends the procedures to disputes arising under the LGIP. This section is designated Section 13.5 in the Final Rule LGIP.

290. The Commission has long encouraged the use of alternative dispute resolution to resolve disagreements over Commission-jurisdictional contracts. The Commission's complaint rule, in fact, requires Parties to specify in a formal complaint whether they have attempted an informal resolution of contract-related disputes, and if they have not done so, to explain why not.[63] Final Rule LGIP Sections 13.5.1 through 13.5.3 reflect the Commission's policy of encouraging alternative dispute resolution without compromising the Commission's authority. Final Rule LGIP Section 13.5.3 prevents arbitrators from changing the provisions of the interconnection agreement in any manner. Arbitrators may only interpret and apply the provisions. Any such changes to the interconnection agreement could be made only pursuant to Sections 205 and 206 of the Federal Power Act, and would require Commission review. Although the arbitrator's decision is binding in so far as it is enforceable in any court having jurisdiction, an arbitrator's decision must be filed with the Commission if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades. Thus, the Commission retains the authority to review the arbitrator's decision. Nor do we agree that the provision circumscribes the Parties' right to avail themselves of the Commission's

[63] 18 CFR 385.206(b)(9) (2003).

complaint process because under Section 13.5.1, a Party that does not agree to arbitration may exercise its rights, including its right to bring a complaint to the Commission.

291. The Commission also adds language to Section 13.6.1 to emphasize that Parties should consider using informal dispute resolution as well as more formal options. The Commission encourages Parties to settle their disputes through other mechanisms (*e.g.*, mediation, assisted negotiations, settlement judge procedures) prior to commencing arbitration proceedings. Of course, at any point during the process the disputing Parties may have recourse to alternative methods of dispute resolution, provided that both Parties agree.[64]

292. *Appendices*—Proposed Appendix 1 is the application form for making an Interconnection Request. Proposed Appendices 2, 3, 4, and 5 set forth the terms for the Interconnection Feasibility Study Agreement, the Interconnection System Impact Study Agreement, the Interconnection Facilities Study Agreement, and the Optional Interconnection Study Agreement; and require a deposit of $10,000 for the Interconnection Feasibility Study, $50,000 for the Interconnection System Impact Study, $100,000 for the Interconnection Facilities Study, and $10,000 for the Optional Interconnection Study. The Final Rule LGIP retains these appendices. In addition, the Final Rule LGIP incorporates the Final Rule Standard Large Generator Interconnection Agreement at Appendix 6.

B. Issues Related to the Standard Large Generator Interconnection Agreement (LGIA)

1. Overview

293. The proposed LGIA contained the Parties' contractual Interconnection Service rights and obligations. It addressed matters such as the effective date and termination costs; regulatory filings; scope of service, including interconnection product options; generator provided services; Interconnection Facilities engineering, procurement and construction; testing and inspection, including start-up and synchronization, system protection and controls requirements; emergency, and disconnect obligations; metering and communications; operations and maintenance; Defaults and indemnifications; transmission crediting; audits; and Dispute Resolution.

294. The proposed LGIA also specified the allocation of the responsibilities among the Interconnection Customer, the Transmission Provider and Transmission Owner (where the latter is a Party other than the Transmission Provider that owns the facilities to which the interconnection is being made), in regard to obtaining all permits and authorizations necessary to accomplish the interconnection.

295. Under this Final Rule, if an Interconnection Customer agrees to pay for any modification to the Transmission Provider's facilities necessitated by the requested interconnection, the Transmission Provider is obligated to offer an executable form of LGIA to the Interconnection Customer. The interconnection agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission. If the Interconnection Customer executes the LGIA, the Transmission Provider, the Interconnection Customer, and the Transmission Owner must perform their respective obligations in accordance with the terms of the executed interconnection agreement, subject to modification by the Commission.

296. If the Interconnection Customer determines that negotiations are at an impasse, it may initiate Dispute Resolution procedures and, if not successful, request submission of the unexecuted agreement to the Commission by the Transmission Provider in accordance with Final Rule LGIP Section 11. Pending Commission action, the Parties will comply with the unexecuted agreement to the extent they can proceed under the agreed upon terms.

2. Article-by-Article Discussion of the Proposed LGIA

297. What follows is a discussion of the proposed LGIA, the comments received, and the Commission's conclusion. The order of discussion follows the organization of the proposed LGIA, covering Articles 1 through 30. Similar to the section-by-section discussion of the proposed LGIP, only articles for which issues are raised are presented. Readers should note again that article numbers referred to in the following discussion are the numbers contained in the proposed LGIA. Some proposed articles are renumbered in the Final Rule; mention of that fact is made in the Commission Conclusions discussion, where appropriate.[65]

298. *Article 1—Definitions*—Proposed LGIA Article 1 contained the definitions of terms used throughout the NOPR LGIA. Many of these terms appear both in the NOPR LGIP as well as the NOPR LGIA and we have decided that a common list of all the defined terms should be included in both the Final Rule LGIA and Final Rule LGIP. However, for simplicity, discussion of commenters' concerns regarding defined terms are discussed in part II.A.2, Section 1 (Definitions).

299. *Article 2—Effective Date, Term and Termination*—Proposed LGIA Article 2 included the proposed effective date, the term of the proposed LGIA, and the procedures for its termination.

300. *Article 2.2—Term of Agreement*—Article 2.2 proposed that the LGIA remain in effect for ten years, or longer by request, and be automatically renewed for each successive one year period thereafter.

Comments

301. Exelon, NYTO and PG&E believe that automatic renewal is unreasonable because it allows the LGIA to remain in effect for an indefinite period. PG&E argues that the LGIA should be for a fixed term (20 years, for example), because the ten year initial term coupled with automatic renewals could make it last forever without giving the Transmission Provider an opportunity to terminate the LGIA except in the case of a Default by the Interconnection Customer. PG&E further argues that a longer fixed term without automatic renewal gives the Parties the flexibility to change the terms of the LGIA at the end of the term to reflect new market structures as they may develop.

Commission Conclusion

302. We adopt Article 2.2 as proposed. Automatic renewal is an efficient mechanism to renew the LGIA. It mitigates a non-independent Transmission Provider's market power by allowing the Interconnection Customer to renew without renegotiation. At the same time, the interests of the Transmission Provider

[64] Disputing parties may retain mediators from outside sources, or they may use the Commission's Dispute Resolution Service or the Commission's settlement judge process.

[65] For some of the LGIA provisions that the Commission is adopting here, few if any written comments were submitted. Commenters tended to use the 30 pages to which they were limited to explain what they would change. They made statements of support for the rule in general, but did not make article-by-article comments on parts that they supported. As a result, the only comments received on some articles were calls for change, even if a majority of commenters may have indicated general support for the proposed articles that they did not specifically comment on.

are adequately protected as it can terminate the LGIA in case of Default by the Interconnection Customer.

303. The Commission also notes that the LGIA, in addition to addressing the electrical connection of the Interconnection Customer to the Transmission Provider's Transmission System, also fixes the performance, operational, and financial obligations of the Parties even after the Generating Facility begins commercial operation. These obligations and responsibilities are of indefinite duration, existing as long as the Generating Facility is connected to the Transmission Provider's Transmission System. Therefore, it is appropriate for the term of the LGIA to be indefinite as well.

304. In addition, a ten year minimum term allows the Parties to avoid tax liability for the payments to the Transmission Provider under current Internal Revenue Service policy.[66]

305. *Article 2.3.1—Written Notice*—Proposed LGIA Article 2.3.1 provides that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider 30 Calendar Days advance written notice.

Comments

306. MidAmerican proposes requiring an Interconnection Customer to provide three years' advance notice to terminate the LGIA. According to MidAmerican, the unexpected retirement of the Generating Facility may result in reduced system reliability due to decreased generation resources, and a Transmission Provider may need to construct or upgrade its own generating or transmission facilities if this occurs. MidAmerican notes that three years is the time customarily required to construct such facilities. Therefore, a three year termination provision would provide a Transmission Provider the opportunity to maintain reliability if the Generating Facility shuts down unexpectedly.

Commission Conclusion

307. We are not persuaded to increase the advance notice and termination period to three years as proposed by MidAmerican. MidAmerican's concern appears to be that the Generating Facility, due to several years of load growth and other changes, may be essential to system reliability. Utilities should not allow themselves to become critically dependent on one generator; however, if they do, they can enter into a ''reliability must-run'' contract before the Interconnection Customer exercises its right to terminate. While there may be a problem if many Interconnection Customers were to cancel concurrently, we do not believe that the LGIA is the best vehicle for addressing this problem, or that every Interconnection Customer in every circumstance should be constrained by a three year termination provision whether or not such a general problem exists.

308. However, we extend the notice period to 90 Calendar Days in order to conform with the Commission's Regulations, which provide that the Transmission Provider is required to notify the Commission of the proposed cancellation or termination of a contract at least 60 Calendar Days, but no more than 180 Calendar Days, before the cancellation or termination is proposed to take effect.[67]

309. *Article 2.3.2—No Commercial Operation*—Proposed LGIA Article 2.3.2 would have provided that the Transmission Provider be allowed to terminate the LGIA if the Interconnection Customer has not met its obligation to achieve commercial operation of its Generating Facility within five years of the scheduled Commercial Operation Date or fails to be available for operation for a period of five years unless a major Generating Facility upgrade is in progress.

Comments

310. Mirant favors deleting this provision. It asserts that there is no valid reason for a Transmission Provider to terminate the LGIA if the Interconnection Customer has paid for the necessary system upgrades and has met every other obligation under the LGIA. Others point out that PJM's interconnection agreement does not include such a provision. Mirant argues that the Transmission Provider should be able to terminate the LGIA only if the Interconnection Customer defaults under the terms and conditions of the LGIA. PSNM and Dairyland Power also favor deleting this provision altogether and claim that, at best, it should be left to the Parties to negotiate a reasonable period for not achieving commercial operation without risking termination of the LGIA.

311. Most Transmission Providers, on the other hand, object to the five year window for achieving commercial operation as being too long, claiming that one to three years is a more reasonable period of time.[68] They point out that the Interconnection Customer determines the Generating Facility's Commercial Operation Date without any input from the Transmission Provider and that the Interconnection Customer should not have an additional five years to achieve commercial operation.

312. Central Vermont PSC also advocates shortening the period from five to two years, and expresses concern that proposed LGIA Article 2.3.2, read with proposed Article 4.1.2, might require a Transmission Provider to reserve transmission capacity on its transmission system for an Interconnection Customer taking Network Resource Interconnection Service for up to five years if the Interconnection Customer fails to meet its scheduled Commercial Operation Date or fails to be operable for a consecutive five-year period.

Commission Conclusion

313. We agree with Mirant that the Transmission Provider should not be allowed to terminate the LGIA if the Interconnection Customer has paid all costs for which it is responsible and has met all of its other obligations under the LGIA. The Commission is removing this provision from the Final Rule LGIA because it contains other provisions for termination, such as failure to meet milestones and other obligations. Furthermore, we note that an Interconnection Customer cannot begin to receive credits for Network Upgrades until its Generating Facility has achieved commercial operation, thereby providing an incentive to the Interconnection Customer to perform.

314. *Article 2.4—Termination Costs*—Proposed LGIA Article 2.4 would have required a Party terminating the interconnection agreement to pay for all costs incurred by the other Party (including costs of cancellation orders or contracts for Interconnection Facilities and equipment).

Comments

315. Mirant argues that an Interconnection Customer should be held responsible only for the Network Upgrades that it has agreed to pay for. It and others are concerned that a higher-queued Interconnection Customer responsible for numerous Network Upgrades might terminate its LGIA and leave lower-queued Interconnection Customers to pay for the Network Upgrades that would otherwise have been assigned to the higher-queued Interconnection Customer. Dominion Resources argues that if a higher-queued Interconnection Customer suspends or terminates construction of its Generating Facility, the lower-queued Interconnection

[66] *See* part II.B.2 Article 5.14.1 (Interconnection Customer Payments Not Taxable).

[67] 18 CFR 35.15 (2003).

[68] *E.g.*, Central Vermont PSC, Cinergy, El Paso, Exelon, MidAmerican, and PG&E.

Customers must be made responsible for the costs of the Network Upgrades.

316. Some Transmission Providers argue that this provision does not make the Interconnection Customer responsible for all costs associated with the termination of an interconnection agreement. For example, Southern says that proposed LGIA Article 2.4.1 covers only that portion of the Transmission Provider's Interconnection Facilities not yet constructed or installed, and should be modified to include all Network Upgrades for which the Transmission Provider has incurred expenses. BPA argues that proposed LGIA Article 2.4.1 should be clear about which Party is responsible for the termination costs and allocate costs accordingly. Central Maine believes that the Transmission Provider and its other customers should not incur any costs associated with the termination of the LGIA, regardless of who is responsible for the termination. The Midwest ISO also states that the termination provision must ensure that the Transmission Provider is made whole for the costs it incurs.

Commission Conclusion

317. As for the obligations of the lower-queued Interconnection Customer with respect to the Network Upgrades that would have been paid for by the terminating Interconnection Customer, this issue is addressed in our discussion of Article 5.13 (Suspension).

318. We clarify that if an Interconnection Customer terminates the LGIA, it will be held responsible for all costs associated with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and any Network Upgrades for which the Transmission Provider has incurred expenses and has not been reimbursed by the Interconnection Customer. This clarification should resolve the Midwest ISO's and Mirant's concerns while ensuring that the Transmission Provider is made whole for the costs it incurs.

319. *Article 2.5*—Disconnection—Proposed LGIA Article 2.5 would have provided that the cost of disconnecting the Generating Facility from the Transmission Provider's Transmission System be borne by the terminating Party unless the disconnection is the result of Default by the other Party.

Comments

320. A number of commenters express concern that this article suggests that the Transmission Provider may somehow be responsible for certain disconnection costs. For example, PacifiCorp emphasizes that the Transmission Provider must be able to disconnect (and not reconnect) a Generating Facility if the Interconnection Customer materially Breaches its obligations to maintain electrical standards or operational requirements, or in the event of Default by the Interconnection Customer. In such a situation, PacifiCorp argues, the Transmission Provider should not be required to bear the costs of disconnecting the Generating Facility. Southern and Dairyland Power ask that this article be revised to make the Interconnection Customer responsible for all costs of disconnection under all circumstances.

Commission Conclusion

321. We agree with PacifiCorp that the Transmission Provider must be able to disconnect the Generating Facility from the Transmission System to protect its system if the Interconnection Customer fails to maintain electrical standards and operational requirements. Accordingly, the Final Rule clarifies that all disconnection costs are borne by the terminating Party, unless the termination results from the non-terminating Party's Default of the LGIA.

322. *Article 2.7—Reservation of Rights*—Proposed Article 2.7 would have reserved to each Party their rights to unilaterally seek modification to the executed LGIA pursuant to Sections 205 and 206 of the FPA, except as restricted by the other provisions of the executed LGIA.

Comments

323. Dynegy and Mirant note that this clause is redundant because another Reservation of Rights provision appears in proposed Article 30.11.

Commission Conclusion

324. We agree that this Article 2.7 is redundant, and we delete it from the Final Rule LGIA.

325. *Article 3—Regulatory Filings*—Proposed LGIA Article 3 would have provided that the Transmission Provider is responsible for filing the LGIA with the appropriate state and federal regulatory authorities (collectively ''Governmental Authorities'') having jurisdiction over the Parties. Article 3 also describes how Confidential Information should be treated. It also prohibits an Interconnection Customer from protesting the filing of an LGIA or an amendment to an LGIA that the Interconnection Customer has executed.

Comments

326. MidAmerican recommends that Article 3 be modified to make both Parties responsible for maintaining the confidentiality of information provided by the other Party. The DG Alliance states that an Interconnection Customer has the right to file unilaterally an unexecuted LGIA if the Transmission Provider declines to negotiate in good faith.

Commission Conclusion

327. MidAmerican's concerns are addressed in Article 22 of the Final Rule LGIA, which deals with the rights and responsibilities of each Party with respect to treatment of Confidential Information. The DG Alliance's comments are addressed in Section 10.3 of the Final Rule LGIP, which contains the procedure for filing an unexecuted agreement.

328. Regarding the prohibition against the Interconnection Customer protesting an executed and filed LGIA or amendment, the Commission concludes that this is contrary to the reservation of rights provision of the LGIA, which allows the parties to retain their respective rights to unilaterally amend their executed LGIA under Sections 205 and 206 of the FPA. Because this prohibition effectively negates the Interconnection Customer's Section 206 rights under the LGIA, this clause favors the Transmission Provider at the expense of the Interconnection Customer with respect to rights that, if present, should be mutual. Accordingly, we delete this prohibition from the Final Rule LGIA.

329. *Article 4—Scope of Service*—Proposed LGIA Article 4 identified two types of Interconnection Service from which the Interconnection Customer must choose: Energy Resource Interconnection Service, which is a basic or minimal service, and Network Resource Interconnection Service, which is a more flexible and comprehensive service. Because this topic generated so much controversy, and because the two services are addressed both in the NOPR LGIA and NOPR LGIP, discussion of proposed LGIA Articles 4.1 through 4.1.2.2 is included in part II.C.2 (Interconnection Products and Scope of Service).

330. *Article 4.3.1—Generator Balancing Service Arrangements*—Proposed LGIA Article 4.3.1 described certain requirements that the Interconnection Customer would have to satisfy before submitting a schedule for delivery service. In particular, the Interconnection Customer would have to ensure that the Generating Facility's actual output matches its scheduled delivery, on an integrated clock hour basis, including ramping into and out of its schedule. The Interconnection

Customer would have to arrange for the supply of energy when there is a difference between actual and scheduled output.

Comments

331. Some commenters, such as NERC, PacifiCorp and American Wind Energy, argue that the provision of energy imbalance service is not related to interconnection and should not be addressed in this rulemaking.

332. Cinergy and others object to the use of a clock hour basis to match Generating Facility output to delivery, indicating that a 10-minute interval basis may be more appropriate so that energy injections will be more consistent across the scheduled hour. NERC likewise has concerns about adopting an integrated clock hour specification, and notes that the Generating Facility's scheduling period may be something other than a clock hour, as specified in the Transmission Provider's Commission-approved Tariff or market structure. NERC recommends revising this provision to ensure consistency with the Tariff and market structure.

333. Cinergy argues that any balancing arrangement to be implemented by the Interconnection Customer should be determined to be technically feasible by the Transmission Provider and recommends that ramp time be excluded in the balancing arrangement because it may conflict with NERC scheduling requirements. Arkansas Coops notes that use of the clock hour may be inconsistent with operating procedures developed in RTOs.

Commission Conclusion

334. The Commission concludes that a provision for balancing service arrangements must be included in the Final Rule LGIA because it describes one of the important requirements that the Interconnection Customer must meet before it takes delivery service. Therefore, the Commission retains Article 4.3 in the Final Rule LGIA.

335. However, the Commission agrees with commenters that Article 4.3 of the NOPR LGIA is overly prescriptive. Accordingly, in the Final Rule, the Commission adopts NERC's proposal to revise NOPR LGIA Article 4.3.1 to omit the reference to an integrated clock hour basis, and to add the phrase, ''consistent with the scheduling requirements of the Transmission Provider's Commission-approved Tariff and any applicable Commission-approved market structure.''

336. *Article 5—Interconnection Facilities Engineering, Procurement, and Construction*—Proposed LGIA Article 5 described procedures for designing, procuring, and constructing the Transmission Provider's Interconnection Facilities and Network Upgrades and the Interconnection Customer's Interconnection Facilities. Construction options, rights, and responsibilities were also presented. This article would have provided that the Interconnection Customer will not be directly assigned the costs of modifications made to the Transmission Provider's Interconnection Facilities or the Transmission System to facilitate interconnection of a Generating Facility of another Interconnection Customer or to provide transmission service under the Transmission Provider's Tariff.

337. *Article 5.1*—Options—Proposed LGIA Article 5.1 specified the method for determining which Party is responsible for the construction of the Transmission Provider's Interconnection Facilities and Network Upgrades. The Interconnection Customer would specify various construction completion dates (such as the In-Service Date, the Initial Synchronization Date, and the Commercial Operation Date), and the Transmission Provider would then choose among three options: (1) *Option A* would have provided that the Transmission Provider construct the Transmission Provider's Interconnection Facilities and Network Upgrades using Reasonable Efforts to complete construction by the dates designated by the Interconnection Customer, but would not be responsible for any liquidated damages in case it fails to meet the construction completion dates established by the Interconnection Customer; (2) *Option B(i)a* would have provided that the Transmission Provider construct the Transmission Provider's Interconnection Facilities and Network Upgrades according to the construction completion dates established by the Interconnection Customer, and if it fails to meet those dates, it may be liable for liquidated damages; however, the Transmission Provider can opt out of this provision by notifying the Interconnection Customer of its intention to do so within 30 Calendar Days; and (3) *Option B(i)b* would have provided that, if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by the Interconnection Customer, the Interconnection Customer could assume responsibility for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.[69] This option would also provide that if the Interconnection Customer does not want to assume responsibility for construction, the Parties would negotiate in good faith to revise the construction completion dates and other provisions. Any agreement reached by the Parties during this negotiation shall be binding. However, if the Parties are unable to reach an agreement, the Transmission Provider would assume responsibility for construction of its Interconnection Facilities and Network Upgrades in accordance with Option A. Proposed LGIA Article 5.1 would establish standards for the Interconnection Customer to follow if it assumes responsibility for constructing the Transmission Provider's Interconnection Facilities and system upgrades that are not Stand Alone Network Upgrades. It does not grant any right to the Interconnection Customer to construct upgrades that are not Stand-Alone Network Upgrades.

Comments

338. Cinergy states that the distinction between Options A and B(i)a is not clear. Monongahela Power recommends that the Commission rename Option B(i)a as Option B and Option B(i)b as Option C.[70]

339. Cinergy and NSTAR seek clarification as to whether the Commission intended that the Interconnection Customer take the responsibility for the construction of upgrades that are not Stand-Alone Network Upgrades.

340. Several commenters, including Cinergy, NYTO, and SoCal PPA, argue that the Interconnection Customer may choose unrealistic construction completion dates and expose the Transmission Provider to liquidated damages. Cinergy states that if several Interconnection Customers choose their construction completion dates close to each other, the Transmission Provider may not be able to meet the dates due to limited construction staff. PacifiCorp recommends that any construction completion date should be treated as an estimate and that any delays on the part of the Interconnection Customer completing its Generating Facility should automatically extend the time for the Transmission Provider to complete its Interconnection Facilities and Network Upgrades.

[69] Stand-Alone Network Upgrades are those Network Upgrades that the Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction.

[70] A typographical error in the NOPR added to the lack of clarity.

341. A number of Transmission Providers oppose giving the Interconnection Customer the option to build or have a contractor build the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. TXU argues that this could threaten the reliability of the Transmission System. SoCal Edison argues that the Transmission Provider must retain adequate control of the engineering and construction of any Transmission Provider Interconnection Facilities and Stand Alone Network Upgrades because of its obligation to protect the safety of the public and maintain the reliability of the Transmission System. Cinergy and NYTO assert that if the Commission does not eliminate the Interconnection Customer's option to build, the Final Rule must provide that an Interconnection Customer exercising this right shall indemnify or hold harmless the Transmission Provider from any resulting liability.

342. Southern states that to ensure that construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades does not impair the reliability or safety of the Transmission System: (1) The Transmission Provider should be allowed to approve the Interconnection Customer's contractors and engineers, as well as the vendors from which equipment and materials are purchased; (2) the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades should be constructed, and equipment and materials purchased, pursuant to contracts that are reasonably acceptable to the Transmission Provider, including acceptable equipment warranty provisions; (3) the Transmission Provider should retain some level of supervision over the construction, with unrestricted access to construction sites to perform inspections; (4) the Interconnection Customer should provide a construction schedule to the Transmission Provider before construction begins; (5) the Interconnection Customer should be required to respond promptly to all requests for information from the Transmission Provider; and (6) the Transmission Provider should be able to require the Interconnection Customer or its contractors to remedy any situation that does not meet the Transmission Provider's specifications or standards.

343. Similarly, the Construction Issues Coalition argues that the Interconnection Customers' right to build the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades should be under specific conditions, such as: (1) The Transmission Provider must provide approval and oversight during design and construction; (2) the Transmission Provider must approve contractors in advance; (3) adequate time should be provided to the Transmission Provider for approval of engineering and construction activities; and (4) all equipment and construction must carry warranties to avoid risk exposure to the Transmission Provider. SoCal Edison argues that costs associated with the Transmission Provider's oversight of the construction should be borne by the Interconnection Customer.

344. NERC argues that if the Interconnection Customer assumes responsibility for construction, it should comply with Good Utility Practice and the Transmission Provider's safety and reliability criteria.

345. NYTO claims that several essential elements of the ERCOT model are absent from the Commission's proposal. It argues, for example, that the Commission should adopt ERCOT's 15 month minimum time period for completing construction after siting permits and land rights have been obtained.

346. American Transmission argues that the Transmission Provider must have the right to step in and assume construction responsibilities to protect the integrity of the system and rights of the third parties in case of serious lapses by an Interconnection Customer.

347. Southern argues that the Final Rule LGIA should require the Interconnection Customer to transfer the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider for ownership and operation after it completes construction.

348. PJMTO asserts that Final Rule LGIA Article 5.1 should contain more explicit provisions addressing the Transmission Owner's role in: (1) Obtaining permits and authorizations, (2) obtaining land rights, (3) performing direct line attachment tie-in work, and (4) calibrating remote terminal unit settings.

349. American Transmission states that proposed LGIP Section 8 (Interconnection Facilities Study) requires the Transmission Provider to develop detailed cost estimates for constructing the Transmission Provider's Interconnection Facilities and Network Upgrades under the assumption that the Transmission Provider will perform all of the construction, yet the Interconnection Customer may assume the responsibility for part of the construction. It asks the Commission to clarify whether there is any relationship between the Transmission Provider's cost estimates and the actual cost of construction performed by the Interconnection Customer. It wants to require approval by the Transmission Provider of the Interconnection Customer's budget for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

350. Dynegy asserts that the last sentence of Article 5.1.A(iv), which provides that the Interconnection Customer's selection of subcontractors is subject to the Transmission Provider's standards and specifications, is overly broad and conflicts with proposed LGIA Article 26.1 (Subcontractors—General), which states that ''nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement.''

Commission Conclusion

351. The Commission is revising Proposed LGIA Article 5.1 to distinguish the various options more clearly. NOPR *Option A* is now renamed *Standard Option.* Under the Standard Option, the Transmission Provider shall construct the Transmission Provider's Interconnection Facilities and Network Upgrades using Reasonable Efforts to complete the construction by the dates designated by the Interconnection Customer, but shall not be responsible for any liquidated damages if it fails to complete the construction by the designated dates. The Standard Option also serves as the default in the event the Parties are unable to reach an agreement under the Negotiated Option

352. *Option B(i)a* is renamed *Alternate Option.* Under the Alternate Option, the Transmission Provider shall construct the Transmission Provider's Interconnection Facilities and Network Upgrades according to the construction completion dates established by the Interconnection Customer, and if it fails to meet those dates, it may be liable for liquidated damages; however, the Transmission Provider can decline to use this option by notifying the Interconnection Customer of its intention to do so within 30 Calendar Days of executing the LGIA.

353. The last option—*Option B(i)b* in the NOPR—gives the Interconnection Customer two choices in the Final Rule LGIA: the *Option to Build* and the *Negotiated Option.* This is because the proposed Option B(i)b actually presented two options. Under the *Option to Build,* the Interconnection

Customer may assume responsibility for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by Interconnection Customer. However, as clarified in Final Rule LGIA Article 5.1.3, it does not grant any right to the Interconnection Customer to construct upgrades that are not Stand-Alone Network Upgrades. Furthermore, both the Transmission Provider and the Interconnection Customer must agree on which facilities are the Stand Alone Network Upgrades and identify them in Appendix A to the LGIA.

354. *The Negotiated Option* provides that, if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by Interconnection Customer, and the Interconnection Customer does not want to assume responsibility for construction, the Interconnection Customer may decide that the Parties shall negotiate in good faith to revise the construction completion dates and other provisions under which the Transmission Provider is responsible for the construction. If the Parties are unable to reach an agreement, the Transmission Provider shall assume responsibility for construction of the Transmission Provider's Interconnection Facilities and Network Upgrades in accordance with the Standard Option.

355. Regarding Cinergy, NYTO, and SoCal PPA's concerns about the selection of unrealistic construction completion dates by an Interconnection Customer, the Final Rule Alternate Option allows the Transmission Provider to avoid unrealistic construction completion dates by notifying the Interconnection Customer that it is unable to meet the established dates. We agree with PacifiCorp that any delay on the part of the Interconnection Customer in meeting its construction completion dates should grant an automatic extension to the Transmission Provider. We note that Final Rule LGIA Article 5.3 (Liquidated Damages) provides that no liquidated damages shall be paid to the Interconnection Customer if the Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities and Network Upgrades on the specified construction dates except if such delay is due to the Transmission Provider's delay.[71]

356. With regard to the concern that giving the Interconnection Customer the right to construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades could threaten the safety and reliability of the Transmission System, Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build) has several safeguards. For example, the Interconnection Customer is required to use Good Utility Practice and the standards and specifications provided in advance by the Transmission Provider. In addition, the Transmission Provider has the right to approve the engineering design, the equipment acceptance tests, and the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

357. In response to those comments seeking an indemnification or hold harmless provision to protect the Transmission Provider from liability arising out of the Interconnection Customer's exercising its right to build, the Commission adds an indemnification clause to Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build).

358. With respect to various modifications that Southern and the Construction Issues Coalition seek, Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build) adds several provisions proposed by these commenters, such as a requirement that the Interconnection Customer (1) provide a construction schedule in advance of the start of construction, (2) remedy deficiencies brought to its attention by the Transmission Provider, and (3) carry warranties for equipment similar to those carried by the Transmission Provider. However, the Commission declines to grant fully the high level of Transmission Provider control that Southern and the Construction Issues Coalition seek, such as approval of subcontractors and vendors. Such control would be overly broad, and the Transmission Provider's ability to seek remedy of any deficiencies should enable it to carry out its responsibilities. The Commission also will deny SoCal Edison's request that the Interconnection Customer bear the Transmission Provider's costs associated with the oversight of construction performed by the Interconnection Customer because such costs are *de minimus.*

359. With respect to NERC's comment that an Interconnection Customer should follow Good Utility Practice and the safety and reliability criteria of the Transmission Provider, such standards are in Final Rule LGIA Article 5.2 (General Conditions Applicable to Option to Build).

360. Regarding NYTO's argument that a minimum of 15 months is needed to complete construction of the Transmission Provider Interconnection Facilities and Network Upgrades, we conclude that specifying such a minimum period is unnecessary because under the Alternate Option, the Transmission Provider will be protected from incurring liquidated damages liability due to delays beyond its reasonable control or reasonable ability to cure.

361. The Commission rejects American Transmission's proposal that the Transmission Provider have a right to step in and assume construction responsibilities in case of lapses by an Interconnection Customer. Since Article 5.1 permits the construction of only Transmission Provider Interconnection Facilities and Stand Alone Network Upgrades, the Commission believes that any such lapses would affect only the Interconnection Customer. If it has the potential to affect anyone other than the Interconnection Customer, the Commission will address such concerns when brought to its attention.

362. The Final Rule does not require that the Interconnection Customer transfer ownership of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider after the Interconnection Customer completes them; however, the Commission will require transfer of *control* of such facilities. Reliability does not require ownership, but it does require control by the Transmission Provider.[72]

363. With respect to PJMTO's request for provisions regarding the Transmission Owner's role in obtaining permits and land rights, Final Rule LGIA Articles 5.12 (Access Rights) and 5.13 (Lands of Other Property Owners) do not distinguish between the role of the Transmission Provider and the Transmission Owner in assisting the Interconnection Customer in obtaining land rights and permits. The Final Rule LGIA is not the appropriate place to set forth the nature of the relationship between the Transmission Owner and Transmission Provider. In addition, the Commission is stating in this Final Rule that it will give an independent transmission provider such as an RTO

[71] Other comments on this issue are addressed in part II.C.8.b (Liquidated Damages).

[72] *See* Arizona Public Service Company, 102 FERC ¶ 61,303 (2003). We also note that the ownership of Stand Alone Network Upgrades by an Interconnection Customer is discussed further under ''Rules Governing the Payment of Credits'' in part C.1 of this Preamble.

or ISO the flexibility to propose different rules in its compliance filing.

364. The Commission denies American Transmission's request to include a provision in the Final Rule LGIA for the Transmission Provider to review and approve the Interconnection Customer's budget if an Interconnection Customer assumes the responsibility to construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. The Interconnection Customer is likely to act in its best interests to keep the costs down because it initially funds the construction costs. In addition, allowing a Transmission Provider unfettered discretion to review the budget would encourage anticompetitive behavior.

365. With regard to Dynegy's concern regarding subcontractors, Article 26.1 provides that nothing in the LGIA prevents a Party from using the services of any subcontractor to perform its obligations under the LGIA and that it is up to the Party to ensure that the subcontractor complies with the LGIA. In addition, the hiring Party remains primarily liable to the other Party for the performance of the subcontractor. Thus, if the subcontractor fails to meet the Interconnection Customer's obligations under the LGIA or to the Transmission Provider, the Interconnection Customer is obligated to remedy any deficiencies. Accordingly, the Commission is removing the words ''including selection of subcontractors'' from Article 5.1 to ensure consistency between that article and Article 26.1.

366. *Article 5.2—Power System Stabilizers* (In the Final Rule LGIA: Article 5.4)—Proposed LGIA Article 5.2 would have required the Interconnection Customer to install, operate and maintain power system stabilizers, if required by the Interconnection System Impact Study. The Transmission Provider would establish minimal acceptable settings subject to the design and operating limitations of the Generating Facility.

Comments

367. Several commenters, including Cal ISO, Dairyland Power, Dominion Resources, and NSTAR, argue that the Transmission Provider's ability to require the installation of a power system stabilizer should not be limited to when required by the Interconnection System Impact Study because the Generating Facility may become a source of power system oscillations on the Transmission System many years after operations commence. Dominion Resources contends that a Transmission Provider should be able to require an Interconnection Customer to install a power system stabilizer any time it determines through its operating experience that a power system stabilizer is needed.

368. Cal ISO argues that the requirement to install a power system stabilizer should not be based on the ''Interconnection System Impact Study,'' but should be based on the ''guidelines and procedures of the Applicable Reliability Council.'' NERC points out that the Transmission System reliability criteria and use of power system stabilizers vary from one region to another, depending on the electrical characteristics of the system. NERC states that, as a result, it is important that the system operator be notified if a power system stabilizer is inoperable or removed from service.

Commission Conclusion

369. The Commission agrees with Cal ISO that an Interconnection Customer should be required to install a power system stabilizer in accordance with the standards of the Applicable Reliability Council. This also addresses Dominion Resources' concern that installation of a power system stabilizer on a Generating Facility may be needed at a later time; such a requirement should be covered in the guidelines of the Applicable Reliability Council. If the Applicable Reliability Council guidelines do not cover such matters, a Transmission Provider may justify its reasons for wishing to require a power system stabilizer despite the lack of such a requirement in the Applicable Reliability Council guidelines when it makes its compliance filing.

370. The Commission will adopt NERC's recommended language requiring notification when power system stabilizers are removed or are not available for automatic operation.

371. This article is designated Article 5.4 in the Final Rule LGIA.

372. *Article 5.8.1—Generator Specifications* (In the Final Rule LGIA: Article 5.10.1)—Proposed LGIA Article 5.8.1 would have required that the Interconnection Customer submit the final specifications for the Interconnection Customer's Interconnection Facilities, including System Protection Facilities, to the Transmission Provider for review at least 90 Calendar Days prior to the Initial Synchronization Date. It proposed to require the Transmission Provider to provide comments to the Interconnection Customer within 30 Calendar Days of the Interconnection Customer's submission.

Comments

373. Cleco and NYTO assert that the Interconnection Customer should have to submit initial specifications for the Interconnection Customer's Interconnection Facilities to the Transmission Provider at least 180 Calendar Days prior to the Initial Synchronization Date with the understanding that the initial specifications are subject to change. Such initial specifications would give them an opportunity to perform the planning required for the new facilities and upgrade.

Commission Conclusion

374. The Commission agrees with Cleco and NYTO and adopts their proposal in the Final Rule.

375. This article is designated Article 5.10.1 in the Final Rule LGIA.

376. *Article 5.8.2—Transmission Provider's Review* (In the Final Rule LGIA: Article 5.10.2)—Proposed LGIA Article 5.8.2 would have required that the Interconnection Customer to modify the Interconnection Customer's Interconnection Facilities as may be reasonably required by the Transmission Provider to ensure that they are compatible with the telemetry communications and safety requirements of the Transmission Provider.

Comments

377. NERC requests that the word ''reasonably'' be removed from the article and recommends referring to Good Utility Practice.

Commission Conclusion

378. The Final Rule revises this article to refer to Good Utility Practice, as requested by NERC, but it does not eliminate the term ''reasonably.'' The Interconnection Customer's Interconnection Facilities are installed at the expense of the Interconnection Customer, but must be reviewed and meet the specifications and requirements established by the Transmission Provider. The term ''reasonably'' helps to ensure that the Transmission Provider does not require the installation of equipment beyond what is necessary for compatibility and reliability, or beyond the standards the Transmission Provider would apply to its own Interconnection Facilities.

379. This article is designated Article 5.10.2 in the Final Rule LGIA.

380. *Article 5.8.3—Interconnection Customer Interconnection Facilities Construction* (In the Final Rule LGIA: Article 5.10.3)—Proposed LGIA Article 5.8.3 would have required the Interconnection Customer to provide to

the Transmission Provider certain ''as built'' drawings, information, and documents pertaining to the construction of the Interconnection Customer's Interconnection Facilities.

Comments

381. NERC proposes that the Interconnection Customer also provide the Transmission Provider specifications for the excitation system, automatic voltage regulator, generator control and protection settings, transformer tap settings, and communications.

Commission Conclusion

382. The Commission adopts NERC's proposal and revises Proposed LGIA Article 5.8.3 to make clear that the list of information to be provided is not exhaustive.

383. This article is designated Article 5.10.3 in the Final Rule LGIA.

384. *Article 5.11—Lands of Other Property Owners* (In the Final Rule LGIA: Article 5.13)—Article 5.11 proposed that Transmission Providers would be required to use Reasonable Efforts, including use of its eminent domain authority if necessary, to facilitate the interconnection of Generating Facilities. The Interconnection Customer would be required to pay any expenses related to obtaining rights of use, rights of way, easements, or eminent domain costs that the Transmission Provider might incur, up to the fair market value of the land or ''such other price as required by the applicable inter-affiliate transaction requirements.''

Comments

385. EPSA and several Interconnection Customers, including Calpine, El Paso, and Reliant Energy, request that the Transmission Provider or Transmission Owner be required to use its eminent domain authority to facilitate the exercise of the Parties' rights and obligations under the LGIA to the extent it is permitted to do so. Numerous Transmission Provider commenters express concern that the eminent domain provisions of the NOPR are too broad, placing the Transmission Provider in an untenable situation. Specifically, several argue that the Commission's proposal conflicts with state limitations on their eminent domain authority.[73] Cleco, for example, states that in Louisiana, a utility cannot legally request eminent domain on behalf of another entity. National Grid and the Construction Issues Coalition argue that many states require that eminent domain authority be used only ''to further a public need''—something that is lacking in the NOPR. Cinergy proposes deleting the entire eminent domain provision, arguing that it imposes an inappropriate burden on the Transmission Provider and reiterates that it conflicts with existing state laws. Similarly, El Paso requests that the use of eminent domain be at the sole discretion of the Transmission Provider or Transmission Owner, citing the numerous factors that must be considered in such an undertaking.

386. Duke Energy proposes that the Commission require a Transmission Provider to use eminent domain only when it reasonably determines that (1) other alternatives are not available and (2) use of eminent domain is permissible under state law. Duke Energy also asserts that the Transmission Provider should provide a written explanation of why other alternatives are appropriate or why the use of eminent domain would not be permitted under state law.

387. National Grid argues that the Commission should eliminate the eminent domain provision, citing the long delays and heavy litigation that often accompany the seizure of property. National Grid, the Construction Issues Coalition, and others argue that regulation of eminent domain differs from state to state, making the type of national contract clause envisaged by the Commission impossible.

388. PJMTO also opposes the eminent domain provision, arguing that eminent domain is an unpopular last resort and one that is rarely exercised even by a Transmission Provider or Transmission Owner on its own behalf. Instead, it proposes requiring that a Transmission Provider or Transmission Owner, upon receipt of a reasonable request, to assist an Interconnection Customer in acquiring land rights using efforts similar to those it typically undertakes on its own behalf.

389. PJMTO also argues for eliminating the cap on land value, noting that individual state laws already contain mechanisms for valuing property. The Commission may lack authority to require a price cap on property sold by an Affiliate of a Transmission Provider, according to National Grid and the Construction Issues Coalition.

390. Salt River Project also opposes the eminent domain language and instead proposes that the Commission work with federal land holding agencies to streamline the procurement of land rights. SoCal Edison adds that it does not believe the Commission has the authority to impose an eminent domain requirement. Instead, it proposes requiring Transmission Providers to exercise good faith efforts in using whatever eminent domain authority state law may allow on an Interconnection Customer's behalf.

Commission Conclusion

391. We agree that a mandatory eminent domain requirement can be difficult for a Transmission Provider or Transmission Owner. The Final Rule requires that a Transmission Provider or Transmission Owner use efforts similar to those it typically undertakes on its own behalf (or on behalf of an Affiliate) to secure land rights for the Interconnection Customer. We are also clarifying that the Transmission Provider or Transmission Owner's efforts must also comply with state law.

392. If the Transmission Provider is an independent entity, the Transmission Owner, the Transmission Provider, and the Interconnection Customer may all sign the LGIA. This allows a Transmission Owner and a Transmission Provider to jointly undertake efforts to secure land rights for the Interconnection Customer.

393. Regarding the cap on land value, while the Commission remains concerned that Affiliates of a Transmission Provider or Transmission Owner might request above-market compensation for land necessary to facilitate the interconnection, the Commission also recognizes that the valuation of property is a matter of state law. Therefore, we eliminate this cap in the Final Rule.

394. This article is designated Article 5.13 in the Final Rule LGIA.

395. *Article 5.12—Early Construction of Base Case Facilities*—Proposed LGIA Article 5.12 would have required that, at the Interconnection Customer's request, the Transmission Provider must construct, using Reasonable Efforts to accommodate the Interconnection Customer's In-Service Date, all or any portion of Network Upgrades reflected in the Base Case of the Interconnection Customer's Facilities Study that are necessary to accommodate the Interconnection Customer's In-Service Date. Construction of the Network Facilities would be required even if the Network Facilities are shared with other interconnecting generators that would not be completed in time to meet the Generating Facility's In-Service Date.

Comments

396. MidAmerican contends that this article is inconsistent with Section 12.3

[73] *E.g.,* Cinergy, Cleco, the Construction Issues Coalition, Duke Energy, National Grid, PJMTO, Salt River Project, SoCal Edison, and Southern.

of the NOPR LGIP (Construction Sequencing), which requires that the Transmission Provider use Reasonable Efforts to accommodate the Generating Facility's In-Service Date. Accordingly, it proposes that Article 5.12 be revised.

397. Cleco argues that the Party requesting early construction should pay all Network Upgrade costs associated with the early construction. FP&L argues that to avoid the need to continuously restudy and revise Network Upgrades, the LGIA should require the timely construction of Network Upgrades relied upon by lower-queued Interconnection Customers.

398. Entergy, Dairyland Power, and others state that the Final Rule should address which Interconnection Customer finances Network Upgrades in the event of a delay by the higher-queued Interconnection Customer to whom the Network Upgrades are assigned. Cal ISO states that language regarding milestones should be inserted between proposed LGIA Articles 5.12 and Article 5.13.

Commission Conclusion

399. In response to the concerns of Entergy and others, the Commission notes that a lower-queued Interconnection Customer always has the right under this article to accelerate its construction schedule by completing all required Network Upgrades on schedule despite any delays by higher-queued Interconnection Customers. This would require the lower-queued Interconnection Customer to fund those Network Upgrades at least initially; however, in the absence of participant funding, it would be reimbursed over time through credits, with interest. Article 5.12 does not need to be changed to allow this.

400. Regarding ''best'' versus ''reasonable'' efforts, the Commission agrees with MidAmerican that there was an inconsistency between proposed LGIA Article 5.12 and proposed LGIP Section 12.3, which requires the Transmission Provider to use Reasonable Efforts to accommodate the Interconnection Customer's requested In-Service Date. Article 5.12 is the more stringent of the two because it requires the Transmission Provider to construct facilities necessary to accommodate the Interconnection Customer's In-Service Date. The Commission's intent is to expedite the interconnection of new generators in a manner that does not undermine the reliability of a Transmission Provider's Transmission System. However, there may be circumstances beyond the Transmission Provider's control that would prevent it from meeting the construction deadline. To address this concern and to ensure consistency between this article and LGIP Section 12.3, the Commission agrees with MidAmerican's comment that the term ''Reasonable Efforts'' is appropriate. This article, which is designated Article 5.15 in the Final Rule LGIA, uses that term.

401. An additional article regarding milestones is not needed. By the time the LGIA is executed, the Parties will have already established under Article 5.1 the milestones Cal ISO refers to.

402. *Article 5.13—Suspension* (In the Final Rule LGIA: Article 5.16)—Proposed LGIA Article 5.13 would allow the Interconnection Customer, upon written notice to the Transmission Provider, to suspend work on Interconnection Facilities or Network Upgrades as long as the Interconnection Customer agrees to be responsible for all reasonable and necessary costs incurred by the Transmission Provider in suspending work. This article proposed that the LGIA be deemed terminated if the Interconnection Customer has not requested the Transmission Provider to recommence work within three years from the date of the suspension request.

Comments

403. Peabody supports allowing an Interconnection Customer to suspend work on the interconnection for up to three years because this offers the Interconnection Customer the flexibility that large-scale generation projects need to accommodate permitting and other delays. Other commenters, including BPA, Cinergy, and SoCal PPA, argue that a three year suspension period is unreasonably long. SoCal PPA further states that substantial changes to the Transmission System could occur during that time. Western believes that letting an Interconnection Customer contract with a Transmission Provider for an interconnection and then suspend operation for as long as three years could allow the Interconnection Customer to game the system. Consequently, Western and other commenters argue that the suspension period should be limited to six months, while Cinergy recommends limiting the suspension period to one year. NYTO believes the entire provision is unreasonable.

404. Cinergy requests that Article 5.13 make it clear that if an Interconnection Customer gives a Transmission Provider written notice of suspension of work, the Transmission Provider does not have to obtain written permission from the Interconnection Customer to cancel or suspend material, equipment and labor contracts associated with that work, and that the Commission clarify what is included in the definition of ''suspension of work.'' Further, to prevent gaming the process, Cinergy proposes that an Interconnection Customer be allowed to provide written notice of suspension of work only once per Generating Facility.

405. Dominion Resources questions whether the responsibility for funding the cost of Network Upgrades would fall on the Interconnection Customer suspending or terminating construction or on other Interconnection Customers remaining in the queue. The Interconnection Customer actually using the Network Upgrades should be required to pay for them. Dominion Resources recognizes that this may shift costs from the Interconnection Customer requesting the suspension to Interconnection Customers further down the queue, which could mean that an Interconnection Customer will be subject to potential cost increases even after signing an LGIA. However, it views this as a more acceptable allocation of cost responsibility than requiring an Interconnection Customer that desires to suspend or terminate its project to bear the full cost of Network Upgrades it may never use. In order to avoid gaming of the interconnection queue, if the suspending Interconnection Customer later continues with its project, it should be required to reimburse any lower-queued Interconnection Customers for any Network Upgrade costs related to its suspension.

406. NERC and MidAmerican comment that there must be a requirement to leave the system in a safe and reliable condition, consistent with Good Utility Practice, if a project is suspended in a partially complete state.

407. The Midwest ISO requests that Article 5.13 make it clear that a suspending Interconnection Customer must provide notice to the Transmission Owner and to any independent Transmission Provider.

408. The Midwest ISO and Georgia Transmission request clarification that the Transmission Provider will be reimbursed for any expenses related to the suspension.

Commission Conclusion

409. Many commenters express concern over the effect that a suspending Interconnection Customer might have on lower-queued Interconnection Customers. We agree with Dominion Resources that, in some cases, a subsequent (*i.e.*, lower queued) Interconnection Customer may be responsible for funding the costs of completing the Network Upgrades constructed for a higher-queued

Interconnection Customer that suspends or terminates construction of such Network Upgrades. However, the Commission is not obligating in this Final Rule a subsequent (*i.e.*, lower queued) Interconnection Customer to pay for these costs regardless of whether that Interconnection Customer benefits from the facilities, since this would subject that Interconnection Customer to significant financial risk. Prices quoted for interconnection in the LGIA are estimates based on the results of studies conducted during the LGIP phase of the interconnection process. If it is apparent to the Parties at the time they execute the LGIA that contingencies (such as other Interconnection Customers terminating their LGIAs) might affect the financial arrangements, the Parties should include such contingencies in their LGIA and address the effect of such contingencies on their financial obligations. If no such contingencies are accounted for in the executed LGIA, since the costs of Network Upgrades may influence an Interconnection Customer's decision whether it can enter into an Interconnection Agreement, we leave it to the subsequent Interconnection Customer and the Transmission Provider to revisit the negotiated terms of their executed Interconnection Agreement. We deny the requests to revise or delete Proposed LGIA Article 5.13 on these grounds.[74]

410. We also retain the three year period. The Commission agrees with Peabody that allowing the Interconnection Customer to have the Transmission Provider suspend work for up to three years allows generation projects the flexibility necessary to accommodate permitting and other delays that are particularly likely to affect large projects.

411. The Final Rule requires the Interconnection Customer to pay all reasonable costs that the Transmission Provider incurs in suspending work on its Interconnection Facilities, as well as costs that are reasonable and necessary to ensure the safety and integrity of the Transmission Provider's Transmission System during the suspension.

412. We reject Cinergy's proposal that an Interconnection Customer be limited to one suspension period per Generating Facility. The LGIA is designed to be a standard agreement that will operate in any number of situations, and to limit arbitrarily each Generating Facility to only one suspension period, regardless of circumstances, is unreasonable.

413. We adopt NERC's proposal that Article 5.13 require a suspending Interconnection Customer to leave the system in a safe and reliable condition in accordance with Good Utility Practice and the Transmission Provider's safety and reliability criteria.

414. In response to Cinergy's request for clarification of the term ''suspension of work,'' the Commission clarifies that a Transmission Provider, upon receiving written notice of suspension from the Interconnection Customer, is authorized to cancel or suspend material, equipment and labor contracts associated with that work. If reliability could be compromised by stopping construction, the Transmission Provider must continue construction until it reaches a stage where it can safely discontinue work. Any costs associated with suspension (or of completing a discrete Network Upgrade) shall be deducted from the Interconnection Customer's security deposit.

415. With respect to the Midwest ISO's request to require an Interconnection Customer to notify both the Transmission Owner and the Transmission Provider, we clarify that if both Parties are signatories to the LGIA, the Interconnection Customer is required to notify both the Transmission Owner and the Transmission Provider.

416. This article is designated Article 5.16 in the Final Rule LGIA.

417. *Article 5.14—Taxes*—Proposed LGIA Article 5.14 addressed the allocation of responsibilities that would apply with respect to the tax treatment of an Interconnection Customer's payments or property transfers to the Transmission Provider for the installation of the Transmission Provider's Interconnection Facilities and Network Upgrades.

418. Internal Revenue Service policy, as expressed in IRS Notice 2001–82 and IRS Notice 88–129, delineates the standards under which an Interconnection Customer's payments to build interconnections facilities will not create a current tax liability for a Transmission Provider. The ''safe harbor'' provisions described in these notices generally prevent the transaction from being considered a taxable transfer. If the IRS changes its policy, or if the transaction no longer qualifies for safe harbor protection and tax liability results, under the provisions in Article 5.14 the Interconnection Customer would indemnify the Transmission Provider for any tax liability that may arise from the payments to build the Transmission Provider's Interconnection Facilities and Network Upgrades.

Comments

419. Several entities argue that the IRS safe harbor does not eliminate all risk of these payments being treated as taxable income to the Transmission Provider because the IRS may revisit its policies in a manner that establishes tax liability for interconnections, including the credits provided against transmission service in exchange for the reimbursement of Network Upgrades.[75] These commenters argue that Article 5.14 should account for these risks.

420. Some commenters, including Duke, EPSA, NYTO, and PG&E, argue that the Commission should adopt Article 5.16.5 of the Consensus LGIA, which ensures that a Transmission Owner is made whole when a contribution from an Interconnection Customer is non-taxable when made, but the IRS later imposes tax liability. NYTO further suggests that the two revisions to Consensus LGIA Article 5.16.5 that were proposed by the Transmission Owners should be retained. These provisions would ensure that the Transmission Owner would be reimbursed for taxes imposed more than ten years after the date the Interconnections Facilities are placed in service and allow for security for such potential tax liability.

Commission Conclusion

421. The Commission finds that Article 5.14 as proposed appropriately addresses the risk that the contracting Parties face because of the uncertainties regarding IRS policy, because it requires the Interconnection Customer to indemnify the Transmission Provider in the event that the IRS changes or clarifies its policy.

422. The Commission concludes that a discussion of subsequent taxable events is appropriate for the Final Rule LGIA.[76] The two additions NYTO requests are unnecessary because Final Rule LGIA Article 5.17.3 addresses limitation of indemnification and the ability of the Transmission Provider to require security from the Interconnection Customer.

423. *Article 5.14.1—Interconnection Customer Payments Not Taxable* (In the Final Rule LGIA: Article 5.17.1)—Proposed LGIA Article 5.14.1 would have provided that, consistent with IRS Notice 2001–82 and IRS Notice 88–129 (discussing the IRS safe harbor provisions), all payments made by the Interconnection Customer to the

[74] An RTO or ISO with participant funding may propose an alternative policy for Commission approval.

[75] *E.g.,* EEI, FP&L, MidAmerican, and TXU.

[76] Subsequent taxable events are discussed in Final Rule LGIA Article 5.17.6. This discussion retains the article numbers that appeared in the NOPR LGIA.

Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and Network Upgrades are non-taxable, either as contributions to capital, or as advances.

Comments

424. Peabody endorses this proposed provision. It argues that it is in the best interest of Interconnection Customers, Transmission Providers and customers to take advantage of the tax exemption for payments that Interconnection Customers make to Transmission Providers for Network Upgrades made pursuant to an LGIA.

425. Progress Energy argues that an Interconnection Customer's right to terminate the LGIA on 30 Calendar Days' written notice may jeopardize the safe harbor treatment of Interconnection Customer contributions because the IRS safe harbor provisions apply only to interconnection agreements with a minimum term of ten years.

Commission Conclusion

426. In response to Progress Energy, the mere existence of the 30 day termination provision does not mean that the Interconnection Agreement conflicts with the IRS minimum term requirement of ten years. Nevertheless, if either Party in fact terminates the LGIA before ten years have passed, the IRS may then conclude that the Interconnection Customer's payments are indeed taxable. Accordingly, the Parties should consider these possible tax consequences when deciding whether to terminate an LGIA within ten years.

427. This article is designated Article 5.17.1 in the Final Rule LGIA.

428. *Article 5.14.2—Representations and Covenants* (In the Final Rule LGIA: Article 5.17.2)—Proposed LGIA Article 5.14.2 set forth the representations and covenants that would be agreed to by the Parties to conform to the requirements of the IRS safe harbor provisions set forth in the relevant IRS Notices.

Comments

429. FirstEnergy argues that in order for the Interconnection Customer's payments to the Transmission Provider to be deemed non-taxable under the IRS safe harbor provisions, ownership of the electricity generated at the Generating Facility must pass to another entity prior to the transmission of the electricity on the Transmission System. FirstEnergy asks the Commission to clarify the representations and proposed covenants in proposed LGIA Article 5.14.2 to refer to the Point of Interconnection or Point of Change of Ownership.

Commission Conclusion

430. We do not intend to interpret the IRS safe harbor provisions, and so we leave it to the Parties to ensure that their conduct, including the point at which the ownership of electric energy produced by the Generating Facility changes hands, conform to IRS policy.

431. This article is designated Article 5.17.2 in the Final Rule LGIA.

432. *Article 5.14.3—Indemnification for Taxes Imposed Upon Transmission Provider*—Proposed LGIA Article 5.14.3 would have required that the Interconnection Customer indemnify (hold harmless) the Transmission Provider from income taxes imposed against the Transmission Provider as a result of payments or property transfers made by Interconnection Customer to the Transmission Provider under the LGIA—that is, if the IRS safe harbor provisions do not keep the Transmission Provider from having to pay income taxes. The Transmission Provider would not include a gross-up [77] for income taxes unless either it has made a good faith determination that the payment or transfers should be recorded as income subject to taxation, or any Governmental Authority directs Transmission Provider to treat the payment or transfers as subject to taxation. As an alternative to the gross-up, the Transmission Provider would be able to require the Interconnection Customer to provide security in a form reasonably acceptable to the Transmission Provider and in an amount equal to the Interconnection Customer's estimated tax liability.

Comments

433. MidAmerican supports Article 5.14.3 and recommends that the Transmission Owner be added to this provision by changing Transmission Provider to Transmission Provider or Transmission Owner.

434. LADWP argues that although Section 5 of the Commission's OATT provides that the transmission customer must indemnify the Transmission Provider that owns facilities financed by tax-exempt debt, it is not clear whether that provision would apply to an Interconnection Customer. LADWP asks the Commission to clarify that an Interconnection Customer is liable for the cost of any adverse tax consequences visited on the public power Transmission Owner because of the interconnection.

435. SoCal PPA believes that the Interconnection Customer's obligation to reimburse the Transmission Provider for taxes should cover *ad valorem* property taxes and other taxes assessed against the Transmission Provider.

436. NE Utilities seeks an alternative method for a Transmission Provider to recover tax liability for which it is not reimbursed due to circumstances beyond its control—for example, if the security instrument provided by the Interconnection Customer does not cover the full tax liability or if the Interconnection Customer defaults on its obligation to indemnify the Transmission Provider. It argues that in these situations, the Commission should authorize the Transmission Provider to recover the remaining balance from customers.

437. TXU says that the Commission should provide comprehensive protection for a Transmission Provider if the IRS decides that Interconnection Customer payments are taxable. A letter of credit, as provided for in proposed LGIA Article 5.14.3, would provide some security for the Transmission Provider, but may limit the process of contesting IRS positions and may prove otherwise difficult to administer. Without elaborating, TXU requests that a more comprehensive security device be required until definitive guidance is received from the IRS.

438. SoCal Edison states that if a Transmission Provider or Transmission Owner is unable to recover from a generator any income tax incurred as a result of an interconnection arrangement, the Commission should provide Transmission Providers and Transmission Owners with a regulatory backstop that would guarantee the recovery of these income taxes in transmission rates. It adds that to the extent that a Transmission Provider or Transmission Owner is unable to include income taxes in transmission rates because of other regulatory restrictions (such as a rate freeze or the requirement to have state commission approval for such rates), the Transmission Provider or Transmission Owner should have discretion in determining the appropriate form and level of security required from the generator at the time the IA becomes effective, and a right to offset any tax liability against any transmission credit owed. Further, SoCal Edison says Article 5.14 must state that any future payment shall include interest and penalties, as well as any other costs imposed by the IRS.

[77] A gross-up for income taxes is a dollar amount calculated to determine the Interconnection Customer's estimated tax liability to the Transmission Owner.

439. Progress Energy advocates that Article 5.14.3 include certain requirements regarding the Interconnection Customer-provided financial guaranty, such as requiring that the guaranty be issued by a financial entity acceptable to the Transmission Provider and that it be non-revocable for the term of the LGIA.

440. Dynegy proposes that the Commission make the security obligation mutual. The Final Rule should state that, when the Transmission Provider requires the Interconnection Customer to pay a tax gross-up because the Transmission Provider has determined in good faith that the payments or property transfers made to Transmission Provider should be reported as income subject to taxation, the Transmission Provider must post security for the amount of the gross-up, plus interest. This will protect the Interconnection Customer from becoming an unsecured creditor in the event of a Transmission Provider insolvency before the issuance of a private letter ruling that could result in the refund of the tax gross-up payment and interest to the Interconnection Customer.

441. Calpine argues that the security requirement should bear a reasonable relationship to the risk to which a transmission owner is exposed. Instead of allowing the Transmission Provider to require an Interconnection Customer to meet a costly security requirement—using funds that the Interconnections Customer could put to better use developing generation and infrastructure—the Commission should authorize the Transmission Provider to recover in its rates any future tax liability. If the Commission is unwilling to expose ratepayers to this risk, it should modify the Final Rule to ensure that any residual security that the Interconnection Customer would be obligated to post be reasonably related to the actual risk to which the Transmission Provider is exposed.

442. EPSA argues that an Interconnection Customer should not be required to pay the taxes of a Transmission Owner unless the Interconnection Customer is entitled to a refund if it is ultimately determined that the amounts paid for Interconnection Facilities and Network Upgrades are not subject to tax. If the Transmission Owner in an Affected System is not a Party to the Interconnection Customer's LGIA, the Interconnection Customer will have no means to enforce its right to a refund of any amounts it has previously paid in taxes. A Transmission Owner is able to insist on security indefinitely, to protect against the remote possibility of a change in circumstances that might become a subsequent taxable event, the balance reflected in the Consensus Tax Provisions would be upset.

Commission Conclusion

443. In response to MidAmerican's request that proposed LGIA Article 5.14.3, which is designated Article 5.17.3 in the Final Rule LGIA, specify that the Transmission Owner as well as the Transmission Provider is indemnified, the term ''Transmission Provider'' in the LGIA includes the Transmission Owner, where applicable. Accordingly, there is no need to revise this provision.

444. SoCal PPA raises tax issues beyond the scope of Article 5.17, since this article addresses only federal tax liability. The Commission rejects the proposal that *ad valorem* property taxes be included in the Interconnection Customer's obligation to reimburse the Transmission Provider for taxes, since these expenses are annual and are more analogous to operating expenses that are not covered under the LGIA.

445. The Commission rejects requests that the Transmission Provider may recover any outstanding federal tax liability balance from customers. A Transmission Provider is to use the security option in Article 5.17.3 to protect itself from the risk that an Interconnection Customer will not pay the potential tax liability, so there should not be any outstanding liability. This, along with the ability to require security or, where appropriate, a gross-up, should sufficiently protect the Transmission Provider from potential tax liability. Should the Transmission Provider be unable for some reason to recover the full cost of its tax liability, it may propose to recover such costs in its rates, but the Commission is not pre-authorizing the recovery of these costs generically.

446. In response to SoCal Edison's request for a requirement that future payment include interest and penalties, as well as any other costs imposed by the IRS, this requirement is in Article 5.17.3.

447. The Commission rejects as unnecessary Progress Energy's request for greater specificity regarding the guaranty because Article 5.17.3 already gives the Transmission Provider the discretion to choose the security in a form ''reasonably acceptable'' to the Transmission Provider. Accordingly, the Transmission Provider has the discretion to require the Interconnection Customer to offer security that meets the criteria Progress Energy specifies.

448. The Commission agrees with Dynegy that the Interconnection Customer should receive security if a Transmission Provider determines that the payments or property transfers should be reported as income subject to taxation. It is reasonable to require the Transmission Provider to post security, since the gross-up puts the Interconnection Customer at risk in the event that it turns out that taxes do not have to be paid, but the Transmission Provider has become insolvent. Final Rule LGIA Article 5.17 gives the Interconnection Customer the option to request such security when the Transmission Provider has made an independent determination that taxes should be payable.[78]

449. Regarding EPSA's argument that an Interconnection Customer should not be required to pay a gross-up unless it is entitled to a refund if the amounts paid ultimately are not taxed, the Commission notes that the refund protection is already in Article 5.17.7. This protection, together with the ability to require security for a gross-up, should afford an Interconnection Customer sufficient protection against the risk of nonrecovery.

450. EPSA raises issues regarding tax liability and Network Upgrades on Affected Systems. Obligations regarding tax liability and related indemnification should be set forth in a separate agreement between the Interconnection Customer and the Affected System related to the Network Upgrade.[79]

451. Finally, in response to EPSA's argument that proposed LGIA Article 5.14.3 of the LGIA permits a Transmission Provider to insist on security indefinitely, the Final Rule has been revised to state that indemnification will terminate at the earlier of the expiration of the ten year testing period, as contemplated by the IRS safe harbor provisions, or the applicable statute of limitations, or the occurrence of a subsequent taxable event contemplated by this article and the payment of any related indemnification obligation. These are reasonable end points for the indemnification obligation because once the earlier of either of these events occurs, there is no further risk of new tax liability and, therefore, no further need for indemnification.

452. *Article 5.14.4—Tax Gross-Up Amount* (In the Final Rule LGIA: Article 5.17.4)—Proposed LGIA Article 5.14.4

[78] Security will not be available when a Governmental Authority directs a Transmission Provider to report payments of property as income subject to taxation.

[79] *See* Part II.A.2—Section 3.5 (Coordination with Affected Systems).

described how the Parties would calculate the Tax Gross-Up Amount.

Comments

453. FP&L argues that the tax gross-up methodology in proposed LGIA Article 5.14.4, when combined with the requirement that the Transmission Provider provide refunds in the form of transmission service credits for its full costs of Network Upgrades (including income taxes), will not allow the Transmission Provider to be made whole for the income tax payments for Network Upgrades. It states that Article 5.14.4 requires the Interconnection Customer to pay up front the net present value of the income taxes due on Network Upgrades, based on the assumption that the Transmission Provider will get income taxes back through the future stream of tax depreciation benefits. But if the Transmission Provider is also required to give back to the Interconnection Customer the net present value of income tax payments, plus interest, through refunds, then the Transmission Provider is paying the full cost of income taxes on assets that it is purchasing and it will not be made whole. FP&L further states that the Commission should authorize two alternatives for the tax gross-up methodology: (1) The Interconnection Customer pays the full amount of taxes up front, but then receives refunds for its tax payments; or (2) the Interconnection Customer pays a reduced amount for the taxes up front, which is the present value of the Transmission Provider's carrying costs, calculated at its current weighted average cost of capital, for its tax payment associated with the contribution in aid of construction until it receives the payment back over time through tax depreciation, but then does not receive refunds for the payment of taxes. Under either alternative, it is essential that the Interconnection Customer not receive interest from the Transmission Provider on tax payments actually made to the government because, if it does, the Transmission Provider will not be made whole.

454. Southern asks the Commission to modify this article so that the calculation of the tax gross-up for payments that entitle the Interconnection Customer to credits is not reduced by depreciation deductions available to the Transmission Provider. FirstEnergy says the method of calculating the Present Value Depreciation Amount, should be clarified by adding the phrase ''used for Federal and state purposes'' after ''* * * Transmission Provider's anticipated tax deductions as * * *.''

455. EPSA supports the tax gross-up calculation in Proposed LGIA Article 5.14.4. It argues that the calculation was drafted by tax professionals during the ANOPR process in an effort to ensure that the Transmission Provider is made whole. The drafting group determined that the most appropriate manner for calculating the tax gross-up is the methodology set forth in *Ozark Gas Transmission Corp.,* 56 FERC ¶ 61,349 (1991). EPSA also states that this formula has been approved by the Commission and many existing interconnection agreements use the *Ozark Gas* methodology to compute tax gross-ups for both interconnection facilities and network upgrades, without regard to whether the Interconnection Customer will receive transmission credits. EPSA further argues that the calculation takes into account a Transmission Provider's federal and state tax rate and the present value of all tax depreciation deductions to which the Transmission Provider is entitled over the life of the Interconnection Facilities and Network Upgrades. Finally, EPSA argues that the tax benefits associated with depreciation are not returned to the Interconnection Customer as transmission credits, as some commenters contend. Although the Transmission Provider will return the gross tax costs to the Interconnection Customer in the form of Transmission Credits, the Transmission Provider still benefits from being able to deduct the cost of the Interconnection Facilities and Network Upgrades.

Commission Conclusion

456. The Commission agrees with EPSA that Proposed LGIA Article 5.14.4 offers the appropriate methodology for ensuring that a Transmission Provider is fully compensated for tax consequences. FP&L and Southern have not sufficiently explained how the calculation fails to make the Parties whole, and we do not revise this article.

457. This article is designated Article 5.17.4 in the Final Rule LGIA.

458. *Article 5.14.5—Private Letter Ruling or Change or Clarification of Law* (In the Final Rule LGIA: Article 5.17.5)—Proposed LGIA Article 5.14.5 would have required that, at the Interconnection Customer's request and expense, a Transmission Provider file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid or to be paid by the Interconnection Customer to the Transmission Provider under the LGIA would be subject to federal income taxation. The point of obtaining such a ruling is to get a definitive answer up front as to whether taxes will be due. If a private letter ruling concludes that such sums are not taxable, the Interconnection Customer's obligations would be reduced accordingly.

Comments

459. Commenters criticize the proposed relationships between the Interconnection Customer and the Transmission Provider in seeking a private letter ruling. El Paso argues that the Transmission Provider should have sole discretion to decide how to minimize its taxes, including whether to seek a private letter ruling or to contest a tax determination. While the Interconnection Customer must indemnify the Transmission Provider for tax liability, El Paso argues that this does not justify allowing the Interconnection Customer to require the Transmission Provider to dedicate its taxpayer status, time, and resources to seeking a private letter ruling or contesting a tax determination. This inappropriately places the Interconnection Customer in the position of deciding how the Transmission Provider will meet its obligations to the Interconnection Customer. In addition, even if the Interconnection Customer pays filing and legal fees associated with a private letter ruling or contest, this does not compensate the Transmission Provider for its internal costs of prosecuting such proceedings.

460. Dynegy generally supports this provision but contends that it should be revised because it (1) fails to recognize that the Interconnection Customer is the Party at risk of paying a tax gross-up that turns out not to have actually been required by the tax laws, and (2) unduly restricts the Interconnection Customer's ability to make the arguments it wants made in pursuing a private letter ruling. For instance, Dynegy says, Article 5.14.5 allows the Interconnection Customer to prepare only the ''initial draft'' of the private letter ruling request, and Article 5.16.6 provides for only one level of judicial review for appeals of adverse rulings. Such restrictions should be removed because it is the Interconnection Customer, not the Transmission Provider, that is paying the gross-up and funding the efforts to obtain a private letter ruling.

461. Salt River Project notes that this provision would require a Transmission Provider to file a private letter ruling, at an Interconnection Customer's request and expense, but establishes that the Interconnection Customer would prepare the initial draft of the letter. This will give rise to disclosure and

confidentiality problems and is a bad business practice.

462. FP&L proposes, without elaboration, that the Commission modify proposed LGIA Article 5.14.5 to permit the Transmission Provider to require a jointly filed request for a private letter ruling.

463. FirstEnergy asks the Commission to clarify that the last sentence of this article refers to the need to maintain a parental guarantee or letter of credit as required by proposed LGIA Article 5.14.3, and not the Interconnection Customer's indemnification obligations under proposed LGIA Article 5.14 generally.

464. NYTO argues, without elaboration, that a provision is needed to ensure that a Transmission Owner can ask the Interconnection Customer to provide financial security to backstop its potential tax liability where the Transmission Owner has not asked for a gross-up payment from the Interconnection Customer pending any ruling from the IRS.

Commission Conclusion

465. The Commission rejects comments that seek to deny the Interconnection Customer the right to ask the Transmission Provider, at the Interconnection Customer's expense, to seek a private letter ruling from the IRS. The Interconnection Customer would otherwise be without recourse if it disagrees with the Transmission Provider's conclusion regarding either tax liability (and gross-up) or the need for security, and it is the Interconnection Customer that pays the taxes.

466. In response to Dynegy, we will not grant the Interconnection Customer greater latitude with respect to the Transmission Provider's request for a private letter ruling because the proposed provision already offers a fair balance between the interests of the Parties. While the Interconnection Customer funds the request for a private letter ruling, permitting it to submit an ''initial draft'' of the private letter ruling request, and to insist on a single appeal, allows the Interconnection Customer to have adequate participation in the effort to secure an IRS determination.

467. The Commission disagrees with Salt River Project's argument that allowing the Interconnection Customer to prepare the initial draft of the request for a private letter ruling from the IRS gives rise to disclosure and confidentiality problems. The Commission leaves it to the Parties to work within the confidentiality and other provisions of the LGIA to determine the most appropriate means for allowing the Interconnection Customer to draft the request.

468. FP&L offers no explanation for why the Transmission Provider should be permitted to require a jointly filed request for a private letter ruling. As a result, we reject FP&L's request.

469. The Commission agrees with FirstEnergy that the last sentence of Proposed LGIA Article 5.14.5 should be revised. This sentence refers to the Interconnection Customer's obligations if a private letter ruling concludes that the transfers or sums paid to the Transmission Provider are not subject to federal income taxation. In this event, the Interconnection Customer's obligations with respect to the guaranty or gross-up allowed under Final Rule LGIA Article 5.17.3 will be reduced or eliminated. The private letter ruling would not eliminate the Interconnection Customer's obligation to indemnify the Transmission Provider in the event that the IRS changes its ruling or policy or a subsequent taxable event occurs.

470. As for NYTO's argument that the Transmission Provider should be able to ask the Interconnection Customer to provide financial security when the Transmission Provider has foregone the gross-up, such authority is already in Final Rule LGIA Article 5.17.3. Under this article, the Transmission Provider may secure a guaranty from the Interconnection Customer in an amount equal to the Interconnection Customer's estimated tax liability. Since the article does not specify the timing of such a request, the request may be made at any time the Transmission Provider believes that it is appropriate.

471. This article is designated Article 5.17.5 in the Final Rule LGIA.

472. *Article 5.14.6—Contests*—Proposed LGIA Article 5.14.6 described the obligations that would apply if any Governmental Authority determines that the Transmission Provider's receipt of payments or property is income subject to taxation. At the Interconnection Customer's sole expense, the Transmission Provider would appeal or oppose such a determination. Proposed LGIA Article 5.14.6 also described the procedures for settling the contested ruling.

Comments

473. Southern proposes clarifying that the Interconnection Customer's obligation for the settlement amount is calculated on a basis that is fully grossed-up for taxes.

474. NYTO argues that the Transmission Owner's obligation to contest a determination by a Governmental Authority should be subject to the Interconnection Customer providing an opinion of tax counsel that there is high likelihood of success.

Commission Conclusion

475. The Commission rejects the commenters' requests. The Transmission Provider may determine if the settlement amount is appropriate under Article 5.14.6, which is designated Article 5.17.7 in the Final Rule, and, therefore, has the opportunity to ensure that the amount is calculated in an acceptable manner. The Commission will not require that the Interconnection Customer tender a tax counsel opinion. Under Article 5.17.7, the Interconnection Customer must pay all of the costs of an appeal of the ruling. The Commission believes that the prospect of paying for an appeal with a low likelihood of success should be a sufficient incentive not to pursue a weak case.

476. *Article 5.14.7—Refund* (In the Final Rule LGIA: Article 5.17.8)—Proposed LGIA Article 5.14.7 described the conditions under which a refund would be payable to the Interconnection Customer for any payments made related to income tax liability and the formula for calculating the refund.

Comments

477. The Florida PSC recommends that the indemnification treatment in the LGIA be subject to review by state commissions on a case-by-case basis since there are local consequences. In some instances, indemnification alone is insufficient and letters of credit, parental involvement or other forms of guarantees may be required to protect retail customers adequately from becoming the default responsible Party. The Transmission Provider should be able to petition the state commission for a more stringent indemnification standard.

Commission Conclusion

478. The Commission does not grant Florida PSC's request. When the Commission, under the authority of sections 201, 205 and 206 of the Federal Power Act [80] sets a rate, term or condition for such transmission, a state may not exercise its jurisdiction over a retail rate to review the reasonableness of the rate, term or condition set by the Commission.[81]

479. This article is designated Article 5.17.8 in the Final Rule LGIA.

[80] 16 U.S.C. 824, 824d and 824e (2000).

[81] *See, e.g., Mississippi Power & Light* v. *Mississippi ex rel.* Moore, 487 U.S. 354, 371–72 (1988); *Nantahala Power & Light Co.* v. *Thornburg,* 476 U.S. 953, 970 (1986) (both applying the same principle to the Commission's jurisdiction over wholesale sales of electric energy).

480. *Article 5.14.8—Taxes Other Than Income Taxes* (In the Final Rule LGIA: Article 5.17.9)—Proposed LGIA Article 5.14.8 described the Parties' obligations if taxes other than federal or state income taxes, and for which the Interconnection Provider may be required to reimburse the Transmission Provider under the terms of the LGIA, are imposed. At the Interconnection Customer's expense, the Transmission Provider would appeal or oppose such a determination. Proposed LGIA Article 5.14.8 also described the procedures for settling the contested ruling.

Comments

481. FP&L asks the Commission to clarify Article 5.14.8 to require the Interconnection Customer to pay tax costs, other than income tax, related to interconnection payments.

Commission Conclusion

482. The Commission notes that Article 5.14 does not limit recovery to state or federal income taxes related to interconnection payments. This provision by itself does not create additional tax liability beyond income taxes. Because FP&L offered no justification for why additional tax protection is necessary, the Commission rejects its request.

483. This article is designated Article 5.17.9 in the Final Rule LGIA.

484. *Article 5.15—Tax Status* (In the Final Rule LGIA: Article 5.18)—Proposed LGIA Article 5.15 provided that each Party cooperate with the other to maintain the other Party's tax status. It also proposed that the LGIA would not be intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds.

Comments

485. NYTO proposes modifying the LGIA to be consistent with the tax-exempt bond provisions of the Transmission Owner's (or the ISO's) OATT. Thus, the LGIA would provide that the Transmission Owner is not obligated to take any action, and the Interconnection Customer is prohibited from taking any action, that would adversely affect the tax-exempt status of the Transmission Owner's (or the ISO's) local furnishing bonds.

486. Several commenters, including LADWP and TANC, are concerned about the effect that providing Interconnection Service will have on the tax-exempt status of their bond funding. TANC asks the Commission to provide flexibility for municipal utilities that adopt the Tariff additions. NRECA–APPA is concerned that contributions by an Interconnection Customer for construction of interconnection facilities and Network Upgrades may result in loss of its tax-exempt status. A tax-exempt cooperative must ensure that at least 85 percent of its income comes from members.

487. LPPC urges the Commission to give public power utilities the option to: (1) Refuse to provide an interconnection if doing so would jeopardize the tax-exempt status of the public power utility's financing; or (2) proceed with the interconnection with an indemnification provision that would require Interconnection Customers to reimburse public power entities if any aspect of compliance with the Final Rule causes the utility to lose the tax-exempt status of its bonds.

Commission Conclusion

488. The Commission concludes that the tax status of the Parties is sufficiently protected by Proposed LGIA Article 5.15.

489. As described more fully in the reciprocity discussion in this preamble, public power and other nonjurisdictional entities with ''safe harbor'' tariffs may add the Final Rule LGIP and Final Rule LGIA to their safe harbor tariffs if they wish to continue to have safe harbor protection.[82] The Commission limits reciprocity compliance to those services a nonjurisdictional entity is capable of providing on its system.[83] The Commission will consider the restrictions on nonjurisdictional and jurisdictional entities' conduct that would endanger the tax exempt status of their bond funding during compliance or upon submission of amended safe harbor tariffs, and we will act to ensure that they retain their tax-exempt status. Accordingly, the Commission need not address further here the argument raised by LPPC.

490. This article is designated Article 5.18 in the Final Rule LGIA.

491. *Article 6—Testing and Inspection*—Proposed LGIA Article 6 provided that, prior to the Commercial Operation of the Generating Facility, the Transmission Provider shall test the Transmission Provider Interconnection Facilities and Network Upgrades, and the Interconnection Customer shall test the Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. The Interconnection Customer would bear the cost of these tests and any modifications. After the Commercial Operation Date, each Party shall conduct routine inspection and testing of its own facilities, at its own expense, in accordance with Good Utility Practice.

Comments

492. Entergy generally supports the testing and inspection provisions, but urges that Article 6.1 provide the Parties with additional scheduling flexibility if testing reveals the need for modifications to the Generating Facility. Entergy therefore proposes that the Parties' schedules for completing their respective obligations to construct and install facilities shall be extended to the extent reasonably necessary to complete any necessary modifications to the Generating Facility.

493. Arkansas Coops propose that Article 6.1 of the NOPR LGIA be modified to prohibit a Transmission Provider from preventing an Interconnection Customer sale of test energy to an entity other than the Control Area operator.

Commission Conclusion

494. The Commission does not believe that a change to the LGIA is required in order to satisfy Entergy's concern. The LGIA is premised on the idea that the Interconnection Customer and Transmission Provider will coordinate the interconnection of the Interconnection Customer's Interconnection Facilities on an ongoing basis. If the testing reveals a problem with the Interconnection Facilities or Network Upgrades, the LGIA contemplates that the Parties will work together to modify the schedule.

495. In response to Arkansas Coops, the Interconnection Customer may sell its energy to anyone; the LGIA does not need to address this matter, as it is not an interconnection matter.

496. *Article 7—Metering*—Proposed LGIA Article 7 would have required that, unless otherwise agreed to by the Parties, the Transmission Provider shall install, own, operate, and maintain Metering Equipment at the Point of Interconnection, with the Interconnection Customer bearing all reasonable documented costs.

497. *Article 7.2—Check Meters*—Proposed LGIA Article 7.2 provided that the Interconnection Customer, at its own expense, may install one or more meters on its side of the Point of Interconnection to check the accuracy of Transmission Provider's meters.

498. *Article 7.3—Standards*—Proposed LGIA Article 7.3 provided that if Article 7 conflicts with the manuals,

[82] *See* part II.C.7 (OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA).

[83] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,286.

standards or guidelines of the Applicable Reliability Council, the latter shall control.

499. *Article 7.4—Testing of Metering Equipment*—Proposed LGIA Article 7.4 provided that if at any time Metering Equipment fails to register or is found to be inaccurate by more than one percent, the Transmission Provider shall correct all measurements made by the inaccurate meter.

500. *Article 7.5—Metering Data*—Proposed LGIA Article 7.5 provided that the official measurement of the amount of energy delivered from the Generating Facility to the Point of Interconnection is the metered data, which would be telemetered to one or more locations designated by the Transmission Provider and one or more locations designated by the Interconnection Customer.

Comments

501. Cal ISO and SoCal Edison argue that, in California, it is the Cal ISO Tariff that governs metering provisions. They further argue that many provisions of proposed LGIA Article 7 appear to be at odds with Cal ISO's Tariff and WECC requirements. For example, Cal ISO points out that proposed Article 7.1 appears to require metering only at the Point of Interconnection which would mean ''net metering,'' whereas WECC requires Cal ISO to meter a generator's gross output.

502. SoCal Edison and WEPCO argue that the Transmission Provider should not be required to own the meters because owning meters carries with it some liability associated with inaccurate meter readings.

503. Dynegy comments that meters should be installed at an agreed-upon location rather than at the Point of Interconnection, and metering information should be provided in analog and digital form to no more than two locations specified by the Transmission Provider. It also proposes that check meter measurements be used when the primary meter is inaccurate, and that the Final Rule specify in more detail the cost responsibility of the Transmission Provider if it does not properly maintain the metering equipment.

504. Baker & McKenzie and Dynegy argue that proposed LGIA Article 7.2 incorrectly references Article 7.3 and should refer instead to Article 7.4. Several commenters, including Baker & McKenzie, the Bureau of Reclamation, Dynegy, and Monongahela Power, propose that language should be added to Article 7.4 to use check meters to correct the measurements read by failed or inaccurate Metering Equipment. Baker & McKenzie proposes several editorial changes to clarify Article 7.4.

505. FirstEnergy argues that the one percent metering accuracy is very difficult to achieve and its current interconnection agreement as well as the industry standard allows for a two percent metering error. It asserts that the provision should be changed to allow for a metering error of two percent. Monongahela Power argues that the allowed metering error should be 1.5 percent.

506. Several commenters including EEI, FirstEnergy, and Southern argue that the last sentence of proposed LGIA Article 7.5 incorrectly states that ''metering data [is] provided by the Interconnection Customer'' because the metering data is being provided by the Transmission Provider to the Interconnection Customer.

Commission Conclusion

507. Cal ISO's concern with regard to metering being allowed only at the Point of Interconnection is misplaced. Proposed LGIA Article 7.1, which provides that ''[u]nless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection,'' clearly allows Metering Equipment to be placed at an agreed upon location different from the Point of Interconnection. However, in response to Cal ISO's and SoCal Edison's concern that their metering provisions are governed by WECC requirements, we are adding the following language to Article 7.1: ''Each Party shall comply with the Applicable Reliability Council requirements.'' The Commission does not expect that Applicable Reliability Council requirements will conflict with our provisions in Final Rule LGIA Article 7. Accordingly, we find the following language to be unneeded and are deleting it from Article 7.3 (Standards): ''To the extent this Article 7 conflicts with the manuals, standards, or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control.''

508. In response to SoCal Edison and WEPCO, we are not revising proposed LGIA Article 7.1 because the Final Rule contains the phrase ''[u]nless otherwise agreed by the Parties'' which allows any Party to own the meters. In response to Dynegy and Baker & McKenzie we are changing the reference in Final Rule LGIA Article 7.2 to Article 7.4. We are also adding language in Final Rule LGIA Article 7.4 for the use of check meters to correct the measurements read by failed or inaccurate Metering Equipment. In response to FirstEnergy and Monongahela Power's argument, the Commission adopts a metering error of two percent because, as pointed out by FirstEnergy, two percent is the industry standard. Finally, we are correcting the error in the last sentence of proposed LGIA Article 7.5 noted by EEI, FirstEnergy and Southern.

509. *Article 8—Communication*—Proposed LGIA Article 8 described the operating communications and dedicated data circuits between the Parties that would be necessary and the cost and maintenance responsibility for such equipment.

510. *Article 8.1—Interconnection Customer Obligations*—Proposed LGIA Article 8.1 would have required the Interconnection Customer to maintain satisfactory operating communications with the Transmission Provider's Transmission System dispatcher or designated representatives.

Comments

511. NERC and Western recommend that a Transmission Provider be permitted to use a voice communications system that does not rely on the public telephone system.

512. Dairyland Power proposes that maintenance be performed by the Transmission Provider, in an agreed upon manner, at the Interconnection Customer's expense.

513. Cleco and FirstEnergy propose that the Interconnection Customer be responsible for the cost of maintaining any communications and computer equipment belonging to either Party, as well as the hardware and software necessary for the Transmission Provider to interface properly with the Interconnection Customer's system.

514. Progress Energy requests that the first sentence of proposed LGIA Article 8.2 be rewritten to read: ''Prior to the Initial Synchronization Date of the [Generating] Facility, a remote terminal unit, or equivalent data collection and transfer equipment acceptable to both Parties shall be installed * * *''

515. The Bureau of Reclamation believes that cyber-security and data security issues should be addressed in the body of the LGIA, and not in an Appendix.

Commission Conclusion

516. The Commission concurs with the recommendations of NERC, Western and Progress Energy, and revises Proposed LGIA Articles 8.1 and 8.2 to allow greater flexibility.

517. In response to the Bureau of Reclamation, the Commission notes that

the Appendices are as binding as provisions within the body of the LGIA.

518. Articles 8.1 and 8.2 require that the Interconnection Customer transmit the data to a point specified by the Transmission Provider. Once the data has reached that point, it becomes the responsibility of the Transmission Provider to maintain its own hardware and software equipment. In response to Dairyland Power, the Commission notes that the Parties may enter into an agreement regarding which Party actually performs the data system maintenance, but the Interconnection Customer is ultimately responsible for paying for that maintenance.

519. *Article 9—Operations*—Proposed LGIA Article 9 would have required the Interconnection Customer and Transmission Provider to operate their facilities in a safe and reliable manner. It also proposed reactive power requirements and provided that the Interconnection Customer will be compensated for capital expenses incurred based on the use of the Interconnection Facilities by the Transmission Provider, all third party users, and the Interconnection Customer.

520. *Article 9.1—General*—Proposed LGIA Article 9.1 would have required the Parties to comply with LGIA Appendix G (Interconnection Guidelines). It would also require that each Party provide to the other Parties all information that may be required to comply with Applicable Laws and Regulations.

Comments

521. Southern, Lakeland, and FirstEnergy state that Article 9.1 should refer to Applicable Reliability Council requirements instead of Appendix G Interconnection Guidelines, which is blank. FirstEnergy states that each Party should be required to comply with the requirements of any RTO or ISO and any procedures agreed to by the Joint Operating Committee.

522. Exelon requests that proposed LGIA Article 9.1 be modified to include the following language: ''To the extent interconnection requirements are inconsistent with ISO/RTO rules, the ISO/RTO rules shall govern.''

Commission Conclusion

523. In the Final Rule, Article 9.1 refers to Applicable Reliability Council requirements. The Commission is deleting Appendix G (Interconnection Guidelines). With respect to FirstEnergy's request that Parties be required to comply with any procedures agreed to by the Joint Operating Committee, the Commission does not believe that any language changes are required. We clarify that the Parties are expected to comply with the procedures established by the Joint Operating Committee. We also clarify that the RTO or ISO rules, once approved by the Commission, shall govern the LGIA.

524. *Article 9.2—Control Area Notification*—Proposed LGIA Article 9.2 would have required the Interconnection Customer to notify the Transmission Provider in writing of the location of its Control Area at least three months before the Generating Facility's Initial Synchronization Date. The proposed article also provided that the Interconnection Customer has the right to change the Control Area after the Initial Synchronization Date.

Comments

525. Some commenters, including PG&E and Cal ISO, believe that the Generating Facility must be the Control Area to which it is electrically connected.

526. MidAmerican believes that the Interconnection Customer must provide the metering and communications necessary to be a part of a Control Area other than the Transmission Provider's Control Area. Cleco proposes that since switching Control Areas is labor-intensive for the employees of both Control Areas, the Interconnection Customer should be required to remain in a Control Area for at least 12 months before switching.

527. NERC asks that proposed LGIA Article 9.2 be clarified to ensure that the host Control Area (the Control Area to which the Interconnection Customer is physically connected, regardless of whether the Generating Facility is electrically telemetered to another Control Area through a dynamic transfer) can enforce an Interconnection Customer's power factor, voltage control, and other similar obligations. Others commenters, including WEPCO, MidAmerican, Avista, National Grid, Southern, express concerns that a separate agreement and control equipment modification should be required, and that if the Interconnection Customer designates a different Control Area, it should be required to follow the rules for all applicable Control Areas.

528. Duke Energy asks what the consequence would be if an Interconnection Customer fails to notify a Transmission Provider of its Control Area three months prior to its Commercial Operating Date. The Maine PSC requests that Article 9.2 permit waiver of Control Area notification in certain situations.

Commission Conclusion

529. In response to Cal ISO, PGE, and Cleco, the Commission does not prohibit dynamic scheduling of a Generating Facility physically connected in one Control Area but scheduled into another. Nor does it place restrictions on changing Control Areas and how long an Interconnection Customer must remain in a Control Area. Moreover, in Order No. 888 the Commission did not require that Transmission Providers offer dynamic scheduling.[84] However, we also agree with the concerns expressed by NERC and other commenters that the process of changing Control Areas and the attendant implementation brings about requirements for coordination, control equipment modification, and agreement on operational details. In such cases, the Commission confirms that the Transmission Provider's OATT shall apply.

530. We also confirm that the Interconnection Customer must notify the Transmission Provider at least three months before the Initial Synchronization Date of the Control Area in which it will be located. Failure of an Interconnection Customer to make the appropriate Control Area designation would be treated as a Breach of the Final Rule LGIA, subject to opportunity to cure. Similarly, while an Interconnection Customer could request that the Transmission Provider waive the three month notice requirement, we decline to make that a provision of the Final Rule LGIA.

531. *Article 9.3—Transmission Provider Obligations*—Proposed LGIA Article 9.3 would have required the Transmission Provider to operate and maintain its Transmission System in a safe and reliable manner and in accordance with the LGIA. It also proposed that the Interconnection Customer would not be obligated to follow the Transmission Provider's instructions if those instructions would undermine the safe and reliable operation of the Generating Facility.

Comments

532. NERC proposes deleting the proposed language allowing an Interconnection Customer to not follow the Transmission Provider's instructions if doing so would cause material damage to the Generating Facility. NERC is concerned that the language appears to grant the Interconnection Customer a blanket right not to follow operating instructions of the Transmission Provider.

[84] Order No. 888 at 31,709–10.

533. NYTO proposes revising Article 9.3 of the NOPR LGIA to remove any incentive for the Interconnection Customer to ''create'' circumstances (*e.g.,* emergencies) that would warrant noncompliance.

534. Southern asserts that it is inappropriate to impose broad obligations on a Transmission Provider's Transmission Systems in the LGIA. The LGIA should govern only the interconnection of an Interconnection Customer and the Interconnection Facilities necessary to achieve the interconnection, not the entire Transmission System.

535. Dynegy states that proposed LGIA Article 9.3 fails to consider the economic effect of operating instructions on the Interconnection Customer, which could be financially devastating, and that the article should make clear that the Transmission Provider must compensate the Interconnection Customer for responding to such operating instructions.

Commission Conclusion

536. We agree with NERC's concern that the proposed language appears to grant the Interconnection Customer a blanket right not to follow the operating instructions of the Transmission Provider during normal operating conditions and accordingly delete the proposed language in the Final Rule. We expect a Transmission Provider to follow NERC procedures and to take every precaution not to cause any material adverse impact on the safe and reliable operation of the Generating Facility. It is essential that the Interconnection Customer follow all orders given by the Transmission Provider, unless they would result in impairment to public health or safety, since otherwise the Transmission Provider would be unable to effectively manage its Transmission System.[85] Final Rule LGIA Article 13.6 (Interconnection Customer Authority) allows Interconnection Customers to take ''actions or inactions'' necessary to ''preserve the reliability of the Interconnection Customer's Generating Facility'' during an Emergency Condition.

537. In response to NYTO's comments, all Parties are obligated to follow Good Utility Practice and to abide by their obligations under the LGIA. If a Party were to manufacture an Emergency Condition, it would be a violation of the LGIA, as well as a serious Breach of NERC and other reliability rules.

538. Southern's concerns are misplaced. Proposed LGIA Article 9.3 simply stated that the Transmission Provider shall maintain its system in a safe manner and that the Interconnection Customer is required to follow the instructions of the Transmission Provider under normal circumstances.

539. Dynegy's comment also appears to be misplaced. Proposed LGIA Article 9.3 dealt with the obligations of the Transmission Provider, not the obligations of the Interconnection Customer. Assuming that Dynegy's comment applies to Article 9.4 instead, we clarify that a Party is not obligated to follow a Transmission Provider's instructions that would cause harm to its Generating Facility, unless public health and safety would be threatened by noncompliance.

540. *Article 9.6.1—Power Factor Design Criteria*—Proposed LGIA Article 9.6.1 would have required the Generating Facility to be designed so that at the continuous rated power output, its power factor would be within a range of 0.97 leading to 0.95 lagging, unless the Transmission Provider has established different requirements applicable to all Interconnection Customers in the Control Area on a comparable basis.

Comments

541. NERC proposes that the Commission require power factor capabilities to be ''within a range required by Good Utility Practice,'' which incorporates NERC standards by reference. It cites its own Planning Standard, which allows a generator to be within the range of 0.95 leading to 0.90 lagging and argues that such a range provides more responsive reactive absorption and supply than the range proposed in Article 9.6.1. That Planning Standard also requires that if the Generating Facility does not meet the requirements, the Interconnection Customer must make alternate arrangements for supplying dynamic reactive power to meet the area's reactive power requirements. However, NERC concedes that a power factor requirement of 0.95 leading to 0.95 lagging is a common practice in some NERC regions.

Commission Conclusion

542. We adopt the power factor requirement of 0.95 leading to 0.95 lagging because it is a common practice in some NERC regions. If a Transmission Provider wants to adopt a different power factor requirement, Final Rule LGIA Article 9.6.1 permits it to do so as long as the power factor requirement applies to all generators on a comparable basis.

543. *Article 9.6.3—Payment for Reactive Power*—Proposed LGIA Article 9.6.3 would have provided that the Transmission Provider pay the Interconnection Customer for reactive power that the Generating Facility provides or absorbs. Such payment would be in accordance with the Interconnection Customer's rate schedule unless service is subject to a Commission-approved RTO or ISO rate schedule. If no rate schedule is in effect, the Transmission Provider would compensate the Interconnection Customer in an amount that would be due the Interconnection Customer had the rate schedule been in effect when the service commenced; provided, however, that the rate schedule must be filed with the Commission within 60 Calendar Days of the commencement of service.

Comments

544. El Paso and others maintain that the Interconnection Customer should not be compensated for reactive power provided or absorbed within the power factor range established in Article 9.6.1 (Power Factor Design Criteria) since it is only meeting its obligation to do so. MidAmerican, Cleco, El Paso, Nevada Power, PG&E, and Western state that the Interconnection Customer should be compensated for the reactive power it provides or absorbs when the Transmission Provider asks the Interconnection Customer to operate its Generating Facility outside the established power factor range. Cleco and Nevada Power also contend that if the Transmission Provider pays for reactive power, so should the Interconnection Customer, when it does not meet the Transmission Provider's voltage schedule that can be met by the established power factor range.

545. MidAmerican and Cleco argue that reactive power should be paid for only if the Interconnection Customer has filed a rate schedule with the Commission prior to the commencement of service. Duke argues that the last sentence of the NOPR LGIA Article 9.6.3 that provides for filing of a rate schedule within 60 Calendar Days of having provided reactive service without a rate schedule should be moved to Article 11.6 (Interconnection Customer Compensation) to cover a similar situation during an Emergency Condition. Cal ISO believes that the procurement of reactive power should be left to another proceeding (such as a Regional Market Design proceeding),

[85] Pacific Gas and Electric Company, *et al.,* 81 FERC ¶ 61,122 at 61,456 (1997).

and NYISO states that this issue is already being dealt with in its Market Administration and Control Area Services Tariff.

Commission Conclusion

546. We agree that the Interconnection Customer should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation. Proposed Article 9.6.3 required payment for reactive power to an Interconnection Customer only when the Transmission Provider requests the Interconnection Customer to operate its Generating Facility outside the range established in Article 9.6.1 (Power Factor Design Criteria). In response to Cleco and Nevada Power, we agree that the Interconnection Customer should be penalized or otherwise compensate the Transmission Provider if the Interconnection Customer does not meet the Transmission Provider's voltage schedule requirements, so long as the voltage schedule requirements can be met by the established power factor range. The Commission is not including a standard penalty or compensation provision here, but will entertain reasonable requests to do so on compliance. We agree with Duke and move the last sentence of Article 9.6.3 to 11.6.

547. With respect to the argument that payment for reactive power should be required only if the Interconnection Customer has a rate schedule on file when service commences, we note that the Commission's Regulations allow an applicant to file a rate schedule within 60 days of the commencement of service.[86]

548. An RTO or ISO, at the time its compliance filing is made, may propose variations from this policy, as discussed below.[87] An RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in a discriminatory manner than a Transmission Provider that is also a market participant. An RTO or ISO will have greater flexibility to customize its LGIP and LGIA to respond to regional needs.

549. *Article 9.7.1.2—Outage Schedule*—Proposed LGIA Article 9.7.1.2 would have a Transmission Provider post transmission facility outages on the Open Access Same-Time Information System (OASIS) and require an Interconnection Customer to schedule its maintenance on a rolling 24 month basis. It also stated that a Transmission Provider may ask the Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; however, the Transmission Provider will compensate the Interconnection Customer for any costs of rescheduling such maintenance.

Comments

550. Several commenters argue that the Transmission Provider should not be required to compensate the Interconnection Customer for the costs of rescheduling maintenance when the purpose of rescheduling the maintenance is to ensure the reliability of the Transmission System. For example, Cal ISO claims that the compensation issue should be resolved by deferring to the RTO or ISO outage coordination provisions in its Tariff. Southern contends that the Interconnection Customer benefits from a reliable Transmission System and should therefore maintain the reliability of the Transmission System without any compensation for rescheduling its outages. Southern also argues that the provision seems to require the Transmission Provider to compensate the Interconnection Customer for rescheduling maintenance even if such rescheduling is required to interconnect another Interconnection Customer. If the provision is adopted, Southern requests clarification that the Interconnection Customer, not the Transmission Provider, is required to pay the costs that other Interconnection Customers incur to reschedule their maintenance. Southern also requests clarification that the reimbursed costs are limited to direct costs and will not include consequential or indirect costs (such as lost profits).

551. Dairyland Power, PSNM, and Western assert that an Interconnection Customer may try to game the outage scheduling process. It could revise its maintenance schedule to coincide with a maintenance project (by listing it on the Transmission Provider's OASIS) and thus create congestion or reliability conditions on the Transmission System for the purpose of receiving compensation from the Transmission Provider. PSNM further states that while curtailment and redispatch costs under the OATT generally are shared on a pro rata basis when transmission service is not available, this article anticipates that the Transmission Provider will compensate an Interconnection Customer for changes in the Interconnection Customer's maintenance plan, with no reciprocal compensation if the Interconnection Customer changes its own plans.

552. Western believes that requiring the Transmission Provider to compensate for ''any costs'' leaves too much to interpretation. The provision should be limited to actual costs incurred by the Interconnection Customer, such as remobilization costs, to prevent gaming. AEP believes that compensation should be provided on rare occasions when maintenance must be rescheduled for reliability purposes. Cleco believes that the payment to the Interconnection Customer should occur only if the Transmission Provider is initially allowed to approve the maintenance schedule proposed by the Interconnection Customer.

Commission Conclusion

553. We agree that the proposed requirement to compensate Interconnection Customers for ''any costs'' incurred in rescheduling maintenance is overly broad. Compensation should be limited to the additional, direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance.

554. We also agree that this article, as proposed, could create an opportunity for gaming on the part of the Interconnection Customer, which might schedule its maintenance at a time when the Transmission Provider could be expected to ask it to reschedule. Therefore the proposed article is modified so that an Interconnection Customer will not receive compensation if it had modified its schedule of maintenance activities during the year before the date of the initially scheduled maintenance.

555. *Article 9.7.1.3—Outage Restoration*—Proposed LGIA Article 9.7.1.3 would have provided that if an outage on a Party's Interconnection Facilities or Network Upgrades harms the other Party's facilities, the Party owning or controlling the facility that is out of service will use Reasonable Efforts to promptly restore it to a normal operating condition.

Comments

556. NERC proposes to require the first Party to provide the other Party information on the nature of the Emergency Condition, including an estimated time of restoration, and on any corrective actions required, as soon as practical, followed by a written explanation of the nature of the outage. The clarification is necessary because the outage may affect outage clearances on other equipment, calculation of

[86] *See* 18 CFR 35.3 (2003).

[87] *See* Part II.C.5 (Variations from the Final Rule and Regional Differences).

transfer capabilities, system deratings, and so on.

Commission Conclusion

557. We incorporate NERC's proposed change. NERC's proposal recognizes not only the importance of restoration after an outage, but the necessity of coordinated restoration and information-sharing to make all affected Parties aware of the restoration, the corrective actions taken, and the time the restoration occurred, so that all Parties may determine whether the interconnected system has been returned to a normal operating condition.

558. *Article 9.7.2—Interruption of Service* (In the NOPR: Continuity of Service)—Proposed LGIA Article 9.7.2 would have provided that the Transmission Provider may require the Interconnection Customer to reduce or interrupt deliveries of electricity if such delivery of electricity would adversely affect the Transmission Provider's ability to perform activities that are necessary to safely and reliably operate and maintain the Transmission System. It also would require the Transmission Provider to schedule the reduction or interruption to either coincide with the scheduled outage of the Generating Facility or during periods of low demand.

Comments

559. Several commenters, mostly Transmission Providers such as Exelon, MidAmerican, PG&E and Southern, argue that the last sentence of proposed LGIA Article 9.7.2.4 that requires the Transmission Provider to schedule the reduction or interruption to either coincide with the scheduled outage of the Generating Facility or during periods of low demand unreasonably limits the Transmission Provider when it can perform maintenance and repair work. PG&E asserts that the periods of low demand either occur at night or during winter, and those times are not suitable for performing maintenance and repair work because it may jeopardize the safety of maintenance personnel. MidAmerican argues that the impact on both the Transmission Provider and Interconnection Customer should be considered when scheduling maintenance and repair work on the Transmission System. MidAmerican offers this alternative last sentence of proposed LGIA Article 9.7.2.4: ''Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer and the Transmission Provider.''

560. Exelon argues that a separate provision should be added to require the Transmission Provider to notify the Interconnection Customer before the Transmission Provider undertakes any construction, repair or maintenance work on its Transmission System that may require the Interconnection Customer to reduce output from its Generating Facility.

Commission Conclusion

561. In response to MidAmerican and PG&E's concern, we adopt MidAmerican's proposed language because it balances the interests of both the Transmission Provider and the Interconnection Customer. With regard to Exelon's argument, we note that Article 9.7.2.4 of the Final Rule LGIA provides that: ''Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notification, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration.''

562. *Article 9.7.3—Under-Frequency and Over-Frequency Conditions* (In the NOPR: Under-Frequency Load Shed Event)—Proposed LGIA Article 9.7.3 stated that the Transmission System is designed to activate a load-shed program automatically in the event of an under-frequency system disturbance. It proposed that an Interconnection Customer shall implement an under-frequency relay set point for the Generating Facility to ensure ''ride through''[88] capability of the Transmission System, to the extent allowed by equipment limitations or warranties.

Comments

563. NERC, MidAmerican, and SoCal Edison state that the scope of Article 9.7.3 should be expanded to include over-frequency conditions as well.

564. NERC, Florida RCC, and TECO Energy oppose relying on equipment limitations or warranties as an excuse for an Interconnection Customer to avoid following Applicable Reliability Council rules. They claim that in a limited number of instances where equipment limitations do exist, the Applicable Reliability Council's rules permit the Interconnection Customer to propose alternative load shedding procedures. They also express concern that should the Commission retain the language relating to equipment limitations or warranties, load shedding procedures may not be effective to prevent full collapse of an electrical ''island,'' thereby threatening the reliability of the Transmission System.

565. NERC recommends that the Generating Facility's response to both under- and over-frequency conditions be studied and coordinated with the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Commission Conclusion

566. We agree with many commenters that their proposed changes would better protect reliability. Therefore, we revise Article 9.7.3 to refer to Applicable Reliability Council requirements and to include over-frequency conditions. Equipment limitations or warranties should not be an excuse for not following Applicable Reliability Council rules; in case of genuine equipment limitations, Applicable Reliability Council rules permit the Interconnection Customer to offer alternative proposals. As such, the Commission eliminates the phrase ''equipment limitations or warranties'' in the Final Rule. In addition, the Commission is adopting NERC's proposed language regarding studies to determine the Generating Facility's response to frequency deviations because of its importance in stabilizing the power system during an electrical disturbance.

567. *Article 9.7.4.1—System Protection Facilities* (In the NOPR: Protection and System Quality)—Proposed LGIA Article 9.7.4.1 would have required that the Interconnection Customer, at its expense, install, operate and maintain System Protection Facilities.

Comments

568. NERC states that the title of proposed LGIA Article 9.7.4.1 should be changed from ''Protection and System Quality'' to ''Protection Required by Study'' because system quality issues are not addressed here.

Commission Conclusion

569. The title of Final Rule LGIA Article 9.7.4.1 is changed to ''System Protection Facilities.'' This change addresses the NERC comment to eliminate reference to ''System Quality.''

570. *Article 9.7.4.2*—Proposed LGIA Article 9.7.4.2 would have required that

[88] ''Ride through'' means a Generating Facility staying connected to and synchronized with the Transmission System during system disturbances within a range of over- and under-frequency conditions, in accordance with Good Utility Practice.

each Party's facility be designed to isolate any fault or abnormality that would negatively affect the other Party or third parties connected to the Transmission Provider's Transmission System.

Comments

571. NERC notes that the term ''negatively affect'' is too vague. It proposes that proposed LGIA Article 9.7.4.2 be revised to state that each Party's protection facilities will be designed and coordinated with other systems in accordance with Good Utility Practice.

Commission Conclusion

572. The Commission adopts NERC's proposed change.

573. *Article 9.7.5—Requirements for Protection*—Proposed LGIA Article 9.7.5 would have required the Interconnection Customer, in compliance with Applicable Reliability Standards, to install, operate and maintain protective devices necessary to remove faults ''promptly'' and to protect the Generating Facility from other conditions, such as negative sequence currents and over- or under-frequency.

Comments

574. NERC comments that the term ''promptly'' is not useful when describing requirements for, or actions taken to preserve, system reliability. It also notes that the Generating Facility's fault protection must be coordinated with system protection. ''Good Utility Practice'' should replace ''Applicable Reliability Standards,'' since Applicable Reliability Standards is a subset of Good Utility Practice.

Commission Conclusion

575. The Commission agrees with NERC and adopts its proposals.

576. *Article 9.9—Use of Transmission Provider's Interconnection Facilities by Third Parties*—Proposed LGIA Article 9.9 would have provided, among other things, that third parties may use the Transmission Provider's Interconnection Facilities if required by Applicable Laws and Regulations, or if the Parties agree.

Comments

577. APS believes that it is inappropriate to prohibit the use of Interconnection Facilities for other functions such as the housing of fiber optic circuits.

Commission Conclusion

578. Since proposed LGIA Article 9.9 specifically allows the Parties to agree to permit third party usage of the Interconnection Facilities, there is no need to revise it.

579. *Article 9.10—Disturbance Analysis Data Exchange* (In the NOPR: Data Exchange)—Proposed LGIA Article 9.10 would have provided that the Parties cooperate with one another in the analysis of disturbances to either the Generating Facility or the Transmission Provider's Transmission System by the gathering and sharing of any information related to any disturbance.

Comments

580. NERC states that since this article is limited to data exchange for disturbance analysis, the title should be ''Disturbance Analysis Data Exchange.'' NERC also recommends covering ''and any disturbance information required by Good Utility Practice.''

Commission Conclusion

581. The Commission adopts NERC's proposals in the Final Rule.

582. *Article 10—Maintenance*—Proposed LGIA Article 10 would have made the Interconnection Customer responsible for all reasonable expenses of owning, operating and maintaining Interconnection Customer and Transmission Provider Interconnection Facilities (except for operations and maintenance expenses associated with modifications necessary for providing service to a third party that pays for such expenses). No significant comments were submitted on this article. Accordingly, the Commission adopts in the Final Rule LGIA Article 10 as proposed.

583. *Article 11—Performance Obligation*—Proposed LGIA Article 11 described the Transmission Provider's and the Interconnection Customer's obligations with respect to construction of Interconnection Facilities and Network Upgrades, security arrangements and deposits, refunds in the form of transmission credits with interest for amounts funded by the Interconnection Customer, and compensation to the Interconnection Customer for services the Transmission Provider requests.

584. Most of the issues in Proposed LGIA Article 11 relate to pricing. All pricing matters are discussed in part II.C.1 (Interconnection Pricing Policy).

585. *Article 11.5—Financial Security Arrangements*—Proposed LGIA Article 11.5 would have required the Interconnection Customer to provide the Transmission Provider with a form of security at least 90 Calendar Days before the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities or Network Upgrades begins. The security amount would have had to be sufficient to cover the costs of procuring, constructing, and installing the Transmission Provider's Interconnection Facilities or Network Upgrades, and it would have been reduced on a dollar-for-dollar basis as payments were made. Articles 11.5.1.1, 11.5.1.2 and 11.5.1.3 would have required that the issuer of the guarantee, letter of credit, surety bond or other form of security meet the creditworthiness requirements of, or be acceptable to, the Transmission Provider and that the security instrument contain specified provisions, such as a reasonable expiration date.[89]

Comments

586. Commenters identify three areas of concern with this provision. First, some commenters believe that 30 days is insufficient time for the Interconnection Customer to provide a reasonable form of security to the Transmission Provider. For example, Dairyland Power argues that 30 days is not enough time for delivery of the necessary equipment and materials. SoCal PPA maintains that the security should be provided 90 days in advance. Progress Energy argues that security should be provided when an interconnection agreement is executed, and FP&L requests that security should be provided within 30 days of either execution of the interconnection agreement or its acceptance by the Commission.

587. Exelon argues that the amount of the security should be allowed to increase (or decrease), based on any changes in the construction cost estimate. According to Progress Energy, the Interconnection Customer should offer security to cover the full cost of the Network Upgrades. EPSA contends that the Interconnection Customer should be allowed to provide security on a rolling six month basis based on the Transmission Provider's cost exposure at each six month interval to ensure that the security costs paid by the Interconnection Customer are reasonable at any given time and are consistent with the Transmission Provider's obligations. In the alternative, EPSA supports the 30 day period. Duke

[89] NOPR LGIA Article 11.5.1 is identical to Article 11.5 except that the former required the Interconnection Customer to provide the Transmission Provider with a form of security at least 30 Calendar Days prior to the commencement of the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities or Network Upgrades. The inclusion of both provisions in the NOPR LGIA was an error. As explained below, we are eliminating Article 11.5 in the Final Rule LGIA.

Energy also supports the 30 day requirement.

588. NMA and Peabody state that while a Transmission Provider should not be placed at risk financially if an Interconnection Customer either terminates its interconnection agreement or breaches its obligation to make monthly payments to the Transmission Provider, at no time will the Transmission Provider be exposed to the financial costs of all the amounts of Network Upgrades or additions as contemplated under the NOPR LGIA. Requiring an Interconnection Customer to guarantee the total cost of the Network Upgrades is unfair because it causes the Interconnection Customer seeking to interconnect a very large generator to incur significant interest costs that it will never be able to recover, and this does not represent the true financial exposure the Transmission Provider faces for Network Upgrades. Further, limiting the security requirement to an amount that reflects the Transmission Provider's cost exposure during a 120 day forward-looking period is more appropriate than requiring an Interconnection Customer with a very large generator to provide security for the total cost of the project. Calpine warns that unnecessary financial security would be a barrier to entry.

589. Several commenters, mostly Transmission Providers, believe that the Transmission Provider or Transmission Owner should determine the form of security to be provided by the Interconnection Customer,[90] since they bear the risk if an Interconnection Customer abandons a project. The Financial Security Issues Coalition argues that the specific reference to surety bonds should be deleted from proposed LGIA Article 11.5 because surety bonds are not in the OATT as an acceptable form of collateral. Also, to reduce bankruptcy and fraudulent conveyance issues, any proposed guaranty should be from a parent, and not merely an Affiliate, of the Interconnection Customer. Finally, any proposed guarantor should have a BBB+ bond rating or higher.

590. Sempra argues that proposed LGIA Article 11.5.1 should be revised to clarify that the decision whether to provide security is the option of the Interconnection Customer. The provision should require an Interconnection Customer to provide a substitute security if it suffers serious financial erosion and financial-ratings downgrades that could lead the Transmission Provider to require assurances of a guarantor's ability to perform its financial and performance obligations. Dominion Resources does not object to the NOPR provision, provided that a subsequent Interconnection Customer is responsible for the costs of completing Network Upgrades if a higher-queued Interconnection Customer chooses to suspend or terminate construction of the Interconnection Facilities.

591. Arkansas Coops argue that Article 11.5.1 should require the Transmission Provider to accept security from the National Rural Utilities Cooperative Finance Corporation (CFC), since this is critical for cooperatives that obtain financing from the CFR.

Commission Conclusion

592. We note at the outset that Article 11.5 and Article 11.5.1 are substantially identical, and the inclusion of both provisions in the NOPR was redundant. We are therefore deleting Article 11.5 in the Final Rule, and renumbering the remaining articles accordingly. The discussion that follows, however, will refer to article numbers contained in the NOPR LGIA.

593. With respect to commenters' concern that the 30 day window for providing a reasonable form of security is too short, the NOPR stated that the form of security must be provided by the Interconnection Customer at least 30 Calendar Days in advance of the procurement, installation, or construction of Interconnection Facilities or Network Upgrade projects. Parties, therefore, remain free to agree to an earlier deadline for the security if they foresee circumstances such as a long lead time for delivery of equipment. We expect that an Interconnection Customer will honor a reasonable request for an earlier deadline for providing a reasonable form of security. And, we will not require that the security be available at an earlier time, or at some specified period after execution of an interconnection agreement, because the purpose of the security is to fund procurement and construction. Since it is uncertain when procurement and construction will begin, it is reasonable to make such activity the trigger for tendering the security.

594. We are not persuaded that providing security on a 120 day or six month rolling basis is superior to the approach proposed in the NOPR. We retain the article as proposed for the following reasons. First, the Final Rule LGIA provides for the reduction of the security amount on a dollar-for-dollar basis as payments are made; this protects the Interconnection Customer against providing too much security and ensures that the Transmission Provider is always adequately protected against its cost exposure. Second, commenters provide inadequate support for their claim that they would be unduly burdened if the article remained unchanged, or that a Transmission Provider and its other customers would suffer no financial harm if the Commission adopted a rolling 120 Calendar Days or six month security period. Third, retaining the proposed language will help to ensure that only a financially sound generation project will advance to the point where a Transmission Provider must make an irreversible financial commitment on its behalf. Fourth, the approach proposed by the commenters could expose a Transmission Provider and its other customers to financial risk if the Interconnection Customer defaults before the construction of new facilities and Network Upgrades have advanced to the point where those facilities can be put to productive use.

595. In response to Exelon's concern that the amount of security be permitted to increase as well as decrease, Final Rule Article 11.5 does not prohibit the Parties from increasing the total amount of security required under an executed LGIA. The prices quoted for interconnection in the LGIA are estimates based on the results of studies conducted during the LGIP phase of the interconnection process. As a result, the final cost of Network Upgrades may rise or fall and with it, the security required under the LGIA.

596. We disagree with commenters' contention that the article requires the Interconnection Customer to guarantee the total cost of the Network Upgrades. Final Rule Article 11.5 requires the Interconnection Customer to provide security to the Transmission Provider for discrete portions of the Transmission Provider's Interconnection Facilities or Network Upgrades, not the total amount of the Network Upgrades. It also provides that the security amount is reduced on a dollar-for-dollar basis for payments made to the Transmission Provider, thereby protecting the Interconnection Customer from having to provide too much security.

597. With respect to commenters' arguments as to the form of security, the Final Rule states that the Interconnection Customer has the right to select a form of security that is acceptable to the Transmission Provider and that the Transmission Provider cannot unreasonably refuse to accept a

[90] *E.g.,* BPA, Central Maine, Duke Energy, Exelon, the Financial Security Issues Coalition, Georgia Transmission, NSTAR, and NYTO.

particular form. As the Commission has noted in recent orders, allowing the Interconnection Customer to provide an ''irrevocable letter of credit * * * or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices'' is not unreasonable, and no commenter has convinced us otherwise.[91] Granting the Transmission Provider absolute discretion on what forms of security to allow would provide too great an opportunity to erect hurdles to new generation, by allowing it to act in an unduly discriminatory or preferential manner.[92] Moreover, Final Rule Article 11.5 grants the Transmission Provider the discretion to reject security from a financial institution that is not reasonably acceptable. As a result, the Commission rejects comments that would grant the Transmission Provider greater discretion with respect to the Interconnection Customer's chosen security or eliminate forms of credit specified in the article.

598. In response to Sempra, Final Rule Article 11.5 clearly states that the Interconnection Customer ''shall provide'' security to the Transmission Provider. It is only the *form* of that security that is the Interconnection Customer's option, within the restrictions specified. We are not adding language to the provision to establish requirements if an Interconnection Customer receives a financial downgrade that makes it difficult to secure a guaranty. The Interconnection Customer remains responsible for providing an acceptable form of guaranty under the existing terms of the article.

599. Regarding Dominion Resources' comment, this issue is addressed in our discussion of Article 5.13 (Suspension).

600. Regarding the Arkansas Coops' concern that a Transmission Provider would not accept security from the CFC, we would not consider such a rejection to be a reasonable decision on the part of the Transmission Provider under the existing terms of Article 11.5. Accordingly, we are not revising the provision.

601. *Article 12—Invoice*—Proposed LGIA Article 12 set out a monthly invoice and billing dispute procedure. The Transmission Provider would have been required to provide an invoice for the final cost of construction of the Transmission Provider's Interconnection Facilities and Network Upgrades within six months, in sufficient detail to enable the Interconnection Customer to compare actual costs with estimates. No significant comments were submitted on this article. Accordingly, the Commission adopts in the Final Rule LGIA Article 12 as proposed.

602. *Article 13—Emergencies*—Proposed LGIA Article 13 explained the Transmission Provider's and the Interconnection Customer's responsibilities when Emergency Conditions arise.

603. *Article 13.1—Definition*—Proposed LGIA Article 13.1 would define Emergency Condition as a condition or situation: (1) That in the judgment of the Party making the claim is imminently likely to endanger life or property, or (2) that, in the case of the Transmission Provider making the claim, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider Interconnection Facilities, or the Transmission Systems of others to which the Transmission System is directly connected, or (3) that, in the case of the Interconnection Customer making the claim, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or its Interconnection Facilities. Any condition or situation that results from a lack of sufficient generating capacity to meet load requirements and that results solely from economic conditions would not, on its own, be an Emergency Condition.

Comments

604. PG&E and Cal ISO believe that lack of sufficient generation to meet load requirements that results solely from economic conditions can be a genuine Emergency Condition. PG&E states that when insufficient generation occurs, regardless of the reason, the Transmission Provider is still responsible for maintaining system stability to the extent possible. It believes that taking away the tools necessary in such an emergency could harm the Transmission System. Cal ISO and Salt River Project make a similar point; they consider lack of generation, for any reason, to be an Emergency Condition that can endanger reliability and, at a minimum, warrants an emergency notification such as those provided for under the Cal ISO's procedures. According to Cal ISO, without a declaration of an Emergency Condition, the Transmission Provider will not be able to invoke its obligation under Article 13.5 of the NOPR LGIA to take actions necessary to preserve reliability.

605. El Paso seeks to revise both the proposed definition of the term Emergency Conditions and NOPR LGIA Article 13 to include a definition of an abnormal condition and to provide the Transmission Provider and Interconnection Customer the discretion to prevent an Emergency Condition (by taking action or inaction) during an abnormal condition.[93] El Paso notes that such action or inaction would require prompt oral notification to the other Party as well as compensation for changes in real power output and reactive power production.

Commission Conclusion

606. The Commission agrees with the comments concerning the potential harm to the Transmission Provider's Transmission System by reducing its flexibility to respond during Emergency Conditions. The Commission is removing from the Final Rule LGIA Article 13.1 definition of Emergency Condition the sentence that reads, ''Any condition or situation that results from a lack of sufficient generating capacity to meet load requirements that results solely from economic conditions shall not, on its own, constitute an Emergency Condition.'' The Commission denies El Paso's request to add a definition of an abnormal condition and to provide the Transmission Provider and Interconnection Customer the discretion to take certain actions or inactions in the event of an Emergency Condition. The Commission would expect the Parties to treat any abnormal conditions appropriately, regardless of whether it is a defined term in the Final Rule.

607. *Article 13.5.1—Transmission Provider Authority—General*—Proposed LGIA Article 13.5.1 provided that the

[91] *See* Florida Power & Light Company, 98 FERC ¶ 61,226 at 61,893–94, *reh'g granted in part on other grounds,* 99 FERC ¶ 61,318 (2002); Florida Power & Light Company, 98 FERC ¶ 61,324 at 62,358–59 (noting that Florida Power & Light Company's practice of limiting interconnection customers to a letter of credit is unreasonable), *reh'g rejected as moot,* 100 FERC ¶ 61,094 (2002).

[92] Southwest Power Pool, Inc., 100 FERC ¶ 61,096 at P 12 (2002).

[93] El Paso would define Abnormal Condition as ''any condition at the [Generating] Facility, on the Interconnection Facilities, on the Transmission System, or on the transmission system of other utilities which is outside normal operating parameters such that facilities are operating outside their normal ratings or reasonable operating limits have been exceeded and would result in an Emergency Condition if these conditions continue. Any condition or situation that results from lack of sufficient planned generating capacity to meet load requirements or that results solely from economic conditions will not, standing alone, constitute an Abnormal Condition.''

Transmission Provider would be able to take whatever actions or inactions it deems necessary during an Emergency Condition to preserve the safety and reliability of the Transmission System or the Transmission Provider Interconnection Facilities.

Comments

608. Dynegy contends that during an Emergency Condition, the Transmission Provider should compensate the Interconnection Customer for starting up or shutting down a Generating Facility or increasing or decreasing its real or reactive output.

Commission Conclusion

609. Compensation during an Emergency Condition is appropriately addressed in Final Rule LGIA Article 11.6.1 (Generator Compensation for Actions During Emergency Conditions).

610. *Article 13.6—Interconnection Customer Authority*—Proposed LGIA Article 13.6 would allow the Interconnection Customer to take actions or inactions necessary to protect the integrity of its Generating Facility or Interconnection Facilities during an Emergency Condition.

Comments

611. NERC proposes that Article 13.6 be revised to read as follows: ''Consistent with Good Utility Practice and the [LG]IA and [LG]IP, the Interconnection Customer may take actions or inactions with regard to the [Generating] Facility or the [Interconnection Customer's] Interconnection Facilities during an Emergency Condition in order to (1) preserve public health and safety, (2) preserve the reliability of the [Generating] Facility or the [Interconnection Customer's] Interconnection Facilities, (3) limit or prevent damage, and (4) expedite restoration of service.'' Central Maine requests that proposed LGIA Article 13.6 be revised to require that an Interconnection Customer exercise its rights in an Emergency Condition in accordance with Good Utility Practice.

Commission Conclusion

612. We adopt NERC's proposed language in Final Rule Article 13.6 because it provides greater specificity concerning the Interconnection Customer actions or inactions that may be taken during the course of an Emergency Condition.

613. *Article 14—Regulatory Requirements and Governing Law*—Proposed LGIA Article 14 described the regulatory requirements and governing law for each Party's obligations under the LGIA.

614. *Article 14.1—Regulatory Requirements & Article 14.2—Governing Law and Applicable Tariffs*—Article 14.1 of the NOPR LGIA proposed that each Party's obligations shall be subject to its receipt of any required approval or certificate from Governmental Authorities in a form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities. Article 14.1 also stated that nothing in the LGIA shall require an Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended. Article 14.2 of the NOPR LGIA provided that the LGIA is governed by the laws of the state where the Point of Interconnection is located, without regard to conflicts of state law principles, and that the LGIA is subject to all Applicable Laws and Regulations.

Comments

615. The Bureau of Reclamation states that it does not have investors or shareholders, is not subject to the Commission's jurisdiction under sections 205 or 206 of the Federal Power Act, and is not subject to the jurisdiction of state public utility commissions. The Bureau of Reclamation has sovereign immunity except to the extent that immunity has been waived by Congress. It believes that proposed LGIA Article 14.2 does not reflect that, as a federal agency, it must comply with the Constitution of the United States and all applicable laws. It states that this includes statutory and regulatory limitations on its ability to submit disputes to arbitration. SoCal PPA requests that Parties have the option of selecting the laws of a state other than the state where the interconnection will occur as the governing law for the LGIA.

Commission Conclusion

616. The Bureau of Reclamation and SoCal PPA argue that public power entities cannot adopt Article 14 without variation. We will not require these entities to adopt provisions that they are legally forbidden to adopt in order to have their reciprocity tariffs approved. As described more fully in the reciprocity discussion,[94] nonjurisdictional entities with safe harbor status for their tariffs may add the Final Rule LGIP and Final Rule LGIA if they wish to continue to have safe harbor protection, but only need to provide services they are ''capable'' of providing.[95] We will consider the legal restrictions on nonjurisdictional entities when we evaluate their reciprocity compliance filings.

617. *Article 15—Notices*—Proposed LGIA Article 15 contained the addresses at which the Transmission Provider and Interconnection Customer will receive, among other things, notices, bills and payments. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

618. *Article 16—Force Majeure*—A Force Majeure clause excuses performance under a contract due to an event beyond a Party's control. Article 16 of the NOPR LGIA proposed to adopt the Force Majeure language of the OATT. It defined Force Majeure events as: ''[A]ny act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, or flood, explosion, breakage or accident to machinery or equipment, any curtailment order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control * * *.'' The NOPR provision would have required the Parties ''to make all Reasonable Efforts'' to comply with their obligations and resolve the Force Majeure condition.

Comments

619. Several commenters ask that the Commission establish a list of non-Force Majeure events.[96] More specifically, some commenters believe that Article 16 should exclude economic hardship from the definition of Force Majeure,[97] while the Coalition for Contract Terms and PSEG comment that the Commission should not treat ''removable or remediable causes'' as Force Majeure.

620. Some commenters request that the Commission establish a formal notice requirement that Parties must follow when claiming Force Majeure.[98] NYTO asks the Commission to require the Party claiming Force Majeure to notify those affected of what steps the

[94] *See* Part II.C.7 (OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA).

[95] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,286.

[96] *E.g.,* The Coalition for Contract Terms, Monongahela Power, PJMTO, and PSEG.

[97] *E.g.,* The Coalition for Contract Terms, Entergy, Mirant, PJMTO, and PSEG.

[98] *E.g.,* The Coalition for Contract Terms, Dominion Resources, Mirant, Monongahela Power, and Progress Energy.

Party is taking to remedy the Force Majeure condition. Dominion Resources and Progress Energy request that the Commission clarify the obligations and responsibilities of each Party during a Force Majeure occurrence. Specifically, they ask the Commission to clarify how a Party invokes the Force Majeure provision.

621. A number of commenters ask the Commission to clarify that the Party claiming Force Majeure must return to complying with the LGIA as soon as the Force Majeure event ends and that the other Party's obligation to pay for services rendered is not suspended during the Force Majeure event.[99]

622. PacifiCorp argues that the Force Majeure clause should cover acts of negligence or intentional wrongdoing by someone other than the claimant, while MidAmerican requests the opposite. Cinergy comments that the NOPR does not define curtailment, and is concerned that this term might unnecessarily broaden the definition of Force Majeure.

Commission Conclusion

623. We agree that the contracting Parties would benefit from greater specificity in the Force Majeure provision, so the Final Rule LGIA sets forth the procedural obligations and responsibilities of the Parties during a Force Majeure event. We adopt a requirement that the Party experiencing a Force Majeure event formally notify the other Party and that it keep the other Party informed about its attempt to remedy the situation. A Party shall exercise due diligence to remove the disability with reasonable dispatch, and it will resume its duties under the LGIA as soon as reasonably possible. For instance, a fire that triggers a Force Majeure claim may be put out within hours, but it may take the Party days or weeks to resume normal operation. The Party would not be in Default of its obligations during that time. The Final rule article also clarifies that the obligation to pay money when due is not suspended by reason of Force Majeure.

624. We agree that it would be useful to identify economic hardship as a non-Force Majeure event. Economic hardship is not considered an event outside the control of the Party. However, it is unnecessary to specify that a ''removable or remediable'' cause does not qualify as Force Majeure event. Final Rule Article 16 defines a Force Majeure event as one that is ''beyond a Party's control.''

625. NOPR Article 16.1 proposed to except from the list of Force Majeure events acts of ''negligence or intentional wrongdoing.'' We clarify in the Final Rule LGIA that acts of negligence or intentional wrongdoing committed by an entity other than the Party claiming Force Majeure would qualify for Force Majeure protection. This is an event beyond a Party's reasonable control.

626. With respect to Cinergy's comments regarding use of the term ''curtailment,'' we conclude that while the curtailments imposed by governmental military or lawfully established civilian authorities are considered Force Majeure events under Section 10.1 of the OATT, it is an inappropriate Force Majeure event in the Final Rule LGIA. Curtailments to transmission service should not serve as the cause for excusing performance under an interconnection contract. As a result, the Commission omits curtailment from the definition of Force Majeure in the Final Rule LGIA.

627. *Article 17—Default*—Proposed LGIA Article 17 defined Default as the failure of either Party to perform any obligation in the time or manner provided in this LGIA. No Default would exist as a result of Force Majeure or an act or omission of the other Party. Article 17 also described notice and cure procedures: the defaulting Party would have 30 Calendar Days from receipt of a Default notice to cure the Default; or, if the Default cannot be cured within 30 Calendar Days, the defaulting Party must begin the cure within 30 Calendar Days and must complete the cure within 90 Calendar Days. NOPR Article 17.1.2 provided the non-defaulting Party with the right to terminate the LGIA and recover damages if a Default is not cured, or is not capable of being cured, within the time provided in Article 17.1.1.

Comments

628. Calpine is concerned that not all Defaults are capable of being cured within 90 Calendar Days, especially if they involve the purchase, modification or installation of equipment. It therefore argues that it is sufficient to require that the cure begin in 30 Calendar Days, and that the defaulting Party ''continuously and diligently complete such cure,'' as required under Article 17.1.1.

Commission Conclusion

629. The Commission declines to adopt Calpine's proposed change. The non-defaulting Party needs to be protected from lengthy Defaults by having the right to terminate, even if the Default cannot be cured within 90 Calendar Days through diligent action by the defaulting Party. The LGIA does not prevent the Parties from agreeing to an extension of the time permitted to cure a Default. Calpine's proposal would provide the non-defaulting Party with too little protection.

630. *Article 18—Indemnity*—Indemnification is defined as compensating another for a loss suffered due to a third party's act or Default.[100] In the NOPR, we proposed that the LGIA incorporate the indemnity provision currently found in the OATT. Thus, the indemnification provision in NOPR LGIA Section 18.1 would indemnify the Transmission Provider and Interconnection Customer for legal costs due to claims by third persons arising from performance of the Transmission Provider's or Interconnection Customer's obligations under the LGIA on behalf of the other contracting Party, and would not explicitly allow indemnification for disputes arising over enforcement of this provision. The Commission sought comments on this approach and the relative merits of the alternative provisions in the Consensus LGIA and ERCOT interconnection agreement. The Consensus LGIA does not extend indemnity protection to cases of ordinary negligence or willful misconduct, and the ERCOT provision does not extend indemnity protection to cases of gross negligence or intentional wrongdoing. Additionally, the Consensus LGIA, unlike the ERCOT interconnection agreement, sets forth detailed procedures for pursuing an indemnity claim and makes the recovery of legal costs available as part of an indemnity claim.

Comments

631. Commenters generally support the inclusion of an indemnification provision, but ask that the Final Rule cover other charges, such as attorneys' fees, and explain the process for invoking this protection.[101] Several commenters, including Duke Energy, Monongahela Power, PacifiCorp, and Sempra, point out a typographical error that would have excepted negligence or intentional wrongdoing by the indemnifying Party rather than the indemnified Party. Some commenters recommend extending the protection to ordinary negligence by the Transmission Provider, but denying

[99] *E.g.,* The Coalition for Contract Terms, Exelon, PSEG, and PJMTO.

[100] Black's Law Dictionary 772 (7th ed. 1999).

[101] *E.g.,* Central Maine, Dominion Resources, Exelon, Monongahela Power, NYTO, and Progress Energy.

protection for gross negligence.[102] NYTO and Cinergy request that the provision cover an Interconnection Customer's performance of construction activities. PSEG requests that the provision be revised to offer specific limitations on the damages provision and a provision limiting liability arising from an emergency. El Paso requests that the Final rule specifically indemnify the Transmission Provider from penalties incurred due to the actions or inactions of the Interconnection Customer.

632. PJMTO argues that the OATT provision does not contain enough specific provisions and inadequately constrains the potential financial risk to each Party. Specifically, it argues that the provision should limit damages and set forth the proper standard for assessing liability (*i.e.,* gross negligence and willful misconduct). It also expresses concern that lending institutions would shy away from investing in new generation without liability limits.

633. Southern proposes to require that each Party indemnify and hold the other Party harmless from any liability resulting from activities on the indemnifying Party's own side of the Point of Change of Ownership, except in cases of gross negligence or intentional misconduct. Each Party should also indemnify the other Party for failure to adhere to operating requirements and Breaches of the LGIA. SoCal PPA notes that it applies a more stringent ''willful action'' standard. It warns that if the Commission retains the proposed standard, a Transmission Owner will have to procure insurance to cover this exposure, for which the Interconnection Customer should pay.

634. NYTO takes issue with the provision's bilateral effect, arguing that a Transmission Owner should not have to indemnify an Interconnection Customer, since the Interconnection Customer requests interconnection for its own benefit. Similarly, NYISO argues that the provision should protect the active Parties to an agreement, here the Transmission Owner or ISO, but not the Interconnection Customer.

635. Salt River Project notes that it is unclear whether the Commission intends to preempt the appropriate tribunal's consideration of whether liability should attach for injuries to third parties.[103] It also argues that compliance with an Interconnection Customer's request should not be required if it will result in violation of statutory restrictions, bond covenants, creditor agreements or private use restrictions.

Commission Conclusion

636. We are amending the proposed indemnity standard to match the customary legal standard of conduct and better address the potential for liability. Because risk exposure can increase interconnection costs, we are revising the indemnity standard to provide protection for acts of ordinary negligence, but not for acts of gross negligence or intentional wrongdoing. Similarly, commenters have convinced us that interconnection presents a greater risk of liability than exists for the provision of transmission service and that, therefore, the OATT indemnity provision is not suitable in the interconnection context. While several commenters request a dollar limit on liability, we conclude that the tightened standards serve as an acceptable limit on liability and that a monetary limitation on damages is not necessary to adequately protect the Parties.

637. Because construction of Interconnection Facilities may expose both a Transmission Provider and an Interconnection Customer to liability for acts taken on the other Party's behalf, we are retaining the bilateral nature of the provision. In response to the concern of some commenters, the indemnity provision of the Final Rule also describes the process for pursuing and securing indemnity from claims in more detail. Additionally, the Final Rule LGIA gives an indemnified Party the right to collect the legal costs of defending an indemnification claim if the indemnifying Party fails to adequately defend the claim on its own. We also adopt El Paso's proposal that indemnification be available because of action or inaction by the Interconnection Customer, and modify the provision accordingly.

638. In response to NYTO's request that the provision cover an Interconnection Customer's construction activities, the Final Rule provision covers construction activities as well as all other activities performed on behalf of the other Party. Where an Interconnection Customer constructs the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the Option to Build in Final Rule LGIA Article 5.1, a Transmission Provider will be protected by the indemnification clause that appears in that article. Indemnification applies to all work, regardless of the side of the Point of Interconnection on which the work occurs.

639. With regard to cost allocation, we clarify that each Party is responsible for paying its own insurance. This is equitable and helps keep the costs of interconnection low, which should encourage the construction of new generation resources. Additionally, we are eliminating indemnification for gross negligence or intentional wrongdoing, which will also reduce the Parties' risk exposure and cost of insurance.

640. It is not our intent to preempt the ''appropriate tribunal's'' assignment of liability for injuries to third parties, as proposed by Salt River Project. The indemnification provision is a common contractual risk-sharing provision and does not strip any court or other tribunal of jurisdiction. To the extent that this provision would cause a specific Transmission Provider to violate statutory or other restrictions, the issue should be raised on compliance in a filing explaining the special circumstances.

641. *Article 19—Assignment*—Proposed LGIA Article 19 provided the conditions for assigning the LGIA to another entity. It stated that any assignment under the LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be expanded.

642. *Article 19.1—Assignment*—Article 19.1 of the NOPR LGIA stated that written consent ordinarily would be required to assign the LGIA, but assignment may be secured without consent if the assignee is an Affiliate that meets certain qualifications. Article 19 also provided that no consent would be required if an Interconnection Customer assigns the LGIA for collateral security purposes to aid in financing.

Comments

643. The Bureau of Reclamation argues that there are limitations on its ability to comply with Article 19.1. It does not typically allow assignments without approval by both entities and assurance that assigns and successors are bound by the original terms of the interconnection agreement. It states that there are standard articles that it would be required to include that are not contained in the NOPR, such as ''Officials Not to Benefit,'' ''Use of Convict Labor,'' ''Prompt Payment Provisions,'' and ''Tort Claims.''

Commission Conclusion

644. The Bureau of Reclamation's concerns are addressed in the reciprocity discussion at Article 14.1 (Regulatory Requirements) and Article

[102] *E.g.,* Central Maine, the Coalition for Contract Terms, Midwest ISO TO, PSEG, Salt River Project, and Southern.

[103] *Citing* Avista Corp., 96 FERC ¶ 61,058 at 61,181 (2002).

14.2 (Governing Law and Applicable Tariffs).

645. *Article 20—Severability*—Article 20 of the NOPR LGIA explained that if a court or Governmental Authority determines that any provision of the LGIA is invalid, void, or unenforceable, such determination would not invalidate any other provision in the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule LGIA as proposed.

646. *Article 21—Comparability*—Article 21 of the NOPR LGIA would have required that the Parties comply with all applicable comparability requirements and code of conduct laws, rules and regulations. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule LGIA as proposed.

647. *Article 22—Confidentiality*—Article 22 of the NOPR LGIA described what constitutes Confidential Information and the protection proposed for such information when shared between Parties. It set forth proposed procedures for the release of Confidential Information and guidelines regarding how Confidential Information should be treated when it is subject to a request from the Commission as part of an investigation. The information of both Parties is protected by this article as long as the information is identified as Confidential Information in accordance with the article.

Comments

648. Cal ISO argues that an RTO or ISO should have access to operational, performance and maintenance data.

649. The Bureau of Reclamation argues that it may not be able to conform to the proposed confidentiality provisions because it must adhere to the Freedom of Information Act (FOIA) [104] when addressing confidentiality. It further explains that FOIA requires federal agencies to release most documents in their possession upon request, except to the extent their contents meet certain exceptions. The Bureau of Reclamation also notes that Article 22 should be revised to reflect security concerns raised by the release of information.

Commission Conclusion

650. In the Final Rule, the Commission adopts NOPR Article 22, with minor modifications, as described below.

651. In response to Cal ISO, the Final Rule allows an RTO or ISO to have access to certain data. Final Rule Article 22.1.11 permits a Transmission Provider to make available information ''necessary to fulfill its obligations * * * as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the RTO/ISO.'' A Transmission Provider that is obliged to disclose information to an RTO or ISO must notify the other Party in writing, assert confidentiality, and cooperate in seeking to protect the Confidential Information from public disclosure ''by confidentiality agreement, protective order or other reasonable measures.'' Thus a Transmission Provider may make available any required operational, performance or maintenance data as long as it maintains the confidentiality of the requested Confidential Information.

652. Regarding the Bureau of Reclamation's argument about its obligations under FOIA, the Commission recognizes that Parties may be subject to statutory or regulatory information restrictions, some of which may address security concerns. If state or federal laws indeed conflict with the Final Rule's confidentiality and information sharing provisions, the Commission expects that public utilities will make conforming changes to these provisions in their compliance filings and explain the statutory basis for such changes. This also applies to non-public utilities that plan to amend their safe harbor tariffs with a conforming Final Rule LGIP and Final Rule LGIA.

653. The Commission is also making several minor changes to NOPR LGIA Article 22.1.10 that addresses disclosure to the Commission or its staff. A Party must provide requested information to the Commission or its staff, even when the Party otherwise would be required by the LGIA to maintain this information in confidence. The Party receiving the request must ask the Commission to treat this information as confidential and non-public, consistent with Section 388.112 of the Commission's Regulations.[105] A Party must notify the other Party when it learns that the Commission has received a request that such information be made public pursuant to Section 388.112. Commission policy prohibits a contracting Party from revealing to a counter-Party that it has received a request for information from the Commission, when such request is made pursuant to an investigation or otherwise.[106] The Commission likewise prohibits a Party from notifying the other Party prior to the release of the Confidential Information to the Commission or its staff.[107]

654. The Commission is also revising Article 22.1.10 in the Final Rule LGIA to clarify that the Party receiving the request from the Commission or its staff will not contact the other Party before releasing the Confidential Information. In addition, because requests for information may be made under the investigation rules in Section 1b.20 of the Commission's Regulations, the Final Rule article includes this reference.

655. *Article 23—Environmental Releases*—Proposed LGIA Article 23 described the procedures that would be required for notifying the other Party of the release or remediation of Hazardous Substances. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

656. *Article 24—Information Requirements*—Proposed LGIA Article 24 described the proposed requirements for sharing information regarding the electrical characteristics of the Parties' respective facilities, including monthly status reports on construction and installation of the Transmission Provider's Interconnection Facilities and Network Upgrades.

657. *Article 24.4—Information Supplementation*—Proposed LGIA Article 24.4 required the Parties, before the Commercial Operation Date of the Interconnection Customer's Generating Facility, to provide either updated test and other technical information or written confirmation that the new technical data and the originally submitted data are consistent. It also describes the types of voltage tests that would be conducted by the Interconnection Customer and the type of recordings it is required to provide to the Transmission Provider. It provides that when there are multiple units at a Generating Facility, the Interconnection Customer would be required to provide recordings for only one generating unit if the other units have identical design and response characteristics.

Comments

658. NERC recommends that Article 24.4 be revised to require that tests conducted on the Generating Facility be consistent with Good Utility Practice. It also recommends requiring the Interconnection Customer to provide the Generating Facility's characteristics based on validated test recordings, as opposed to raw test data. It asks that the

[104] 5 U.S.C. 552(a) (2000).

[105] 18 CFR 388.112 (2003).

[106] American Electric Power Service Corp., 99 FERC ¶ 61,312 at PP 22–24 (2002).

[107] *Id.*

Commission not permit the test results for one generating unit to be allowed to represent the characteristics of all generating units, if there is more than one unit at the Generating Facility with the same design characteristics. NERC believes that it is necessary to verify modeling characteristics of each generating unit for system planning purposes and to verify the operational capabilities of each generating unit for operations purposes. NERC states that the electrical characteristics of each Generating Facility are unique.

Commission Conclusion

659. We concur with NERC's position and adopts its recommended revisions.

660. *Article 25—Information Access and Audit Rights*—Proposed LGIA Article 25 required that each Party make information available to the other Party necessary to verify costs for which the other Party is responsible under this LGIA and to carry out its obligations and responsibilities under the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

661. *Article 26—Subcontractors*—Proposed LGIA Article 26 provided that the Parties would be able to use subcontractors to perform obligations under the LGIA if the subcontractors comply with the applicable terms and conditions of the LGIA and each Party remains liable to the other for the subcontractor's performance. The hiring Party would retain all of its obligations under this article. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

662. *Article 27—Disputes*—Proposed LGIA Article 27 explained the Dispute Resolution and arbitration procedures that would apply to the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed with one change to emphasize that Parties should consider using informal dispute resolution as well as more formal options.

663. *Article 28—Representations, Warranties and Covenants*—Proposed LGIA Article 28 would have required that each Party be organized and qualified to do business in the relevant jurisdiction. Each Party would be required to have the authority to enter into this LGIA, and performance of its duties would not conflict with organizational or formation documents. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

664. *Article 29—Joint Operating Committee* (in the NOPR: Operating Committee)—Proposed LGIA Article 29 provided that the Transmission Provider shall set up: (1) An Operating Committee made up of a member from the Interconnection Customer and a member from the Transmission Provider, and (2) a Joint Operating Committee made up of members of all of its Operating Committees, in order to coordinate operating and technical considerations of Interconnection Service. The Operating Committee would meet when necessary, but not less than once each calendar year. The duties of the Operating Committee would include, among other things, establishing and maintaining control and operating procedures, data requirements and operating record requirements, reviewing outage forecasts, and coordinating outage schedules.

Comments

665. Avista and FirstEnergy oppose this requirement as unduly burdensome and unnecessary because it will impose additional costs on them. Moreover, some of the tasks envisioned for the Operating Committee are being performed either by NERC or an Applicable Reliability Council. For example, Avista argues that NERC is responsible for establishing standards for operating and control procedures for generators. Dynegy, on the other hand, would keep the Operating Committee and proposes some minor changes to the proposed language of this provision.

666. PJM and Cal ISO argue that ISOs should be exempt from this requirement because they already perform the tasks envisioned for Operating Committee in the normal course of their business.

Commission Conclusion

667. The Final Rule LGIA eliminates the requirement that the Transmission Provider constitute an Operating Committee for each Interconnection Customer. However, we are requiring a Joint Operating Committee because it provides Interconnection Customers and Transmission Providers a forum in which to discuss and coordinate operating and technical considerations of Interconnection Service. We are revising Final Rule LGIA to eliminate tasks that are already being performed by NERC, thereby responding to Avista's concern.

668. Finally, we agree with PJM and Cal ISO's proposal that the Final Rule article exempt an RTO or ISO from this requirement because an RTO or ISO performs Joint Operating Committee-type functions in their normal course of business.

669. *Article 30—Miscellaneous*—Proposed LGIA Article 30 addressed matters such as rules of interpretation, a prohibition on third party beneficiaries, and the right to amend the LGIA by mutual agreement. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

670. *Article 30.11—Reservation of Rights*—Proposed Article 30.11 would have reserved to each Party their rights to unilaterally seek modification to the LGIA pursuant to sections 205 and 206 of the FPA, except as restricted by the other provisions of the executed LGIA.

Comments

671. Dynegy and Mirant note that this clause is redundant because another Reservation of Rights provision appears in Proposed Article 2.7.

Commission Conclusion

672. The Commission deletes proposed Article 2.7, and modifies proposed Article 30.11 in this Final Rule. As proposed, Article 30.11 contains a redundancy. The Commission deletes the second paragraph of this Article, because it repeats the reservation of rights set forth in the first paragraph of the Article.

673. *Appendices*—The NOPR LGIA contained appendices for Interconnection Facilities and Network Upgrades, time schedule, interconnection details, standard LGIA, security arrangement details, Commercial Operation Date, and interconnection guidelines. The Commission adopts these appendices in the Final Rule LGIA, with the exception of Appendix G (Interconnection Guidelines) since the Final Rule LGIA captures the provisions of that Appendix elsewhere.

C. Other Significant Policy Issues

674. A number of issues such as interconnection pricing policy, permitted variations in the terms of the Final Rule for independent transmission entities, and legal issues such as consequential damages and liquidated damages transcend individual sections in the Final Rule LGIP or articles in the Final Rule LGIA. Accordingly, they are addressed in the individual discussions that follow.

1. Interconnection Pricing Policy

675. In the NOPR, the Commission proposed to adopt its existing interconnection pricing policy for a

Transmission Provider that is not independent of market participants, and invited comments on whether it should depart from this policy for a Transmission Provider that is independent.

676. Since the NOPR was written to reflect the Commission's current pricing policy, NOPR LGIA Article 11 proposed that the Interconnection Customer be solely responsible for the costs of Interconnection Facilities, which are defined as all facilities and equipment between the Generating Facility and the Point of Interconnection with the Transmission System. Network Upgrades, which are defined as all facilities and equipment constructed at or beyond the Point of Interconnection for the purpose of accommodating the new Generating Facility,[108] would be funded initially by the Interconnection Customer unless the Transmission Provider elects to fund them. The Interconnection Customer would then be entitled to a cash equivalent refund (*i.e.*, credit) equal to the total amount paid for the Network Upgrades, including any tax gross-up or other tax-related payments. The refund would be paid to the Interconnection Customer on a dollar-for-dollar basis, as credits against the Interconnection Customer's payments for transmission services, with the full amount to be refunded, with interest calculated in accordance with 18 CFR 35.19a(a)(2)(ii), within five years of the date the Network Upgrades are placed in service, so long as the Transmission Provider continues to receive payments for transmission service with respect to the Generating Facility during this period. The NOPR proposed that the Interconnection Customer may assign its refund rights to any person.

677. Also, in the NOPR, the Commission asked for comments on appropriate interconnection pricing consistent with the use of the locational marginal pricing methodology. This method was proposed in the Standard Market Design proceeding that the Commission had previously announced.[109] The Commission noted that in a region that uses locational pricing, the RTO or ISO usually assigns to the Interconnection Customer the cost of any new network facilities that would not be in its transmission expansion plan but for the interconnecting Generating Facility. The Interconnection Customer then typically receives transmission rights in return for the capacity that is created. The Commission explained that this pricing method has been allowed only in regions where the Transmission Provider is independent of market participants, because certain aspects of this method can be subjective. These subjective aspects include the determination of congestion prices, rules for deciding which Interconnection Customer in the queue should be responsible for which facilities, the cost of the facilities, and the assumptions underlying the power flow analysis needed for system impact and facilities studies. The Commission noted that a Transmission Provider that is not an independent entity would have the ability and the incentive to exploit this subjectivity to its own or its affiliates advantage if it is able to allocate the costs of Network Upgrades between the Interconnection Customer and other transmission customers, where the Transmission Provider may be the principal other customer. The Commission invited comments on whether it should accept an approach that departs from the current Commission policy of providing transmission credits, and stated its willingness to consider alternative proposals as long as the cost causation determinations are made on an objective and non-discriminatory basis by an independent entity such as an RTO.

678. The Commission has traditionally favored a ''rolled-in'' transmission pricing policy of the type that formed the basis for the pricing proposal in the Interconnection NOPR. However, such a policy may limit economic expansions that would remove congestion and allow customers to reach more distant power supplies. This may occur at least in part because state siting authorities may have little interest in siting a transmission facility that benefits mainly a particular Interconnection Customer or customers in another state if doing so would require the retail sales customers on the constructing public utility's system to pay for the new facilities.

679. The Standard Market Design NOPR proposed that a policy of participant funding, where those who benefit from a particular project pay for it, may help to solve this problem. The Commission then reiterated its concern that certain functions that the Transmission Provider must perform to implement participant funding can be subjective. Also in this docket, the Commission encouraged the formation of Regional State Committees, which would allow states to work together to identify beneficiaries of expansion projects and make recommendations on pricing proposals and cost recovery that may include rolling in, assignment to beneficiaries, or some combination of the two.

680. Finally, the Commission also addressed in the NOPR the question of the appropriate rate treatment for the cost of Interconnection Facilities that the Transmission Provider constructs for its own Generating Facilities. The Commission noted that, in *Southern Company Services, Inc. (Southern),* the company proposed to continue to treat the cost of Interconnection Facilities for its own Generating Facilities as part of the network while directly assigning the cost of the same type of facilities to its competitors' Generating Facilities. Southern raised the issue of how to ensure consistency between interconnection and transmission pricing. Recognizing the need to address this issue on a generic basis, the Commission made *Southern* subject to the outcome of this rulemaking. The Commission proposed in the NOPR to require all transmission rates to be designed in a manner that is consistent with whatever interconnection pricing policy is approved in the Final Rule. Thus, the Commission proposed that, to the extent its current interconnection pricing policy is adopted, each Transmission Provider must remove from its transmission rates the costs of all Interconnection Facilities, not just generator step-up transformers, constructed for the Transmission Provider's own Generating Facilities. The Commission proposed that the costs of these sole use facilities be directly assigned as generation-related costs. The Commission explained that this would be consistent with its current pricing of generator step-up transformers, and it would send a more accurate price signal by assigning the cost of Interconnection Facilities to the generation customers using them.

Comments

681. A large number of commenters argue that the Commission's proposed crediting policy provides an undesirable subsidy to the Interconnection Customer and thereby creates incentives for the Interconnection Customer to make poor siting and investment decisions. Many commenters express concerns about the relationship between this policy and the Commission's Standard Market Design

[108] The proposed definition also states that the ''facilities and equipment are used by and benefit all users of the transmission grid, without distinction or regard as to the purpose of the upgrade (*e.g.*, to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration) including the fact that these facilities and equipment are being replaced or upgraded to accommodate the interconnection request.''

[109] Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55542 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002).

proposal, and several provide recommendations on how the two rules could be made compatible. In addition, many commenters object to specific features of the proposed crediting policy. For example, several transmission owners cite problems (*e.g.*, regulatory lag, retail rate freezes) related to their ability to recover in transmission rates the costs of interconnections, including the credits that they pay to an Interconnection Customer. Many commenters object to the five year ''sunset'' date for refunding all amounts paid by the Interconnection Customer. They are concerned that transmission customers could be left with the financial burden and no offsetting benefits if the Interconnection Customer's Generating Facility ceases to operate. Some commenters argue that the Interconnection Customer's receipt of credits should not be limited to those occasions when the Interconnection Customer takes transmission service with respect to the output of the Generating Facility. Others argue that the payment of interest on unpaid credits is not appropriate or that the rate prescribed is either too high or too low.

682. The following is a summary of the comments received, organized according to the issues addressed. After each issue summary, the Commission presents its conclusions for that issue.[110]

Concerns About the Fairness and Efficiency of the Commission's Crediting Policy

683. Transmission Owners, such as Entergy, and others argue that the Commission's current crediting policy requires all transmission customers to subsidize the cost of facilities that would be unnecessary ''but for'' a particular Interconnection Customer's Generating Facility and that provide no benefits to the other transmission customers on the Transmission System. They also argue that this policy encourages inefficient siting decisions because the Interconnection Customer has no incentive to consider the full impact of its decision regarding where to locate its Generating Facility on the Transmission System. They claim that, when selecting a site, an Interconnection Customer will pay more attention to fuel supply and water availability than to its impact on the Transmission System.

684. The Alabama PSC argues that a pricing policy that spreads the costs of all interconnection-related facilities situated ''at and beyond'' the Point of Interconnection to all transmission customers results in a subsidy to the Interconnection Customer, causes inefficiencies in siting, and is inconsistent with longstanding cost causation principles. The Coalition for Pricing claims that the policy of assigning cost responsibility simply based on the physical location of the facilities (*i.e.*, relative to the Point of Interconnection) is contrary to the Commission's ''system-wide benefit test'' and violates the Energy Policy Act of 1992. It argues that certain facilities installed at and beyond the Point of Interconnection may not provide a system-wide benefit and, as such, should be directly assigned to the Interconnection Customer. Entergy argues that grave consequences can be avoided through the interim use of the system-wide benefit test, and the assignment of costs to those who benefit, prior to the establishment of participant funded expansion regimes in RTOs.

685. PSEG notes that in PJM the cost of any Network Upgrades that would not be required ''but for'' the interconnection of a Generating Facility to the Transmission System is assigned to the Interconnection Customer, and the Interconnection Customer receives financial transmission rights associated with the Network Upgrades that it pays for. PJM and others argue that an established RTO or ISO should be allowed to continue to use this policy, as the NOPR proposes. PJM states that its experience under its interconnection rules confirms that such pricing promotes economic efficiency including efficient use of the Transmission System. However, KeySpan cautions that the ''but for'' test can become meaningless if a fictitious transmission planning study can be used to identify the Transmission System needs required to meet load growth. It states that the independence of the Transmission Provider completing the study is the key to this process.

686. The Maine PUC contends that the Commission's reasoning for refusing to socialize system expansion costs in the natural gas pipeline context applies with equal force in the generator interconnection context. It states that, just as subsidization of gas pipeline expansion costs could lead to non-optimal or unnecessary capacity expansion, so too will subsidization of Network Upgrades associated with new generation projects. The Maine PUC also states that, just as rolled-in pricing gives an existing gas pipeline an unfair economic advantage over potential new entrants, subsidization of Network Upgrades for Generating Facility interconnections could interfere with price signals for alternatives to traditional congestion solutions, such as load response from customers or merchant transmission.

687. Many other commenters, including state commissions, are especially concerned about an Interconnection Customer that intends to sell its output off-system or out of state. These commenters claim that the current policy requires transmission customers of the local Transmission Provider to subsidize the cost of Network Upgrades that would, in the latter case, provide them with no benefits. NRECA-APPA recommends that, without a commitment by the Interconnection Customer to serve power customers within the Transmission Provider's footprint, the Commission should require the Interconnection Customer to pay for the Network Upgrades. Some commenters, such as the Midwest ISO, further claim that the law in some states may not allow Network Upgrade costs to be rolled into the base rates of the local customers that are not the beneficiaries of the upgrades.

688. Other commenters, including EPSA, voice strong support for the crediting approach. EPSA states that the crediting mechanism works well at this time and should not be adjusted until the Commission has put in place a specific market design that would require such an adjustment. American Transmission and SoCal Edison also support the crediting approach. Indeed, American Transmission supports the crediting approach even if the Transmission Provider is an independent entity. American Transmission states that it discounts the argument advanced by critics of this policy that the Interconnection Customer must receive stronger price signals through direct assignment of the costs of Network Upgrades to bring about efficient location of new generation. It believes that requiring participant funding for Network Upgrades is akin to moving backward to the vertically integrated industry structure that existed prior to open access.

689. Cleco supports participant funding that would eliminate the need for the costs of Network Upgrades being refunded through transmission crediting. In the absence of such an approach, Cleco recommends that an Interconnection Customer should be credited for only half of the transmission service it has subscribed to for the first five years. Under Cleco's

[110] Issues regarding the pricing of Network Resource Interconnection Service are addressed in part II.C.2 (Interconnection Products and Scope of Service).

proposal, there would be no interest paid, and after five years no additional payment to the Interconnection Customer would be made. Western also recommends that the Commission adopt a method to recover the costs of the Network Upgrades from the benefitting entities. It believes that current transmission customers should be held harmless from the cost impact of Network Upgrades that is not mitigated by increased transmission usage and associated revenues.

690. The North Carolina Commission recommends that the Commission modify its proposed rule to explicitly adopt the ''but for'' pricing policy for interconnection and transmission service in those states that have not yet unbundled retail electric service or implemented retail competition.

691. Several commenters, including National Grid, propose that the pricing issue can be resolved by analogy to the process of cost allocation for public roads. According to this analogy, the Interconnection Customer will have virtually sole use of the leads to the substation, just like the homeowner has sole use of his or her driveway. Thus, the cost of Interconnection Facilities, which are for the sole use of the Interconnection Customer, should be the responsibility of the Interconnection Customer. Next, the substation facilities needed to connect the sole-use facilities of the Interconnection Customer to the general delivery system are shared-use facilities, much like a local street. National Grid states that the cost of such facilities could be allocated partially to load and partially to the new Interconnection Customer. It explains that Network Upgrades that are remote from the Generating Facility typically allow movement of aggregate generation to aggregate load. National Grid contends that the benefits and use of such Network Upgrades are spread much more broadly and, like the highway system, could be rolled in and allocated to aggregate load within the market, or throughout an RTO if one exists. Finally, it argues that it may be appropriate to maintain an incremental charge for market-to-market transactions, but only where Network Upgrades in one market are needed by another market.

692. Peabody asserts that the NOPR contains certain provisions that are unjust and unreasonable as applied to large-scale base-load generation projects, especially coal-based projects. It urges the Commission to modify its interconnection pricing policy in such cases to require the Transmission Provider to roll the costs of Network Upgrades into its transmission rate base without requiring the Interconnection Customer to fund the costs in advance.

Commission Conclusion

693. For Transmission Providers that are not independent entities, the Commission will continue to apply its current interconnection pricing policy, with certain revisions that are discussed below.

694. The Commission recognizes that its policy of requiring refunds to be paid to an Interconnection Customer for the cost of Network Upgrades constructed on its behalf is a controversial one. However, the Commission instituted this policy to achieve a number of important goals. First, consistent with the Commission's long-held policy of prohibiting ''and'' pricing [111] for transmission service, the crediting policy ensures that the Interconnection Customer will not be charged twice for the use of the Transmission System. The Commission determined that it is appropriate for the Interconnection Customer to pay initially the full cost of Interconnection Facilities and Network Upgrades that would not be needed but for the interconnection, but once the Generating Facility commences operation and delivery service begins, it must receive transmission service credits for the cost of the Network Upgrades. This ensures that the Interconnection Customer will not ultimately have to pay both incremental costs and an average embedded cost rate for the use of the Transmission System. Second, the Commission's crediting policy helps to ensure that the Interconnection Customer's interconnection is treated comparably to the interconnections that a non-independent Transmission Provider completes for its own Generating Facilities. The Transmission Provider has traditionally rolled into its transmission rates the cost of Network Upgrades required for its own interconnections, and the Commission's crediting policy ensures that Network Upgrades constructed for others are treated the same way. Finally, the policy is intended to enhance competition in bulk power markets by promoting the construction of new generation, particularly in areas where entry barriers due to unduly discriminatory transmission practices may still be significant. The policy is therefore consistent with the Commission's long-held view that competitive wholesale markets provide the best means by which to meet its statutory responsibility to assure adequate and reliable supplies of electric energy at just and reasonable prices.[112]

695. While the Commission still finds these to be appropriate goals for an interconnection pricing policy, the commenters that object to the Commission's crediting policy make a number of valid points. Most importantly, as many point out, providing transmission service credits to an Interconnection Customer for the cost of Network Upgrades that would not be needed but for the interconnection of the new Generating Facility mutes somewhat the Interconnection Customer's incentive to make an efficient siting decision that takes new transmission costs into account, and it provides the Interconnection Customer with what many view as an improper subsidy, particularly when the Interconnection Customer chooses to sell its output off-system. In this regard, the Commission believes that, under the right circumstances, a well-designed and independently administered participant funding policy for Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach. The Commission notes that the transmission pricing policies that the Commission has permitted for an RTO or ISO with locational pricing, in which the Interconnection Customer bears the cost of all facilities and upgrades that would not be needed but for the interconnection of the new Generating Facility and receives valuable transmission rights in return, are acceptable forms of participant funding.

696. However, the Commission remains concerned that, when the Transmission Provider is not

[111] When a Transmission Provider must construct Network Upgrades to provide new or expanded transmission service, the Commission generally allows the Transmission Provider to charge the higher of the embedded costs of the Transmission System with expansion costs rolled in, or incremental expansion costs, but not the sum of the two. Hence, ''and'' pricing is not permitted.

[112] The Commission's crediting policy has also withstood judicial review. In an opinion issued February 18, 2003, the DC Circuit Court of Appeals affirmed Commission orders requiring a Transmission Provider to provide credits to Interconnection Customers for the cost of short-circuit and stability Network Upgrades. *Entergy Services, Inc.* v. *FERC,* 319 F.3d 536 (DC Cir. 2003). The court stated that ''[t]he Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects its policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest.'' Id. at 543–44. The court concluded that ''the Commission has reasonably explained that its crediting pricing policy avoids both gold plating and less favorable price signals such that the enlarged transmission system, which it views as a public good, can function reliably and continue to expand.'' *Id.* at 544.

independent and has an interest in frustrating rival generators, the implementation of participant funding, including the ''but for'' pricing approach, creates opportunities for undue discrimination. As the Commission stated in the NOPR, a number of aspects of the ''but for'' approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers. The Commission would find any policy that creates opportunities for such discriminatory behavior to be unacceptable. Furthermore, none of the commenters in this proceeding has convinced the Commission that, in the absence of independence, it is possible to implement a ''but for'' pricing approach that avoids this inherent subjectivity. Therefore, the Commission continues in this Final Rule its current policy, as modified below, of requiring a Transmission Provider that is not an independent entity to provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection.

697. The Commission notes, however, that the current pricing policy does not explicitly address instances where the Generating Facility interconnects with a Transmission Provider's jurisdictional distribution facility and, as a result, upgrades are needed on the Distribution System to accommodate the interconnection. The Commission clarifies here that, if any such interconnection is jurisdictional, the cost of such upgrades must be directly assigned to the Interconnection Customer. This is because an upgrade to the Distribution System generally does not benefit all transmission customers. 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. Accordingly, it is not appropriate that all transmission customers share the cost of Distribution Upgrades.

698. For a Transmission Provider, such as an RTO or ISO, that is an independent entity, the Commission continues to allow flexibility regarding the interconnection pricing policy that each independent entity chooses to adopt, subject to Commission approval. We invite a Regional State Committee to establish criteria that an independent entity would use to determine which Transmission System upgrades, including those required for generator interconnections, should be participant funded and which should not.

699. The Commission will permit, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades for generator interconnections as soon as an independent administrator has been approved by the Commission and the affected states. Allowing participant funding, *i.e.*, direct assignment of the cost of Network Upgrades is reasonable, if an independent administrator performs transmission planning and related cost allocation, as a transitional approach that may be used in anticipation of an RTO or ISO assuming operational control of the regional transmission grid within a year.[113] Based on the comments in this interconnection rulemaking, we find this approach to be appropriate here. Therefore, the Commission adopts this policy in this Final Rule.

700. However, the Commission wishes to emphasize that, by allowing an independent Transmission Provider to adopt a pricing policy, such as the ''but for'' approach, that differs from the crediting approach that the Commission is requiring for non-independent entities, the Commission is not abandoning the goals that the Commission has established for interconnection pricing, as described above. First, even though the ''but for'' approach allows the cost of certain Network Upgrades to be assigned to the Interconnection Customer, it is not ''and'' pricing if, for example, the Interconnection Customer is allowed to receive well-defined capacity rights that are created by the upgrades. For example, PJM, which uses locational pricing, gives Firm Transmission Rights (FTRs) and Capacity Interconnection Rights (CIRs) to the Interconnection Customer in exchange for a ''but for'' cost payment. These are rights that are created by the Network Upgrades for which the Interconnection Customer pays, and they are well-defined, long-term and tradeable. Moreover, the Commission concludes that, even if the Interconnection Customer (or its power sales customer) is also required to pay an embedded cost-based charge for transmission service, this is not ''and'' pricing. This is because the Interconnection Customer pays separate charges for separate services. It pays an access charge for transmission service that may involve an obligation to pay congestion charges, and in exchange for its ''but for'' payment, it receives these well-defined capacity rights, which provide some protection from having to actually pay the congestion charges.

701. Second, when the Transmission Provider is an independent entity, the Commission is much less concerned that all generation owners will not be treated comparably because independence ensures that the Transmission Provider has no incentive to treat Interconnection Customers differently.

702. Third, in this context, ''but for'' pricing is consistent with the Commission's policy of promoting competitive wholesale markets because it causes the Interconnection Customer to face the same marginal cost price signal that it would face in an efficient, competitive market. This means that, in a competitive market environment, market forces could act freely to achieve the desirable level of entry of new generating capacity.

703. Finally, participant funding of transmission upgrades may provide the pricing framework needed to overcome the reluctance of incumbent Transmission Owners in many parts of the country to build transmission, with the result that badly needed transmission infrastructure could be put in place quickly.

Interconnection Pricing and the Transition to Standard Market Design

704. Several commenters assert that certain proposed Standard Market Design policies, such as locational marginal pricing, congestion revenue rights, transmission expansion pricing, and transmission planning, could affect interconnection pricing, but that the full effect cannot be determined until the Standard Market Design Final Rule is issued. Nevertheless, many of these commenters propose that, until Standard Market Design is implemented, the Commission should continue to require the Interconnection Customer to pay for Network Upgrades in exchange for future transmission service credits. Duke Energy proposes that after Standard Market Design is implemented, the crediting policy could be replaced with one that provides the Interconnection Customer with financial transmission rights in exchange for funding Network Upgrades.

705. Exelon and Sithe recommend that, for the Transmission Provider that is not yet part of an RTO, and for an RTO that has not yet implemented LMP-based congestion pricing, the Commission continue its current policy

[113] *See* Cleco Power LLC, *et al.*, 103 FERC ¶ 61,272 (2003); Southern Company Services, Inc., 103 FERC ¶ 61,279 (2003), *reh'g pending.*

of requiring the Transmission Provider to provide an Interconnection Customer that funds Network Upgrades with credits against future transmission service. As a transition plan, Exelon and Sithe recommend that an Interconnection Customer that is receiving credits when Standard Market Design is implemented be awarded financial transmission rights in an amount based on the Interconnection Customer's remaining credits as a proportion of its total credits. Some commenters, such as Cleco Power and Monongahela Power, emphasize that a Transmission Provider should not be required to provide both transmission credits and congestion rights to the same Interconnection Customer. Mirant believes that the two practices can coexist and that the Interconnection Customer should have the option to elect either transmission credits or the equivalent firm transmission rights as comparable compensation for Network Upgrades.

706. Other commenters believe that attempting to resolve pricing issues in this rulemaking presents significant problems. New York Transmission Owners declares that the ''Commission's [Standard Market Design and LMP] policies and this NOPR are regulatory ships traveling in the night on a collision course, each completely unaware of the other's existence.'' They propose that the Commission limit the interconnection rulemaking to non-price issues. EPSA proposes that the Commission need not resolve in this proceeding what, if any, changes in the crediting mechanism might be necessary to implement Standard Market Design and the formation of RTOs. Calpine submits that the transmission credit policy should not be abandoned in the transition to Standard Market Design. It states that relying on recovery of the costs of Network Upgrades solely through assignment of FTRs under Standard Market Design would ignore the network access aspect of Standard Market Design and would not provide a practical means of recovering all costs of Network Upgrades. Although a change in policy may be appropriate after the Standard Market Design is in place, Calpine recommends that such a change not be made in this proceeding.

Commission Conclusion

707. The timing and content of any Final Rule in the Standard Market Design proceeding will not be determined in this proceeding. In the meantime, it is important to include interconnection pricing rules in this Final Rule, based on the record of this proceeding.

The Inability of a Transmission Owner To Recover the Costs of Network Upgrades

708. A number of Transmission Owners express concern that they may not be able to recover in a timely fashion the costs that they will incur under the proposed pricing policy. Monongahela Power states that a Transmission Owner faces three problems in this regard. First, it notes that a Transmission Owner faces the expense, delay, and uncertainty of a full transmission rate case before the Commission to roll in the costs of system upgrades associated with new generation projects. Second, it claims that even if the Commission grants full cost recovery, costs may be ''trapped'' by an inability to pass them through to the majority of customers due to a state retail rate freeze. Third, a Transmission Owner may face lost revenues associated with a new generating project once transmission service begins because of the requirement to provide a financial credit to the Interconnection Customer. Monongahela Power asks that the Commission permit a Transmission Owner to make a limited Section 205 filing for the immediate roll in of these costs, and that it work with the States to accommodate the flow-through of these costs to retail customers. At a minimum, both Monongahela Power and Dominion Resources ask that the Commission provide for deferred accounting treatment with assurances of future cost recovery when the Transmission Owner must record a transmission revenue credit with no income to offset it.

Commission Conclusion

709. The Commission concludes that it is not necessary to provide for the Transmission Provider to make a limited Section 205 filing as proposed by Monongahela Power for the immediate roll in of the costs it will incur under the crediting policy. In the ordinary course of business, a public utility frequently incurs costs for which it has no immediate revenue offset, just as it routinely experiences revenue increases that are not accompanied by commensurate increases in costs. When a public utility believes that its revenues are not adequate, it is permitted by Section 205 of the FPA to make a rate filing. The commenters have provided no evidence to convince the Commission that the burden created by its crediting policy is so great that the Commission should change its regulations to permit a limited Section 205 transmission rate filing that addresses only credit-related cost increases, or deferred accounting treatment for transmission credits, as sought by Monongahela Power and Dominion Resources.

Responsibility for Line Outage Costs Resulting From Interconnection

710. The NOPR did not address the allocation of costs that may be incurred when a transmission line must be taken off-line in order to complete an interconnection. In an order issued November 20, 2001,[114] however, the Commission stated that it would consider in this rulemaking the question of who should bear these costs.

711. Commenters express a variety of views on this issue. The Coalition for Pricing states that these costs should be a component of the costs paid by generators for interconnection service under the Final Rule IA. It asserts that any other policy would result in all transmission customers unfairly subsidizing Generating Facility interconnections. The Coalition for Pricing proposes that the Parties to individual interconnection agreements be allowed to agree on the specific line outage costs for which the Interconnection Customer should be responsible. The Coalition for Pricing argues that, since the Parties' agreement would necessarily be filed with the Commission, it would retain its regulatory control over line outage cost allocations. However, Reliant states that the Commission has had a policy of not requiring that the Interconnection Customer pay for outage-related costs, and argues that the Coalition for Pricing has provided no justification for departing from this policy. Reliant recommends rejecting the modifications that the Coalition for Pricing proposes.

712. AEP recommends that the Interconnection Customer be required to reimburse all affected generation owners for outage-related costs that they incur, whether or not such generation owners are affiliated with the Transmission Provider. AEP believes that this can be done in a manner that properly identifies the costs, minimizes the Transmission Provider's discretion, and allows for adequate regulatory scrutiny. It recommends a method of compensation that it claims avoids the exercise of discretion. That is, the Interconnection Customer should replace the energy that would otherwise have been generated by the affected Generating Facility. AEP states that if the Interconnection Customer is unwilling to replace the lost energy, it would be up to the affected generation

[114] American Electric Power Service Corporation, 97 FERC ¶ 61,200 (2001) (*AEP*).

owner to file with the Commission a proposal to recover its costs. Further, AEP believes that the Interconnection Customer, the existing generation owner and the Transmission Provider should be obligated to use Reasonable Efforts to minimize the impact of any outage.

713. ATC states that dividing the costs between the Interconnection Customer and the Transmission Provider may provide the most equitable results. It believes that a reasonable approach might be to allocate up to the full costs of the line outage to the Interconnection Customer so long as the timing is primarily under the Interconnection Customer's control. However, if the Transmission Provider has substantial influence over the timing and engineering aspects of the outage, ATC recommends that all or a large percentage of the new facility costs may be appropriate for rolling into transmission rates.

Commission Conclusion

714. The Final Rule does not permit the Transmission Provider to allocate interconnection-related outage costs to the Interconnection Customer. The Commission recognizes that the Transmission Provider and the owners of other generators may incur costs as a result of having to take a transmission line out of service in order to complete an interconnection. Such costs may include generator shut-down and restart costs, redispatch and purchased power costs, lost opportunity costs on sales not made, costs of power to compensate for additional line losses, and possibly other costs. In prior orders,[115] the Commission has generally rejected, without prejudice, proposals by a Transmission Provider to allocate these costs to the Interconnection Customer. Among other things, the Commission has found that the proposals are vague, leave too much discretion to the Transmission Provider, and do not provide for adequate regulatory oversight by the Commission. For example, in NSTAR, the Commission stated that ''determining how much cost responsibility to assign to an interconnecting generator, when other factors also may contribute to the need to redispatch contemporaneously, would be unacceptably arbitrary: for example, higher redispatch costs may be the result of a planned or unplanned outage, maintenance that requires a line to be taken out of service temporarily, or an unexpected shift in load.'' [116]

[115] *See, e.g., id.*; ISO New England, Inc., 91 FERC ¶ 61,311 (2000).

[116] Cambridge Electric Light Co., *et al.*, (*NSTAR*), 95 FERC ¶ 61,339 (2001).

Furthermore, while the Transmission Provider may be able to propose an objective method for determining its own outage-related costs, estimating the outage-related costs of unaffiliated generation owners could pose a significant problem. The Commission does not believe that AEP's proposal to have the Interconnection Customer replace the energy that would otherwise have been generated by the affected Generating Facility solves this problem in part because the value of the replacement energy may bear no relationship to the actual outage-related costs.

715. As the Commission concluded above, when the Transmission Provider asks the Interconnection Customer to reschedule a planned maintenance outage of the Generating Facility (per Article 9.7—Outages, Interruptions, and Disconnection), the Interconnection Customer should be compensated for only the direct costs that the Interconnection Customer incurs. It should not be compensated, for example, for lost opportunity costs. One reason is that outages of transmission and generation facilities for maintenance and other purposes are a routine part of electric system operations and, in fairness, these costs also should be considered a normal part of doing business. Moreover, the determination of the appropriate level of costs to be allocated involves a process that is inevitably arbitrary and contentious, particularly when the determination is made by a Transmission Provider that is not an independent entity. Therefore, in the Final Rule we are codifying our policy of not allowing interconnection-related outage costs to be allocated to the Interconnection Customer.

Issues Concerning the Five Year Refund Period and the Payment of Interest

716. Many commenters object to the proposal to require the Interconnection Customer to be reimbursed for the costs of Network Upgrades within a five year period. Several also object to the payment of interest on outstanding balances or to the formula for determining the rate of interest.

717. Duke Energy generally supports the provisions as proposed but, to be consistent with the Commission's policy of allowing the Transmission Provider to collect the higher of incremental or embedded costs for transmission service, it recommends elimination of the five year ''sunset'' provision in Section 11.4.1 of the NOPR LGIA. Cleco is concerned that a Transmission Provider may be liable for payment of refunds after a five year period has elapsed because the Interconnection Customer has not taken enough transmission service to be credited the full amount for upgrades originally paid for. Westconnect RTO submits that arbitrarily setting a five year term is unjustified and unreasonable. It proposes that a more appropriate approach would be to allow unused transmission credits to expire after a set term. However, Mirant argues that once the Network Upgrades are placed in service, every network customer receives some benefit from those facilities. Therefore, it sees no reason to limit the refund to the requirement in proposed LGIA Article 11.4.1 that the Transmission Provider continue to receive payment for transmission service from the Generating Facility.

718. Western states that if it has to return monies to an Interconnection Customer in less time than the service life of an upgrade, rates may have to be increased to ensure the timely repayment of other federal investments. It believes such a rate increase would be inequitable to existing customers. BPA states that the Interconnection Customer should not be entitled to a refund over an arbitrary five year period and argues that other customers should not have to bear the risk that the Interconnection Customer will cease taking transmission service. LADWP states that the five year requirement imposes an undue burden on public power customers. It requests that, if the Commission's generation interconnection pricing policy is applied to a non-jurisdictional transmission owner, that owner should have the flexibility to provide such refunds over the same period that it would use to amortize such facilities if constructed for the benefit of its own customers. WEPCO states that the Commission should recognize that sometimes both the Interconnection Customer and the Transmission Provider may desire a payback period of less than five years. Accordingly, it recommends that the Commission revise Article 11.4.1 of the NOPR LGIA to provide for repayment at such earlier time as the Parties may agree.

719. Mirant argues that, at a minimum, the Commission should require that interest on any Network Upgrades be calculated using the Transmission Provider's most recent Commission-approved rate of return in the Transmission Provider's OATT. For a non-public utility that does not have a rate of return, Mirant proposes that the Commission use the rate of return set forth in the most recent Commission order as a proxy for such entity. Peabody recommends that the Commission modify the proposed LGIA

to provide for a more flexible, incentive-based rate of interest for transmission credits. Also, if a Transmission Provider files for incentive pricing for transmission service, Peabody recommends that it be required to file simultaneously to amend the interest rate in LGIA Article 11.4.1 to match such incentive mechanism. Progress Energy disagrees with the requirement to pay an Interconnection Customer interest, arguing that the Transmission Provider cannot use the funds advanced by the Interconnection Customer for purposes other than constructing the Network Upgrades and that it should not be put in the position of being a bank for the Interconnection Customer. If interest must be paid, Progress Energy proposes using the Federal Fund Commercial Rate or a similar rate to ensure that the payment of interest is not a source of profit for the Interconnection Customer.

Commission Conclusion

720. Regarding the specific rules for the payment of credits, the Commission clarifies that the Interconnection Customer is entitled to a full refund of the payments it makes toward the cost of Network Upgrades within five years after the Commercial Operation Date, as long as the Generating Facility remains in operation through the five year period.[117] During the five year period, credits must be awarded on a dollar-for-dollar basis as payments are made for transmission services. However, the Commission is also permitting the payments to be made on any other basis that is mutually agreeable to the Interconnection Customer and the Transmission Provider. For example, if the Parties agree to a stream of uniform monthly payments designed to fully reimburse the Interconnection Customer over the five year period, that would be acceptable. In addition, as stated in Article 11.3 of the Final Rule LGIA, the Transmission Provider may elect to fund the Network Upgrades itself, with no advance payment by the Interconnection Customer, and thus no need for subsequent credits.

721. With regard to Cleco's concern about the Transmission Provider's liability at the end of the five year crediting period, the Commission clarifies that the Transmission Provider must make a lump-sum payment to the Interconnection Customer for any balance owed to the Interconnection Customer five years after the Interconnection Customer has begun commercial operation.

722. The Commission recognizes that the choice of the length of the repayment period is somewhat arbitrary. However, specifying five years as the maximum repayment period will promote the development of new generation by reducing the Interconnection Customer's risk, thereby facilitating project financing. Contrary to the views of LADWP and others, it would not be appropriate to extend repayment over a period that corresponds to the Transmission Provider's amortization period for similar facilities. As explained above, the Commission's policy for a non-independent Transmission Provider is to roll the costs of interconnection-related Network Upgrades into the Transmission Provider's transmission rate base. However, rather than require immediate roll-in, we have chosen a five year repayment period, in part to provide the Interconnection Customer with an incentive to make good faith requests for Network Upgrades.

723. With regard to the payment of interest on unpaid credits, the Commission adopts the policy proposed in the NOPR. The Commission continues to believe that the Interconnection Customer is entitled to a refund for all of the costs of the Network Upgrades for which it has paid, including a reasonable estimate of the carrying costs that it incurs in making the advance payments. The determination of an interest rate that accurately reflects this carrying cost cannot be reduced to a completely objective calculation. Interest calculated in accordance with 18 CFR § 35.19a(a)(2)(ii) provides a reasonable proxy for this carrying cost, and because it offers an objective calculation, the Commission retains this provision in Article 11.4.1 of the Final Rule LGIA.

Rules Governing the Payment of Credits

724. With regard to the payment of credits, Interconnection Customers generally are in favor of a flexible policy that allows credits to be paid under a wide range of circumstances, while Transmission Providers advocate a policy that places strict limits on when and how an Interconnection Customer may receive credits.

725. For example, Dynegy states that the Final Rule must ensure that the credits do not limit the Interconnection Customer to purchasing the delivery component of transmission service on the Transmission Provider's system with the Interconnection Customer's Generating Facility as the Point of Receipt. Instead, Dynegy believes that the credits should apply to transmission at any location on the Transmission Provider's system. Duke Energy believes that an Interconnection Customer's flexibility in obtaining refunds should be similar to the flexibility a Transmission Customer has to reassign transmission service under the OATT. Accordingly, it proposes to allow credits not only for the charges for transmitting power from the Generating Facility, but also for the charges for transmitting power from an Affiliated Generating Facility. Similarly, Peabody states that the Interconnection Customer should be allowed to receive credits for any transmission service that it purchases on the Transmission Provider's Transmission System. Both Calpine and EPSA offer modified language for Article 11 of the NOPR LGIA that would implement these recommendations. Cal Cogen and the Energy Producers and Users Coalition claims that a term-based credit mechanism (*i.e.*, one where the credits are paid out according to a fixed schedule) is preferable to the NOPR's proposed transmission-based mechanism.

726. Edison Mission states that Articles 2 and 11 of the NOPR LGIA should be modified so that if an Interconnection Customer pays for Network Upgrades but the interconnection agreement is then terminated or the Generating Facility not constructed, the Interconnection Customer nonetheless receives payments for the upgrades it paid for, with the payments coming from other users of the Transmission System.

727. Other commenters propose limiting the availability of credits. Dominion Resources argues that, if Network Upgrades funded by the Interconnection Customer are not used for output from the Generating Facility, a refund for such upgrades is inappropriate. Similarly, the Coalition for Pricing claims that proposed LGIP Section 11.4.2 can be read to suggest that the Interconnection Customer has some right to transmission credits as transmission service is taken anywhere on the Transmission Provider's system. It asks the Commission to clarify that this is not the case. The Alabama PSC argues that providing transmission credits only when transmission service is taken from an Interconnection Customer's Generating Facility would prevent the socialization of upgrade costs that do not benefit the network.

[117] Although Article 11.4.1 of the NOPR LGIA proposed to begin the five year period on the date that the Network Upgrades are placed in service, as the Commission explains below, the Commission concludes that the Interconnection Customer should not be entitled to receive a refund unless the Generating Facility achieves commercial operation. Therefore, the Commission is modifying Article 11.4.1 to specify that the five year period begins with the Generating Facility's Commercial Operation Date.

728. Westconnect RTO and others argue that the Transmission Provider should credit the Interconnection Customer only for the ''demand'' or ''return'' component of the otherwise applicable transmission charges, and not apply the credit to such costs as operations and maintenance, administrative and general, taxes, line losses, etc. Also, Westconnect RTO and BPA oppose the proposal in Section 12.3 of the NOPR LGIP that the Interconnection Customer receive transmission credits for expediting costs associated with constructing Network Upgrades out of sequence. TAPS states that the Interconnection Customer should receive a credit against its network transmission service bill based on the capacity of the Generating Facility, not the energy output of the unit. It argues that an energy output-based method of calculating the credit unfairly penalizes network customers and sends the wrong price signal, discouraging the construction of peaking units and the designation of such units as Network Resources.

729. WEPCO states that the Commission must continue to mandate, as proposed in Article 11.4 of the NOPR LGIA, that rights to receive credits are fully assignable. It believes that this is crucial because in many instances the Interconnection Customer is not the transmission customer.

Commission Conclusion

730. The Commission agrees with Dynegy and others that the Interconnection Customer should receive credits for transmission (delivery) service taken anywhere on the Transmission Provider's Transmission System and that credits should not be limited to service taken with respect to the Generating Facility at the point of receipt, as long as certain conditions are met. That is, as long as the Generating Facility has achieved commercial operation, continues to operate and there are unpaid credits outstanding, the Interconnection Customer should receive credits for all of the transmission charges that it pays, including charges for ''through'' transmission service. This is appropriate because it provides an additional vehicle by which the Transmission Provider can meet the requirement that the Interconnection Customer must receive a full refund of all amounts due within five years of the Commercial Operation Date. Accordingly, the Commission is removing from Article 11.4.1 of the Final Rule LGIA the following language: ''so long as Transmission Provider continues to receive payments for transmission service with respect to the Generating Facility during such period.''

731. Edison Mission asks that Articles 2 and 11 of the NOPR LGIA be modified to allow the Interconnection Customer to receive credits for Network Upgrades that it has paid for if the interconnection agreement is terminated or the Generating Facility is not constructed. The Commission disagrees. In order to achieve an appropriate balance between the Interconnection Customer's risks and incentives, the Commission believes that the Interconnection Customer should receive a refund of the costs of Network Upgrades only if the Generating Facility has achieved commercial operation. Allowing the Interconnection Customer to avoid any responsibility for the cost of Network Upgrades needed for a Generating Facility that is never completed would improperly shift all risk of cost recovery to the Transmission Provider and its other customers. In addition, it would greatly reduce the Interconnection Customer's incentives to make good faith requests for Network Upgrades. Therefore, the Commission concludes that the Transmission Provider must provide a refund to the Interconnection Customer only after commercial operation of the Generating Facility has been demonstrated. However, if the Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, the Interconnection Customer would at that time be entitled to a refund of the investment that it made in the Network Upgrades.

732. Westconnect RTO and others argue that the Transmission Provider should credit the Interconnection Customer only for the non-usage sensitive ''demand'' or ''return'' component of the applicable transmission charges, presumably on the basis that this is the component that relates most directly to the cost of the investment for which the Interconnection Customer is to receive credits. The Commission clarifies that the Transmission Provider may decline to award credits for those transmission charges that are designed to recover out-of-pocket costs, such as the cost of line losses, associated with the delivery of the Generating Facility's output. The Commission notes, however, that all amounts paid by the Interconnection Customer toward Network Upgrades must be refunded within five years of the Commercial Operation Date. Thus, any reduction in the level of credit payments will only increase the cost of interest and the magnitude of the final cash payment that may be required.

733. Westconnect RTO and BPA oppose the proposal in Section 12.3 of the NOPR LGIP that would provide the Interconnection Customer with a refund of the costs of expediting construction of Network Upgrades so that they can be placed in service out of sequence. The Commission is not changing this provision in the Final Rule LGIP. The sequence in which Network Upgrades would normally be constructed is based on the order in which requests are received. Although changing the order may increase or decrease the level of costs, the new level of costs is no less legitimate than the first. Thus, the Transmission Provider must refund to the Interconnection Customer the cost of constructing Network Upgrades regardless of the construction sequence.

734. In response to WEPCO's concern about the assignability of refund rights, the Commission confirms that Final Rule LGIA Article 11.4 provides that refund rights are fully assignable.

735. Finally, the Commission clarifies how the crediting policy will work when the Interconnection Customer elects to build and retain ownership of Stand-Alone Network Upgrades. In such case, the Interconnection Customer is not entitled to a refund of its investment in any facilities in which it elects to retain ownership. If the Interconnection Customer constructs Stand-Alone Network Upgrades, and chooses not to transfer ownership to the Transmission Provider, it will not receive a refund but may enter into a cost-based lease agreement with the Transmission Provider that places the upgrades under the Transmission Provider's operation and control. The rates, terms and conditions of any such lease agreement are subject to the approval of the Commission.

Responsibility for the Costs Incurred by Affected Systems

736. A number of commenters argue that the Final Rule should address directly the assignment of costs that may be incurred by Affected Systems when an Interconnection Customer obtains an interconnection.[118] Entergy contends that, even if the Final Rule LGIA could bind an Affected System, the Commission's current interconnection pricing policies fail to establish the allocation of the costs of Network Upgrades among the Interconnection Customer, the interconnecting Transmission Provider, and the Affected System. Dominion

[118] As discussed above, an Affected System is a system other than that of the Transmission Provider that may be affected by the proposed interconnection.

Resources recommends that Section 3.5 of the NOPR LGIP require the Interconnection Customer to be responsible for all costs incurred by the Transmission Provider in coordinating the interconnection request with the affected party, including all study costs. Reliant states that there is presently no mechanism that provides the Interconnection Customer with transmission credits for a contribution to the construction of Network Upgrades on third party systems. Reliant recommends that the Commission add to Section 3.5 of the NOPR LGIP language proposed by EPSA that addresses this omission. Mirant recommends that the Commission require the Transmission Provider to coordinate the provision of transmission credits associated with funding Network Upgrades on affected third party systems.

737. LADWP is concerned that the NOPR did not address how the Commission intends the financing and crediting to be implemented if the Interconnection Customer does not purchase transmission service on the Affected System.

Commission Conclusion

738. The NOPR LGIP and NOPR LGIA included no pricing provisions that specifically address situations where Network Upgrades must be constructed on Affected Systems to protect the reliability of those systems. However, the Commission concurs with the commenters that state that the NOPR LGIA should be modified to expressly allow for refunds to be provided to the Interconnection Customer when such Network Upgrades must be constructed and the Interconnection Customer is required to pay for them. Therefore, the Commission modifies Article 11.4 of the Final Rule LGIA to make it applicable to all jurisdictional Affected System Operators on whose systems Network Upgrades are constructed to accommodate the Interconnection Customer's Interconnection Request. This means that, prior to the Commercial Operation Date, an Affected System Operator may require the Interconnection Customer to pay for all Interconnection Facilities and Network Upgrades constructed to accommodate the Interconnection Customer's Interconnection Request. Then, upon commencement of commercial operation, any Affected System Operator that has received payments from the Interconnection Customer must begin to refund to the Interconnection Customer the costs of Network Upgrades that the Interconnection Customer has paid. Furthermore, refunds are to be provided without regard to whether the Interconnection Customer has contracted for delivery service on the Affected System Operator's Transmission System. If the Interconnection Customer has not contracted for delivery service, and in the absence of another mutually agreeable payment schedule, refunds shall be provided by means of a uniform stream of monthly payments designed to fully reimburse the Interconnection Customer, with interest, over a five year period commencing with the Generating Facility's Commercial Operation Date.

739. When the Interconnection Customer is required to pay for Network Upgrades on an Affected System, it must enter into an agreement with the Affected System Operator unless the payments are incorporated in the interconnection agreement that the Interconnection Customer signs with the Transmission Provider. Any agreement with an Affected System Operator must specify the terms governing payments to be made by the Interconnection Customer as well as the payment of refunds by the Affected System Operator. The Commission is revising proposed Article 11.4.1 to incorporate this new requirement.

Policies Regarding Previously Approved Cost Allocations and Pricing Arrangements

740. A number of commenters express their views regarding the NOPR's proposal to require that all Transmission Providers remove from their transmission rates the costs of Interconnection Facilities constructed for the Transmission Provider's own Generating Facilities, and to treat them as directly assigned, generation-related costs. Commenters also address the possible retroactive application of the pricing policy adopted in the Final Rule. Calpine and Mirant request that the Commission require that all Transmission Owners make compliance filings to remove the costs of Interconnection Facilities from existing transmission rates. The Arkansas PSC states that it does not object in principle to the proposal to remove such costs from transmission rates, but notes that this could shift additional costs onto the retail customers of regulated generation-owning utilities. It proposes that, if the cost-shifting burden is judged to be significant, a phase-in or modification may be appropriate. PSNM believes that the Commission's proposal to require all Transmission Providers to remove sole use facilities from their transmission rates currently in place resolves the lack of pricing comparability alleged by Interconnection Customers.

741. PJMTO generally agrees with the NOPR's proposal to assign to the generator the costs of Interconnection Facilities, but requests that the Commission clarify that, to the extent this policy alters existing practices, it will apply prospectively and only affect interconnections that post-date the Final Rule. PJMTO states that, historically, transmission providers have used a variety of approaches to assign cost responsibility for Interconnection Facilities, claiming that some have rolled these costs into transmission rates while others have directly assigned the costs to the Interconnection Customer. PJMTO urges the Commission not to undercut the business assumptions of existing project sponsors or to require the Transmission Provider to refile transmission rates to remove any non-network costs that have been rolled in, and invoice Interconnection Customers for such removed costs. Exelon and Sithe express similar views and state that, since Order No. 888, numerous vertically integrated utilities have spun off their Generation Facilities to non-affiliated third parties. Exelon and Sithe believe that those parties would likely claim that their interconnection arrangements have been effectively grandfathered and that no interconnection costs that may have been rolled into base transmission rates are now recoverable from them. Exelon and Sithe argue this could lead to costly and time-consuming litigation.

742. Calpine requests that the Commission find here that any policy that requires the Interconnection Customer to pay for Network Upgrades is unjust and unreasonable, and unless otherwise barred by explicit contract language, any Interconnection Customer should be permitted to have the facility cost allocation provisions of any existing agreement modified pursuant to Section 206 of the FPA to reflect the current interconnection pricing policies. However, Exelon and Sithe, using arguments similar to those above, recommend that any historical allocation of the costs of Network Upgrades that was agreed to by the parties and accepted by the Commission should not be disturbed now. Exelon and Sithe recommend that those costs be rolled into the transmission rate base only for new Interconnection Requests.

Commission Conclusion

743. The Commission believes that, to ensure fully comparable treatment of all Generating Facilities, transmission rates should not include the costs of Interconnection Facilities. As stated in the NOPR, this policy is consistent with the Commission's current treatment of

generation step-up transformers, appropriately assigns the costs of Interconnection Facilities to the generation customers using them, and ensures that the Transmission Provider's own Generating Facilities and those of its competitors are treated comparably.

744. However, the Commission is sympathetic to the concern of PJMTO and Exelon and Sithe that the Transmission Provider may have difficulty recovering the costs associated with Generating Facilities that it does not own, including those that it once owned but has since divested. Also, the Commission is concerned that the Transmission Provider may have difficulty identifying the interconnection-related costs of older Generating Facilities given that, historically, the Transmission Provider may have had no reason to segregate these costs from other transmission costs in its books of account. Therefore, the Commission is not adopting the NOPR's proposal to require the Transmission Provider to remove from its existing transmission rates the costs of all Interconnection Facilities constructed for its own Generating Facilities and to directly assign them as generation-related costs. Rather, the Commission here is imposing a more limited requirement. The Commission is requiring that the Transmission Provider remove from transmission rates only the costs of Interconnection Facilities constructed by the Transmission Provider after a certain date to interconnect Generating Facilities owned by the Transmission Provider on the effective date of this Final Rule. That date certain is March 15, 2000, the date on which the Commission issued its order in *Tennessee* clarifying that interconnection is a separate component of transmission service, and that an Interconnection Customer may request interconnection separately from the delivery component of transmission service. That order effectively placed Transmission Providers on notice that the costs of Interconnection Facilities cannot be recovered in rates for transmission service. Thus, the Commission presumes that after March 15, 2000, any Interconnection Agreement signed by the Transmission Provider provides for the direct assignment of Interconnection Facility costs to the Interconnection Customer. The Commission also presumes that the Transmission Provider can identify the costs of any Interconnection Facilities constructed for its own Generating Facilities after March 15, 2000. In this Final Rule, the Commission is requiring the Transmission Provider, in its next filed transmission rate case, to remove such costs from transmission rates.

745. With regard to the Arkansas PSC's concern about the impact of any cost shifting that may result from the reallocation of Interconnection Facility costs, we do not believe that the impact will be so great as to warrant a phase-in. Because the requirement that we are adopting here applies only to costs incurred after March 15, 2000, we expect the cost impact, if any, to be small. Furthermore, any cost impact will not occur until the Transmission Provider's next filed rate case.

746. Finally, in response to Calpine, the Commission is not requiring in this Final Rule any changes to previously accepted interconnection agreements.

Miscellaneous Pricing Issues

747. Dynegy argues that Article 4.6 of the NOPR LGIA should be clarified to include a more comprehensive listing of the possible services that the Interconnection Customer might be called upon to provide to the Transmission Provider under the express provisions of the LGIA. Dynegy submits that the Interconnection Customer would be required to have a Tariff on file with the Commission pursuant to Section 205 of the Federal Power Act for any service for which it seeks to charge the Transmission Provider. In the alternative, it recommends that the Commission clarify that this provision does not require the Interconnection Customer to forego the right to seek compensation for any services beyond the two listed.

748. ACEEE states that it agrees with the Commission's general proposal on pricing, but identifies pricing issues faced by the Interconnection Customer that it believes can pose major barriers to interconnection. It claims that excessive standby charges, backup power rates, and insurance requirements have frequently been used to try to block an Interconnection Customer from interconnecting a new Generating Facility and competing on a comparable basis. It states that the Commission and others must address these pricing issues if electricity markets are to be fully accessible.

Commission Conclusion

749. In response to Dynegy, the Commission clarifies that, while Articles 4.6 and 11.6 of the Final Rule LGIA provide that the Transmission Provider must compensate the Interconnection Customer for certain specific services that the latter provides, no provision of the Final Rule LGIA limits the right of the Interconnection Customer to seek compensation for any other services that the Transmission Provider may from time to time request from the Interconnection Customer.

750. With regard to ACEEE's concerns about the rates for standby charges and backup power rates provided by the Transmission Provider to the Interconnection Customer, the rates for these services are a state jurisdictional retail rate issue. The Commission discusses insurance requirements in part II.C.8.a of this Preamble.

2. Interconnection Products and Scope of Service

751. Scope of service, including in particular the definition and study requirements for the two Interconnection Service products proposed to be made available to Interconnection Customers, was perhaps the most heavily debated topic during the ANOPR phase of this proceeding. In addition, the controversial nature of this topic is reflected in the many pages that commenters devoted to it. These comments are addressed below.

Definition of Interconnection Products

752. The LGIA NOPR provided for two Interconnection Service products from which the Interconnection Customer would have to choose: Energy Resource Interconnection Service, which is a basic or minimal interconnection service, and Network Resource Interconnection Service, which is a more flexible and comprehensive interconnection service.[119] Neither is a transmission delivery service. Article 4 (Scope of Service) of the NOPR LGIA defines these products and sets forth specific Interconnection Study requirements for each. This article also describes the relationship between delivery service and the Interconnection Services, as well as the rights and responsibilities that each Interconnection Service entails. In addition, Section 3.2 of the NOPR LGIP sets forth the procedure that the Interconnection Customer must use to select an Interconnection Service.

753. As proposed, Energy Resource Interconnection Service would allow the Interconnection Customer to connect its Generating Facility to the Transmission System and be eligible to deliver its output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. In an area with a bid-based energy market (*e.g.*, ISO New

[119] During the ANOPR negotiating sessions EPSA and other Interconnection Customers negotiated to secure these two forms of service.

England, NYISO, or PJM), Energy Resource Interconnection Service would allow the Interconnection Customer to place a bid to sell into the market and the Generating Facility would be dispatched if the bid is accepted. In all other areas, no transmission delivery service would be assured, but the Interconnection Customer may obtain point-to-point transmission service or gain access to secondary network transmission service, pursuant to the Transmission Provider's Tariff. The Interconnection Studies to be performed for Energy Resource Interconnection Service would identify the Interconnection Facilities required as well as the Network Upgrades needed to allow the proposed Generating Facility to operate at full output. In addition, the Interconnection Studies would identify the maximum allowed output of the Generating Facility without Network Upgrades.

754. In contrast, Network Resource Interconnection Service would require the Transmission Provider to undertake the Interconnection Studies and Network Upgrades needed to integrate the Generating Facility into the Transmission System in a manner comparable to that in which the Transmission Provider integrates its own generators to serve native load customers. If the Transmission Provider is an RTO or ISO with market-based congestion management, it would have to integrate the Generating Facility in the same manner as all other Network Resources.

755. The Transmission Provider would study the Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with the Transmission Provider's reliability criteria and procedures. Under this approach, the Transmission Provider would assume that some portion of the capacity of existing Network Resources is displaced by the output of the new Generating Facility.

756. Network Resource Interconnection Service provides for all of the Network Upgrades that would be needed to allow the Interconnection Customer to designate its Generating Facility as a Network Resource and obtain Network Integration Transmission Service. Thus, once an Interconnection Customer has obtained Network Resource Interconnection Service, any future transmission service request for delivery from the Generating Facility would not require additional studies or Network Upgrades. However, Network Resource Interconnection Service itself does not convey any delivery service and the Interconnection Customer would not be required to identify a specific buyer (or sink). If the Interconnection Customer wishes to obtain the delivery component of transmission service, it would have to do so pursuant to the Transmission Provider's Tariff.

757. Requests for long-term transmission service for deliveries outside the Transmission Provider's system may require additional Interconnection Studies and Network Upgrades. Network Resource Interconnection Service would allow the Generating Facility to be used to provide Ancillary Services and, should the Transmission System become congested, the Generating Facility would be subject to the same congestion management procedures that apply to all other Network Resources. Article 4.1.2.3 of the NOPR LGIA states that ''[d]epending on how the cost allocation issue is resolved, the [Interconnection Customer] may be allocated congestion rights based on the construction of upgrades.''

758. Proposed LGIA Article 4.3 also provides for generator balancing service arrangements and refers to other articles that address payment for certain services provided by the Interconnection Customer.

Comments

759. Several commenters, primarily Transmission Providers, object to the proposed requirement that Interconnection Customers be allowed to request Network Resource Interconnection Service. NRECA–APPA and others argue that, contrary to the Commission's assertion, Network Resource Interconnection Service would convey transmission delivery rights to the Interconnection Customer in the form of a permanent right to the future use of the Transmission System's delivery capacity. APS contends that Network Resource Interconnection Service would provide delivery service rights that are greater than any available under Order No. 888, and claims that Network Resource Interconnection Service may require a Transmission Provider to expand transmission capacity beyond any foreseeable needs of network load and to hold that capacity indefinitely. LG&E Energy believes that Network Resource Interconnection Service could result in substantial overbuilding of the Transmission System as a result of the requirement that transmission be upgraded to accommodate any Interconnection Customer taking Network Resource Interconnection Service to serve any load on the system. However, TAPS is concerned that Network Resource Interconnection Service does not provide for the capacity expansions that may be needed to allow network customers to access their Network Resources without congestion. It claims that the NOPR's treatment of Network Resource designation and network service is inconsistent with the OATT Network Integration Transmission Service, which requires a demonstration of load-specific deliverability from designated Network Resources. TAPS states that Network Resource Interconnection Service lacks such a deliverability test and, as a result, would be a service under which the Network Resource designation is meaningless from a load serving entity's point of view. It claims that while Network Resource Interconnection Service would grant some rights to the Interconnection Customer, it leaves the load serving entity to bear all the risk of congestion between its Network Resources and its load.

760. PSNM notes that for an Interconnection Customer to secure delivery rights using Network Integration Transmission Service under the OATT, the Generating Facility must be designated as a Network Resource. The Interconnection Customer also must pay separately for point-to-point service when not providing service as a Network Resource. PSNM claims that the language in the NOPR LGIA would undo that requirement. Western objects to the fact that Network Resource Interconnection Service would impose no obligation on an Interconnection Customer to serve network load or to meet network operating obligations, such as providing Ancillary Services, and would not require an Interconnection Customer to participate in regional planning processes. Dairyland Power states that Article 4.1.2 of the NOPR LGIA seems to presuppose that Network Resource Interconnection Service may be used only in conjunction with Network Integration Transmission Service under the OATT, but the LGIA is not explicit. It asks the Commission to clarify the purpose of Network Resource Interconnection Service and how it may actually be used.

761. Central Maine claims that the exact products or services required to be offered are not clearly defined. Industrial Energy asserts that the acknowledgment of potential congestion in the Network Resource Interconnection Service description seems to contradict the further

specifications in proposed LGIA Article 4.1.2.3, which appears to contemplate delivery from the Generating Facility within the Transmission Provider's Transmission System of any amount of capacity and/or energy up to the amount initially studied without additional studies or Network Upgrades. TANC recommends that the Commission replace the study provision requiring displacement of existing generation (NOPR LGIA Article 4.1.2.2) with appropriate technical guidelines and procedures for identifying resource displacement.

762. LG&E Energy claims that the proposal is inconsistent with the Commission's proposed approach to Standard Market Design. It notes that the market designs of certain ISOs permit customers to designate any resource as a Network Resource, but do not require the Transmission System to be upgraded to ensure physical delivery of all generation resources to all loads. Rather, according to LG&E Energy, the effect of transmission congestion is reflected in locational energy prices. Also, the Midwest ISO states that it is not clear how Network Resource Interconnection Service would evolve as Standard Market Design is implemented. It believes that Network Resource Interconnection Service is more appropriate for an Interconnection Customer that wishes to designate its Generating Facility as a capacity resource in a market design where there is a capacity market. If there is not such a market, the Midwest ISO would support Energy Resource Interconnection Service alone as sufficient to provide for reliable interconnections, and allow for market-based mechanisms to support expansion of the Transmission System beyond minimum reliability needs. Both the Wisconsin PSC and American Wind Energy advise the Commission to defer consideration of Network Resource Interconnection Service until it can be evaluated in the context of Standard Market Design. Dairyland Power states that it is not clear how Network Resource Interconnection Service would fit with the new Network Access Service contemplated in the Commission's Standard Market Design rulemaking.

763. Some commenters argue that there should be only one interconnection product and that product should define a minimum level of service. For example, ISO New England believes that its Minimum Interconnection Standard has resulted in equal treatment of new and incumbent generation owners and has resulted in a substantial number of new generators being interconnected onto the bulk power Transmission System in New England. It also states that the Minimum Interconnection Standard allows every generator owner, new and incumbent alike, the opportunity to participate in all markets.

764. PG&E notes that, while Network Resource Interconnection Service requires the Transmission Provider to interconnect new plants in a manner comparable with that of other Network Resources, in California there are no Network Resources. PG&E asks the Commission to explain how this Interconnection Service would apply in areas where no network transmission service is available. Central Maine argues that the definition of products and services should be left to regional practices.

765. Xcel states that the description of Network Resource Interconnection Service appears to assume the Transmission Provider's system is the same as its Control Area. However, with the development of large transmission networks subject to an RTO's OATT, it may not be possible to actually deliver the capacity and energy of any individual generator to a network load on a huge regional network. The Midwest ISO recommends that, if Network Resource Interconnection Service is retained as part of the Final Rule, an Interconnection Customer within a large footprint RTO like the Midwest ISO should be allowed to select specific zones (or Control Areas) in which it would be eligible to be a designated Network Resource.

Commission Conclusion

766. Article 4 of the NOPR LGIA did not adequately convey the Commission's intent, particularly with regard to the characteristics that distinguish the two proposed interconnection products and the rights and responsibilities that each entails. Many of the commenters' concerns can be addressed by improving the clarity and accuracy in the Final Rule provisions concerning scope of services and interconnection products. Therefore, as described below, the Commission modifies the text of proposed LGIA Article 4 and provides the following clarifications.

767. Both Energy Resource Interconnection Service and Network Resource Interconnection Service provide for the construction of Network Upgrades that would allow the Interconnection Customer to flow the output of its Generating Facility onto the Transmission Provider's Transmission System in a safe and reliable manner. However, contrary to the assertions of several commenters, neither Energy Resource Interconnection Service nor Network Resource Interconnection Service in and of itself conveys the right to do so. Moreover, neither type of Interconnection Service constitutes a reservation of transmission capacity. The Interconnection Customer, load or other market participant would have to request either point-to-point or Network Integration Transmission Service under the Transmission Provider's OATT in order to receive the delivery service that is a prerequisite to flowing power onto the system. When an Interconnection Customer that has chosen either Energy Resource Interconnection Service or Network Resource Interconnection Service later requests firm point-to-point delivery service, additional Network Upgrades may be required, depending on the availability of transmission capacity to deliver power to the delivery point.

768. Network Resource Interconnection Service is intended to provide the Interconnection Customer with an interconnection of sufficient quality to allow the Generating Facility to qualify as a designated Network Resource on the Transmission Provider's system without additional Network Upgrades. This means that Network Resource Interconnection Service entitles the Generating Facility to be treated in the same manner as the Transmission Provider's own resources for purposes of assessing whether aggregate supply is sufficient to meet aggregate load within the Transmission Provider's Control Area, or other area customarily used for generation capacity planning. Thus, with Network Resource Interconnection Service, the Interconnection Customer would be eligible to obtain Network Service under the Transmission Provider's OATT, or network access service under the Tariff of an RTO or ISO, without the need for additional Network Upgrades.

769. However, contrary to the views of some commenters, Network Resource Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Generating Facility to any particular load on the system without incurring congestion costs. Depending on the location of the load for which the Generating Facility serves as a designated Network Resource, it may be required to participate in a redispatch procedure, or other non-discriminatory congestion management process, such as locational marginal pricing. Network Upgrades required under Network Resource Interconnection Service integrate the Generating Facility into the

Transmission System in a manner that ensures that aggregate generation can meet aggregate load while satisfying regional reliability criteria and generation capacity planning requirements. However, these upgrades do not necessarily eliminate congestion.

770. In response to ISO New England and the Midwest ISO, the Commission is not limiting the Interconnection Customer's interconnection alternatives to a single option that meets only a minimum interconnection standard. In general, such a policy would not provide an interconnection that meets the standard that the Transmission Provider uses to interconnect its own generators. The Commission notes, however, that in regions where the Transmission System is operated by an independent entity, the Commission allows flexibility, as discussed in part II.C.1 (Interconnection Pricing Policy). For example, an independent entity may determine, subject to Commission approval, that the designation of Network Resources is not necessary (which, PG&E points out, is the case in California).

771. The Commission recognizes that the Transmission Provider's Transmission System may not comprise a single Control Area, as several commenters point out. If the Transmission Provider operates more than one Control Area, it may limit the network service that is available to an Interconnection Customer taking Network Resource Interconnection Service to the Control Area where the Generating Facility is located. If the Interconnection Customer wishes to serve load in another Control Area, it must submit a separate request for transmission service to that other area, and it would be subject to the pricing provisions of the Transmission Provider's OATT for that service.

772. The Commission further clarifies that, if the Generating Facility of an Interconnection Customer taking Network Resource Interconnection Service is selected by a load as a designated Network Resource, it will be required to meet all network operating obligations that the OATT imposes upon Network Resources generally. If an Interconnection Customer's Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generators that are similarly situated.

773. Finally, in response to Dairyland Power and others, the Commission notes that an RTO or ISO may propose in its tariff filing to modify the definition and scope of the available interconnection products to accommodate its market.

Pricing of Network Resource Interconnection Service

774. Some commenters express concern over the application of the proposed interconnection pricing policy to Network Resource Interconnection Service. For example, Progress Energy and the Alabama PSC believe that an Interconnection Customer taking Network Resource Interconnection Service should pay a reservation charge for reserved but unused transmission capacity on the Transmission Provider's Transmission System. Progress Energy believes that such an approach would properly allocate the cost of the transmission capacity being reserved for the Interconnection Customer until a customer actually begins paying for transmission service for output from the Interconnection Customer's Generating Facility.

775. Entergy states that the requirement that a Transmission Provider offer Network Resource Interconnection Service should not be included in the Final Rule until the Commission has thoroughly analyzed the effects of providing such service. If this service is required, however, Entergy recommends that a Transmission Provider be compensated by any Interconnection Customer electing this service, as the service prevents a Transmission Provider from achieving the maximum use of its Transmission System due to the standing transmission reservation that it claims is granted to an Interconnection Customer under this service. The Coalition for Pricing recommends that the Interconnection Customer be required to commit to pay for Network Resource Interconnection Service for a specific term long enough to protect other customers from economic harm. It further recommends that, if the Interconnection Customer is not required to commit to a specific term of Network Resource Interconnection Service, it should at a minimum be required to pay some amount up front to cover ongoing expenses associated with the upgrades constructed if service is cancelled after a short time.

776. NRECA–APPA states that coupling Network Resource Interconnection Service with the Commission's current interconnection pricing policy will cause customers to bear much of the cost of Network Upgrades while having no right to use the resulting transmission delivery capability.

777. However, American Transmission opposes any special charges for Network Resource Interconnection Service and believes that commenters' criticisms that this service confers too great an advantage on the new Interconnection Customer are overstated. It believes the provision should be designed to put the independent generation owner on a competitive footing equal to that of incumbent owners. If the Commission is persuaded that the proposed policy provides an undue advantage to the new Interconnection Customer, the solution lies in adjusting the service description, not in imposing a surcharge.

Commission Conclusion

778. The Commission is not requiring the Interconnection Customer to pay a reservation fee for the delivery component of transmission service as a condition for receiving Network Resource Interconnection Service. As explained above, Network Resource Interconnection Service does not convey to the Interconnection Customer a reservation of transmission capacity or the right to begin taking firm or non-firm transmission service on the Transmission Provider's system. Rather, its purpose, as stated in proposed LGIA Article 4.1.2.1, is to provide the Network Upgrades needed to integrate the Interconnection Customer's Generating Facility into the Transmission System in a manner that is comparable to that in which the Transmission Provider integrates its own resources or other Network Resources. When the Interconnection Customer does take transmission service, it (or its power sales customer) will be required to pay appropriate rates, subject to the crediting provisions of Article 11.4 of the Final Rule LGIA. To charge the Interconnection Customer an additional reservation fee, as several commenters propose, would violate the Commission's prohibition against ''and'' pricing. Nevertheless, Network Resource Interconnection Service does not guarantee that the Interconnection Customer can physically deliver its output to any load. This means that, depending on the location of its power sales customer, the Interconnection Customer may be required to pay congestion or redispatch costs.

779. Finally, in response to NRECA–APPA, the Commission emphasizes that any capacity created by the Network Upgrades constructed on the Interconnection Customer's behalf is available for use by all customers on an equal basis. The Final Rule only requires that, once the Interconnection Customer has paid for the Network Upgrades needed to integrate its Generating Facility, it cannot be charged

again for any additional upgrades that may be needed to continue to qualify as a Network Resource.

Study Requirements for Network Resource Interconnection Service

780. Article 4.1.2.2 of the NOPR LGIA described the Interconnection Study procedures for Network Resource Interconnection Service. Among other things, they would require the Transmission Provider to study the Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with the Transmission Provider's reliability criteria and procedures.

Comments

781. PG&E states that it does not understand the difference between the study requirements for Energy Resource Interconnection Service and Network Resource Interconnection Service. For Network Resource Interconnection Service, the NOPR LGIA says that the study must be done with the system at peak load and under a variety of severely stressed conditions, but PG&E claims that it is not clear that any lesser study would be necessary for Energy Resource Interconnection Service.

782. Cal ISO states that it is essential that all studies consider off-peak operating periods with the Generating Facility at full output. It argues that, during light load periods, the energy generated is not consumed locally and has to be transmitted over longer distances, possibly causing overloads that would not be revealed by studying only on-peak periods. Therefore, Cal ISO recommends replacing ''at peak load, under a variety'' with ''at peak load and under a variety.'' NERC recommends several changes in NOPR LGIA Article 4.1.2.2, including replacing ''at peak load, under a variety of severely stressed conditions'' with ''under a set of reasonably expected limiting conditions.'' It states that studying interconnection impacts only under conditions of system peak load and the Generating Facility's peak output may overlook the study of other conditions that could be unsafe. NERC asserts that use of the term ''limiting conditions'' provides the flexibility to incorporate studies that are necessary to ensure reliability.

Commission Conclusion

783. The study requirements for Energy Resource Interconnection Service and Network Resource Interconnection Service are set forth in Sections 3.2.1 and 3.2.2 of the Final Rule LGIP.

784. In response to PG&E, the principal difference between the study requirements for Energy Resource Interconnection Service and Network Resource Interconnection Service is that the study for Network Resource Interconnection Service identifies the Network Upgrades that are needed to allow the Generating Facility to contribute to meeting the overall capacity needs of the Control Area or planning region whereas the study for Energy Resource Interconnection Service does not. The study for Energy Resource Interconnection Service includes short circuit/fault duty, steady state (thermal and voltage) and stability analyses to identify the Network Upgrades needed to allow the output of the Generating Facility to be injected into the Transmission System using capacity on an ''as available'' basis. By contrast, the study for Network Resource Interconnection Service includes similar analyses but also assumes that the output of the Generating Facility may displace the output of certain other Network Resources on the Transmission System. The study then identifies the Network Upgrades that would be required to allow the Generating Facility to be counted toward system capacity needs in the same manner as the displaced resources. However, the Interconnection Customer may request that Optional Studies be performed, and Section 3.2 of the Final Rule LGIP allows the Interconnection Customer then to proceed with Network Resource Interconnection Service or to request a lower level of interconnection service whereby only certain upgrades will be completed.

785. With regard to the changes to Article 4.1.2.2 of the LGIA recommended by NERC and Cal ISO, we note that this provision is intended to serve two purposes. First, it establishes the standards for conducting necessary studies to provide the requested service while ensuring that the reliability of the system is maintained. Second, it deters a Transmission Provider from delaying an interconnection by imposing on competing Interconnection Customers, in the name of reliability, more stringent Interconnection Study requirements than it would require of its own interconnections or those of its Affiliates. Because NERC's and Cal ISO's proposals satisfy only the reliability purpose, the Commission does not adopt them. Our requirement that the interconnection be studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, is comparable, we believe, to the study requirement that the Transmission Provider applies to its own generation. However, we are sympathetic to NERC's and Cal ISO's concerns. Therefore, the Commission would entertain a request, in a non-independent Transmission Provider's compliance filing required by this Final Rule, to adopt a different requirement (*e.g.*, off-peak load in addition to peak load) if the non-independent Transmission Provider can demonstrate that the proposed requirement is consistent with or superior to the requirement of the Final Rule LGIP. At a minimum, the Transmission Provider must demonstrate that it consistently applies the proposed requirement in the studies it conducts for itself and its Affiliates. As discussed below in Part II.C.5 (Variations from the Final Rule), we will allow an RTO or ISO to seek an ''independent entity variation'' from the Final Rule LGIP if it wants to adopt a different study requirement.

Identification of Types of Interconnection Services To Be Studied

786. According to Section 3.2 of the NOPR LGIP, when the Interconnection Customer submits its Interconnection Request, it would be required to identify the type of Interconnection Service it wants. However, an Interconnection Customer requesting Network Resource Interconnection Service would have the option of requesting that its Interconnection Request also be studied for the less comprehensive Energy Resource Interconnection Service up to the point when an Interconnection Facilities Study Agreement is executed.

Comments

787. Several commenters state that allowing the Interconnection Customer to request that its Interconnection Request be studied for both Network Resource Interconnection Service and Energy Resource Interconnection Service concurrently will unnecessarily tax the Transmission Provider's resources and increase the burden of performing the studies. Entergy and BPA believe that this option will unnecessarily delay the conduct of studies for third party interconnections unless the Interconnection Customer is required to select the particular service under which it will interconnect prior to the execution of an Interconnection System Impact Study Agreement. Entergy states that such a limitation would not unduly disadvantage the Interconnection Customer, but would further ensure that a Transmission

Provider's limited transmission planning resources are used to perform studies for interconnections that are likely to be completed. NYTO believes that the additional study work required to conduct concurrent studies is not accounted for in the Interconnection Feasibility, System Impact or Facilities Study sections of the NOPR LGIP. It states that additional time would be required to conduct the concurrent studies if the Transmission Provider is required to offer this option. Also, Cal ISO asks whether two deposits will be required if an Interconnection Customer requests that the Interconnection Request be studied as both Network Resource Interconnection Service and Energy Resource Interconnection Service.

788. BPA observes that the NOPR LGIP included very strict timelines for completion of various studies and provided for no meaningful milestones or other means by which the Transmission Provider can ensure that only bonafide Interconnection Requests remain in the queue. It states that this places a Transmission Provider with a large number of Interconnection Requests in a very difficult position, and the more concurrent studies the Interconnection Customer can require the Transmission Provider to perform on a single request, the more difficult this position becomes. BPA believes that requiring concurrent studies is purely for the convenience of the Interconnection Customer, and that it is not unreasonable to require the Interconnection Customer to choose early in the process what kind of resource it intends to develop.

789. Georgia Transmission believes that it is appropriate to allow the Interconnection Customer to request concurrent studies throughout the Interconnection Feasibility Study stage, but allowing the parallel studies to continue beyond that point simply gives the Interconnection Customer more time to decide what type of Interconnection Service product to contract for, while greatly increasing the study burden on the Transmission Provider. Georgia Transmission claims that the Interconnection System Impact Study is a much more complex and involved study than the Interconnection Feasibility Study. Further, to accommodate the Interconnection Customer's desire to study multiple Interconnection Service products, Georgia Transmission claims that the Transmission Provider must conduct multiple studies not only for the first Interconnection Customer, but for all other Interconnection Customers proceeding through the interconnection process to reflect the multiple service characteristics of the first Interconnection Customer. If these other Interconnection Customers also request the Transmission Provider to concurrently study multiple service options, the Transmission Provider study burden ''quickly snowballs out of control.'' [120] At this stage of the Interconnection Study process, the cost of studying the multiple service options greatly outweighs the benefits to the Interconnection Customer.

790. TVA argues that allowing an Interconnection Customer to request that the Transmission Provider study both types of Interconnection Services may double the work of the Transmission Provider at each stage up to the Interconnection Facilities Study stage. It finds this troubling in light of the NOPR's proposed milestones frames and the possibility of the Transmission Provider having to pay liquidated damages for failure to meet the deadlines.

791. Interconnection Customers, however, express very different views. For example, Tenaska states that the choice between Network Resource Interconnection Service and Energy Resource Interconnection Service will be dictated by the Interconnection Customer's wholesale power customer. It argues that marketing efforts for new generation projects are not completed until late in the development process, making it impossible for the Interconnection Customer to know with certainty which service it requires. Tenaska asks that the Interconnection Customer be afforded maximum flexibility to choose between the two interconnection Services and recommends that, instead of making the Interconnection Customer choose prior to executing the Interconnection Facilities Study Agreement, the Final Rule LGIP should allow the Interconnection Customer to defer its choice until the execution of the interconnection agreement.

Commission Conclusion

792. While conducting complex Interconnection Studies can be burdensome for the Transmission Provider, the Commission is not amending NOPR LGIP Section 3.2 to eliminate the Interconnection Customer's option to have its request studied as Energy Resource Interconnection Service as long as it has also requested to be studied as Network Resource Interconnection Service. This is a valuable option for the Interconnection Customer because it provides key information to support its investment decisions, and thus helps to meet the Commission's goal of encouraging the development of a new generation.

793. The Commission also recognizes that the Interconnection System Impact Study is more complex than the Interconnection Feasibility Study. However, the Commission does not believe that it would be reasonable to require the Interconnection Customer to choose between the two services prior to executing the Interconnection System Impact Study Agreement, as several commenters propose. Once the Interconnection Customer has asked to be studied for Network Resource Interconnection Service, a service that is far more comprehensive than Energy Resource Interconnection Service, the incremental burden created by also having to conduct an Interconnection System Impact Study for the simpler Energy Resource Interconnection Service should not be great. It is for this reason that the Commission disagrees with Georgia Transmission's contention that having to study multiple options will have a significant snowball effect on the overall study burden. Moreover, the Transmission Provider will be fully compensated for all of the costs that it incurs in conducting a more expansive study. As for the risk that the Transmission Provider faces by allowing the Interconnection Customer to make this choice, such risk is mitigated by the fact that the Commission is not making the Transmission Provider subject to liquidated damages under the Final Rule LGIP.[121]

Revisions to the Final Rule LGIP and Final Rule LGIA

794. In the Final Rule, the Commission is modifying various provisions of the NOPR LGIP and NOPR LGIA to provide greater clarity and to make other minor changes with respect to scope of service and interconnection products, as discussed above. In addition, the Commission is incorporating in the Final Rule LGIP certain provisions concerning product definitions and study requirements that were included in the NOPR LGIA but not the NOPR LGIP. These provisions are being added to the Final Rule LGIP because they directly relate to the process of obtaining an interconnection. They appear as new Sections 3.2.1 and 3.2.2 in the Final Rule LGIP.

[120] Comments of Georgia Transmission at 18.

[121] Liquidated damages in the LGIP are further discussed in part II.C.8.b(4).

3. ''Distribution'' Interconnections

795. We proposed in the NOPR [122] that we would assert authority to order interconnection when the Interconnection Customer wants to interconnect its Generating Facility with a jurisdictional transmission facility, or when it will make a wholesale sale of electric energy in interstate commerce using a public utility's ''distribution'' facilities.

Comments

796. Commenters objecting to the Commission's jurisdictional statement—chiefly Transmission Providers, public power providers, and state public utility commissions [123]—argue that ''distribution'' interconnection raises complex jurisdictional issues and that the Commission should leave this issue to the States, in part because they have experience regulating these kinds of interconnections. EEI notes that it is unclear if the Commission has authority over sales of power for resale using ''distribution'' facilities when the energy neither crosses state lines nor enters the interstate transmission system. The Public Power Council asks the Commission to recognize the jurisdiction of state commissions and local governing boards over the ''distribution'' systems of investor-owned and publicly owned utilities. SoCal Edison and PG&E ask the Commission to clarify that when a retail customer installs a generating facility that will never send energy over the Transmission System (*i.e.*, the energy will be consumed on site), this is a retail service arrangement beyond Commission jurisdiction.

797. The North Carolina Commission argues that, because it has not restructured its electric industry, any generating facility in North Carolina not owned by a vertically integrated utility would be required to sell its output at wholesale (because it cannot sell directly to retail consumers). As a result, the NOPR effectively eliminates state jurisdiction over the interconnection of generators involved in programs such as net metering or green power, which rely on simpler and less expensive interconnection procedures and agreements than those proposed by the Commission. These interconnection decisions are best left to the States.

798. APS notes that the NOPR does not address how Transmission Providers will handle their responsibilities over transmission facilities jointly owned by jurisdictional and non-jurisdictional entities. This is a particular concern in the Western United States. APS warns that the failure to examine this issue in a separate NOPR will result in a patchwork of transmission terms and conditions that the Commission sought to avoid in Order No. 888.[124]

799. EEI raises other objections, noting that Commission regulation of ''distribution'' interconnections may create new layers of regulatory costs that will not be recoverable in retail rates. It also warns that competing and possibly conflicting state and federal interconnection requirements may encourage forum-shopping by Interconnection Customers and create problems for ''distribution'' providers. To discourage this, National Grid proposes that an Interconnection Customer should state whether it will make sales for resale before the Scoping Meeting provided for in Section 3.3.4 of the proposed LGIP; this will determine how the Interconnection Studies will be performed. Once established, the designation could not be changed unilaterally by the Interconnection Customer.

800. NRECA-APPA argues that, because ''distribution'' systems do not operate like Transmission Systems, ''distribution'' interconnections will require provisions not in the NOPR LGIP and NOPR LGIA, including different Interconnection Study requirements. It argues that the physical differences and economic differences between interconnection at ''distribution'' and transmission levels—distribution is typically ''low voltage'' and transmission typically is ''high voltage,'' and ''distribution'' providers may lack engineering personnel necessary to evaluate Interconnection Requests—would make a single rule completely inappropriate. WEPCO argues that the NOPR LGIP and NOPR LGIA are unworkable for interconnections to the ''distribution'' system because ''distribution'' companies serve load and ''distribution'' systems are not designed to accommodate large generation facilities seeking to move energy off the ''distribution'' system. Accordingly, the Commission should clarify that the principles underlying the Final Rule LGIP and Final Rule LGIA, *i.e.*, nondiscriminatory access and comparable treatment, will be applicable to both ''distribution'' and transmission, but that the documents will apply only to transmission level interconnections. State-approved tariffs should govern ''distribution''-level interconnections. Nevertheless, an Interconnection Customer interconnecting to a ''distribution'' system still would be entitled to petition the Commission if it encountered undue discrimination.

801. Consumers see a useful analogy in the Commission's natural gas regulations. It argues that the Commission should consider adopting an approach like the blanket certificate program applied to natural gas pipelines for incidental jurisdictional uses of non-jurisdictional transportation facilities. The goal of the Commission's blanket certificate program [125] is to remove restraints on the flow of gas between the interstate and the intrastate market. It allows entities that are otherwise state-jurisdictional to perform incidental Commission-jurisdictional activities without subjecting them, or their incidental interstate activities, to full Commission regulation.

802. NARUC states that it ''supports the Commission's statement that the NOPR [LG]IA and [LG]IP 'will apply only when a generator interconnects to the Transmission Provider's transmission system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level,' '' but argues that the States ''are best situated to ensure the efficient, reliable and safe interconnection of small generators to local distribution systems and should continue to have that authority, as the NOPR recognizes.''[126] TAPS supports Commission jurisdiction over the interconnection of generators used for wholesale sales, whether the interconnection is made to transmission or ''distribution,'' because such application is essential to prevent evasion of the intent of the NOPR to provide non-discriminatory interconnection service, and should encompass wholesale interconnections to the Distribution Systems of large jurisdictional utilities that have divested their transmission facilities to an independent transmission company or the like.

Commission Conclusion

803. At the outset, it is important to clarify several terms when discussing the question of jurisdiction. ''Local distribution'' is a legal term; under FPA Section 201(b)(1), the Commission lacks

[122] See Large Generator Interconnection NOPR, FERC Stats. & Regs. ¶ 32,560 at 34,178 & n.22 (2002).

[123] *E.g.,* Consumers, EEI, LADWP, National Grid, the North Carolina Commission, NRECA–APPA, the Public Power Council, and the Wisconsin PSC.

[124] *Citing* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,673.

[125] 18 CFR 284.224 (2003).

[126] NARUC comments at 5 (citation omitted) (emphasis added by NARUC).

jurisdiction over local distribution facilities.[127] ''Distribution'' is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are ''local distribution'' facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

804. This Final Rule applies to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT.[128] In other words, the standard interconnection procedures and contract terms adopted in this Final Rule apply when an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made. Therefore, the Final Rule applies to a request to interconnect to a public utility's facilities used for transmission in interstate commerce. It also applies to a request to interconnect to a public utility's ''distribution'' facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT. But where the ''distribution'' facilities have a dual use, *i.e.*, the facilities are used for both wholesale sales and retail sales, the Final Rule applies to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce.[129]

805. In response to SoCal Edison and PG&E, we clarify that we are not asserting jurisdiction over a hook-up between a retail customer and a Transmission Provider when a retail customer installs a generator that will produce electric energy to be consumed only on site.

806. Regarding the arguments that the NOPR LGIP and NOPR LGIA are designed for interconnection to a transmission system and not a ''distribution'' system, we expect that the majority of interconnections to jurisdictional ''distribution'' or other jurisdictional low-voltage facilities will be made by generators no larger than 20 MW. These Small Generators will be interconnected using the standard procedures and agreement adopted in the Small Generator rulemaking. We are proposing rules in that proceeding to accommodate the interconnection of Small Generators, mostly to jurisdictional ''distribution'' (not ''local distribution'') and low-voltage facilities. However, in response to WEPCO's argument, we conclude that under some circumstances (*e.g.*, interconnection to facilities below 69 kV) the Interconnection Studies in the Final Rule LGIP may be inappropriate to analyze some Large Generator Interconnection Requests. In such a case, we will allow the Transmission Provider to use modified Interconnection Studies, subject to Commission approval. The Commission expects that interconnection requests of this kind will be rare and, as a result, we do not at this time incorporate a standard study specifically designed for interconnections to low-voltage or ''distribution'' facilities into the Final Rule LGIP. Accordingly, a Transmission Provider may use the studies it deems appropriate to properly study the Interconnection Request, subject to Commission approval. The Commission therefore requires that a Transmission Provider, upon receipt of a request for jurisdictional interconnection to a jurisdictional ''distribution'' or low-voltage facility, file with the Commission an amendment to the LGIP in its OATT that describes the Interconnection Studies applicable to such requests.

807. APS raises concerns regarding joint ownership of transmission by jurisdictional and non-jurisdictional entities. In Order No. 888, the Commission required each public utility that owns an interstate transmission facility jointly with a non-jurisdictional entity to offer service over its share of the joint facility, even if the joint ownership contract prohibits service to third parties.[130] Applying the same principle here, joint ownership does not affect the Commission's authority to regulate the public utility. Accordingly, the Final Rule LGIP and Final Rule LGIA would apply to Interconnection Service provided by the public utility on its portion of a jointly owned facility.

808. Regarding EEI's comment about the Commission's authority over an interconnection for the purpose of making sales of electric energy for resale using ''distribution'' facilities when the energy neither crosses state lines nor enters the interstate transmission system, this question is moot because the Commission is not here extending its jurisdiction to any facility that is not already under its jurisdiction, pursuant to a Commission-filed OATT at the time the interconnection request is made.

809. Finally, regarding EEI's objection that Commission regulation of ''distribution'' interconnections may create new layers of regulatory costs not recoverable in retail rates, our jurisdiction discussion above clarifies that because this Final Rule applies only where the Commission already has jurisdiction at the time interconnection is requested, this should not result in any new unrecoverable regulatory costs to a Transmission Provider.

4. Issues Relating to Qualifying Facilities

810. The NOPR did not address interconnection issues related to qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).[131] Nevertheless, several commenters bring QF-related issues to our attention.

Comments

811. Cal Cogen and ELCON recommend that the Commission allow a QF to request interconnection under state authority when it either sells the majority of its output under a PURPA-based power sales agreement, or does not sell power to the wholesale market.

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[127] 16 U.S.C. 824(b)(1) (2000).

[128] For purposes of this paragraph, the term ''Commission-filed OATT'' means a tariff that is on file at, and has been approved by, the Commission.

[129] The Commission will exercise exclusive jurisdiction only over the Commission-jurisdictional service. *See* Laguna Irrigation District, 95 FERC ¶ 61,305 at 62,039 (2001) *aff'd sub nom. Pacific Gas & Electric Co.* v. *FERC,* 44 Fed. Appx. 170 (9th Cir. 2002); Tex-La Electric Cooperative of Texas, Inc., 67 FERC ¶ 61,019 at 61,055–56, *final order,* 69 FERC ¶ 61,269 (1994) (both noting that the Commission asserts jurisdiction over the service when the facilities are not purely ''transmission'' facilities). Accordingly, the Commission will continue to exercise exclusive jurisdiction over the rates, terms, and conditions of the Commission-jurisdictional service provided over the dual use ''distribution'' facility, but the Commission will not assert jurisdiction over all uses of that facility, because the regulation of ''local distribution'' of electricity to end users is reserved to the States.

[130] *See* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,692; Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,219 (urging such public utilities to seek mutually agreeable revisions to their agreements with non-jurisdictional entities to permit third-party access to all, or at least the public utility share, of the facilities, and to file proposed revisions to such contracts with the Commission).

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

If the QF primarily generates electricity for sale in wholesale markets under non-PURPA agreements, they argue, the Final Rule should apply. Cal Cogen argues that this approach is in keeping with the Commission's Regulations, which give the States the responsibility for QF interconnections,[132] and Commission precedent, which holds that an interconnection agreement in which an interconnected utility purchases a QF's total output falls under state authority.[133]

812. Similarly, SoCal Edison and PG&E request that the Commission clarify that the Final Rule LGIP and Final Rule LGIA will not apply to a QF selling to the interconnected utility or to on-site customers. Calpine requests that generating facilities currently interconnected to the Transmission System under non-FERC-jurisdictional arrangements, such as QFs, that subsequently become FERC-jurisdictional by terminating their QF status or deciding to sell power in the wholesale market, not be treated as ''new'' generating facilities or ''new'' Interconnection Customers under the interconnection procedures. While only the contractual arrangements have changed, the physical interconnection requirements remain unchanged, and as long as the Generating Facility's output will be substantially the same after conversion, no Interconnection Studies are necessary and the Interconnection Customer should not be placed in the Transmission Provider's interconnection queue with new Generation Facilities. Rather, the Interconnection Customer should only have to execute the Commission-jurisdictional interconnection agreement to become effective upon termination of the state-jurisdictional agreement. Independent Producers, which makes a similar argument, notes that treating a newly jurisdictional former QF as a new interconnection would be discriminatory since this would essentially require that facilities be interconnected twice. If an existing QF is already in the ''base case'' used to determine impacts of new generators, and this same base case is used to analyze the interconnection of the existing QF, there will be no effect.

Commission Conclusion

813. The Commission's Regulations govern a QF's interconnection with most electric utilities in the United States,[134] including normally nonjurisdictional utilities.[135] When an electric utility is obligated to interconnect under Section 292.303 of the Commission's Regulations, that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.[136] But when an electric utility interconnecting with a QF does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.[137]

814. Thus, the Commission has jurisdiction over a QF's interconnection to a Transmission System if the QF's owner sells any of the QF's output to an entity other than the electric utility directly interconnected to the QF. Because the presence of *any* output sold to a third party determines Commission jurisdiction, we reject Cal Cogen and ELCON's requests that we establish jurisdiction over QF interconnections based on the amount of energy sold to a third party. Accordingly, this Final Rule applies when the owner of the QF seeks interconnection to a Transmission System to sell any of the output of the QF to a third party. This jurisdiction applies to a new QF that plans to sell its output to a third party, and to an existing QF interconnected to a Transmission System that historically sold its total output to an interconnected utility or on-site customer and now plans to sell output to a third party. Nevertheless, consistent with the Commission's Regulations, states will continue to exercise authority over QF interconnections when the owner of the QF sells the output of the QF only to an interconnected utility or to on-site customers.

815. Finally, regarding a former QF interconnected to a Transmission System that sells electric energy at wholesale in interstate commerce, we conclude that the owner of the QF need not submit an Interconnection Request if it represents that the output of the generating facility will be substantially the same as before. A QF, under the Commission's Regulations,[138] must provide electric energy to its interconnecting utility much like the interconnecting utility's other Network Resources, since the utility must purchase the QF's power to displace its own generation. When the owner of a QF that was formerly interconnected to a Transmission System seeks to sell energy at wholesale and represents that the output of its generator will be substantially the same after conversion, it would be unreasonable for a Transmission Provider to require the former QF to join the interconnection queue.

5. Variations From the Final Rule

816. In the NOPR, we proposed to allow a Transmission Provider to justify variations from the non-price terms and conditions of the interconnection provisions of the Final Rule using the approach taken in Order No. 888. Order No. 888 allows two types of variations. First, public utilities may seek to use regional differences to justify proposed changes to certain specifically identified OATT provisions when the proposed alternative provision is ''reasonable, generally accepted in the region, and consistently adhered to by the [T]ransmission [P]rovider.''[139] Second, public utilities may argue that proposed changes to any OATT provision are ''consistent with or superior to'' the terms of the OATT. In the NOPR, we also stated that if a legitimate need for regional variations in specific provisions in the Final Rule LGIP and Final Rule LGIA were identified, we would consider adopting specific provisions that permit regional variations.

Comments

817. While a few commenters, including Cinergy, Dynegy, and SoCal Edison, support the proposed provision, others seek greater flexibility to propose changes based on regional differences for provisions other than those the Commission identified as specific eligible provisions. For example, several commenters argue that the Commission should allow variations for regional

[132] *Citing* 18 CFR 292.306, 292.308 (2003).

[133] *Citing* Western Massachusetts Electric Co., 61 FERC ¶ 61,182 (1992), *aff'd sub nom. Western Massachusetts Electric Co.* v. *FERC,* 165 F.3d 922 (D.C. Cir. 1999).

[134] 18 CFR 292.303, 292.306 (2003).

[135] The absence of interstate commerce in Alaska, Hawaii, portions of Texas and Maine, and Puerto Rico is not germane to the Commission's jurisdiction over QF matters under PURPA. *See* 16 U.S.C. 2602 (2000).

[136] *See* Western Massachusetts Electric Co., 61 FERC ¶ 61,182 at 61,661–62 (1992) (*Western Massachusetts*), *aff'd sub nom. Western Massachusetts Electric Co.* v. *FERC,* 165 F.3d. 922, 926 (D.C. Cir. 1999).

[137] *See id.* at 61,661–62. The Commission further clarified that the use of facilities for non-jurisdictional services is not dispositive when determining jurisdiction: ''The fact that the facilities used to support the jurisdictional service might also be used to provide various nonjurisdictional services, such as back-up and maintenance power for a QF, does not vest state regulatory authorities with authority to regulate matters subject to the Commission's exclusive jurisdiction.'' *Id.* at 61,662.

[138] 18 CFR 292.303 (2003).

[139] *See* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,770.

differences based on the reliability needs of a particular region, which may be unique because of system configuration or generation prevalent in the region.[140]

818. Several commenters, including APS, the Connecticut PUC, and WestConnect RTO, request that the Commission allow specific regional interconnection standards or reliability requirements to be treated as regional differences. The Florida RCC proposes that the Commission require that the Parties comply with any standards and guidelines of the Applicable Reliability Council. It offers several specific provisions that should be revised to account for the requirements established by the Florida RCC and other regional reliability councils.

819. MidAmerican argues that the Final Rule should recognize regional differences particular to the Midwest. As an example, it offers the high potential for wind farms in the Midwest, and the resulting need to study voltage flicker, harmonics, dynamic voltage stability, stray voltage, and small signal stability. According to MidAmerican, these additional study options, which were not expressly proposed in the NOPR, should be included in the Final Rule to recognize regional differences. Entergy requests that the Commission consider extending the dates for completing Interconnection Studies in a region when there is a large number of Interconnection Requests.

820. Dairyland Power requests that during the compliance phase of this rulemaking the Commission allow a Transmission Provider greater flexibility to make changes using a regional differences rationale. Monongahela Power argues that regional differences should be accommodated, but only on a case-by-case basis through application for exemption rather than through changes to the Final Rule. In this way, the Final Rule serves as a baseline national standard. In contrast, Mirant requests that the Commission restrict the availability of variations based on regional differences to large, established ISOs that can show that the variations are consistent with or superior to what appears in the Final Rule.

821. NYISO recommends that the Commission revise the definition of Good Utility Practice, which was proposed to include ''practices, methods or acts generally accepted in a region,'' and which is used repeatedly in the NOPR LGIP and NOPR LGIA to describe the standards that will be applied to certain obligations. It urges that the definition should include among eligible regions those administered by an RTO or ISO.

Commission Conclusion

822. We will apply a regional differences rationale to accommodate variations from the Final Rule during compliance, but with certain restrictions. We conclude that a non-independent transmission provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination. Accordingly, we will allow an RTO or ISO greater flexibility than that allowed under the regional differences rationale to propose variations from the Final Rule provisions, as further discussed below.

823. Although commenters generally did not identify provisions in the NOPR LGIP or NOPR LGIA that should be subject to variations based on ''regional differences,'' when a commenter did provide specific provisions, the revisions were based on the reliability requirements of a given region. Because we intend to supplement rather than supplant the work that regional reliability groups already have undertaken regarding interconnection, we are permitting a Transmission Provider, on compliance, to offer variations based on existing regional reliability requirements. Accordingly, regional flexibility is included in the Final Rule definition of Good Utility Practice, which includes practices established by relevant reliability councils and local laws and regulations. We accommodate NYISO's proposal that the definition of Good Utility Practice be revised as requested by instead defining it to include ''acceptable practices, methods, or acts generally accepted in the region.'' Thus, this definition includes by implication the Commission-approved practices of those regions administered by an RTO or ISO.

824. Nevertheless, there may be Final Rule provisions that do not include reference to Good Utility Practice that may be subject to or affected by regional reliability restrictions. Rather than identify all such provisions in the Final Rule, as the Florida RCC proposes, we leave it to the Transmission Provider to justify variations based on regional requirements. With this approach, we are permitting public utilities the flexibility necessary to ensure that reliability needs are met. Because we seek greater standardization of interconnection terms and conditions, we are not permitting a non-independent Transmission Provider to use the regional differences justification in the absence of established regional reliability standards.

825. For other proposed deviations from the Final Rule LGIP and Final Rule LGIA not made in response to established regional reliability requirements, we are requiring non-independent transmission providers to justify variations in non-price terms and conditions of the Final Rule LGIP and Final Rule LGIA using the approach taken in Order No. 888, which allows them to propose variations on compliance that are ''consistent with or superior to'' the OATT.

826. To clarify, if on compliance a non-RTO or ISO Transmission Provider offers a variation from the Final Rule LGIP and Final Rule LGIA and the variation is in response to established (*i.e.*, approved by the Applicable Reliability Council) reliability requirements, then it may seek to justify its variation using the regional difference rationale. If the variation is for any other reason, the non-RTO or ISO Transmission Provider must present its justification for the variation using the ''consistent with or superior to'' rationale that the Commission applies to variations from the OATT in Order No. 888.

827. With respect to an RTO or ISO, at the time its compliance filing is made, as discussed above, we will allow it to seek ''independent entity variations'' from the Final Rule pricing and non-pricing provisions. This is a balanced approach that 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. The RTO or ISO shall therefore have greater flexibility to customize its interconnection procedures and agreements to fit regional needs.

6. Waiver Availability for Small Entities

828. In the NOPR, we did not address whether special provisions are needed for small Transmission Providers for whom providing Interconnection Services might be overly burdensome.

Comments

829. Maine PSC asks the Commission to provide flexibility and waiver of the full requirements of the Final Rule LGIP and Final Rule LGIA for small transmission owners. Southwest Transmission requests that the current ''small utility'' exception for Order Nos. 888 and 889 should not only be

[140] *E.g.,* Florida RCC, NARUC, the North Carolina Commission, the Public Power Council, and WEPCO.

retained, but it should be expanded to apply to cooperatives with total electric energy dispositions that exceed four million MWh annually and with outside sales that do not exceed one million MWh annually. SoCal Water District also asks for a waiver for utilities with annual sales of less than four million MWh.

Commission Conclusion

830. We are sympathetic to the array of concerns raised by small Transmission Providers. Order Nos. 888 and 889 established guidelines for the granting of waivers to small entities, and this Final Rule adopts that approach and makes conforming changes to the regulatory text in Part 35 of the Commission's regulations.[141] We recognize, for example, that it might be a financial burden on a small Transmission Provider to perform Interconnection Studies or manage the construction of Interconnection Facilities in the same manner as a larger Transmission Provider. The small Transmission Provider may simply not have the staff or expertise to efficiently accommodate all Interconnection Requests.

831. Because the possible scenarios under which small entities may seek waivers from the Final Rule are diverse, they are not susceptible to resolution on a generic basis and we will require applications and fact-specific determinations in each instance. If the circumstances that give rise to the exemption change, the waiver may no longer be appropriate. In addition, we will apply the same standards to any entity seeking a waiver, including public utilities seeking waiver of some or all of the requirements of the Final Rule, as well as non-public utilities seeking waiver of the reciprocity provision. Each entity, however, will have to apply for this waiver and demonstrate that it qualifies for the waiver as required in Order No. 888.

7. OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA

832. In the NOPR, we proposed that the Final Rule LGIP and Final Rule LGIA be subject to the reciprocity provision of Order No. 888, as incorporated into the OATTs adopted by public utilities.[142] The reciprocity provision allows any public utility that provides open access transmission to a non-public utility to receive as a condition of service non-discriminatory access in return.[143] With the addition of the Final Rule LGIP and Final Rule LGIA to the OATT, in order to meet its reciprocity obligation, a non-public utility would have to provide Interconnection Service to the Transmission Provider and the Transmission Provider's Affiliates under the same terms and conditions under which it receives service.

Comments

833. Several public power commenters, including Lakeland, LPPC, Nebraska PPD, NRECA–APPA, and the Public Power Council, request that the Commission clarify that it indeed intends to apply, without modification, the reciprocity policy as expressed in Order No. 888 to the Final Rule LGIP and Final Rule LGIA. Other commenters such as LADWP and LIPA warn that any attempt to expand the reciprocity policy to allow a generator unaffiliated with a Commission-jurisdictional Transmission Provider to require a non-public utility to comply with the reciprocity condition would be an impermissible extension of Commission jurisdiction.

834. Mirant argues that the Commission should add additional reciprocity language to every Transmission Provider's OATT that conditions the continued provision of transmission service on a non-public utility Interconnection Customer offering comparable Interconnection Service on its own transmission facilities.

835. Nebraska PPD objects to any reciprocity with respect to the Final Rule LGIP and Final Rule LGIA. In the alternative, it seeks clarification that the jurisdictional Transmission Provider may waive reciprocity. It also joins LPPC in requesting that only terms and conditions, and not the rate provisions, be subject to the reciprocity condition.

836. Pinnacle West argues that the Commission should state that the reciprocity requirement cannot be satisfied if a non-public utility fails to provide credits against transmission service bills for Network Upgrades. Otherwise, Pinnacle West continues, the non-public utilities would be engaging in prohibited ''and'' pricing that charges customers twice for transmission service. It states that Commission precedent has made clear that to satisfy reciprocity, a non-public utility must charge rates comparable to the rates it charges itself.[144]

837. TAPS explains that the reciprocity condition should impose an obligation to interconnect on a basis that is reasonable under the circumstances and comparable to the way the non-public utility treats its own interconnections. It supports the availability of a Commission waiver of the reciprocity requirement for small transmission owners.

838. Certain public power entities, including the Bureau of Reclamation, LIPA, NYTO, Southwest Transmission, and TAPS, ask the Commission to consider the statutory or regulatory restrictions applicable to public power and other non-public utilities when the Commission evaluates their reciprocity compliance filings. They request that non-public utilities be afforded sufficient flexibility to include or modify certain provisions as required by law.

839. SoCal Edison expresses concern that an interconnection with a non-public utility may require Network Upgrades to a neighboring public utility's transmission facilities, and that the neighboring public utility would have no recourse should the owner of the generator and the non-public utility proceed with the interconnection without paying the neighboring public utility's upgrade costs. It proposes that the Commission, as part of the reciprocity provision, allow a jurisdictional utility to disconnect from its non-jurisdictional neighbor unless the neighbor ensures that the interconnecting generator mitigates the effects on the jurisdictional utility's system.

Commission Conclusion

840. Some commenters may have misunderstood our reciprocity statement in the NOPR as extending reciprocity rights to public utilities that do not own, control, or operate transmission either directly or through an Affiliate. The owners of many generators are public utilities that do not own, and are not affiliated with a public utility that owns, transmission. They are thus incapable of offering reciprocity service. We wish to make it clear that this Final Rule in no way alters the applicability of the reciprocity provision in the OATT and the reciprocity policy articulated in Order No. 888 and its progeny. The point of the reciprocity requirement is to permit a public utility that provides open access transmission service to require a

[141] *See* 18 CFR 35.28(d) (2003); Reg. Text 35.28(f)(3), *infra.*

[142] Large Generator Interconnection NOPR, FERC Stats. & Regs ¶ 32,560 at 34,184–185. *See also* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,755.

[143] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760.

[144] *Citing* Missouri Basin Municipal Power Authority, 99 FERC ¶ 61,062 at 61,296 (2002).

non-public utility that owns, controls, or operates transmission facilities to have available reciprocal transmission service from that non-public utility. The concept of reciprocity is simply irrelevant if the non-public utility does not own, control, or operate transmission facilities, as is the case with many Interconnection Customers. Because the Final Rule LGIP and Final Rule LGIA are to become a part of the OATT, the reciprocity provision in the OATT applies to interconnection as well. EEI—Alliance of Energy Suppliers, MidAmerican, and Nevada Power, among others, filed comments supporting this approach.

841. Under the reciprocity provision in Section 6 of the OATT, if the public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. Under the OATT, a public utility may refuse to provide open access transmission service to a non-public utility if the non-public utility refuses to reciprocate. A non-public utility may satisfy the reciprocity condition in one of three ways: first, it may provide service under a Tariff that has been approved by the Commission under the voluntary ''safe harbor'' provision. A non-public utility using this alternative submits a reciprocity Tariff to the Commission seeking a declaratory order that the proposed reciprocity Tariff substantially conforms to or is superior to the OATT. The non-public utility then must offer service under its reciprocity Tariff to any public utility whose transmission service the non-public utility seeks to use. Second, the non-public utility may provide service to a public utility under a bilateral agreement that satisfies its reciprocity obligation. Finally, the non-public utility may seek a waiver of the reciprocity condition from the public utility.[145]

842. A non-public utility that has a ''safe harbor'' Tariff may add to its Tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the Final Rule LGIP and Final Rule LGIA if it wishes to continue to qualify for safe harbor treatment. A non-public utility that owns, controls, or operates transmission and that has not filed with the Commission a safe harbor Tariff and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement or seek a waiver of the OATT reciprocity condition from the public utility.

843. We do not require, as Pinnacle West proposes, that a non-public utility also provide transmission credits for Network Upgrade costs, to satisfy the Commission's reciprocity condition. With respect to a tariff filed under the ''safe harbor'' provision, our reciprocity policy requires that it contain rates comparable to the rates the non-public utility charges itself.[146] As for rates contained in a bilateral agreement, they are a fact-specific matter that will be subject to a case-by-case analysis.[147]

844. Regarding the applicability of the reciprocity requirement to public power and other nonjurisdictional entities, we shall limit reciprocity compliance to those services a nonjurisdictional entity is capable of providing on its system.[148] We likewise will consider the legal and regulatory restrictions on nonjurisdictional entities' contractual rights and tax-exempt status when we evaluate any ''safe harbor'' reciprocity filings.

845. Finally, since we did not propose to change the reciprocity condition articulated in the OATT in this Final Rule, SoCal Edison's concerns are more appropriately addressed in the discussion of effects on third party systems.

8. General Comments/Clarifications

a. Insurance

846. In the NOPR, we omitted the insurance requirements originally filed in the ANOPR Consensus LGIA. Those insurance requirements would have set out the minimum coverage types and amounts that each Party to the LGIA must maintain. The NOPR did not propose insurance requirements because insurance requirements are not contained in the OATT.

Comments

847. Many commenters, primarily Transmission Providers, ask the Commission to reconsider its proposal to omit the insurance requirements.[149] They argue that insurance provisions are common in individually negotiated interconnection agreements and are important for managing risks and containing liability costs. The magnitude of the costs and potential liability at issue necessitate the inclusion of insurance provisions, they claim. Entergy explains that since the indemnification provision in NOPR LGIA Article 18 likely will be inadequate to make the Transmission Provider whole, insurance is necessary to ensure that damaged Parties are made whole for a disturbance caused by a Generating Facility.

848. Several commenters, including PSNM, Southern, and Tenaska, argue that the Commission should not follow the OATT on this issue because Interconnection Service is different from transmission service in that the operation of generators poses safety and operational risks. PJMTO and PSEG note that a generation project is unlikely to obtain financing without appropriate insurance provisions within the Final Rule LGIA.

849. Some commenters, including Avista, Dynegy, FP&L, and National Grid, argue that the Commission should restore the insurance provision that appeared in the ANOPR LGIA, which included mandatory insurance types and coverage amounts. Others, including Dominion Resources, NYTO, and Progress Energy, argue that while state laws and local business practices should dictate the actual amount of coverage, the Final Rule LGIA should describe the types of insurance coverage each Party must carry. Some commenters including EEI—Alliance of Energy Suppliers state that while it is infeasible on a generic basis to stipulate the appropriate levels of insurance for all facilities, the Interconnection Customer and Transmission Provider should be required to maintain certain minimum levels of insurance as agreed by the Parties.

Commission Conclusion

850. We conclude that requiring certain minimum insurance in the Final Rule will benefit both the Transmission Provider and the Interconnection Customer and will help the Transmission Provider to avoid undue financial risk. Accordingly, we are restoring the insurance requirement in the Final Rule LGIA. The addition of this provision should help the Transmission Provider and the Interconnection Customer to manage the risks arising from Interconnection Service. The Final Rule requires that each Party, at its own expense, maintain certain minimum insurance coverages throughout the period of their interconnection agreement. These coverages include Employers' Liability and Workers' Compensation Insurance, Commercial General Liability Insurance,

[145] *See* Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,285–86.

[146] *See generally* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,761; *see also* Long Island Power Authority, 84 FERC ¶ 61,280 at 62,333 (1998).

[147] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,289.

[148] *Id.* at 30,286.

[149] *E.g.,* American Transmission, APS, Dominion Resources, Dynegy, Entergy, FP&L, National Grid, NiSource, NYTO, Oklahoma G&E, PSNM, and Tucson Electric.

Comprehensive Automobile Liability Insurance, and Excess Public Liability Insurance.

b. Liquidated Damages

851. Two liquidated damages provisions appeared in the NOPR, one in Article 5.1 of the LGIA and the other in Section 13.5 of the LGIP.

852. The liquidated damages provision in the NOPR LGIA would be applicable if an Interconnection Customer chooses the option described in Article 5.1.B. Under this option, if a Transmission Provider fails to complete construction of the Interconnection Facilities by the In-Service Date or the Network Upgrades by the Commercial Operation Date, the Transmission Provider would pay the Interconnection Customer liquidated damages. Liquidated damages would be limited to 0.5 percent per Calendar Day of the actual aggregate costs of the Interconnection Facilities or Network Upgrades for which the Transmission Provider remains responsible, not to exceed 20 percent of such costs.

853. The liquidated damages provision in Section 13.5 in the NOPR LGIP would have the Transmission Provider pay liquidated damages if it fails to meet its obligations in the LGIP and does not remedy the failure within 15 Business Days. Liquidated damages would be one percent of the actual costs of the applicable study cost per Calendar Day, with a cap at 50 percent. Also, upon expiration of the remedy period, the Transmission Provider would refund any deposit amount for the applicable study that the Interconnection Customer had paid beyond the actual reasonably incurred study costs.

Comments

854. Many commenters make similar arguments about these provisions, and since the provisions serve different functions, there may be different responses to the same argument. Nevertheless, there are a few issues that the Commission will address collectively; namely, legal authority to allow liquidated damages, and the applicability of liquidated damages to public power organizations and RTOs.

(1) Legal Authority To Require Liquidated Damages

855. Some commenters argue that liquidated damages are beyond the Commission's statutory authority inasmuch as they are penalties that are not fact-specific because they are not designed to remedy the actual damages experienced,[150] or are damages beyond the statutory authority of the Commission.[151] Others, including El Paso and WestConnect RTO, argue that liquidated damages are inconsistent with just and reasonable rates under the Federal Power Act. Southern questions whether the Commission has authority to require liquidated damage in private contracts. Idaho Power argues that the liquidated damages provisions violate the Federal Power Act by preventing a Transmission Provider from recovering costs prudently incurred in providing service to an Interconnection Customer. Maine PSC notes that the imposition of liquidated damages is at odds with the Commission's precedent on liability, which states that there should be no liability without fault and that liability should be unavoidable if caused by one's own gross negligence or intentional actions.[152] Other commenters, including Idaho Power and WestConnect RTO, argue that an Interconnection Customer should file a complaint if it believes that the rates, terms, and conditions of Interconnection Service are unjust or unreasonable.

Commission Conclusion

856. We are deleting the liquidated damages provisions from the Final Rule LGIP and retaining them, with modifications, in the Final Rule LGIA.

857. Liquidated damages provisions are within our statutory authority because, although we do not assess or award damages, we have jurisdiction under Section 205 over agreements from which damages may arise. Liquidated damages can help manage risk within a jurisdictional agreement.

858. In response to the comments questioning the imposition of liquidated damages by regulatory fiat, we clarify that the Final Rule, like the NOPR, does not require liquidated damages. A Transmission Provider has the option to agree to a liquidated damages provision after agreeing to the dates for designing, procuring and constructing the Interconnection Facilities and Network Upgrades designated by the Interconnection Customer.[153] If the Parties are unable to agree on an acceptable schedule, they may negotiate terms and conditions—including revisions to the liquidated damages provision—under the Negotiated Option in Article 5.1.4 of the Final Rule LGIA. So, rather than impose liquidated damages, the Final Rule LGIA provides liquidated damages as an option that may become a provision in the interconnection agreement signed by the Parties.

859. Because we are not including a liquidated damages provision in the Final Rule LGIP, we are not discussing that proposed provision here.

(2) Applicability of Liquidated Damages to Public Power, Cooperatives, and RTOs

860. Georgia Transmission argues that liquidated damages are particularly burdensome for cooperatives because of their inability to recover these costs except directly from the cooperative customers. For similar reasons, liquidated damages may make it financially prohibitive for some public power providers to handle Interconnection Requests from third party Interconnection Customers.[154] Western warns that it cannot agree to a contractual provision that would result in open-ended financial exposure when funds have not been appropriated for this purpose.

861. Midwest ISO TO argues that the liquidated damages provisions will not work in the RTO context, especially when the RTO is non-profit, for several reasons: (1) A Transmission Owner in an RTO should not be subject to liquidated damages because it will not be in charge of the interconnection process—the RTO will be, (2) an RTO should not pay liquidated damages since the costs will end up being spread over all customers who will pay the Interconnection Customer for the RTO's failure to meet the schedule, and (3) in an RTO context, with a neutral, non-profit RTO, there should be much less of a need for liquidated damages.

862. Cal ISO argues that since a Transmission Owner, rather than an RTO or ISO, will undertake many of these functions, the RTO or ISO should not be a guarantor for the Transmission Owner. For the RTO's responsibilities, Cal ISO continues, an Interconnection Customer is afforded recourse via Section 210 of the Federal Power Act.

863. PSEG and PJMTO similarly argue that the Final Rule should treat liquidated damages as a last resort remedy that would not apply where either the Interconnection Customer has an effective alternative backstop to protect itself against discriminatory conduct by the Transmission Provider or Transmission Owner, or the interconnection process is under the control of an independent third party

[150] *E.g.,* El Paso, Idaho Power, PacifiCorp, and WestConnect RTO.

[151] *E.g.,* Entergy and SoCal PPA.

[152] *See, e.g.,* ANR Pipeline Co., 98 FERC ¶ 61,128 at 61,862 (2002).

[153] LGIA Articles 5.1.2 and 5.1.3.

[154] *E.g.,* Imperial Irrigation, Lakeland, and LPPC.

unaffiliated with any market participant.

864. The Midwest ISO also argues that if an RTO or the Transmission Owner must pay liquidated damages, the Commission should limit their exposure by imposing liability only in cases of gross negligence and should require a Party to pay liquidated damages only if its action or inaction alone caused the damages.

Commission Conclusion

865. In response to commenters that question their ability to pay or recover liquidated damages, the Final Rule LGIA does not require that all executed interconnection agreements contain liquidated damages provision. As noted above in the discussion of proposed LGIA Article 5.1 (Options), a Transmission Provider may reject liquidated damages when the schedule proffered by the Interconnection Customer exposes it to too much risk.

866. Therefore, public power entities that have met a reciprocity obligation by filing a safe harbor Tariff will have the same opportunity to negotiate the liquidated damages provision as any other non-public power Transmission Provider. Entities with safe harbor tariffs that face unusual limitations, such as cooperatives financed by the Rural Utilities Service or federal power entities subject to contracting restrictions set by statute or regulation, may request waiver of the liquidated damages provision of the Final Rule LGIA when they comply with their reciprocity condition.

867. We agree with the Midwest ISO that liquidated damages may be unnecessary when an RTO or ISO administers the interconnection agreement and oversees the interconnection process. As noted above in part II.C.5 (Variations from the Final Rule), we will permit RTOs and ISOs to use an independent entity variation standard to justify variations from the Final Rule provisions. Accordingly, we will consider proposals to eliminate liquidated damages from the compliance filings of RTOs and ISOs.

(3) General Comments on the LGIA Liquidated Damages Provision

868. Many commenters, most of them Transmission Providers, ask the Commission to either eliminate [155] or modify [156] the liquidated damage provision in the NOPR LGIA. They argue that liquidated damages are inappropriate because the Transmission Owner recognizes no profit from the interconnection and has no means of recouping such costs.[157]

869. PG&E argues that the Commission should eliminate the liquidated damage clause and instead provide a rapid method for addressing Interconnection Customer complaints. PacifiCorp contends that this is not an appropriate context for liquidated damages because the Parties are not negotiating the terms. The Louisiana PSC argues that liquidated damages should be unavailable without a demonstration that harm was caused and that the Transmission Provider caused the harm. While FP&L argues that liquidated damages should not apply unless a Transmission Provider can recover these costs in rates, including retail rates, the Louisiana PSC argues that liquidated damages should not be recoverable in transmission charges.

870. Some commenters contend that, if the Parties agree to liquidated damages and liquidated damages are recoverable, it should be the exclusive remedy for failure to complete construction on time.[158] SoCal Edison argues that operating dates must be agreed upon between the Transmission Provider and the Interconnection Customer in order for liquidated damages to apply. Southern contends that liquidated damages should be available only for facilities that are not completed on time. If a Transmission Provider is subject to liquidated damages for failure to complete Interconnection Facilities being built by another Interconnection Customer, Dominion Resources argues, the Interconnection Customer constructing the Interconnection Facilities should indemnify the Transmission Owner for any liquidated damages resulting from the Interconnection Customer's failure to meet the designated date.

871. Others commenters, including Georgia Transmission and NRECA-APPA, argue that, in lieu of liquidated damages, the Commission should include a Good Utility Practice and best efforts standard that holds the Transmission Provider liable for actual damages. Several commenters ask the Commission to adopt a provision that would protect a Transmission Provider from liquidated damages if it meets a certain standard, such as a best efforts or Reasonable Efforts standard.[159] Some commenters, including Cleco and FP&L, argue that liquidated damages should be available only in cases of intentional wrongdoing or negligence.

872. Several Transmission Providers also argue alternatively that, if the liquidated damages provision remains in the Final Rule LGIA, it should be modified. Recommended modifications include not holding the Transmission Provider liable for Force Majeure events and circumstances beyond its control, such as permitting and regulatory delays, delays due to third parties, and delays due to the requesting Interconnection Customer or other Interconnection Customers.[160] Ameren argues that proposed LGIA Article 5.1.B(ii) might result in confusion, appeals, and litigation.

873. FP&L comments that the liquidated damages provision penalizes the Transmission Provider without a symmetrical opportunity for it to make a profit or recoup its costs and requests that the Transmission Provider have the opportunity to receive a financial benefit above its costs if a study is completed on time. Other commenters, including American Transmission, Cleco, MidAmerican, PG&E, and SoCal Edison, ask that the Commission make liquidated damages bilateral, thereby subjecting an Interconnection Customer to liquidated damages for missing its milestones. American Transmission further argues that an Interconnection Customer should be responsible for liquidated damages payable to the Transmission Provider at two levels of liability—a higher level when Generating Facilities lower in the queue are dependent on the Interconnection Customer's timely performance and a lower level when no third parties are harmed by the delay but the Transmission Provider deserves compensation.

874. Ameren argues that the NOPR LGIA does not address a situation in which multiple Interconnection Customers rely on the same Transmission Provider Interconnection Facilities and Network Upgrades. American Transmission proposes that total liability for a particular project should be the same regardless of the number of Interconnection Customers requesting the component. The Construction Issues Coalition

[155] *E.g.,* APS, Bridger Valley, Cinergy, El Paso, FP&L, Entergy, Idaho Power, LADWP, Monongahela Power, PacifiCorp, PG&E, Tucson Electric, and Western.

[156] *E.g.,* Ameren, American Transmission, Cal ISO, the Construction Issues Coalition, MidAmerican, Mirant, National Grid, NSTAR, NYTO, PSNM, Sempra, and SoCal Edison.

[157] *E.g.,* APS, Cinergy, Exelon, and Oklahoma G&E.

[158] *E.g.,* American Transmission, Construction Issues Coalition, NYTO, NSTAR, SoCal Edison, and WestConnect RTO.

[159] *E.g.,* Ameren, Cal ISO, Central Maine, El Paso, Exelon, and WestConnect RTO.

[160] *E.g.,* Ameren, the Construction Issues Coalition, Dominion Resources, FP&L, NE Utilities, NSTAR, PG&E, Sempra, SoCal PPA, and Southern.

recommends that the Commission modify proposed LGIA Article 5.1.B(ii) to specify a maximum of 20 percent of the project costs for all Interconnection Customers relying on the upgrade.

875. National Grid argues that the ERCOT LGIA provision, which has a compensatory approach, was better than the NOPR LGIA provision, which takes a punitive approach. The asymmetry between risk and reward may cause a Transmission Provider to avoid any obligation to perform Interconnection Services, says National Grid. Since a Transmission Provider can opt out of the liquidated damages provision in the interconnection agreement, an Interconnection Customer will likely be forced to find another builder.

876. PG&E requests that the Commission adopt a 15 month period for completing the work, which was in the ERCOT liquidated damages provision.

877. Cal ISO argues that damages must track the entity performing the work. In cases where there is an RTO or ISO, the Transmission Owner should be liable, and the RTO or ISO should not be a guarantor for the Transmission Owner.

878. Western argues that it is inequitable to allow the Interconnection Customer to extend the In-Service Date without penalty (Article 5.5) without also giving the Transmission Provider this option. Also, the Transmission Provider should be allowed to provide justification for not meeting unreasonable deadlines.

879. The Construction Issues Coalition argues that proposed LGIA Article 5.1.B.1.a should be modified to allow a Transmission Provider or a Transmission Owner not to enter into an interconnection agreement that includes liquidated damages for any reason, not just because of unacceptable dates. Because the limits on liquidated damages recovery may not be appropriate for every Interconnection Customer, Mirant argues, the proposed LGIA liquidated damages provision should be optional and left to the election of the Interconnection Customer.

880. American Forest expresses concern that the liquidated damages cap could be used by the Transmission Provider to delay or deny completion of Interconnection Studies or construction of facilities or upgrades simply by paying liquidated damages. The Commission should clarify that the cap should not be used by the Transmission Provider to impede the development of new generation. It proposes either deleting the cap or adding language to specify that the cap does not apply if the Transmission Provider intentionally delays or denies service. Also, Cal ISO notes that the penalty of 0.5 percent of the upgrade cost in proposed LGIA Article 5.1.A(ii) for each day the Transmission Provider fails to meet an agreed upon deadline for completing any portion of the Transmission Provider Interconnection Facilities or Network Upgrades does not really work as an incentive because there may be no incentive to meet a deadline if the cost of the upgrade is small because the penalty would be so low.

881. Several commenters, including Duke Energy, EPSA, and NE Utilities, support the liquidated damages provision in the NOPR LGIA but none provide detailed arguments explaining their support.

Commission Conclusion

882. As noted above, the proposed LGIA liquidated damages provision allows a Transmission Provider to refuse the Interconnection Customer's proffered construction schedule and perhaps even negotiate to revise the liquidated damages provision if the Parties end up negotiating over construction terms.[161] We are concerned that Transmission Providers will always negotiate to eliminate liquidated damages liability unless the provision is revised to further protect the Transmission Provider. For this reason, we are adopting the recommendations of several commenters to revise this provision.

883. In the Final Rule LGIA, liquidated damages would be recoverable if an Interconnection Customer chooses the Alternate Option in Final Rule LGIA Article 5.1.2. Under this option, if a Transmission Provider fails to complete the Interconnection Facility or the Network Upgrades by the dates designated by the Interconnection Customer and accepted by the Transmission Provider, the Transmission Provider would pay the Interconnection Customer liquidated damages. Liquidated damages would be limited to 0.5 percent per Calendar Day of the actual aggregate costs of the Interconnection Facilities or Network Upgrades for which the Transmission Provider remains responsible, and not to exceed 20 percent of the Transmission Provider's actual costs. They would not be recoverable under certain circumstances, such as when the Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities or Network Upgrades by the date specified (unless the Interconnection Customer was not ready due to delay on the part of the Transmission Provider) or if the delay is due to a cause beyond the reasonable control of the Transmission Provider.

884. Liquidated damages should not be payable if the delay is due to circumstances beyond the control of the Transmission Provider. As a result, liquidated damages will be available only due to the action or inaction of a Transmission Provider, and not when the delays are due to third parties or other circumstances beyond the Transmission Provider's control. For the purposes of this provision, the Transmission Provider's subcontractors will not be considered third parties, but delays due to the action or inaction of Interconnection Customers earlier in the queue will be considered delays due to third parties. This provision also will sufficiently protect a Transmission Provider that seeks to interconnect multiple Generating Facilities to the same interconnection, since liability to each of the Interconnection Customers for liquidated damages may be avoidable as long as the delay is not attributable to the Transmission Provider or its subcontractors. This will also counterbalance the Interconnection Customer's ability to adjust the schedule under Final Rule Article 5.7, since the Transmission Provider can avoid liability for the acts of third parties. Finally, because liquidated damages liability will not have to be paid unless the Transmission Provider is at fault, we conclude that these damages will not be considered just and reasonable costs of service and will not be recoverable in transmission rates.

885. Finally, if the Parties agree to liquidated damages and liquidated damages are payable, this will be the exclusive remedy for failure to complete construction on time. We are not making the liquidated damages provision bilateral, however, because the Final Rule LGIA provides a Transmission Provider the necessary protection from liquidated damages liability, as well as the ability to negotiate provisions of the interconnection agreement to better match its chosen level of risk.

(4) General Comments on the LGIP Liquidated Damages Provision

886. Many commenters, most of them Transmission Providers, ask the Commission to either eliminate[162] or

[161] In Final Rule LGIA Article 5.1.4, the Parties may negotiate terms under the Negotiated Option.

[162] *E.g.,* APS, Bridger Valley, El Paso, Entergy, FP&L, LADWP, LPPC, NYISO, PacifiCorp, PG&E, PGE, PJMTO, PSNM, Southern, WestConnect RTO, and Western.

modify [163] the liquidated damages provision in the LGIP.

887. Those opposed to the liquidated damages provision in the LGIP argue, among other things, that liquidated damages are inappropriate because the Transmission Owner recognizes no profit and has no means for recouping costs.[164] Entergy notes that liquidated damages are improper because the Commission traditionally rejected these payments in favor of the payments of identifiable and direct costs incurred. PacifiCorp contends that this is not an appropriate context for liquidated damages because the Parties are not bargaining on the terms. Southern complains that the liquidated damages are improper because the LGIP provides for an uncontrolled and lengthy process due to the many opportunities for the Interconnection Customer to change data and Generating Facility configuration.

888. The NYISO and PSNM argue that instead of liquidated damages, the Commission should use the OATT Section 19.4 study requirement, which requires due diligence to perform within a specified time period. Under this approach, if a Transmission Provider is unable to meet the deadline, it must notify the customer and provide an estimate of the additional time needed and explain why more time is necessary.

889. Among those commenters requesting modification, several Transmission Providers propose that liquidated damages be made bilateral, thereby subjecting Interconnection Customers to liquidated damages for failure to meet deadlines.[165] American Transmission argues that there should be separate levels of liability facing the Interconnection Customer depending on third party harm caused by the Interconnection Customer's delay. Some commenters, including National Grid and NE Utilities, recommend a reciprocal financial incentive to earn for superior performance to offset the risk of liquidated damages.

890. Several Transmission Providers, including AEP, Ameren, Idaho Power, LG&E Energy, and NE Utilities, recommend modifying the proposed LGIP to exempt the Transmission Provider from circumstances beyond its control, such as the action or inaction of third parties, the failure of the Interconnection Customer to provide all relevant data, failure of a third party contracted by the Interconnection Customer to provide timely studies, or permitting or other state regulatory prerequisites.

891. The Salt River Project contends that a Transmission Provider should be able to avoid liquidated damages in the LGIP as it can in the LGIA. NSTAR recommends that the LGIP adopt NEPOOL language that allows the Parties to agree upon a schedule with deadlines if money damages are at stake for non-completion.

892. Several commenters, including Dominion Resources, FP&L, and Progress Energy, argue that the liquidated damages provision should be revised so that it does not apply unless the failure to meet a deadline results from negligence or intentional wrongdoing by the Transmission Provider.

893. Duke Energy asks the Commission to clarify that the Reasonable Efforts standard also applies to restudies, and that liquidated damages apply only to the study obligations under the LGIP, and not all of the LGIP obligations. NE Utilities recommends that, to avoid overlap and ambiguity, the first sentence of proposed LGIP Section 13.5 should be revised to apply to ''study-related'' obligations.

894. American Transmission argues that the 50 percent cap on liquidated damages in the LGIP is excessive and it should be reduced to 25 percent.

895. American Forest proposes either deleting the cap or adding language to specify that the cap does not apply if the Transmission Provider intentionally delays or denies service.

896. Mirant argues that the liquidated damages provision in the LGIP should provide for liquidated damages of one percent per day starting on the date the Transmission Provider misses a deadline for completing the study, but after 30 days, the Transmission Provider should pay the Interconnection Customer liquidated damages equal to the remaining difference between the study cost and the amount already paid in liquidated damages. Also, the Transmission Provider should refund with interest any deposit amount in excess of the actual reasonably incurred study costs immediately upon expiration of the 15 day remedy period. These modifications provide a better incentive for Transmission Provider compliance.

897. Some commenters, including Calpine, EPSA, and KeySpan, argue in favor of the incentive that this proposed liquidated damages provision provides.

Commission Conclusion

898. We are eliminating liquidated damages from the Final Rule LGIP. While we understand the value of providing an incentive to complete Interconnection Studies, we are concerned that the availability of such a provision may undermine the Transmission Provider's ability to economically administer its study process.

899. Moreover, we question whether liquidated damages are appropriate during the study phase, since at that time it will be unclear whether a prospective Interconnection Customer intends to pursue its Interconnection Request. Because at this stage the prospective Interconnection Customer does not face a substantial risk of damages, we are not standardizing liquidated damages for Transmission Providers during the study phase (*i.e.,* in the Final Rule LGIP). Rather, we are requiring that a Transmission Provider use due diligence to perform within a specified time period. This approach, which has been applied to facilities studies in OATT Section 19.4, gives the Transmission Provider a deadline, and requires that the Interconnection Customer be kept apprised in writing of any difficulties encountered in meeting the deadline. In order to ensure that a Transmission Provider complies with its obligations, we urge the Interconnection Customer to bring any disputes to the Commission's Dispute Resolution Service, or if necessary, pursue claims of unduly discriminatory treatment under Section 206 of the Federal Power Act.

c. Consequential Damages

900. Consequential damages are losses that flow indirectly—rather than directly and immediately—from an injurious act.[166] In the NOPR, the Commission chose to maintain consistency with the OATT, and the NOPR LGIA did not limit liability for losses or costs for consequential damages. Instead, it relied on the statement in Order No. 888–A that Transmission Providers and customers can rely on any statutes or other laws to protect Parties from consequential or indirect damages.[167] The NOPR also stated that the OATT protects a Transmission Provider from consequential damages and indirect damages claims by third parties though indemnification except in cases of negligence or intentional wrongdoing by the Transmission Provider. The

[163] *E.g.,* AEP, American Forest, American Transmission, Cal ISO, Central Maine, Cleco, Duke Energy, National Grid, NE Utilities, NYTO, and Salt River Project.

[164] *E.g.,* APS, PG&E, and PGE.

[165] *E.g.,* American Transmission, Joint Consumer Advocates, and the Midwest ISO.

[166] Black's Law Dictionary 394 (7th ed. 1999).

[167] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,302.

Commission sought comments on this approach and the relative merits of the alternative provisions in the consensus and ERCOT interconnection agreements.

Comments

901. Many commenters, mostly Transmission Providers, recommend that the Final Rule LGIA limit exposure to consequential damages, such as incidental, exemplary or indirect damages, lost profits, and other business interruption damages.[168] Without a provision limiting exposure, the Mississippi PSC explains, a Transmission Provider will be unable to contractually protect itself from these claims. The risk of exposure will impose significant additional costs, which will then be charged to all transmission customers. In this way, clauses that exclude liability for consequential damages reduce rates.

902. APS explains that, because statutes for liability vary from state to state, the LGIA must recognize these differences, and dictating specific terms should be avoided. FP&L notes that, contrary to the Commission's reliance on state statutes, not all states provide consequential damages protection. As an example, FP&L points to Florida, which allows exclusion of consequential damages, but the provision must be included in a contract. Progress Energy warns that a reliance on statutes or other laws dealing with consequential damages, as the Commission proposed in the NOPR, will only invite future disagreements and litigation.

903. Some commenters, including Duke Energy and Dynegy, request that, if language limiting liability for consequential damages is not inserted, the Commission should, at a minimum, provide Parties the option of mutually agreeing to include a limitation on liability, consistent with existing Commission policy.

904. Westconnect RTO notes that if liquidated damages are not available under the option in proposed LGIA Article 5.1B(i)(b), an Interconnection Customer may still sue the Transmission Provider for failing to meet the In-Service Date if there is no limitation of liability clause. It notes that without a clause limiting liability for consequential damages, an Interconnection Customer may still be able to secure damages akin to liquidated damages, even if the Parties do not expressly agree to liquidated damages in their executed interconnection agreement.

905. Central Maine takes issue with the NOPR position that a Transmission Provider is protected from consequential and indirect damage liability to third parties through indemnification. A Transmission Provider's obligation to indemnify the Interconnection Customer for third party claims against the Interconnection Customer may be viewed as a payment of consequential damages by the Transmission Provider.

Commission Conclusion

906. There are several factors that convince us that a provision limiting consequential damages should be added to the Final Rule LGIA. First, by standardizing the liability protection, rather than leaving the issue to state law, it should offer greater certainty to Transmission Providers and Interconnection Customers alike. Contrary to APS's argument, it is precisely because state liability statutes vary that we are prescribing a specific liability provision. Second, liability limitation provisions protect against excessive utility rates by capping damage awards.[169] Finally, a goal of this rulemaking is to reduce litigation arising from interconnection, and an express provision in the LGIA limiting liability will have this effect. For these reasons, we are including a provision limiting consequential damages. Final Rule LGIA Article 18.2 protects either Party from liability for any special, indirect, incidental, consequential, or punitive damages, including profit or revenue. The Parties remain liable for any liquidated damages payable, and any damages for which a Party may be liable to the other Party under another agreement.

d. Two vs. Three Party Agreements

907. In the NOPR, the Commission proposed that, along with the Interconnection Customer, the Transmission Provider, and, to the extent necessary, the Transmission Owner, must become signatories to the interconnection agreement. The intent was to require the Transmission Provider to sign the agreement, and if the Transmission Owner is a separate entity, to require it to sign as well. We reasoned that the Transmission Provider should sign the agreement because the Interconnection Service would be provided under the Transmission Provider's OATT. However, we noted that no one disputes that the Transmission Owner must also enter into an agreement with the Interconnection Customer, and it would be inefficient to require the Interconnection Customer to enter into separate agreements with the Transmission Owner and the Transmission Provider.

Comments

908. Interconnection Customers, such as Calpine, Dairyland Power, and PSEG, generally prefer a three party agreement because it facilitates ''one-stop shopping.'' RTOs, ISOs, and some Transmission Owners, including Cal ISO, PJM, and PG&E believe that, when the Transmission Provider is not the Transmission Owner, the former's responsibilities can be fully addressed in the Tariff and it need not be a Party to the interconnection agreement. They argue that the main purpose of the agreement is to establish a property-based relationship between the Interconnection Customer and the Transmission Owner. Also, PJM states that the NOPR LGIA is not structured to accommodate its use as a three party agreement, and should be changed to clearly define the roles of Transmission Owners and Transmission Providers.

Commission Conclusion

909. We are replacing the proposed words ''to the extent necessary'' with the words ''if the Transmission Owner is not the Transmission Provider'' in the Final Rule provision. Thus, both must sign the interconnection agreement when the Transmission Owner is not also the Transmission Provider. We believe that this better defines the relationship among the Parties in one document, protects the Interconnection Customer and, therefore, facilitates the development of new generation resources. In an RTO or ISO where the Transmission Provider is not the Transmission Owner, the RTO or ISO's compliance filing may propose a modified interconnection agreement that provides different respective rights and obligations in the region. In other cases, we do not believe that the three party agreement should create an undue burden for either entity.

D. Compliance Issues

1. Amendments to Transmission Providers' OATTs

910. The Commission is requiring all public utilities that own, control, or operate interstate transmission facilities to adopt the Final Rule LGIP and Final Rule LGIA as an amendment to their

[168] *E.g.,* Ameren, American Transmission, APS, Avista, Central Maine, the Coalition for Contract Terms, Dominion Resources, Duke Energy, FP&L, Mississippi PSC, NYTO, PacifiCorp, Progress Energy, PSNM, RTO West Utilities, Tucson Electric, and WestConnect RTO.

[169] *See* Richard J. Pierce, Regional Transmission Organizations: Federal Limitations Needed for Tort Liability, 23 Energy L.J. 63, 67–72 (2002).

OATTs within 60 days after the publication of the Final Rule in the **Federal Register**. RTOs and ISOs are required to make a compliance filing by this same deadline, but their compliance filings will be assessed using the independent entity variation standard as described in Part II.C.5 of this preamble.

2. Grandfathering of Existing Interconnection Agreements (ISOs and Non-ISOs)

911. The Commission is not requiring retroactive changes to individual interconnection agreements filed with the Commission prior to the effective date of this Final Rule.[170] Non-generic agreements submitted for approval by the Commission before the effective date of the Final Rule are grandfathered and will not be rejected outright for failing to conform to the Final Rule LGIA. Generic interconnection procedures submitted for approval or approved by the Commission before the effective date of the Final Rule must be resubmitted after being revised to conform to this Final Rule. For previously accepted individual interconnection agreements, the Commission's interconnection case law and policies govern.

912. As for requests for interconnection pending when the Final Rule takes effect, Final Rule LGIP Section 5.1 ensures that an Interconnection Customer that has been assigned a Queue Position before the issuance of the Final Rule retains that Queue Position. If an Interconnection Customer has signed any Interconnection Study agreement as of the effective date of the Final Rule, it has the option to either continue with the remaining Interconnection Studies under the Transmission Provider's existing study process or complete the remaining studies for which it does not have a signed Interconnection Study agreement under the provisions of the Final Rule LGIP.

3. Order No. 2001 and the Filing of Interconnection Agreements

913. Order No. 2001[171] revised the format through which traditional public utilities and power marketers must satisfy their obligation, pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's Regulations, to file agreements with the Commission.[172] Public utilities that have standard forms of agreement in their transmission tariffs, cost-based power sales tariffs, or tariffs for other generally applicable services no longer need to file conforming service agreements with the Commission. The filing requirement for conforming agreements is now satisfied by filing the standard form of agreement and an Electronic Quarterly Report.[173] Order No. 2001 also lifts the requirement that parties to an expiring conforming agreement file a notice of cancellation or a cancellation tariff sheet with the Commission. The public utility may simply remove the agreement from its Electric Quarterly Report in the quarter after it terminates.[174]

914. Non-conforming agreements, which are agreements for transmission, cost-based power sales and other generally applicable services that do not conform to an applicable standard form of agreement in a public utility's tariff, must continue to be filed with the Commission for approval before going into effect.[175] This category includes unexecuted agreements and agreements that do not precisely match the applicable standard form of service agreement.[176]

915. With respect to interconnection agreements, Order No. 2001 found that part 35 of the Commission's Regulations does not make a distinction between an interconnection agreement and other agreements for service that must be filed in conformance with this part of the Commission's Regulations.[177] Order No. 2001 therefore found that if an interconnection agreement conforms with a Commission-approved standard form of interconnection agreement, the utility does not have to file it but must report it in the Electric Quarterly Reports. Order No. 2001 also states that the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement, and continues until the Electric Quarterly Report filed after it expires or by order of the Commission. However, an Interconnection Agreement that does not precisely match the Transmission Provider's approved standard LGIA or that is unexecuted must be filed in its entirety. The Transmission Provider should clearly indicate where the agreement does not conform to its standard Interconnection Agreement, preferably through red-lining and strike-out.

III. Information Collection Statement

916. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency.[178] The information collection requirements in this Final Rule are identified under the Commission data collection, FERC–516 ''Electric Rate Schedule Filings.'' In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[179] the proposed reporting requirements in the subject rulemaking will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail *pamelabeverly .oirasubmission@omb.eop.gov*).

917. The regulated entities shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

918. *Public Reporting Burden:* The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–516:				
LGIPs & LGIAs	95	1	4	380

[170] Section 5 of the Final Rule LGIP governs the treatment of Queue Positions established prior to the effective date of the Final Rule. It also provides a transition process for Transmission Providers with Interconnection Requests outstanding when the Final Rule takes effect.

[171] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *reh'g denied,* Order 2001–A, 100 FERC ¶ 61,074 (2002); *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342 (2002); *further order,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

[172] *See* Order No. 2001 at P 12.

[173] *See id.* at P 18.

[174] *See id.* at P 249.

[175] *See id.* at P 19.

[176] *See id.* at P 196.

[177] *See id.* at P 200.

[178] 5 CFR 1320.11 (2003).

[179] 44 U.S.C. 3507(d) (2000).

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
LGIPs & LGIAs to be developed	81	1	6	486
	81	1	25	2,205
Recordkeeping	176	1	6	1,056
Totals				3,947

Total Annual Hours for Collection: (reporting (2,891) + recordkeeping (1,056) = 3,947 hours.

Information Collection Costs: The Commission sought comments about the time to comply with these requirements. No comments were received. Staffing requirements to review and modify existing LGIPs & LGIAs = $19,000 (95 respondents × $200 (4 hours @ $50 hourly rate)). To be added to this cost are the costs for review and preparation of new LGIPs and LGIAs or $125,550 (81 respondents × $1,550 (31 hours @ $50 hourly rate)) = $144,550. There are also the annualized costs for processing (operations) and maintenance (recordkeeping) of these documents = $70,752 (176 respondents × $402 ((6 hours @ $50 hourly rate) (for processing these documents) (operations) + (6 hours @$17 hourly rate) (recordkeeping/maintenance)). The Commission believes there will be a one-time start up costs to comply with these requirements for the procedures and agreements and then an additional $70,752 to maintain them. Total annualized costs = $215,302.

Titles: FERC–516 ''Electric Rate Schedule Filings.''

Action: Revision of Currently Approved Collection of Information.

OMB Control Nos.: 1902–0096.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: The final rule revises the reporting requirements contained in 18 CFR part 35. The Commission promulgates a standard LGIP and standard LGIA that public utilities must adopt. As noted in the Final Rule, the adoption of these procedures and agreement will (1) reduce interconnection costs and time for generators and Transmission Providers alike; (2) limit opportunities for Transmission Providers to favor their own generation; (3) facilitate market entry for generation competitors; and (4) encourage needed investment in generator and transmission infrastructure.

919. Interconnection plays a growing crucial role in bringing much needed generation into the market to meet the needs of electricity customers. However, requests for interconnection frequently result in complex technical disputes about interconnection feasibility, cost and cost responsibility. The Commission expects that a standard LGIP and standard LGIA will reduce interconnection costs and time for Interconnection Customers and Transmission Providers, resolve most interconnection disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and improve system reliability.

920. For information on the requirements, submitting comments on the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail *pamelabeverly.oirasubmission@omb.eop.gov*).

IV. Environmental Impact Statement

921. Commission Regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[180] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulations being amended,[181] and also for information gathering, analysis, and dissemination.[182] The Final Rule updates part 35 of the Commission's Regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's Regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

922. The Regulatory Flexibility Act (RFA)[183] requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission stated that the proposed regulations would impose requirements only on interstate transmission providers, which are not small businesses. The Commission certified that the proposed regulations would not have a significant adverse impact on a substantial number of small entities.

Comments

923. NRECA–APPA argues that the Commission failed to adequately account for the limited resources of small service providers when drafting the NOPR's RFA compliance statement. According to NRECA–APPA, the NOPR inconsistently suggests that it would apply to wholesale sales through Distribution Systems, but the RFA compliance language states that the regulations impose requirements only on interstate Transmission Providers.

Commission Conclusion

924. As explained above, only facilities owned by public utilities that own, control, or operate interstate transmission facilities (Transmission Providers) are subject to the Final Rule. Thus the Final Rule applies to the same class of entities subject to Order No. 888. In Order No. 888, the Commission concluded that the number of affected small entities did not constitute a ''substantial number'' under the RFA and noted that small entities would be eligible for a waiver.[184] The Commission adopts the same reasoning here. The waiver available for

[180] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[181] 18 CFR 380.4(a)(2)(ii) (2003).

[182] 18 CFR 380.4(a)(5) (2003).

[183] 5 U.S.C. 601–612 (2000).

[184] Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,897.

compliance with the Commission's Order No. 888[185] is also available for this Final Rule.

The Regulatory Flexibility Act of 1980 (RFA)[186] generally requires a description and analysis of the effect of proposed or Final Rules that will have significant economic impact on a substantial number of small entities or a certification that the rule will not have such an economic effect. In this Final Rule, the Commission is requiring public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to modify their OATTs, first established under Order No. 888, to include a standard LGIP and standard LGIA. In Order Numbers 888 and 889, the Commission certified that its rules would not impose a significant economic impact on a substantial number of small entities.[187] In Order No. 888, the Commission found that just over one-tenth of the total number of public utilities constitute small entities.[188] And of that number, several had already filed OATTs, reducing this number even further. As the Commission noted in Order No. 888 and reemphasizes here, waiver provisions are applicable here.[189] This waiver policy follows the provisions of the Small Business Act (SBA) by acknowledging the definition of a small electric utility. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh.[190] Continuing to make the waiver process available should address the concerns of those entities that ask the Commission to extend the ''small utility'' exception.[191] This Final Rule will promote consistent reporting practices for all reporting companies. It will not be a significant burden to industry, since several Transmission Providers have already filed interconnection procedures as part of their OATTs and much of the information is already being supplied under interconnection agreements throughout the industry. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

925. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in 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 20426.

926. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

927. User assistance is available for FERRIS and the Commission's Website during normal business hours from FERC Online Support (by phone at 1–866–208–3676 (toll free) or 202–502–6652, or by e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at (202) 502–8371, for TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*).

VII. Effective Date and Congressional Notification

928. This Final Rule will take effect on October 20, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[192] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[193]

[185] *See* 18 CFR 35.28(d) (2003).

[186] 5 U.S.C. 601–612 (2000).

[187] Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,898.

[188] 5 U.S.C. 601(3) (2000), citing to Section 3 of the Small Business Act, 15 U.S.C. 632 (2000). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominate in its field of operation.

[189] *See* 18 CFR 35.28(d) (2003).

[190] 13 CFR 121.61 (Sector 22, Utilities, North American Industry Classification System, NAICS) (2003).

[191] Maine PSC, Southwest Transmission, and SoCal Water District.

[192] 5 U.S.C. 804(2) (2000).

[193] 5 U.S.C. 801(a)(1)(A) (2000).

List of Subjects in 18 CFR Part 35

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

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 35, Chapter I, Title 18 of the Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 35.28, the last sentence in the paragraph (d) introductory text is revised, and paragraph (f) is added to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(d) *Waivers.* * * * Except as provided in paragraph (f) of this section, an application for waiver must be filed either:

* * * * *

(f) *Standard generator interconnection procedures and agreement.* (1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) or such other interconnection procedures and agreement as may be approved by the Commission consistent with Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection).

(i) The amendment required by paragraph (f)(1) of this section must be filed no later than October 20, 2003.

(ii) Any public utility that seeks a deviation from the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection), must demonstrate that the deviation is consistent with the principles of Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection).

(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) of this section are applicable to the standard

interconnection procedures and agreement.

(3) A public utility subject to the requirements of this paragraph may file a request for waiver of all or part of the requirements of this paragraph (f), for good cause shown. An application for waiver must be filed either:

(i) No later than October 20, 2003, or

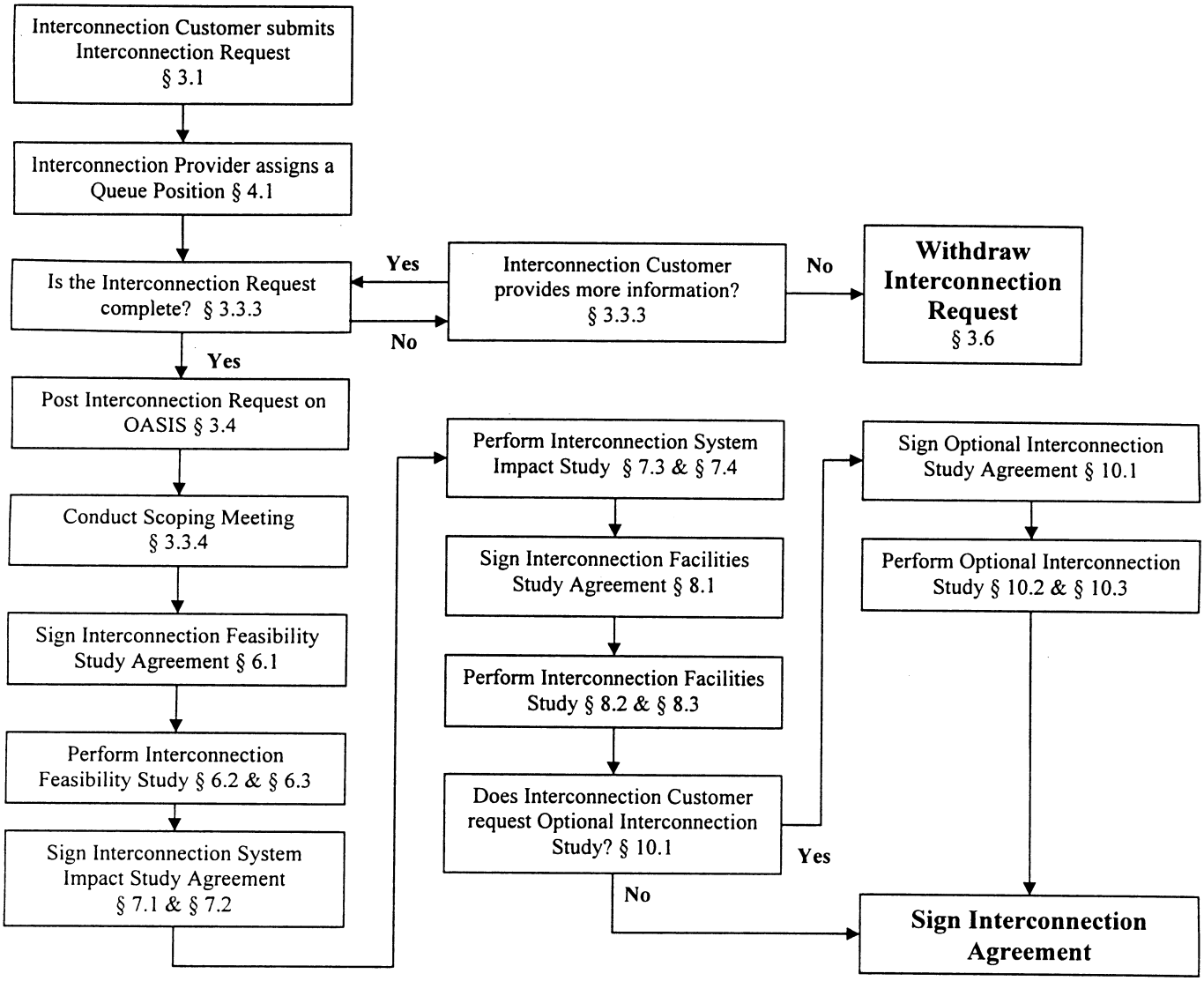
(ii) No later than 60 days prior to the time the public utility would otherwise have to comply with the requirements of this paragraph (f).

Note: The following Appendices will not be published in the *Code of Federal Regulations.*

BILLING CODE 6717–01–P

Appendix A

Flow Chart of the Large Generating Facility Interconnection Process



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Appendix B—Commenter Acronyms

ACEEE—American Council for an Energy Efficient Economy
AEP—American Electric Power System
Alabama MEA—Alabama Municipal Electric Authority
Alabama PSC—Alabama Public Service Commission
Ameren—Ameren Services Company
American Boiler—American Boiler Manufacturers Association
American Forest—American Forest & Paper Association
American National—American National Power, Inc.
American Superconductor—American Superconductor Corporation
American Transmission—American Transmission Company, LLC
American Wind Energy—American Wind Energy Association
APS—Arizona Public Service Company
Arkansas Coops—Arkansas Electric Cooperative Corporation
Arkansas PSC—Arkansas Public Service Commission
Avista—Avista Corporation
Baker & McKenzie—Baker & McKenzie
Basin Electric—Basin Electric Power Cooperative
Bergey Windpower—Bergey Windpower Company
BP Solar—BP Solar
BPA—Bonneville Power Administration
Bridger Valley—Bridger Valley Electric Association, Inc.
Bruder—Bruder, Gentile & Marcoux, L.L.P.
Bureau of Reclamation—Bureau of Reclamation, U.S. Department of Interior
Cal EOB—California Electricity Oversight Board
Cal Cogen—Cogeneration Association of California
Cal DWR—California Department of Water Resources
Cal ISO—California ISO
Calpine—Calpine Corporation
Central Maine—Central Maine Power Company, New York State Electric & Gas Corporation, and Rochester Gas & Electric Corporation
Central Vermont PSC—Central Vermont Public Service Corporation
Cinergy—Cinergy Services, Inc.
Cleco—Cleco Power, LLC
Coalition for Contract Terms—Coalition in Support of Retaining and/or Modifying Certain Commercial Contract Terms for the Standard Interconnection Agreement
Coalition for Pricing—Coalition for Equitable Transmission Pricing
Coalition for Services—Coalition for Appropriate Interconnection Services
Combined Heat & Power—U.S. Combined Heat and Power Association
Connecticut PUC—Connecticut Department of Public Utility Control
Construction Issues Coalition—Transmission Owner/Provider Construction Issues Coalition
Consumers—Consumers Energy Company
CPUC—California Public Utilities Commission
Cummins—Cummins, Inc.
Dairyland Power—Dairyland Power Cooperative
DG Alliance—Distributed Generation Alliance
Dominion Resources—Dominion Resources Services, Inc.
Duke Energy—Duke Energy Corporation
Dynegy—Dynegy Power Corporation
E3—The E Cubed Company, LLC
Edison Mission—Edison Mission Energy
EEI—Edison Electric Institute, Alliance of Energy Suppliers, EEI Transmission Group, EEI Distributed Generation Task Force and Tax Analysis Research Subcommittee
El Paso—El Paso Electric Company
ELCON—Electricity Consumers Resource Council
Encorp—Encorp, Inc.
Enercon—Enercon Engineering, Inc.
Energy Consortium—The Energy Consortium
Entergy—Entergy Services, Inc.
EPSA—The Electric Power Supply Association
EPUC—The Energy Producers and Users Coalition
Exelon—Exelon Corporation
Financial Security Issues Coalition—Transmission Owner/Provider Financial Security Issues Coalition
FirstEnergy—FirstEnergy Corporation
Florida PSC—Florida Public Service Commission
Florida RCC—Florida Reliability Coordinating Council
FP&L—Florida Power & Light Company
Georgia Transmission—Georgia Transmission Corporation
GE Power—GE Power Systems
Great Northern—Great Northern Power Development
Great River—Great River Energy
H Power—H Power
Idaho Power—Idaho Power Company
Ida Tech—Ida Tech
Imperial Irrigation—Imperial Irrigation District
Independent Market Operator—Independent Electricity Market Operator
Independent Producers—Independent Energy Producers Association
Industrial Energy—Industrial Energy Consumer Group
Interconnection Services Coalition—Transmission Owners Coalition for Appropriate Interconnection Services
International Paper—International Paper Company
ISO New England—ISO New England
Joint Consumer Advocates—Joint Consumer Advocates
Kentucky PSC—Public Service Commission of the Commonwealth of Kentucky
KeySpan—KeySpan-Glenwood Energy Center LLC, KeySpan-Port Jefferson Energy Center, LLC, and KeySpan-Ravenswood, Inc.
LADWP—Los Angeles Department of Water and Power
Lakeland—Lakeland Electric, Kissimmee Utility Authority, Gainesville Regional Utilities, and The City of Tallahassee, Florida
LPPC—Large Public Power Council
LG&E Energy—LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company
LIPA—Long Island Power Authority
Louisiana PSC—Louisiana Public Service Commission
Maine PSC—Maine Public Service Company
Maine Public Advocate—Maine Office of the Public Advocate
Maine PUC—Maine Public Utilities Commission
Maryland PSC—Public Service Commissions of Maryland, Delaware, and the District of Columbia
Memphis LG&W—Memphis Light, Gas and Water Division
MidAmerican—MidAmerican Energy Company
Midwest ISO—Midwest ISO
Midwest ISO TO—Midwest ISO Transmission Owners
Mirant—Mirant Americas, Inc.
Mississippi PSC—Mississippi Public Service Commission
Monongahela Power—Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and Allegheny Energy Supply Company, LLC
NARUC—National Association of Regulatory Utility Commissioners
National Energy Marketers—National Energy Marketers Association
National Grid—National Grid USA
Nebraska PPD—Nebraska Public Power District
NEMA—National Electrical Manufacturers Association
NE PCC—Northeast Power Coordinating Council
NERC—North America Electric Reliability Council
NE Utilities—Northeast Utilities Service Company
Nevada Power—Nevada Power Company
New York PSC—New York State Public Service Commission
NiSource—NiSource, Inc.
NMA—National Mining Association
North Carolina Commission—North Carolina Utilities Commission
Norton Energy—Norton Energy Storage, L.L.C.
NRECA–APPA—National Rural Electric Cooperative Association and the American Public Power Association
NRG—NRG Energy, Inc.
NSTAR—NSTAR Electric and Gas Corporation
NTTRC—National Transmission Technical Research Center
NYISO—New York ISO
NYTO—New York Transmission Owners
Ohio PUC—Public Utilities Commission of Ohio
Oklahoma G&E—Oklahoma Gas and Electric Company
Old Dominion—Old Dominion Electric Cooperative
ONEOK—ONEOK Power Marketing Company
PacifiCorp—PacifiCorp
Peabody—Peabody Energy Corporation
PGE—Portland General Electric Company
PG&E—Pacific Gas and Electric Company
Pinnacle West—Pinnacle West Energy Company
PJM—PJM International LLC
PJMTO—PJM Transmissions Owners Group
Plug Power—Plug Power

Progress Energy—Progress Energy, Inc.
PSEG—The PSEG Companies
PSNM—Public Service Company of New Mexico
Public Interest Organizations—Public Interest Organizations
Public Power Council—Public Power Council
RealEnergy—RealEnergy, Inc.
Reliant—Reliant Resources, Inc.
Rhode Island Consortium—The Energy Consortium of Rhode Island
RTO West Utilities—Certain RTO West Filing Utilities
Salt River Project—Salt River Project Agricultural Improvement and Power District
Schott—Schott Applied Power Corporation
Seminole Electric—Seminole Electric Cooperative
Sempra—Sempra Energy
Sithe—Sithe Energies, Inc.
SMUD—Sacramento Municipal Utility District
SoCal Edison—Southern California Edison Company
SoCal Water District—The Metropolitan Water District of Southern California
SoCal PPA—Southern California Public Power Authority
Solar Energy—Solar Energy Industries Association
Solar Turbines—Solar Turbines, Inc.
South Carolina PSA—South Carolina Public Service Authority
Southern—Southern Company Services, Inc.
Southwest Transmission—Southwest Transmission Cooperative
Sunflower Electric—Sunflower Electric Power Corporation
TANC—Transmission Agency of Northern California
TAPS—Transmission Access Policy Study Group
TECO Energy—TECO Energy, Inc.
Tenaska—Tenaska, Inc.
Tennessee Valley PPA—Tennessee Valley Public Power Association
Third Party Issues Coalition—Transmission Owner/Provider Third Party Issues Coalition
TI—Texas Instruments
TransEnergie—TransEnergie U.S. Ltd.
Tucson Electric—Tucson Electric Power Company
TVA—Tennessee Valley Authority
TXU—TXU Operating Companies
United Technologies—United Technologies Corporation
Vermont DPS—Vermont Department of Public Service
Western—Western Area Power Administration
WEPCO—Wisconsin Electric Power Company, Madison Gas and Electric Company, and Alliant Energy Corporate Services, Inc.
Westar—Westar Energy, Inc.
Westconnect RTO—Westconnect RTO, LLC
Williams Energy—Williams Energy Marketing and Trading Company
Wisconsin PSC—Wisconsin Public Service Commission
Xcel—XCEL Energy Services, Inc.

Appendix C—Standard Large Generator Interconnection Procedures (LGIP) Including Standard Large Generator Interconnection Agreement (LGIA)

Standard Large Generator Interconnection Procedures (LGIP) (Applicable to Generating Facilities That Exceed 20 MWs)

Table of Contents

Section 1. Definitions
Section 2. Scope and Application
2.1 Application of Standard Large Generator Interconnection Procedures
2.2 Comparability
2.3 Base Case Data
2.4 No Applicability to Transmission Service
Section 3. Interconnection Requests
3.1 General
3.2 Identification of Types of Interconnection Services
3.2.1 Energy Resource Interconnection Service (ER Interconnection Service)
3.2.1.1 The Product
3.2.1.2 The Study
3.2.2 Network Interconnection Service (NR Interconnection Service)
3.2.2.1 The Product
3.2.2.2 The Study
3.3 Valid Interconnection Request
3.3.1 Initiating an Interconnection Request
3.3.2 Acknowledgment of Interconnection Request
3.3.3 Deficiencies in Interconnection Request
3.3.4 Scoping Meeting
3.4 OASIS Posting
3.5 Coordination with Affected Systems
3.6 Withdrawal
Section 4. Queue Position
4.1 General
4.2 Clustering
4.3 Transferability of Queue Position
4.4 Modifications
4.4.1
4.4.2
4.4.3
4.4.4
4.4.5
Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Standard Large Generator Interconnection Procedures
5.1 Queue Position for Pending Requests
5.1.1
5.1.1.1
5.1.1.2
5.1.1.3
5.1.2 Transition Period
5.2 New Transmission Provider
Section 6. Interconnection Feasibility Study
6.1 Interconnection Feasibility Study Agreement
6.2 Scope of Interconnection Feasibility Study
6.3 Interconnection Feasibility Study Procedures
6.3.1 Meeting with Transmission Provider
6.4 Re-Study
Section 7. Interconnection System Impact Study
7.1 Interconnection System Impact Study Agreement
7.2 Execution of Interconnection System Impact Study Agreement
7.3 Scope of Interconnection System Impact Study
7.4 Interconnection System Impact Study Procedures
7.5 Meeting with Transmission Provider
7.6 Re-Study
Section 8. Interconnection Facilities Study
8.1 Interconnection Facilities Study Agreement
8.1.1
8.2 Scope of Interconnection Facilities Study
8.3 Interconnection Facilities Study Procedures
8.4 Meeting with Transmission Provider
8.5 Re-Study
Section 9. Engineering & Procurement (''E&P'') Agreement
Section 10. Optional Interconnection Study
10.1 Optional Interconnection Study Agreement
10.2 Scope of Optional Interconnection Study
10.3 Optional Interconnection Study Procedures
Section 11. Standard Large Generator Interconnection Agreement
11.1 Tender
11.2 Negotiation
11.3 Execution and Filing
11.4 Commencement of Interconnection Activities
Section 12. Construction of Transmission Provider's Interconnection Facilities and Network Upgrades
12.1 Schedule
12.2 Construction Sequencing
12.2.1 General
12.2.2 Advance Construction of Network Upgrades that are an Obligation of an Entity other than the Interconnection Customer
12.2.3 Advancing Construction of Network Upgrades that are part of an Expansion Plan of the Transmission Provider
12.2.4 Amended Interconnection System Impact Study
Section 13. Miscellaneous
13.1 Confidentiality
13.1.1 Scope
13.1.2 Release of Confidential Information
13.1.3 Rights
13.1.4 No Warranties
13.1.5 Standard of Care
13.1.6 Order of Disclosure
13.1.7 Remedies
13.1.8 Disclosure to FERC or Its Staff
13.1.9
13.1.10
13.1.11
13.2 Delegation of Responsibility
13.3 Obligation for Study Costs
13.4 Third Parties Conducting Studies
13.5 Disputes
13.5.1 Submission
13.5.2 External Arbitration Procedures
13.5.3 Arbitration Decisions
13.5.4 Costs

Appendices

Appendix 1—Interconnection Request
Appendix 2—Interconnection Feasibility Study Agreement

Appendix 3—Interconnection System Impact Study Agreement
Appendix 4—Interconnection Facilities Study Agreement
Appendix 5—Optional Interconnection Study Agreement
Appendix 6—Standard Large Generator Interconnection Agreement

Section 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation Date of a unit shall mean the date on which Interconnection Customer commences commercial operation of the unit at the Generating Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service (ER Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq*.

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and

expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Geneator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean that portion of a Generating Facility that is integrated with the Transmission Provider's Transmission System, designated as a Network Resource pursuant to the terms of the Tariff, and subjected to redispatch directives as ordered by the Transmission Provider in accordance with the Tariff.

Network Resource Interconnection Service (NR Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the

same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to commercial operation.

Section 2. Scope and Application

2.1 Application of Standard Large Generator Interconnection Procedures

Sections 2 through 13 apply to processing an Interconnection Request pertaining to a Large Generating Facility.

2.2 Comparability

The Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this LGIP. The Transmission Provider will use the same Reasonable Efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Generating Facilities are owned by Transmission Provider, its subsidiaries or Affiliates or others.

2.3 Base Case Data

Transmission Provider shall provide base power flow, short circuit and stability databases, including all underlying assumptions, and contingency list upon request subject to confidentiality provisions. Such databases and lists, hereinafter referred to as Base Cases, shall include all (1) generation projects and (ii) transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.

2.4 No Applicability to Transmission Service

Nothing in this LGIP shall constitute a request for transmission service or confer upon an Interconnection Customer any right to receive transmission service.

Section 3. Interconnection Requests

3.1 General

An Interconnection Customer shall submit to the Transmission Provider an Interconnection Request in the form of Appendix 1 to this LGIP and a refundable deposit of $10,000. The Transmission Provider shall apply the deposit toward the cost of an Interconnection Feasibility Study. The Interconnection Customer shall submit a separate Interconnection Request for each

site and may submit multiple Interconnection Requests for a single site. The Interconnection Customer must submit a deposit with each Interconnection Request even when more than one request is submitted for a single site. An Interconnection Request to evaluate one site at two different voltage levels shall be treated as two Interconnection Requests.

At Interconnection Customer's option, Transmission Provider and Interconnection Customer will identify alternative Point(s) of Interconnection and configurations at the Scoping Meeting to evaluate in this process and attempt to eliminate alternatives in a reasonable fashion given resources and information available. Interconnection Customer will select the definitive Point(s) of Interconnection to be studied no later than the execution of the Interconnection Feasibility Study Agreement.

3.2 Identification of Types of Interconnection Services

At the time the Interconnection Request is submitted, Interconnection Customer must request either ER Interconnection Service or NR Interconnection Service, as described; provided, however, any Interconnection Customer requesting NR Interconnection Service may also request that it be concurrently studied as an ER Interconnection Service, up to the point when an Interconnection Facility Study Agreement is executed. Interconnection Customer may then elect to proceed with NR Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

3.2.1 Energy Resource Interconnection Service (ER Interconnection Service)

3.2.1.1 *The Product.* ER Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. ER Interconnection Service does not in and of itself convey any transmission service.

3.2.1.2 *The Study.* The study consists of short circuit/fault duty, steady state (thermal and voltage) and stability analyses. The short circuit/fault duty analysis would identify direct Interconnection Facilities required and the Network Upgrades necessary to address short circuit issues associated with the Interconnection Facilities. The stability and steady state studies would identify necessary upgrades to allow full output of the proposed Large Generating Facility and would also identify the maximum allowed output, at the time the study is performed, of the interconnecting Large Generating Facility without requiring additional Network Upgrades.

3.2.2 Network Resource Interconnection Service (NR Interconnection Service)

3.2.2.1 *The Product.* The Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which the Transmission Provider integrates its Generating Facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. NR Interconnection Service Allows the Interconnection Customer 's Large Generating Facility to be designated as a Network Resource, up to the Large Generating Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur.

3.2.2.2 *The Study.* The Interconnection Study for NR Interconnection Service shall assure that the Interconnection Customer's Large Generating Facility meets the requirements for NR Interconnection Service and as a general matter, that such Large Generating Facility's interconnection is also studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Large Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission Provider's Transmission System, consistent with the Transmission Provider's reliability criteria and procedures. This approach assumes that some portion of existing Network Resources are displaced by the output of the Interconnection Customer's Large Generating Facility. NR Interconnection Service in and of itself does not convey any transmission service.

3.3 Valid Interconnection Request

3.3.1 Initiating an Interconnection Request

To initiate an Interconnection Request, Interconnection Customer must submit all of the following: (i) A $10,000 deposit, (ii) a completed application in the form of Appendix 1, and (iii) demonstration of Site Control or a posting of an additional deposit of $10,000. Such deposits shall be applied toward any Interconnection Studies pursuant to the Interconnection Request. If Interconnection Customer demonstrates Site Control within the cure period specified in Section 3.3.3 after submitting its Interconnection Request, the additional deposit shall be refundable; otherwise, all such deposit(s), additional and initial, become non-refundable.

The expected In-Service Date of the new Large Generating Facility or increase in capacity of the existing Generating Facility shall be no more than the process window for the regional expansion planning period (or in the absence of a regional planning process, the process window for the Transmission Provider's expansion planning period) not to exceed seven years from the date the Interconnection Request is received by the Transmission Provider, unless the Interconnection Customer demonstrates that engineering, permitting and construction of the new Large Generating Facility or increase in capacity of the existing Generating Facility will take longer than the regional expansion planning period. The In-Service Date may succeed the date the Interconnection Request is received by the Transmission Provider by a period up to ten years, or longer where the Interconnection Customer and Transmission Provider agree, such agreement not to be unreasonably withheld.

3.3.2 Acknowledgment of Interconnection Request

Transmission Provider shall acknowledge receipt of the Interconnection Request within five (5) Business Days of receipt of the request and attach a copy of the received Interconnection Request to the acknowledgement.

3.3.3 Deficiencies in Interconnection Request

An Interconnection Request will not be considered to be a valid request until all items in Section 3.3.1 have been received by the Transmission Provider. If an Interconnection Request fails to meet the requirements set forth in Section 3.3.1, the Transmission Provider shall notify the Interconnection Customer within five (5) Business Days of receipt of the initial Interconnection Request of the reasons for such failure and that the Interconnection Request does not constitute a valid request. Interconnection Customer shall provide the Transmission Provider the additional requested information needed to constitute a valid request within ten (10) Business Days after receipt of such notice. Failure by Interconnection Customer to comply with this Section 3.3.3 shall be treated in accordance with Section 3.6.

3.3.4 Scoping Meeting

Within ten (10) Business Days after receipt of a valid Interconnection Request, Transmission Provider shall establish a date agreeable to Interconnection Customer for the Scoping Meeting, and such date shall be no later than thirty (30) Calendar Days from receipt of the valid Interconnection Request, unless otherwise mutually agreed upon by the Parties.

The purpose of the Scoping Meeting shall be to discuss alternative interconnection options, to exchange information including any transmission data that would reasonably be expected to impact such interconnection options, to analyze such information and to determine the potential feasible Points of Interconnection. Transmission Provider and Interconnection Customer will bring to the meeting such technical data, including, but not limited to: (i) General facility loadings, (ii) general instability issues, (iii) general short circuit issues, (iv) general voltage issues, and (v) general reliability issues as may be reasonably required to accomplish the purpose of the meeting. Transmission Provider and Interconnection Customer will also bring to the meeting personnel and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. On the basis of the meeting, Interconnection Customer shall designate its Point of Interconnection, pursuant to Section 6.1, and one or more available alternative Point(s) of Interconnection. The duration of the meeting shall be sufficient to accomplish its purpose.

3.4 OASIS Posting

The Transmission Provider will maintain on its OASIS a list of all Interconnection

Requests. The list will identify, for each Interconnection Request: (i) The maximum summer and winter megawatt electrical output; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the projected In-Service Date; (v) the status of the Interconnection Request, including Queue Position; (vi) the type of Interconnection Service being requested; and (vii) the availability of any studies related to the Interconnection Request; (viii) the date of the Interconnection Request; (ix) the type of Generating Facility to be constructed (combined cycle, base load or combustion turbine and fuel type); and (x) for Interconnection Requests that have not resulted in a completed interconnection, an explanation as to why it was not completed. The list will not disclose the identity of the Interconnection Customer until the Interconnection Customer executes an LGIA or requests that the Transmission Provider file an unexecuted LGIA with FERC. The Transmission Provider shall post to its OASIS site any deviations from the study timelines set forth herein. Interconnection Study reports and Optional Interconnection Study reports shall be posted to the Transmission Provider's OASIS site subsequent to the meeting between the Interconnection Customer and the Transmission Provider to discuss the applicable study results. The Transmission Provider shall also post any known deviations in the Large Generating Facility's In-Service Date.

3.5 Coordination with Affected Systems

The Transmission Provider will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System Operators and, if possible, include those results in its applicable Interconnection Study within the time frame specified in this LGIP. The Transmission Provider will include such Affected System Operators in all meetings held with the Interconnection Customer as required by this LGIP. The Interconnection Customer will cooperate with the Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Transmission Provider which may be an Affected System shall cooperate with the Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

3.6 Withdrawal

The Interconnection Customer may withdraw its Interconnection Request at any time by written notice of such withdrawal to the Transmission Provider. In addition, if the Interconnection Customer fails to adhere to all requirements of this LGIP, except as provided in Section 13.5 (Disputes), the Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Interconnection Customer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Upon receipt of such written notice, the Interconnection Customer shall have fifteen (15) Business Days in which to either respond with information or actions that cures the deficiency or to notify the Transmission Provider of its intent to pursue Dispute Resolution.

Withdrawal shall result in the loss of the Interconnection Customer's Queue Position. If an Interconnection Customer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, the Interconnection Customer's Interconnection Request is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position. An Interconnection Customer that withdraws or is deemed to have withdrawn its Interconnection Request shall pay to the Transmission Provider all costs that the Transmission Provider prudently incurs with respect to that Interconnection Request prior to the Transmission Provider's receipt of notice described above. The Interconnection Customer must pay all monies due to the Transmission Provider before it is allowed to obtain any Interconnection Study data or results.

The Transmission Provider shall (i) update the OASIS Queue Position posting and (ii) refund to the Interconnection Customer any portion of the Interconnection Customer's's deposit or study payments that exceeds the costs that the Transmission Provider has incurred, including interest calculated in accordance with section 35.19a(a)(2) of FERC's regulations. In the event of such withdrawal, the Transmission Provider, subject to the confidentiality provisions of Section 13.1, shall provide, at Interconnection Customer's request, all information that the Transmission Provider developed for any completed study conducted up to the date of withdrawal of the Interconnection Request.

Section 4. Queue Position

4.1 General

The Transmission Provider shall assign a Queue Position based upon the date and time of receipt of the valid Interconnection Request; provided that, if the sole reason an Interconnection Request is not valid is the lack of required information on the application form, and the Interconnection Customer provides such information in accordance with Section 3.3.3, then the Transmission Provider shall assign the Interconnection Customer a Queue Position based on the date the application form was originally filed. Moving a Point of Interconnection shall result in a lowering of Queue Position if it is deemed a Material Modification under Section 4.4.3.

The Queue Position of each Interconnection Request will be used to determine the order of performing the Interconnection Studies and determination of cost responsibility for the facilities necessary to accommodate the Interconnection Request. A higher queued Interconnection Request is one that has been placed ''earlier'' in the queue in relation to another Interconnection Request that is lower queued.

4.2 Clustering

At Transmission Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the Interconnection System Impact Study.

Clustering shall be implemented on the basis of Queue Position. If Transmission Provider elects to study Interconnection Requests using Clustering, all Interconnection Requests received within a period not to exceed one hundred and eighty (180) Calendar Days, hereinafter referred to as the ''Queue Cluster Window'' shall be studied together without regard to the nature of the underlying Interconnection Service, whether ER Interconnection Service or NR Interconnection Service. Deadline for completing all Interconnection System Impact Studies for which an Interconnection System Impact Study Agreement has been executed during a Queue Cluster Window shall be in accordance with Section 7.4, for all Interconnection Requests assigned to the same Queue Cluster Window. Transmission Provider may study an Interconnection Request separately to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Large Generating Facility.

Clustering Interconnection System Impact Studies shall be conducted in such a manner to ensure the efficient implementation of the applicable regional transmission expansion plan in light of the Transmission System's capabilities at the time of each study.

The Queue Cluster Window shall have a fixed time interval based on fixed annual opening and closing dates. Any changes to the established Queue Cluster Window interval and opening or closing dates shall be announced with a posting on the Transmission Provider's OASIS beginning at least one hundred and eighty (180) Calendar Days in advance of the change and continuing thereafter through the end date of the first Queue Cluster Window that is to be modified.

4.3 Transferability of Queue Position

An Interconnection Customer may transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change.

4.4 Modifications

The Interconnection Customer shall submit to the Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. The Interconnection Customer shall retain its Queue Position if the modifications are in accordance with Sections 4.4.1, 4.4.2 or 4.4.5, or are determined not to be Material Modifications pursuant to Section 4.4.3.

Notwithstanding the above, during the course of the Interconnection Studies, either the Interconnection Customer or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request. To the extent the identified changes are

acceptable to the Transmission Provider and Interconnection Customer, such acceptance not to be unreasonably withheld, Transmission Provider shall modify the Point of Interconnection and/or configuration in accordance with such changes and proceed with any re-studies necessary to do so in accordance with Section 6.4, Section 7.6 and Section 8.5 as applicable and Interconnection Customer shall retain its Queue Position.

4.4.1 Prior to the return of the executed Interconnection System Impact Study Agreement to the Transmission Provider, modifications permitted under this Section shall include specifically: (a) A reduction up to 60 percent (MW) of electrical output of the proposed project; (b) modifying the technical parameters associated with the Large Generating Facility technology or the Large Generating Facility step-up transformer impedance characteristics; and (c) modifying the interconnection configuration. For plant increases, the incremental increase in plant output will go to the end of the queue for the purposes of cost allocation and study analysis.

4.4.2 Prior to the return of the executed Interconnection Facility Study Agreement to the Transmission Provider, the modifications permitted under this Section shall include specifically: (a) additional 15 percent decrease in plant size (MW), and (b) Large Generating Facility technical parameters associated with modifications to Large Generating Facility technology and transformer impedances; provided, however, the incremental costs associated with those modifications are the responsibility of the requesting Interconnection Customer.

4.4.3 Prior to making any modification other than those specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5, Interconnection Customer may first request that the Transmission Provider evaluate whether such modification is a Material Modification. In response to Interconnection Customer's request, the Transmission Provider shall evaluate the proposed modifications prior to making them and inform the Interconnection Customer in writing of whether the modifications would constitute a Material Modification. Any change to the Point of Interconnection shall constitute a Material Modification. The Interconnection Customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification.

4.4.4 Upon receipt of Interconnection Customer's request for modification permitted under this Section 4.4, the Transmission Provider shall commence and perform any necessary additional studies as soon as practicable, but in no event shall the Transmission Provider commence such studies later than thirty (30) Calendar Days after receiving notice of Interconnection Customer's request. Any additional studies resulting from such modification shall be done at Interconnection Customer's cost.

4.4.5 Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Large Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing.

Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Standard Large Generator Interconnection Procedures

5.1 Queue Position for Pending Requests

5.1.1 Any Interconnection Customer assigned a Queue Position prior to the effective date of this LGIP shall retain that Queue Position

5.1.1.1 If an Interconnection Study Agreement has not been executed as of the effective date of this LGIP, then such Interconnection Study, and any subsequent Interconnection Studies, shall be processed in accordance with this LGIP.

5.1.1.2 If an Interconnection Study Agreement has been executed prior to the effective date of this LGIP, such Interconnection Study shall be completed in accordance with the terms of such agreement. With respect to any remaining studies for which an Interconnection Customer has not signed an Interconnection Study Agreement prior to the effective date of the LGIP, the Transmission Provider must offer the Interconnection Customer the option of either continuing under the Transmission Provider's existing interconnection study process or going forward with the completion of the necessary Interconnection Studies (for which it does not have a signed Interconnection Studies Agreement) in accordance with this LGIP.

5.1.1.3 If an LGIA has been submitted to the Commission for approval before the effective date of the LGIP, then the LGIA would be grandfathered.

5.1.2 Transition Period

To the extent necessary, the Transmission Provider and Interconnection Customers with an outstanding request (*i.e.,* an Interconnection Request for which an LGIA has not been submitted to the Commission for approval as of the effective date of this LGIP) shall transition to this LGIP within a reasonable period of time not to exceed sixty (60) Calendar Days. The use of the term ''outstanding request'' herein shall mean any Interconnection Request, on the effective date of this LGIP: (i) That has been submitted but not yet accepted by the Transmission Provider; (ii) where the related interconnection agreement has not yet been submitted to the Commission for approval in executed or unexecuted form, (iii) where the relevant Interconnection Study Agreements have not yet been executed, or (iv) where any of the relevant Interconnection Studies are in process but not yet completed. Any Interconnection Customer with an outstanding request as of the effective date of this LGIP may request a reasonable extension of any deadline, otherwise applicable, if necessary to avoid undue hardship or prejudice to its Interconnection Request. A reasonable extension shall be granted by the Transmission Provider to the extent consistent with the intent and process provided for under this LGIP.

5.2 New Transmission Provider

If the Transmission Provider transfers control of its Transmission System to a successor Transmission Provider during the period when an Interconnection Request is pending, the original Transmission Provider shall transfer to the successor Transmission Provider any amount of the deposit or payment with interest thereon that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required by this LGIP shall be paid by or refunded to the Interconnection, as appropriate. The original Transmission Provider shall coordinate with the successor Transmission Provider to complete any Interconnection Study, as appropriate, that the original Transmission Provider has begun but has not completed. If the Transmission Provider has tendered a draft LGIA to the Interconnection Customer but the Interconnection Customer has not either executed the LGIA or requested the filing of an unexecuted LGIA with FERC, unless otherwise provided, the Interconnection Customer may elect to complete negotiations with the Transmission Provider or the successor Transmission Provider.

Section 6. Interconnection Feasibility Study

6.1 Interconnection Feasibility Study Agreement

Simultaneously with the acknowledgement of a valid Interconnection Request the Transmission Provider shall provide to Interconnection Customer an Interconnection Feasibility Study Agreement in the form of Appendix 2. The Interconnection Feasibility Study Agreement shall specify that Interconnection Customer is responsible for the actual cost of the Interconnection Feasibility Study. Within five (5) Business Days following the Scoping Meeting Interconnection Customer shall specify for inclusion in the attachment to the Interconnection Feasibility Study Agreement the Point(s) of Interconnection and any reasonable alternative Point(s) of Interconnection. Within five (5) Business Days following the Transmission Provider's receipt of such designation, Transmission Provider shall tender to Interconnection Customer the Interconnection Feasibility Study Agreement signed by Transmission Provider, which includes a good faith estimate of the cost for completing the Interconnection Feasibility Study. The Interconnection Customer shall execute and deliver to the Transmission Provider the Interconnection Feasibility Study Agreement along with a $10,000 deposit no later than thirty (30) Calendar Days after its receipt.

On or before the return of the executed Interconnection Feasibility Study Agreement to the Transmission Provider, the Interconnection Customer shall provide the technical data called for in Appendix 1, Attachment A.

If the Interconnection Feasibility Study uncovers any unexpected result(s) not contemplated during the Scoping Meeting, a substitute Point of Interconnection identified by either Interconnection Customer or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of Queue Position, and Re-studies shall be completed pursuant to Section 6.4 as applicable. For the

purpose of this Section 6.1, if the Transmission Provider and Interconnection Customer cannot agree on the substituted Point of Interconnection, then Interconnection Customer may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

6.2 Scope of Interconnection Feasibility Study

The Interconnection Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System.

The Interconnection Feasibility Study will consider the Base Case as well as all Generating Facilities (and with respect to (iii), any identified Network Upgrades) that, on the date the Interconnection Feasibility Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC. The Interconnection Feasibility Study will consist of a power flow and short circuit analysis. The Interconnection Feasibility Study will provide a list of facilities and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

6.3 Interconnection Feasibility Study Procedures

The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Transmission Provider shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after the Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement. At the request of the Interconnection Customer or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Feasibility Study, Transmission Provider shall notify the Interconnection Customer as to the schedule status of the Interconnection Feasibility Study. If the Transmission Provider is unable to complete the Interconnection Feasibility Study within that time period, it shall notify the Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Interconnection Customer supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Interconnection Feasibility Study, subject to confidentiality arrangements consistent with Section 13.1.

6.3.1 Meeting With Transmission Provider

Within ten (10) Business Days of providing an Interconnection Feasibility Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Feasibility Study.

6.4 Re-Study

If Re-Study of the Interconnection Feasibility Study is required due to a higher queued project dropping out of the queue, or a modification of a higher queued project subject to Section 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Interconnection Customer in writing. Such Re-Study shall take not longer than forty-five (45) Calendar Days from the date of the notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 7. Interconnection System Impact Study

7.1 Interconnection System Impact Study Agreement

Unless otherwise agreed, pursuant to the Scoping Meeting provided in Section 3.3.4, simultaneously with the delivery of the Interconnection Feasibility Study to the Interconnection Customer, the Transmission Provider shall provide to the Interconnection Customer an Interconnection System Impact Study Agreement in the form of Appendix 3 to this LGIP. The Interconnection System Impact Study Agreement shall provide that the Interconnection Customer shall compensate the Transmission Provider for the actual cost of the Interconnection System Impact Study. Within three (3) Business Days following the Interconnection Feasibility Study results meeting, the Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection System Impact Study.

7.2 Execution of Interconnection System Impact Study Agreement

The Interconnection Customer shall execute the Interconnection System Impact Study Agreement and deliver the executed Interconnection System Impact Study Agreement to the Transmission Provider no later than thirty (30) Calendar Days after its receipt along with demonstration of Site Control, and a $50,000 deposit.

If the Interconnection Customer does not provide all such technical data when it delivers the Interconnection System Impact Study Agreement, the Transmission Provider shall notify the Interconnection Customer of the deficiency within five (5) Business Days of the receipt of the executed Interconnection System Impact Study Agreement and the Interconnection Customer shall cure the deficiency within ten (10) Business Days of receipt of the notice, provided, however, such deficiency does not include failure to deliver the executed Interconnection System Impact Study Agreement or deposit.

If the Interconnection System Impact Study uncovers any unexpected result(s) not contemplated during the Scoping Meeting and the Interconnection Feasibility Study, a substitute Point of Interconnection identified by either Interconnection Customer or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of Queue Position, and restudies shall be completed pursuant to Section 7.6 as applicable. For the purpose of this Section 7.6, if the Transmission Provider and Interconnection Customer cannot agree on the substituted Point of Interconnection, then Interconnection Customer may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

7.3 Scope of Interconnection System Impact Study

The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System. The Interconnection System Impact Study will consider the Base Case as well as all Generating Facilities (and with respect to (iii) below, any identified Network Upgrades associated with such higher queued interconnection) that, on the date the Interconnection System Impact Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC.

The Interconnection System Impact Study will consist of a short circuit analysis, a stability analysis, and a power flow analysis. The Interconnection System Impact Study will state the assumptions upon which it is based; state the results of the analyses; and provide the requirements or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The Interconnection System Impact Study will provide a list of facilities that are required as a result of the Interconnection Request and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

7.4 Interconnection System Impact Study Procedures

The Transmission Provider shall coordinate the Interconnection System Impact Study with any Affected System that is affected by the Interconnection Request pursuant to Section 3.5 above. The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Transmission Provider shall use Reasonable Efforts to complete the Interconnection System Impact Study within ninety (90) Calendar Days after the receipt of the Interconnection System Impact Study Agreement or notification to proceed, study payment, and technical data. If Transmission Provider uses Clustering, the Transmission Provider shall use Reasonable Efforts to deliver a completed

Interconnection System Impact Study within ninety (90) Calendar Days after the close of the Queue Cluster Window.

At the request of the Interconnection Customer or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection System Impact Study, Transmission Provider shall notify the Interconnection Customer as to the schedule status of the Interconnection System Impact Study. If the Transmission Provider is unable to complete the Interconnection System Impact Study within the time period, it shall notify the Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Interconnection Customer all supporting documentation, workpapers and relevant pre-Interconnection Request and post-Interconnection Request power flow, short circuit and stability databases for the Interconnection System Impact Study, subject to confidentiality arrangements consistent with Section 13.1.

7.5 Meeting with Transmission Provider

Within ten (10) Business Days of providing an Interconnection System Impact Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection System Impact Study.

7.6 Re-Study

If Re-Study of the Interconnection System Impact Study is required due to a higher queued project dropping out of the queue, a modification of a higher queued project subject to 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Interconnection Customer in writing. Such Re-Study shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 8. Interconnection Facilities Study

8.1 Interconnection Facilities Study Agreement

Simultaneously with the delivery of the Interconnection System Impact Study to the Interconnection Customer, the Transmission Provider shall provide to the Interconnection Customer an Interconnection Facilities Study Agreement in the form of Appendix 4 to this LGIP. The Interconnection Facilities Study Agreement shall provide that the Interconnection Customer shall compensate the Transmission Provider for the actual cost of the Interconnection Facilities Study. Within three (3) Business Days following the Interconnection System Impact Study results meeting, the Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection Facilities Study. The Interconnection Customer shall execute the Interconnection Facilities Study Agreement and deliver the executed Interconnection Facilities Study Agreement to the Transmission Provider within thirty (30) Calendar Days after its receipt, together with the required technical data and the greater of $100,000 or Interconnection Customer's portion of the estimated monthly cost of conducting the Interconnection Facilities Study.

8.1.1 Transmission Provider shall invoice Interconnection Customer on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

8.2 Scope of Interconnection Facilities Study

The Interconnection Facilities Study shall specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facility to the Transmission System. The Interconnection Facilities Study shall also identify the electrical switching configuration of the connection equipment, including, without limitation: the transformer, switchgear, meters, and other station equipment; the nature and estimated cost of any Transmission Provider's Interconnection Facilities and Network Upgrades necessary to accomplish the interconnection; and an estimate of the time required to complete the construction and installation of such facilities.

8.3 Interconnection Facilities Study Procedures

The Transmission Provider shall coordinate the Interconnection Facilities Study with any Affected System pursuant to Section 3.5 above. The Transmission Provider shall utilize existing studies to the extent practicable in performing the Interconnection Facilities Study. The Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Interconnection Customer within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: ninety (90) Calendar Days, with no more than a +/-20 percent cost estimate contained in the report; or one hundred eighty (180) Calendar Days, if the Interconnection Customer requests a +/-10 percent cost estimate.

At the request of the Interconnection Customer or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Facilities Study, Transmission Provider shall notify the Interconnection Customer as to the schedule status of the Interconnection Facilities Study. If the Transmission Provider is unable to complete the Interconnection Facilities Study and issue a draft Interconnection Facilities Study report within the time required, it shall notify the Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required.

The Interconnection Customer may, within thirty (30) Calendar Days after receipt of the draft report, provide written comments to the Transmission Provider, which the Transmission Provider shall include in the final report. The Transmission Provider shall issue the final Interconnection Facilities Study report within fifteen (15) Business Days of receiving the Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it will not provide comments. The Transmission Provider may reasonably extend such fifteen-day period upon notice to the Interconnection Customer if the Interconnection Customer's comments require the Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, the Transmission Provider shall provide the Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 13.1.

8.4 Meeting with Transmission Provider

Within ten (10) Business Days of providing a draft Interconnection Facilities Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.

8.5 Re-Study

If Re-Study of the Interconnection Facilities Study is required due to a higher queued project dropping out of the queue or a modification of a higher queued project pursuant to Section 4.4, Transmission Provider shall so notify Interconnection Customer in writing. Such Re-Study shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 9. Engineering & Procurement ("E&P") Agreement

Prior to executing an LGIA, an Interconnection Customer may, in order to advance the implementation of its interconnection, request and Transmission Provider shall offer the Interconnection Customer, an E&P Agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. However, the Transmission Provider shall not be obligated to offer an E&P Agreement if Interconnection Customer is in Dispute Resolution as a result of an allegation that Interconnection Customer has failed to meet any milestones or comply with any prerequisites specified in other parts of the LGIP. The E&P Agreement is an optional procedure and it will not alter the Interconnection Customer's Queue Position or In-Service Date. The E&P Agreement shall provide for the Interconnection Customer to pay the cost of all activities authorized by the Interconnection Customer and to make advance payments or provide other satisfactory security for such costs.

The Interconnection Customer shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for its interconnection, which cannot be mitigated as hereafter described, whether or not such items or equipment later become unnecessary. If Interconnection Customer withdraws its application for interconnection or either party terminates the E&P Agreement, to the extent the equipment ordered can be canceled under reasonable terms, Interconnection Customer shall be obligated to pay the associated cancellation costs. To the extent that the equipment cannot be reasonably canceled, Transmission Provider may elect: (i) To take title to the equipment, in which event Transmission Provider shall refund Interconnection Customer any amounts paid by Interconnection Customer for such equipment and shall pay the cost of delivery of such equipment, or (ii) to transfer title to and deliver such equipment to Interconnection Customer, in which event Interconnection Customer shall pay any unpaid balance and cost of delivery of such equipment.

Section 10. Optional Interconnection Study

10.1 Optional Interconnection Study Agreement

On or after the date when the Interconnection Customer receives Interconnection System Impact Study results, the Interconnection Customer may request, and the Transmission Provider shall perform a reasonable number of Optional Studies. The request shall describe the assumptions that the Interconnection Customer wishes the Transmission Provider to study within the scope described in Section 10.2. Within five (5) Business Days after receipt of a request for an Optional Interconnection Study, the Transmission Provider shall provide to the Interconnection Customer an Optional Interconnection Study Agreement in the form of Appendix 5.

The Optional Interconnection Study Agreement shall: (i) Specify the technical data that the Interconnection Customer must provide for each phase of the Optional Interconnection Study, (ii) specify Interconnection Customer's assumptions as to which Interconnection Requests with earlier queue priority dates will be excluded from the Optional Interconnection Study case and assumptions as to the type of interconnection service for Interconnection Requests remaining in the Optional Interconnection Study case, and (iii) the Transmission Provider's estimate of the cost of the Optional Interconnection Study. To the extent known by the Transmission Provider, such estimate shall include any costs expected to be incurred by any Affected System whose participation is necessary to complete the Optional Interconnection Study. Notwithstanding the above, the Transmission Provider shall not be required as a result of an Optional Interconnection Study request to conduct any additional Interconnection Studies with respect to any other Interconnection Request.

The Interconnection Customer shall execute the Optional Interconnection Study Agreement within ten (10) Business Days of receipt and deliver the Optional Interconnection Study Agreement, the technical data and a $10,000 deposit to the Transmission Provider.

10.2 Scope of Optional Interconnection Study

The Optional Interconnection Study will consist of a sensitivity analysis based on the assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement. The Optional Interconnection Study will also identify the Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or Interconnection Service based upon the results of the Optional Interconnection Study. The Optional Interconnection Study shall be performed solely for informational purposes. The Transmission Provider shall use Reasonable Efforts to coordinate the study with any Affected Systems that may be affected by the types of Interconnection Services that are being studied. The Transmission Provider shall utilize existing studies to the extent practicable in conducting the Optional Interconnection Study.

10.3 Optional Interconnection Study Procedures

The executed Optional Interconnection Study Agreement, the prepayment, and technical and other data called for therein must be provided to the Transmission Provider within ten (10) Business Days of Interconnection Customer receipt of the Optional Interconnection Study Agreement. The Transmission Provider shall use Reasonable Efforts to complete the Optional Interconnection Study within a mutually agreed upon time period specified within the Optional Interconnection Study Agreement. If the Transmission Provider is unable to complete the Optional Interconnection Study within such time period, it shall notify the Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required. Any difference between the study payment and the actual cost of the study shall be paid to the Transmission Provider or refunded to the Interconnection Customer, as appropriate. Upon request, the Transmission Provider shall provide the Interconnection Customer supporting documentation and workpapers and databases or data developed in the preparation of the Optional Interconnection Study, subject to confidentiality arrangements consistent with Section 13.1.

Section 11. Standard Large Generator Interconnection Agreement (LGIA)

11.1 Tender

Simultaneously with the issuance of the draft Interconnection Facilities Study report to the Interconnection Customer, the Transmission Provider shall tender to the Generator a draft LGIA together with draft appendices completed to the extent practicable. The draft LGIA shall be in the form of the Transmission Provider's Commission-approved standard form LGIA, which is in Appendix 6. Within thirty (30) Calendar Days after the issuance of the draft Interconnection Facilities Study Report, the Transmission Provider shall tender the completed draft LGIA appendices.

11.2 Negotiation

Notwithstanding Section 11.1, at the request of the Interconnection Customer the Transmission Provider shall begin negotiations with the Interconnection Customer concerning the appendices to the LGIA at any time after the Interconnection Customer executes the Interconnection Facilities Study Agreement. The Transmission Provider and the Interconnection Customer shall negotiate concerning any disputed provisions of the appendices to the draft LGIA for not more than sixty (60) Calendar Days after tender of the final Interconnection Facilities Study Report. If the Interconnection Customer determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the LGIA pursuant to Section 11.1 and request submission of the unexecuted LGIA with FERC or initiate Dispute Resolution procedures pursuant to Section 13.5. If the Interconnection Customer requests termination of the negotiations, but within sixty (60) Calendar Days thereafter fails to request either the filing of the unexecuted LGIA or initiate Dispute Resolution, it shall be deemed to have withdrawn its Interconnection Request. Unless otherwise agreed by the Parties, if the Interconnection Customer has not executed the LGIA, requested filing of an unexecuted LGIA, or initiated Dispute Resolution procedures pursuant to Section 13.5 within sixty days of tender of completed draft of the LGIA appendices, it shall be deemed to have withdrawn its Interconnection Request. The Transmission Provider shall provide to the Interconnection Customer a final LGIA within fifteen (15) Business Days after the completion of the negotiation process.

11.3 Execution and Filing

Within fifteen (15) Business Days after receipt of the final LGIA, the Interconnection Customer shall provide the Transmission Provider (A) reasonable evidence that continued Site Control or (B) posting of $250,000, non-refundable additional security, which shall be applied toward future construction costs. At the same time, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at the Interconnection Customer election, has been achieved: (i) The execution of a contract for the supply or transportation of fuel to the Large Generating Facility; (ii) the execution of a contract for the supply of cooling water to the Large Generating Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility; (iv) execution of a contract for the sale of electric energy or capacity from the Large Generating Facility; or (v) application for an air, water, or land use permit.

The Interconnection Customer shall either: (i) Execute two originals of the tendered

LGIA and return them to the Transmission Provider; or (ii) request in writing that the Transmission Provider file with FERC an LGIA in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of the tendered LGIA (if it does not conform with a Commission-approved standard form of interconnection agreement) or the request to file an unexecuted LGIA, the Transmission Provider shall file the LGIA with FERC, together with its explanation of any matters as to which the Interconnection Customer and the Transmission Provider disagree and support for the costs that the Transmission Provider proposes to charge to the Interconnection Customer under the LGIA. An unexecuted LGIA should contain terms and conditions deemed appropriate by the Transmission Provider for the Interconnection Request. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LGIA, they may proceed pending Commission action.

11.4 Commencement of Interconnection Activities

If the Interconnection Customer executes the final LGIA, the Transmission Provider and the Interconnection Customer shall perform their respective obligations in accordance with the terms of the LGIA, subject to modification by FERC. Upon submission of an unexecuted LGIA, both Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted LGIA, subject to modification by FERC.

Section 12. Construction of Transmission Provider's Interconnection Facilities and Network Upgrades

12.1 Schedule

The Transmission Provider and the Interconnection Customer shall negotiate in good faith concerning a schedule for the construction of the Transmission Provider's Interconnection Facilities and the Network Upgrades.

12.2 Construction Sequencing

12.2.1 General

In general, the In-Service Date of an Interconnection Customers seeking interconnection to the Transmission System will determine the sequence of construction of Network Upgrades.

12.2.2 Advance Construction of Network Upgrades That Are an Obligation of an Entity Other Than the Interconnection Customer

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that the Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Were assumed in the Interconnection Studies for such Interconnection Customer, (ii) are necessary to support such In-Service Date, and (iii) would otherwise not be completed, pursuant to a contractual obligation of an entity other than the Interconnection Customer that is seeking interconnection to the Transmission System, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that the Interconnection Customer commits to pay Transmission Provider: (i) Any associated expediting costs and (ii) the cost of such Network Upgrades.

The Transmission Provider will refund to the Interconnection Customer both the expediting costs and the cost of Network Upgrades, in accordance with Article 11.4 of the LGIA. Consequently, the entity with a contractual obligation to construct such Network Upgrades shall be obligated to pay only that portion of the costs of the Network Upgrades that Transmission Provider has not refunded to the Interconnection Customer. Payment by that entity shall be due on the date that it would have been due had there been no request for advance construction. The Transmission Provider shall forward to the Interconnection Customer the amount paid by the entity with a contractual obligation to construct the Network Upgrades as payment in full for the outstanding balance owed to the Interconnection Customer. The Transmission Provider then shall refund to that entity the amount that it paid for the Network Upgrades, in accordance with Article 11.4 of the LGIA

12.2.3 Advancing Construction of Network Upgrades That Are Part of an Expansion Plan of the Transmission Provider

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that the Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Are necessary to support such In-Service Date and (ii) would otherwise not be completed, pursuant to an expansion plan of the Transmission Provider, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that the Interconnection Customer commits to pay Transmission Provider any associated expediting costs. The Interconnection Customer shall be entitled to transmission credits, if any, for any expediting costs paid.

12.2.4 Amended Interconnection System Impact Study

An Interconnection System Impact Study will be amended to determine the facilities necessary to support the requested In-Service Date. This amended study will include those transmission and Large Generating Facilities that are expected to be in service on or before the requested In-Service Date.

Section 13. Miscellaneous

13.1 Confidentiality

Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of an LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.1.1 Scope

Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of the LGIA; or (6) is required, in accordance with Section 13.1.6, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under the LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.1.2 Release of Confidential Information

Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Section 13.1 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Section 13.1.

13.1.3 Rights

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.1.4 No Warranties

By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.1.5 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under these procedures or its regulatory requirements.

13.1.6 Order of Disclosure

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of the LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.1.7 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Section 13.1. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Section 13.1, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Section 13.1, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Section 13.1.

13.1.8 Disclosure to FERC or Its Staff

Notwithstanding anything in this Section 13.1 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to the LGIP, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to the LGIA when its is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112.

13.1.9 Subject to the exception in Section 13.1.8, any information that a Party claims is competitively sensitive, commercial or financial information (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIP or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a subregional, regional or national reliability organization or planning group. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

13.1.10 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

13.1.11 The Transmission Provider shall, at Interconnection Customer's election, destroy, in a confidential manner, or return the Confidential Information provided at the time of Confidential Information is no longer needed.

13.2 Delegation of Responsibility

The Transmission Provider may use the services of subcontractors as it deems appropriate to perform its obligations under this LGIP. Transmission Provider shall remain primarily liable to the Interconnection Customer for the performance of such subcontractors and compliance with its obligations of this LGIP. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

13.3 Obligation for Study Costs

Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Studies. Any difference between the study deposit and the actual cost of the applicable Interconnection Study shall be paid by or refunded, except as otherwise provided herein, to Interconnection Customer or offset against the cost of any future Interconnection Studies associated with the applicable Interconnection Request prior to beginning of any such future Interconnection Studies. Any invoices for Interconnection Studies shall include a detailed and itemized accounting of the cost of each Interconnection Study. Interconnection Customer shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefor. The Transmission Provider shall not be obligated to perform or continue to perform any studies unless Interconnection Customer has paid all undisputed amounts in compliance herewith.

13.4 Third Parties Conducting Studies

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) the Interconnection Customer receives notice pursuant to Sections 6.3, 7.4 or 8.3 that the Transmission Provider will not complete an Interconnection Study within the applicable timeframe for such Interconnection Study, or (iii) the Interconnection Customer receives neither the Interconnection Study nor a notice under Sections 6.3, 7.4 or 8.3 within the applicable timeframe for such Interconnection Study, then the Interconnection Customer may require the Transmission Provider to utilize a third party consultant reasonably acceptable to Interconnection Customer and Transmission Provider to perform such Interconnection Study under the direction of the Transmission Provider. At other times, Transmission Provider may also utilize a third party consultant to perform such Interconnection Study, either in response to a general request of the Interconnection Customer, or on its own volition.

In all cases, use of a third party consultant shall be in accord with Article 26 of the LGIA (Subcontractors) and limited to situations where the Transmission Provider determines that doing so will help maintain or accelerate the study process for the Interconnection Customer's pending Interconnection Request and not interfere with the Transmission Provider's progress on Interconnection Studies for other pending Interconnection Requests. In cases where the Interconnection Customer requests use of a third party consultant to perform such Interconnection Study, Interconnection Customer and Transmission Provider shall negotiate all of the pertinent terms and conditions, including

reimbursement arrangements and the estimated study completion date and study review deadline. Transmission Provider shall convey all workpapers, data bases, study results and all other supporting documentation prepared to date with respect to the Interconnection Request as soon as practicable upon Interconnection Customer's request subject to the confidentiality provision in Section 13.1. In any case, such third party contract may be entered into with either the Interconnection Customer or the Transmission Provider at the Transmission Provider's discretion. In the case of (iii) the Interconnection Customer maintains its right to submit a claim to Dispute Resolution to recover the costs of such third party study. Such third party consultant shall be required to comply with this LGIP, Article 26 of the LGIA (Subcontractors), and the relevant OATT procedures and protocols as would apply if the Transmission Provider were to conduct the Interconnection Study and shall use the information provided to it solely for purposes of performing such services and for no other purposes. The Transmission Provider shall cooperate with such third party consultant and Interconnection Customer to complete and issue the Interconnection Study in the shortest reasonable time.

13.5 Disputes

13.5.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with the LGIA, the LGIP, or their performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

13.5.2 External Arbitration Procedures

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 13, the terms of this Section 13 shall prevail.

13.5.3 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the LGIA and LGIP and shall have no power to modify or change any provision of the LGIA and LGIP in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

13.5.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Appendices to LGIP

Appendix 1—Interconnection Request
Appendix 2—Interconnection Feasibility Study Agreement
Appendix 3—Interconnection System Impact Study Agreement
Appendix 4—Interconnection Facilities Study Agreement
Appendix 5—Optional Interconnection Study Agreement
Appendix 6—Standard Large Generator Interconnection Agreement

Appendix 1 to LGIP—Interconnection Request

1. The undersigned Interconnection Customer submits this request to interconnect its Large Generating Facility with the Transmission Provider's Transmission System pursuant to a Tariff.

2. This Interconnection Request is for (check one):

__A proposed new Large Generating Facility.

__An increase in the generating capacity or a Material Modification of an existing Generating Facility.

3. The type of interconnection service requested (check one or both as appropriate):

__[It is intended that the types of interconnection services specified in Article 4 of the LGIA be placed here.]

4. The Interconnection Customer provides the following information:

a. Address or location or the proposed new Large Generating Facility site (to the extent known) or, in the case of an existing Generating Facility, the name and specific location of the existing Generating Facility;

b. Maximum summer at __ degrees C and winter at __ degrees C megawatt electrical output of the proposed new Large Generating Facility or the amount of megawatt increase in the generating capacity of an existing Generating Facility;

c. General description of the equipment configuration;

d. Commercial Operation Date by day, month, and year;

e. Name, address, telephone number, and e-mail address of the Interconnection Customer's contact person;

f. Approximate location of the proposed Point of Interconnection (optional); and

g. Interconnection Customer Data (set forth in Attachment A).

5. Applicable deposit amount as specified in the LGIP.

6. Evidence of Site Control as specified in the LGIP (check one):

__Is attached to this Interconnection Request.
__Will be provided at a later date in accordance with this LGIP.

7. This Interconnection Request shall be submitted to the representative indicated below:

[To be completed by Transmission Provider]

8. Representative of the Interconnection Customer to contact:

[To be completed by Interconnection Customer]

9. This Interconnection Request is submitted by:

Name of Interconnection Customer:

_____

By (signature): _____
Name (type or print): _____
Title: _____
Date: _____

Large Generating Facility Data Unit Ratings

kVA _____ °F _____ Voltage _____
Power Factor _____
Speed (RPM) _____ Connection (*e.g.* Wye) _____
Short Circuit Ratio _____ Frequency, Hertz _____
Stator Amperes at Rated kVA _____
Field Volts _____
Max Turbine MW _____ °F _____

Combined Turbine-Generator-Exciter Inertia Data

Inertia Constant, H= _____ kW sec/kVA
Moment-of-Inertia, WR2 = _____ lb. ft.2

	Direct axis	Quadrature axis
Reactance Data (Per Unit-Rated KVA):		
Synchronous—saturated	Xdv _____	Xqv _____
Synchronous—unsaturated	Xdi _____	Xqi _____
Transient—saturated	X′dv _____	X′qv _____
Transient—unsaturated	X′di _____	X′qi _____
Subtransient—saturated	X′dv _____	X′qv _____
Subtransient—unsaturated	X′di _____	X′qi _____
Negative Sequence—saturated	X2v _____	
Negative Sequence—unsaturated	X2i _____	
Zero Sequence—saturated	X0v _____	
Zero Sequence—unsaturated	X0i _____	
Leakage Reactance	Xlm _____	
Field Time Constant Data (Sec):		
Open Circuit	T′do _____	T′qo _____
Three-Phase Short Circuit Transient	T′d3 _____	T′q _____
Line to Line Short Circuit Transient	T′d2 _____	
Line to Neutral Short Circuit Transient	T′d1 _____	
Short Circuit Subtransient	T′d _____	T′q _____
Open Circuit Subtransient	T′do _____	T′qo _____
Armature Time Constant Data (Sec):		
Three Phase Short Circuit	Ta3 _____	
Line to Line Short Circuit	Ta2 _____	
Line to Neutral Short Circuit	Ta1 _____	

Note: If requested information is not applicable, indicate by marking ''N/A.''

MW Capability and Plant Configuration Large Generating Facility Data

Armature Winding Resistance Data (Per Unit)

Positive R1_____
Negative R2_____
Zero R0_____

Rotor Short Time Thermal Capacity I22t = _____

Field Current at Rated kVA, Armature Voltage and PF = _____ amps
Field Current at Rated kVA and Armature Voltage, 0 PF = _____ amps
Three Phase Armature Winding Capacitance = _____ microfarad
Field Winding Resistance = _____ohms _____ °C
Armature Winding Resistance (Per Phase) = _____ ohms _____°C

Curves

Provide Saturation, Vee, Reactive Capability, Capacity Temperature Correction curves. Designate normal and emergency Hydrogen Pressure operating range for multiple curves.

Generator Step-Up Transformer Data

Ratings

Capacity Self-cooled/maximum nameplate _____kVA
Voltage Ratio Generator side/System side _____kV
Winding Connections Low V/High V (Delta or Wye) _____
Fixed Taps Available _____
Present Tap Setting _____

Impedance

Positive Z1 (on self-cooled kVA rating)_____ % _____ X/R
Zero Z0 (on self-cooled kVA rating)_____ % _____ X/R

Excitation System Data

Identify appropriate IEEE model block diagram of excitation system and power system stabilizer (PSS) for computer representation in power system stability simulations and the corresponding excitation system and PSS constants for use in the model.

Governor System Data

Identify appropriate IEEE model block diagram of governor system for computer representation in power system stability simulations and the corresponding governor system constants for use in the model.

Wind Generators

Number of generators to be interconnected pursuant to this Interconnection Request: _____
Elevation: _____
_____Single Phase
_____Three Phase
Inverter manufacturer, model name, number, and version:

_____

List of adjustable setpoints for the protective equipment or software:

_____

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet must be supplied with the Interconnection Request. If other data sheets are more appropriate to the proposed device then they shall be provided and discussed at Scoping Meeting.

Induction Generators

(*) Field Volts: _____
(*) Field Amperes: _____
(*) Motoring Power (kW): _____
(*) Neutral Grounding Resistor (If Applicable): _____
(*) I_2^2t or K (Heating Time Constant): _____
(*) Rotor Resistance: _____
(*) Stator Resistance: _____
(*) Stator Reactance: _____
(*) Rotor Reactance: _____
(*) Magnetizing Reactance: _____
(*) Short Circuit Reactance: _____
(*) Exciting Current: _____
(*) Temperature Rise: _____
(*) Frame Size: _____
(*) Design Letter: _____
(*) Reactive Power Required In Vars (No Load): _____
(*) Reactive Power Required In Vars (Full Load): _____
(*) Total Rotating Inertia, H: _____Per Unit on KVA Base _____

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

Appendix 2 to LGIP—Interconnection Feasibility Study Agreement

This Agreement is made and entered into this____day of_____, 20__by and between_____, a_____ organized and existing under the laws of the State of_____, (''Interconnection Customer,'') and _____ a _____ existing under the laws of the State of_____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; and

Whereas, Interconnection Customer has requested the Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Large Generating Facility to the

Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Section 6.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection Feasibility Study shall be based on the technical information provided by Interconnection Customer in the Interconnection Request, as may be modified as the result of the Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Section 3.3.4 of the LGIP. If, after the designation of the Point of Interconnection pursuant to Section 3.3.4 of the LGIP, Interconnection Customer modifies its Interconnection Request pursuant to Section 4.4, the time to complete the Interconnection Feasibility Study may be extended.

5.0 The Interconnection Feasibility Study report shall provide the following information:

—Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
—Preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection; and
—Preliminary description and non-bonding estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit and power flow issues.

6.0 The Interconnection Customer shall provide a deposit of $10,000 for the performance of the Interconnection Feasibility Study.

Upon receipt of the Interconnection Feasibility Study the Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Feasibility Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to the Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Interconnection Feasibility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Scoping Meeting held on_____:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider]

Appendix 3 to LGIP—Interconnection System Impact Study Agreement

This agreement is made and entered into this____day of_____, 20__ by and between_____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a _____existing under the laws of the State of_____ , (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System;

Whereas, the Transmission Provider has completed an Interconnection Feasibility Study (the ''Feasibility Study'') and provided the results of said study to the Interconnection Customer;[1] and

Whereas, Interconnection Customer has requested the Transmission Provider to perform an Interconnection System Impact Study to assess the impact of interconnecting the Large Generating Facility to the Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection System Impact Study consistent with Section 7.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Interconnection System Impact Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study and the technical information provided by Interconnection Customer in the Interconnection Request, subject to any modifications in accordance with Section 4.4 of the LGIP. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Customer System Impact Study. If Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the Interconnection System Impact Study may be extended.

5.0 The Interconnection System Impact Study report shall provide the following information:

—Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
—Identification of any thermal overload or voltage limit violations resulting from the interconnection;
—Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and
—Description and non-binding, good faith estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 The Interconnection Customer shall provide a deposit of $50,000 for the performance of the Interconnection System Impact Study. The Transmission Provider's good faith estimate for the time of completion of the Interconnection System Impact Study is [insert date].

Upon receipt of the Interconnection System Impact Study, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection System Impact Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to the Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Interconnection System Impact Study Agreement shall

[1] This recital to be omitted if Interconnection Customer has elected to forego the Interconnection Feasibility Study.

include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.]

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Assumptions Used in Conducting the Interconnection System Impact Study

The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study, subject to any modifications in accordance with Section 4.4 of the LGIP, and the following assumptions:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider]

Appendix 4 to LGIP—Interconnection Facilities Study Agreement

This agreement is made and entered into this ____ day of _____, 20 __ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System;

Whereas, the Transmission Provider has completed an Interconnection System Impact Study (the ''System Impact Study'') and provided the results of said study to the Interconnection Customer; and

Whereas, Interconnection Customer has requested the Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Large Generating Facility to the Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 8.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.

4.0 The Interconnection Facilities Study report (i) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Large Generating Facility to the Transmission System and (ii) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Impact Study.

5.0 The Interconnection Customer shall provide a deposit of $100,000 for the performance of the Interconnection Facilities Study. The time for completion of the Interconnection Facilities Study is specified in Attachment A.

Transmission Provider shall invoice Interconnection Customer on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

6.0 Miscellaneous. The Interconnection Facility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Interconnection Customer Schedule Election for Conducting the Interconnection Facilities Study

The Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Interconnection Customer within the following number of days after of receipt of an executed copy of this Interconnection Facilities Study Agreement:

—Ninety (90) Calendar Days with no more than a ±20 percent cost estimate contained in the report, or

—One hundred eighty (180) Calendar Days with no more than a ±10 percent cost estimate contained in the report.

Data Form To Be Provided by Interconnection Customer With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, *etc.*

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections:

On the one line indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one line indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

Will an alternate source of auxiliary power be available during CT/PT maintenance? __Yes __No

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?'' __Yes __No (Please indicate on one line).

What type of control system or PLC will be located at the Interconnection Customer's Large Generating Facility?

_____

What protocol does the control system or PLC use?

_____

Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.

_____

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider's transmission line.

_____

Tower number observed in the field. (Painted on tower leg)*

_____

Number of third party easements required for transmission lines:*

_____

* To be completed in coordination with Transmission Provider.

Is the Large Generating Facility in the Transmission Provider's service area?

__Yes __No Local provider:

_____

Please provide proposed schedule dates:

Begin Construction:

Date: _____

Generator step-up transformer: receives back feed power

Date: _____

Generation Testing:

Date: _____

Commercial Operation:

Date: _____

Appendix 5 to LGIP—Optional Interconnection Study Agreement

This agreement is made and entered into this ____ day of _____, 20 __ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____;

Whereas, Interconnection Customer is proposing to establish an interconnection with the Transmission System; and

Whereas, Interconnection Customer has submitted to Transmission Provider an Interconnection Request; and

Whereas, on or after the date when the Interconnection Customer receives the Interconnection System Impact Study results, Interconnection Customer has further requested that the Transmission Provider prepare an Optional Interconnection Study;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Optional Interconnection Study consistent with Section 10.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Optional Interconnection Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Optional Interconnection Study shall be performed solely for informational purposes.

5.0 The Optional Interconnection Study report shall provide a sensitivity analysis based on the assumptions specified by the Interconnection Customer in Attachment A to this Agreement. The Optional Interconnection Study will identify the Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the assumptions specified by the Interconnection Customer in Attachment A.

6.0 The Interconnection Customer shall provide a deposit of $10,000 for the performance of the Optional Interconnection Study. The Transmission Provider's good faith estimate for the time of completion of the Optional Interconnection Study is [insert date].

Upon receipt of the Optional Interconnection Study, the Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Optional Study.

Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to the Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Optional Interconnection Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

Assumptions Used in Conducting the Optional Interconnection Study

[To be completed by Interconnection Customer consistent with Section 10 of the LGIP.]

Appendix 6 to LGIP—Standard Large Generator Interconnection Agreement

Standard Large Generator Interconnection Agreement (LGIA)

(Applicable to Generating Facilities That Exceed 20 MW)

Table of Contents

Article 1. Definitions
Article 2. Effective Date, Term and Termination
2.1 Effective Date
2.2 Term of Agreement
2.3 Termination Procedures
2.3.1 Written Notice
2.3.2 Default
2.4 Termination Costs
2.4.1
2.4.2
2.4.3
2.5 Disconnection
2.6 Survival
Article 3. Regulatory Filings
3.1 Filing
Article 4. Scope of Service
4.1 Interconnection Product Options
4.1.1 Energy Resource Interconnection Service
4.1.1.1 The Product
4.1.1.2 Transmission Delivery Service Implications
4.1.2 Network Resource Interconnection Service
4.1.2.1 The Product
4.1.2.2 Transmission Delivery Service Implications
4.2 Provision of Service
4.3 Generator Balancing Service Arrangements
4.3.1
4.4 Performance Standards
4.5 No Transmission Delivery Service
4.6 Interconnection Customer Provided Services
Article 5. Interconnection Facilities Engineering, Procurement, and Construction
5.1 Options
5.1.1 Standard Option
5.1.2 Alternate Option
5.1.3 Option to Build
5.1.4 Negotiated Option
5.2 General Conditions Applicable to Option to Build
5.3 Liquidated Damages
5.4 Power System Stabilizers
5.5 Equipment Procurement
5.5.1
5.5.2
5.5.3
5.6 Construction Commencement
5.6.1
5.6.2
5.6.3
5.6.4
5.7 Work Progress
5.8 Information Exchange
5.9 Limited Operation
5.10 Interconnection Customer Interconnection Facilities (''ICIF'')
5.10.1 Large Generating Facility Specifications
5.10.2 Transmission Provider's Review
5.10.3 ICIF Construction
5.11 Transmission Provider Interconnection Facilities Construction
5.12 Access Rights
5.13 Lands of Other Property Owners
5.14 Permits
5.15 Early Construction of Base Case Facilities
5.16 Suspension
5.17 Taxes
5.17.1 Interconnection Customer Payments Not Taxable
5.17.2 Representations And Covenants
5.17.3 Indemnification for Taxes Imposed Upon Transmission Provider
5.17.4 Tax Gross-Up Amount
5.17.5 Private Letter Ruling or Change or Clarification of Law

5.17.6 Subsequent Taxable Events
5.17.7 Contests
5.17.8 Refund
5.17.9 Taxes Other Than Income Taxes
5.17.10 Transmission Owners Who Are Not Transmission Providers
5.18 Tax Status
5.19 Modification
5.19.1 General
5.19.2 Standards
5.19.3 Modification Costs
Article 6. Testing and Inspection
6.1 Pre-Commercial Operation Date Testing and Modifications
6.2 Post-Commercial Operation Date Testing and Modifications
6.3 Right to Observe Testing
6.4 Right to Inspect Article
Article 7. Metering
7.1 General
7.2 Check Meters
7.3 Standards
7.4 Testing of Metering Equipment
7.5 Metering Data
Article 8. Communications
8.1 Interconnection Customer Obligations
8.2 Remote Terminal Unit
8.3 No Annexation
Article 9. Operations
9.1 General
9.2 Control Area Notification
9.3 Transmission Provider Obligations
9.4 Interconnection Customer Obligations
9.5 Start-Up and Synchronization
9.6 Reactive Power
9.6.1 Power Factor Design Criteria
9.6.2 Voltage Schedules
9.6.2.1 Governors and Regulators
9.6.3 Payment for Reactive Power
9.7 Outages and Interruptions
9.7.1 Outages
9.7.1.1 Outage Authority and Coordination
9.7.1.2 Outage Schedules
9.7.1.3 Outage Restoration
9.7.2 Interruption of Service
9.7.2.1
9.7.2.2
9.7.2.3
9.7.2.4
9.7.2.5
9.7.3 Under-Frequency and Over-Frequency Conditions
9.7.4 System Protection and Other Control Requirements
9.7.4.1 System Protection Facilities
9.7.4.2
9.7.4.3
9.7.4.4
9.7.4.5
9.7.4.6
9.7.5 Requirements for Protection
9.7.6 Power Quality
9.8 Switching and Tagging Rules
9.9 Use of Interconnection Facilities by Third Parties
9.9.1 Purpose of Interconnection Facilities
9.9.2 Third Party Users
9.10 Disturbance Analysis Data Exchange
Article 10. Maintenance
10.1 Transmission Provider Obligations
10.2 Interconnection Customer Obligations
10.3 Coordination
10.4 Secondary Systems
10.5 Operating and Maintenance Expenses
Article 11. Performance Obligation
11.1 Interconnection Customer Interconnection Facilities
11.2 Transmission Provider's Interconnection Facilities
11.3 Network Upgrades and Distribution Upgrades
11.4 Transmission Credits
11.4.1 Refund of Amounts Advanced for Network Upgrades
11.4.2 Special Provisions for Affected Systems
11.4.3
11.5 Provision of Security
11.5.1
11.5.2
11.5.3
11.6 Interconnection Customer Compensation
11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition
Article 12. Invoice
12.1 General
12.2 Final Invoice
12.3 Payment
12.4 Disputes
Article 13. Emergencies
13.1 Definition
13.2 Obligations
13.3 Notice
13.4 Immediate Action
13.5 Transmission Provider Authority
13.5.1 General
13.5.2 Reduction and Disconnection
13.6 Interconnection Customer Authority
13.7 Limited Liability
Article 14. Regulatory Requirements and Governing Laws
14.1 Regulatory Requirements
14.2 Governing Law
14.2.1
14.2.2
14.2.3
Article 15. Notices
15.1 General
15.2 Billings and Payments
15.3 Alternative Forms of Notice
15.4 Operations and Maintenance Notice
Article 16. Force Majeure
16.1
16.2
Article 17. Default
17.1 Default
17.1.1 General
17.1.2 Right to Terminate
Article 18. Indemnity, Consequential Damages, and Insurance
18.1 Indemnity
18.1.1 Indemnified Person
18.1.2 Indemnifying Party
18.1.3 Indemnity Procedures
18.2 Consequential Damages
18.3 Insurance
18.3.1
18.3.2
18.3.3
18.3.4
18.3.5
18.3.6
18.3.7
18.3.8
18.3.9
18.3.10
18.3.11
Article 19. Assignment
19.1 Assignment
Article 20. Severability
20.1 Severability
Article 21. Comparability
21.1 Comparability
Article 22. Confidentiality
22.1 Confidentiality
22.1.1 Term
22.1.2 Scope
22.1.3 Release of Confidential Information
22.1.4 Rights
22.1.5 No Warranties
22.1.6 Standard of Care
22.1.7 Order of Disclosure
22.1.8 Termination of Agreement
22.1.9 Remedies
22.1.10 Disclosure to FERC or its Staff
22.1.11
22.1.12
Article 23. Environmental Releases
23.1
Article 24. Information Requirements
24.1 Information Acquisition
24.2 Information Submission by Transmission Provider
24.3 Updated Information Submission by Interconnection Customer
24.4 Information Supplementation
Article 25. Information Access and Audit Rights
25.1 Information Access
25.2 Reporting of Non-Force Majeure Events
25.3 Audit Rights
25.4 Audit Rights Periods
25.4.1 Audit Rights Period for Construction-Related Accounts and Records
25.4.2 Audit Rights Period for All Other Accounts and Records
25.5 Audit Results
Article 26. Subcontractors
26.1 General
26.2 Responsibility of Principal
26.3 No Limitation by Insurance
Article 27. Disputes
27.1 Submission
27.2 External Arbitration Procedures
27.3 Arbitration Decisions
27.4 Costs
Article 28. Representations, Warranties and Covenants
28.1 General
28.1.1 Good Standing
28.1.2 Authority
28.1.3 No Conflict
28.1.4 Consent and Approval
Article 29. Joint Operating Committee
29.1 Joint Operating Committee
29.1.1
29.1.2
29.1.3
29.1.4
29.1.5
29.1.6
Article 30. Miscellaneous
30.1 Binding Effect
30.2 Conflicts
30.3 Rules of Interpretation
30.4 Entire Agreement
30.5 No Third Party Beneficiaries
30.6 Waiver
30.7 Headings

30.8 Multiple Counterparts
30.9 Amendment
30.10 Modification by the Parties
30.11 Reservation of Rights
30.12 No Partnership

Appendices

Appendix A—Interconnection Facilities, Network Upgrades and Distribution Upgrades
Appendix B—Milestones
Appendix C—Interconnection Details
Appendix D—Security Arrangements Details
Appendix E—Commercial Operation Date
Appendix F—Addresses for Delivery of Notices and Billings

Standard Large Generator Interconnection Agreement

This standard large generator interconnection agreement (''Agreement'') is made and entered into this ____ day of _____ 20, __ by and between _____, a _____ organized and existing under the laws of _____ the State/Commonwealth of (''Interconnection Customer'' with a Large Generating Facility), and _____, a [corporation] organized and existing under the laws of the State/Commonwealth of _____ (''Transmission Provider and/or Transmission Owner''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party'' or collectively as the ''Parties.''

Recitals

Whereas, Transmission Provider operates the Transmission System; and

Whereas, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

Whereas, Interconnection Customer and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System;

Now, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used.

Article 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation Date of a unit shall mean the date on which Interconnection Customer commences commercial operation of the unit at the Generating Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service (ER Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that

authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean that portion of a Generating Facility that is integrated with the Transmission Provider's Transmission System, designated as a Network Resource pursuant to the terms of the Tariff, and subjected to redispatch directives as ordered by the Transmission Provider in accordance with the Tariff.

Network Resource Interconnection Service (NR Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to commercial operation.

Article 2. Effective Date, Term and Termination

2.1 *Effective Date.* This LGIA shall become effective upon execution by the Parties subject to acceptance by FERC (if

applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.

2.2 *Term of Agreement.* Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request (Term to be Specified in Individual Agreements) and shall be automatically renewed for each successive one-year period thereafter.

2.3 *Termination Procedures.* This LGIA may be terminated as follows:

2.3.1 *Written Notice.* The Interconnection Customer may terminate this LGIA after giving the Transmission Provider ninety (90) Calendar Days advance written notice; or

2.3.2 *Default.* Either Party may terminate this LGIA in accordance with Article 17.

Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.

2.4 *Termination Costs.* If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this LGIA. In the event of termination by either Party, both Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this LGIA, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, the Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by the Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which the Transmission Provider has incurred expenses and has not been reimbursed by the Interconnection Customer.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 *Disconnection.* Upon termination of this LGIA, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

2.6 *Survival.* This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

Article 3. Regulatory Filings

3.1 *Filing.* The Transmission Provider shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Interconnection Customer to contain competitively sensitive commercial or financial information shall be maintained by the Transmission Provider and identified as ''confidential'' under seal stating that Interconnection Customer asserts such information is Confidential Information and has requested such information be kept under seal. If requested by the Transmission Provider, Interconnection Customer shall provide the Transmission Provider, in writing, with the Interconnection Customer's basis for asserting that the information referred to in this Article 3.1 is competitively sensitive information, and the Transmission Provider may disclose such writing to the appropriate Governmental Authority. Interconnection Customer shall be responsible for the costs associated with affording confidential treatment of such information. If the Interconnection Customer has executed this LGIA, or any amendment thereto, the Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

Article 4. Scope of Service

4.1 *Interconnection Product Options.* Interconnection Customer has selected the following (checked) type of Interconnection Service:

4.1.1 Energy Resource Interconnection Service (ER Interconnection Service).

4.1.1.1 *The Product.* ER Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. To the extent Interconnection Customer wants to receive ER Interconnection Service, the Transmission Provider shall construct facilities consistent with the studies identified in Attachment A. ER Interconnection Service does not in and of itself convey any transmission delivery service.

4.1.1.2 *Transmission Delivery Service Implications.* Under ER Interconnection Service, the Interconnection Customer will be able to inject power from the Large Generating Facility into and deliver power across the interconnecting Transmission Provider's Transmission System on an ''as available'' basis up to the amount of MW's identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for ER Interconnection Service have been constructed. Where eligible to do so (*e.g.,* PJM, ISO–NE, NYISO), the Interconnection Customer may place a bid to sell into the market up to the maximum identified Large Generating Facility output, subject to any conditions specified in the interconnection service approval, and the Large Generating Facility will be dispatched to the extent the Interconnection Customer's bid clears. In all other instances, no transmission delivery service from the Large Generating Facility is assured, but the Interconnection Customer may obtain point-to-point transmission delivery service or be used for secondary network transmission service, pursuant to the Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for the Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of the Transmission Provider's Tariff. The Interconnection Customer's ability to inject its Large Generating Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of the Transmission Provider's Transmission

System at such time as a transmission service request is made that would accommodate such delivery. The provision of firm point-to-point transmission service may require the construction of additional Network Upgrades.

4.1.2 Network Resource Interconnection Service (NR Interconnection Service).

4.1.2.1 *The Product.* The Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. NR Interconnection Service in and of itself does not convey any transmission delivery service.

4.1.2.2 *Transmission Delivery Service Implications.* NR Interconnection Service allows the Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on the Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although NR Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses other Network Resources. A Large Generating Facility receiving NR Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all Generating Facilities that are similarly situated.

NR Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on the Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on the Transmission Provider's Transmission System, the Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in the Transmission Provider's Transmission System in the same manner as all other Network Resources.

There is no requirement either at the time of study or interconnection, or at any point in the future, that the Interconnection Customer's Large Generating Facility be designated as a Network Resource by a Network Service Customer under the Tariff or that the Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Large Generating Facility as a Network Resource, it must do so pursuant to the Transmission Provider's Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining NR Interconnection Service, any future transmission service request for delivery from the Large Generating Facility within the Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Large Generating Facility. To the extent the Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Large Generating Facility outside the Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for the Transmission Provider to grant such request.

4.2 *Provision of Service.* Transmission Provider shall provide Interconnection Service for the Large Generating Facility at the Point of Interconnection.

4.3 *Generator Balancing Service Arrangements.* Interconnection Customer must demonstrate, to the Transmission Provider's reasonable satisfaction, that it has satisfied the requirements of this Article 4.3 prior to the submission of any schedules for delivery service to such Transmission Provider identifying the Large Generating Facility as the Point of Receipt for such scheduled delivery.

4.3.1 Interconnection Customer is responsible for ensuring that its actual Large Generating Facility output matches the scheduled delivery from the Large Generating Facility to the Transmission Provider's Transmission System, consistent with the scheduling requirements of the Transmission Provider's FERC-approved market structure, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection, consistent with the scheduling requirements of the Transmission Provider's Tariff and any applicable FERC-approved market structure.

Interconnection Customer shall arrange for the supply of energy when there is a difference between the actual Large Generating Facility output and the scheduled delivery from the Large Generating Facility (the ''Generator Balancing Service Arrangements'').

Interconnection Customer may satisfy its obligation for making such Generator Balancing Service Arrangements by:

(a) Obtaining such service from another entity that (i) has generating resources deliverable within the applicable Control Area, (ii) agrees to assume responsibility for providing such Generator Balancing Service Arrangement to the Interconnection Customer, and (iii) has appropriate coordination service arrangements or agreements with the applicable Control Area that addresses Generator Balancing Service Arrangements for all generating resources for which the entity is responsible within the applicable Control Area;

(b) Committing sufficient additional unscheduled generating resources to the control of and dispatch by the applicable Control Area operator that are capable of supplying energy not supplied by the Interconnection Customer's scheduled Large Generating Facility, and entering into an appropriate coordination services agreement with the applicable Control Area that addresses Generator Balancing Service Arrangements obligations for the Large Generating Facility;

(c) Entering into an arrangement with another Control Area to dynamically schedule the Interconnection Customer's Large Generating Facility out of the applicable Control Area and into such other Control Area;

(d) Entering into a Generator Balancing Service Arrangements with the applicable Control Area; or

(e) In the event the load/generation balancing function of the applicable Control Area is accomplished through the function of its market structures approved by FERC, by entering into an arrangement consistent with such FERC-approved market structure.

In the event Interconnection Customer fails to demonstrate to the Transmission Provider that it has otherwise complied with this Article 4.3, the Interconnection Customer shall be deemed to have elected to enter into a Generator Balancing Service Arrangements with the applicable Control Area.

Nothing in this provision shall prejudice either Party from obtaining a FERC-approved tariff addressing its obligations and rights with respect to Generator Balancing Service Arrangements.

4.4 *Performance Standards.* Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is the Transmission Provider or Transmission Owner, then that Party shall amend the LGIA and submit the amendment to the Commission for approval.

4.5 *No Transmission Delivery Service.* The execution of this LGIA does not constitute a request for, nor the provision of, any transmission delivery service under the Transmission Provider's Tariff.

4.6 Interconnection Customer Provided Services. The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 *Options.* Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Transmission Provider's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities and Network Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.

5.1.1 *Standard Option.* The Transmission Provider shall design, procure, and construct the Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete the Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. The Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Provider reasonably expects that it will not be able to complete the Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, the Transmission Provider shall promptly provide written notice to the Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 *Alternate Option.* If the dates designated by Interconnection Customer are acceptable to Transmission Provider, the Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 *Option to Build.* If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, the Transmission Provider shall so notify the Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. Both Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A to the LGIA. Except for Stand Alone Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 *Negotiated Option.* If the Interconnection Customer elects not to exercise its option under Article 5.1.3, Option to Build, Interconnection Customer shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades by Interconnection Customer) pursuant to which Transmission Provider is responsible for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Network Upgrades pursuant to 5.1.1, Standard Option.

5.2 *General Conditions Applicable to Option to Build.* If Interconnection Customer assumes responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

(1) The Interconnection Customer shall engineer, procure equipment, and construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(4) Prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;

(5) At any time during construction, Transmission Provider shall have the right to gain unrestricted access to the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, the Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) The Interconnection Customer shall indemnify the Transmission Provider for claims arising from the Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) The Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider; and

(9) Transmission Provider shall approve and accept for operation and maintenance the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2.

5.3 *Liquidated Damages.* The actual damages to the Interconnection Customer, in the event the Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by the Interconnection Customer and accepted by the Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Transmission Provider to the Interconnection Customer in the event that Transmission Provider does not complete any portion of the Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of the Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Transmission Provider Interconnection Facilities and Network Upgrades for which the Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Transmission Provider to the Interconnection Customer as

just compensation for the damages caused to the Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless the Interconnection Customer would have been able to commence use of the Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) the Transmission Provider's failure to meet the specified dates is the result of the action or inaction of the Interconnection Customer or any other Interconnection Customer who has entered into an LGIA with the Transmission Provider or any cause beyond Transmission Provider's reasonable control or reasonable ability to cure; (3) the interconnection Customer has assumed responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 *Power System Stabilizers.* The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Applicable Reliability Council. Transmission Provider reserves the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, the Interconnection Customer shall immediately notify the Transmission Provider's system operator, or its designated representative.

5.5 *Equipment Procurement.* If responsibility for construction of the Transmission Provider's Interconnection Facilities or Network Upgrades is to be borne by the Transmission Provider, then the Transmission Provider shall commence design of the Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 The Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.5.2 The Transmission Provider has received written authorization to proceed with design and procurement from the Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 The Interconnection Customer has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 *Construction Commencement.* The Transmission Provider shall commence construction of the Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Provider's Interconnection Facilities and Network Upgrades;

5.6.3 The Transmission Provider has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix B, Milestones; and

5.6.4 The Interconnection Customer has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.7 *Work Progress.* The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, the Interconnection Customer determines that the completion of the Transmission Provider's Interconnection Facilities will not be required until after the specified In-Service Date, the Interconnection Customer will provide written notice to the Transmission Provider of such later date upon which the completion of the Transmission Provider's Interconnection Facilities will be required.

5.8 *Information Exchange.* As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with the Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 *Limited Operation.* If any of the Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and the Interconnection Customer Interconnection Facilities may operate prior to the completion of the Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and the Interconnection Customer Interconnection Facilities in accordance with the results of such studies.

5.10 *Interconnection Customer's Interconnection Facilities (''ICIF'').* Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.10.1 *Large Generating Facility Specifications.* Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 *Transmission Provider's Review.* Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the telemetry, communications, and safety requirements of the Transmission Provider.

5.10.3 *ICIF Construction.* The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Interconnection Customer shall deliver to the Transmission Provider ''as-built'' drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facilities. The Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications.

5.11 *Transmission Provider's Interconnection Facilities Construction.* The Transmission Provider's Interconnection

Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Transmission Provider shall deliver to the Interconnection Customer the following ''as-built'' drawings, information and documents for the Transmission Provider's Interconnection Facilities [include appropriate drawings and relay diagrams].

The Transmission Provider will obtain control of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 *Access Rights.* Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (''Granting Party'') shall furnish at no cost to the other Party (''Access Party'') any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party and its agents that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) Interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.13 *Lands of Other Property Owners.* If any part of the Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, the Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property. Upon receipt of a reasonable siting request, Transmission Provider shall provide siting assistance to the Interconnection Customer comparable to that provided to the Transmission Provider's own, or an Affiliate's generation.

5.14 *Permits.* The LGIA shall specify the allocation of the responsibilities of the Transmission Provider or Transmission Owner and the Interconnection Customer to obtain all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. The Transmission Provider or Transmission Owner and the Interconnection Customer shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations. With respect to this paragraph, Transmission Provider or Transmission Owner shall provide permitting assistance to the Interconnection Customer comparable to that provided to the Transmission Provider's own, or an Affiliate's generation.

5.15 *Early Construction of Base Case Facilities.* Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for the Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.

5.16 *Suspension.* Interconnection Customer reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this LGIA with the condition that the Transmission Provider shall be left in a safe and reliable condition in accordance with Good Utility Practice and the Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this LGIA on or before the expiration of three (3) years following commencement of such suspension, this LGIA shall be deemed terminated.

5.17 Taxes

5.17.1 *Interconnection Customer Payments Not Taxable.* The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of the Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 *Representations And Covenants.* In accordance with IRS Notice 2001–82 and IRS Notice 88–129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Transmission Provider for the Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Transmission Provider's Interconnection Facilities that is a ''dual-use intertie,'' within the meaning of IRS Notice 88–129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, ''de minimis amount'' means no more than 5 percent of the total power flows in both directions, calculated in accordance with the ''5 percent test'' set forth in IRS Notice 88–129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of the Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 *Indemnification for Taxes Imposed Upon Transmission Provider.* Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from income taxes imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer under this LGIA unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by

Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; *provided, however,* that Transmission Provider may require Interconnection Customer to provide security, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to Interconnection Customer's estimated tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such taxes on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

In the event that the Transmission Provider includes a gross-up upon its own determination that the payments or property transfers should be reported as income subject to taxation, the Interconnection Customer may require the Transmission Provider to provide security, in a form reasonably acceptable to the Interconnection Customer (such as a parental guarantee or a letter of credit) in an amount equal to the Interconnection Customer's estimated tax liability under this Article 5.17.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the 10-year testing period, as contemplated by IRS Notice 88–129, and the applicable statute of limitation, as it may be extended by the Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 *Tax Gross-Up Amount.* Interconnection Customer's liability for taxes under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider (''Current Taxes'') on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA (without regard to any payments under this Article 5.17) (the ''Gross Income Amount'') over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the ''Present Value Depreciation Amount''), plus (2) an additional amount sufficient to permit the Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the ''Current Tax Rate''), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: (Current Tax Rate × (Gross Income Amount − Present Value of Tax Depreciation))/(1-Current Tax Rate). Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 *Private Letter Ruling or Change or Clarification of Law.* At Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Provider and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request. If the private letter ruling concludes that such transfers or sums are not subject to federal income taxation, or a clarification of or change in law results in Transmission Provider determining in good faith that such transfers or sums are not subject to federal income taxation, Parties' obligations regarding a gross-up or security under this Article 5.17 shall be reduced accordingly.

5.17.6 *Subsequent Taxable Events.* If, within 10 years from the date on which the relevant Transmission Provider Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenant contained in Article 5.17.2(i), (ii) a ''disqualification event'' occurs within the meaning of IRS Notice 88–129, or (iii) this LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, the Interconnection Customer shall pay a tax gross-up for the taxes imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90–60.

5.17.7 *Contests.* In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider shall file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. Transmission Provider will not be required to appeal or seek further review beyond one level of judicial review. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.17.8 *Refund.* In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any

amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) Any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) On any amounts paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) With respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); *provided, however,* that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave both parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 *Taxes Other Than Income Taxes.* Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this LGIA. Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.17.10 *Transmission Owners Who Are Not Transmission Providers.* If the Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of the Transmission Provider under this Article 5.17 of this LGIA.

5.18 *Tax Status.* Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.19 Modification

5.19.1 *General.* Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

5.19.2 *Standards.* Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA and Good Utility Practice.

5.19.3 *Modification Costs.* Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to the Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to the Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service under the Transmission Provider's Tariff. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to the Interconnection Customer Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 *Pre-Commercial Operation Date Testing and Modifications.* Prior to the Commercial Operation Date, the Transmission Provider shall test the Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and the Interconnection Customer Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

6.2 *Post-Commercial Operation Date Testing and Modifications.* Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.3 *Right to Observe Testing.* Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 *Right to Inspect.* Each Party shall have the right, but shall have no obligation to: (i) Observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective

equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that Transmission Provider obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be confidential hereunder.

Article 7. Metering

7.1 *General.* Each Party shall comply with the Applicable Reliability Council requirements. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 *Check Meters.* Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

7.3 *Standards.* Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.

7.4 *Testing of Metering Equipment.* Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 *Metering Data.* At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

Article 8. Communications

8.1 *Interconnection Customer Obligations.* Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 *Remote Terminal Unit.* Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to both Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 *No Annexation.* Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

Article 9. Operations

9.1 *General.* Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 *Control Area Notification.* At least three months before Initial Synchronization Date, the Interconnection Customer shall notify the Transmission Provider in writing of the Control Area in which the Large Generating Facility will be located. If the Interconnection Customer elects to locate the Large Generating Facility in a Control Area other than the Control Area in which the Large Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Control Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Control Area.

9.3 *Transmission Provider Obligations.* Transmission Provider shall cause the Transmission System and the Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.4 *Interconnection Customer Obligations.* Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and the Interconnection Customer Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the

Large Generating Facility and the Interconnection Customer Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.

9.5 *Start-Up and Synchronization.* Consistent with the Parties' mutually acceptable procedures, the Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to the Transmission Provider's Transmission System.

9.6 Reactive Power

9.6.1 *Power Factor Design Criteria.* Interconnection Customer shall design the Large Generating Facility 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, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis.

9.6.2 *Voltage Schedules.* Once the Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 *Governors and Regulators.* Whenever the Large Generating Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its speed governors and voltage regulators in automatic operation. If the Large Generating Facility's speed governors and voltage regulators are not capable of such automatic operation, the Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.6.3 *Payment for Reactive Power.* Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility only in those instances where the Transmission Provider requests the Interconnection Customer to operate its Large Generating Facility outside the agreed upon dead band. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

9.7 Outages and Interruptions

9.7.1 Outages

9.7.1.1 *Outage Authority and Coordination.* Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both Parties. In all circumstances any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 *Outage Schedules.* The Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Interconnection Customer would have incurred absent the Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Interconnection Customer had modified its schedule of maintenance activities.

9.7.1.3 *Outage Restoration.* If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.7.2 *Interruption of Service.* If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all Generating Facilities directly connected to the Transmission System;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer and the Transmission Provider;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to

their normal operating state, consistent with system conditions and Good Utility Practice.

9.7.3 *Under-Frequency and Over-Frequency Conditions.* The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Council to ensure ''ride through'' capability of the Transmission System. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the Transmission Provider in accordance with Good Utility Practice. The term ''ride through'' as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

9.7.4 System Protection and Other Control Requirements

9.7.4.1 *System Protection Facilities.* Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or the Interconnection Customer Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on the Transmission Provider Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and the Interconnection Customer Interconnection Facilities.

9.7.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Interconnection Customer's units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 *Requirements for Protection.* In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

9.7.6 *Power Quality.* Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1–1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1–1989, or any applicable superseding electric industry standard, ANSI Standard C84.1–1989, or the applicable superseding electric industry standard, shall control.

9.8 *Switching and Tagging Rules.* Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.9 Use of Interconnection Facilities by Third Parties

9.9.1 *Purpose of Interconnection Facilities.* Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

9.9.2 *Third Party Users.* If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 *Disturbance Analysis Data Exchange.* The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or the Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

Article 10. Maintenance

10.1 *Transmission Provider Obligations.* Transmission Provider shall maintain the Transmission System and the Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.2 *Interconnection Customer Obligations.* Interconnection Customer shall maintain the Large Generating Facility and the Interconnection Customer Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.3 *Coordination.* The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

10.4 *Secondary Systems.* Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 *Operating and Maintenance Expenses.* Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

Article 11. Performance Obligation

11.1 *Interconnection Customer Interconnection Facilities.* Interconnection Customer shall design, procure, construct, install, own and/or control the Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.

11.2 *Transmission Provider's Interconnection Facilities.* Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of the Interconnection Customer.

11.3 *Network Upgrades and Distribution Upgrades.* Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless the Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by the Interconnection Customer.

11.4 Transmission Credits

11.4.1 *Refund of Amounts Advanced for Network Upgrades.* Interconnection Customer shall be entitled to a cash refund, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility.

Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and Affected System Operator refund all amounts paid by Interconnection Customer for the Network Upgrades, together with interest, within five (5) years from the Commercial Operation Date. Transmission Provider and Affected System Operator shall provide refunds to Interconnection Customer only after commercial operation of the Large Generating Facility has been demonstrated.

If the Large Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time provide refunds to Interconnection Customer for the amounts advanced for the Network Upgrades. Any refund shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a refund of such payment pursuant to this subparagraph. Interconnection Customer may assign such refund rights to any person.

11.4.2 *Special Provisions for Affected Systems.* Unless the Transmission Provider provides, under the LGIA, for the payment of refunds for amounts advanced to Affected System Operator for Network Upgrades, the Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such payment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to the Affected System Operator as well as the payment of refunds by the Affected System Operator.

Refunds are to be paid without regard to whether the Interconnection Customer contracts for transmission service on the Affected System. If the Interconnection Customer does not contract for transmission service, and in the absence of another mutually agreeable payment schedule, refunds shall be established at a level equal to the Affected System's rate for firm point-to-point transmission service multiplied by the output of the Large Generating Facility assumed in the Interconnection Facilities Study. All refunds must be paid within five years of the Commercial Operation Date.

11.4.3 Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Large Generating Facility.

11.5 *Provision of Security.* At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this LGIA during its term.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 *Interconnection Customer Compensation.* If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.5.1 of this LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this LGIA, the Transmission Provider agrees to compensate the Interconnection Customer in such amount as would have been due the Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 *Interconnection Customer Compensation for Actions During Emergency Condition.* Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 *General.* Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month.

Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 *Final Invoice.* Within six months after completion of the construction of the Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of the Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 *Payment.* Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by Interconnection Customer will not constitute a waiver of any rights or claims Interconnection Customer may have under this LGIA.

12.4 *Disputes.* In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this LGIA as long as Interconnection Customer: (i) Continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 CFR § 35.19a(a)(2)(ii).

Article 13. Emergencies

13.1 Definition. ''Emergency Condition'' shall mean a condition or situation: (i) That in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Large Generating Facility or the Interconnection Customer Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

13.2 *Obligations.* Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Joint Operating Committee.

13.3 *Notice.* Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects the Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or the Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or the Interconnection Customer Interconnection Facilities that may reasonably be expected to affect the Transmission System or the Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.4 *Immediate Action.* Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or the Interconnection Customer Interconnection Facilities in response to an Emergency Condition either declared by the Transmission Provider or otherwise regarding the Transmission System.

13.5 Transmission Provider Authority

13.5.1 *General.* Transmission Provider may take whatever actions or inactions with regard to the Transmission System or the Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or the Transmission Provider's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or the Interconnection Customer Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2; directing the Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and the Interconnection Customer Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.5.2 *Reduction and Disconnection.* Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or the Interconnection Customer Interconnection Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the Transmission Provider pursuant to the Transmission Provider's Tariff. When the Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Interconnection Customer and the Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 *Interconnection Customer Authority.* Consistent with Good Utility Practice and the LGIA and the LGIP, the Interconnection Customer may take whatever actions or inactions with regard to the Large Generating Facility or the Interconnection Customer Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or

the Interconnection Customer Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and the Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions. Interconnection Customer shall not be obligated to follow Transmission Provider's instructions to the extent the instruction would have a material adverse impact on the safe and reliable operation of Interconnection Customer's Large Generating Facility. Upon request, Interconnection Customer shall provide Transmission Provider with documentation of any such alleged material adverse impact.

13.7 *Limited Liability.* Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Regulatory Requirements and Governing Law

14.1 *Regulatory Requirements.* Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended.

14.2 Governing Law and Applicable Tariffs

14.2.1 The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This LGIA is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices

15.1 *General.* Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 *Billings and Payments.* Billings and payments shall be sent to the addresses set out in Appendix F.

15.3 *Alternative Forms of Notice.* Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out in Appendix F.

15.4 *Operations and Maintenance Notice.* Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

Article 17. Default

17.1 Default

17.1.1 *General.* No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 17.1.2, the defaulting Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty (30) Calendar Days, the defaulting Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

17.1.2 *Right to Terminate.* If a Default is not cured as provided in this Article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this LGIA, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this LGIA.

Article 18. Indemnity, Consequential Damages and Insurance

18.1 *Indemnity.* The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

18.1.1 *Indemnified Person.* If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgement with respect to, or pay in full, such claim.

18.1.2 *Indemnifying Party.* If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

18.1.3 *Indemnity Procedures.* Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the

Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgement in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

18.2 *Consequential Damages.* Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 *Insurance.* Each party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located. The minimum limits for the Employers' Liability insurance shall be One Million Dollars ($1,000,000) each accident bodily injury by accident, One Million Dollars ($1,000,000) each employee bodily injury by disease, and One Million Dollars ($1,000,000) policy limit bodily injury by disease.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/ One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

18.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees (''Other Party Group'') as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the polices are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issues to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

18.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.

18.3.9 Within ten (10) days following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, each Party may self-insure to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it shall not be required to comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9.

18.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LGIA.

Article 19. Assignment

19.1 *Assignment.* This LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this LGIA without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that the Interconnection Customer shall have the right to assign this LGIA, without the consent of the Transmission Provider, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that the Interconnection Customer will require any secured party, trustee or mortgagee to notify the Transmission Provider of any such assignment. Any financing arrangement entered into by the Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 *Severability.* If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision,

agreement or covenant of this LGIA; provided that if the Interconnection Customer (or any third party, but only if such third party is not acting at the direction of the Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

Article 21. Comparability

21.1 *Comparability.* The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 *Confidentiality.* Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 *Term.* During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 *Scope.* Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of the LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 *Release of Confidential Information.* Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 *Rights.* Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 *No Warranties.* By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 *Standard of Care.* Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this LGIA or its regulatory requirements.

22.1.7 *Order of Disclosure.* If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 *Termination of Agreement.* Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 *Remedies.* The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 *Disclosure to FERC or its Staff.* Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to the LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this LGIA (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or

(iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

22.1.12 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

Article 23. Environmental Releases

23.1 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) Provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 *Information Acquisition.* Transmission Provider and the Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 *Information Submission by Transmission Provider.* The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow the Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by both Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) Progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 *Updated Information Submission by Interconnection Customer.* The updated information submission by the Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, the Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on the Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 *Information Supplementation.* Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all ''as-built'' Large Generating Facility information or ''as-tested'' performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit ''step voltage'' test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent (5 percent) change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to the Transmission Provider for each individual generating unit in a station.

Subsequent to the Operation Date, the Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide the Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect the Interconnection Customer Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 *Information Access.* Each Party (the ''disclosing Party'') shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and (ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA.

25.2 *Reporting of Non-Force Majeure Events.* Each Party (the ''notifying Party'') shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.

25.3 *Audit Rights.* Subject to the requirements of confidentiality under Article 22 of this LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this LGIA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, the Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, the Transmission Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this LGIA.

Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods

25.4.1 *Audit Rights Period for Construction-Related Accounts and Records.* Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 *Audit Rights Period for All Other Accounts and Records.* Accounts and records related to either Party's performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 *Audit Results.* If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 *General.* Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 *Responsibility of Principal.* The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 *No Limitation by Insurance.* The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 *Submission.* In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

27.2 *External Arbitration Procedures.* Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 *Arbitration Decisions.* Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 *Costs.* Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties and Covenants

28.1 *General.* Each Party makes the following representations, warranties and covenants:

28.1.1 *Good Standing.* Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LGIA.

28.1.2 *Authority.* Such Party has the right, power and authority to enter into this LGIA, to become a party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 *No Conflict.* The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 *Consent and Approval.* Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

Article 29. Joint Operating Committee

29.1 *Joint Operating Committee.* Except in the case of ISOs and RTOs, Transmission Provider shall constitute a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. At least six (6) months prior to the expected Initial Synchronization Date, Interconnection Customer and Transmission Provider shall each appoint one representative and one alternate to the Joint Operating Committee. Each Interconnection

Customer shall notify the Transmission Provider of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this LGIA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

29.1.1 Establish data requirements and operating record requirements.

29.1.2 Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.

29.1.3 Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Interconnection Customer's facilities at the Point of Interconnection.

29.1.4 Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Large Generating Facility and other facilities that impact the normal operation of the interconnection of the Large Generating Facility to the Transmission System.

29.1.5 Ensure that information is being provided by each Party regarding equipment availability.

29.1.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

Article 30. Miscellaneous

30.1 *Binding Effect.* This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

30.2 *Conflicts.* In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.

30.3 *Rules of Interpretation.* This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) The singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be; (6) ''hereunder'', ''hereof'', ''herein'', ''hereto'' and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) ''including'' (and with correlative meaning ''include'') means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, ''from'' means ''from and including'', ''to'' means ''to but excluding'' and ''through'' means ''through and including''.

30.4 *Entire Agreement.* This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this LGIA.

30.5 *No Third Party Beneficiaries.* This LGIA 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.

30.6 *Waiver.* The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA 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 LGIA. Termination or Default of this LGIA for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this LGIA shall, if requested, be provided in writing.

30.7 *Headings.* The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

30.8 *Multiple Counterparts.* This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 *Amendment.* The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by both of the Parties.

30.10 *Modification by the Parties.* The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

30.11 *Reservation of Rights.* Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

30.12 *No Partnership.* This LGIA 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.

In witness whereof, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date:p _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Appendices to LGIA

Appendix A—Interconnection Facilities, Network Upgrades and Distribution Upgrades
Appendix B—Milestones
Appendix C—Interconnection Details
Appendix D—Security Arrangements Details
Appendix E—Commercial Operation Date
Appendix F—Addresses for Delivery of Notices and Billings

Appendix A to LGIA—Interconnection Facilities, Network Upgrades and Distribution Upgrades

1. Interconnection Facilities:

(a) [insert Interconnection Customer's Interconnection Facilities]:

(b) [insert Transmission Provider's Interconnection Facilities]:

2. Network Upgrades:

(a) [insert Stand Alone Network Upgrades]:

(b) [insert Other Network Upgrades]:

3. Distribution Upgrades:

Appendix B to LGIA—Milestones [Reserved]

Appendix C to LGIA—Interconnection Details [Reserved]

Appendix D to LGIA—Security Arrangements Details

Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. The Commission will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix E to LGIA—Commercial Operation Date

This Appendix E is a part of the LGIA between Transmission Provider and Interconnection Customer.

[Date]

[Transmission Provider Address]

Re: _____Large Generating Facility

Dear: _____

On [Date] [Interconnection Customer] has completed Trial Operation of Unit No. _____. This letter confirms that [Interconnection Customer] commenced commercial operation of Unit No. ____ at the Large Generating Facility, effective as of [Date plus one day].

Thank you.

[Signature]

[Interconnection Customer Representative]

Appendix F to LGIA—Addresses for Delivery of Notices and Billings

Notices:

Transmission Provider:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

Billings and Payments:

Transmission Provider:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

Alternative Forms of Delivery of Notices (telephone, facsimile or email):

Transmission Provider:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

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August 19, 2003

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Standardization of Small Generator Interconnection Agreements and Procedures; Proposed Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–000]

Standardization of Small Generator Interconnection Agreements and Procedures

July 24, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Federal Power Act (FPA) to require public utilities that own, operate, or control facilities for transmitting electric energy in interstate commerce to file revised Open Access Transmission Tariffs containing standard interconnection procedures and a standard interconnection agreement for small generators. Specifically, the Commission is proposing in this Notice of Proposed Rulemaking that such public utilities shall provide interconnection service to Small Generating Facilities (*i.e.*, devices used for the production of electricity having a capacity of no more than 20 megawatts), including their own generation, under the procedures set forth in the proposed standard interconnection procedures and according to a standard interconnection agreement. Any non-public utility that seeks voluntary compliance with the reciprocity condition of a jurisdictional transmission tariff may satisfy this condition by adopting these procedures and this agreement.

DATES: Comments are due October 3, 2003. Comments should be double spaced and include an executive summary. In order to facilitate the evaluation of comments, commenters are encouraged to file their comments electronically in WordPerfect, MS Word, Portable Document Format (PDF), or ASCII format.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Comments should reference Docket No. RM02–12–000. Please refer to the Comment Procedures Section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:
Bruce Poole (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8468.

Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6205.

Kirk F. Randall (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8092.

Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Background
B. Generator Interconnections
C. Large Generator Interconnection Rulemaking
D. Small Generator Interconnection ANOPR, Process, and Comments
II. Discussion
A. The Commission's Small Generator Interconnection Proposal
1. Jurisdiction
2. Summary of the Interconnection Process for Small Generating Facilities
3. Maximum Capacity of a Small Generator (Proposed SGIP Section 1, Proposed SGIA Article 1)
4. Precertification of Small Generating Facilities No Larger than 2 MW (Proposed SGIP Section 3.1)
5. Use of Screening Criteria (Proposed SGIP Sections 3.3 and 4.3)
a. Super-Expedited Screening Criteria (Appendix 1 to the Proposed SGIP)
b. Expedited Screening Criteria (Appendix 2 to the Proposed SGIP)
6. Dispute Resolution (Proposed SGIP Section 2.11 and Proposed SGIA Article 8)
7. Queuing (Proposed SGIP Sections 4.4 and 4.7)
8. Parties to the Proposed SGIA (Proposed SGIA Article 9)
9. Affected Systems (Proposed SGIP Section 2.8)
10. Pricing / Cost Recovery for Upgrades (Proposed SGIA Article 5)
11. Liability, Indemnity, Force Majeure, and Insurance (Proposed SGIA Articles 6.13, 6.14, and 6.16)
12. Variations From the Final Rule on Compliance
B. Summary of the Proposed SGIP and the Proposed SGIA
1. Standard Small Generator Interconnection Procedures (Proposed SGIP)
Section 1. Definitions
Section 2. General Provisions
Section 3. Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System
Section 4. Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System
Charts
Appendices
2. Standard Small Generator Interconnection Agreement (Proposed SGIA)
Article 1. Definitions
Article 2. Scope and Limitations of Agreement
Article 3. Inspection, Testing, Authorization, and Right of Access
Article 4. Effective Date, Term, Termination, and Disconnection
Article 5. Cost Responsibility, Milestones, Billing, and Payment
Article 6. Miscellaneous
Article 7. Confidentiality
Article 8. Disputes
Article 9. Signatures
Appendices
III. Public Reporting Burden and Information Collection Statement
IV. Environmental Analysis
V. Regulatory Flexibility Act Certification
VI. Comment Procedures
VII. Document Availability
Appendix A—Flow Chart of Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System
Appendix B—Flow Chart of Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System
Appendix C—Standard Small Generator Interconnection Procedures (SGIP), including Standard Small Generator Interconnection Agreement (SGIA)

I. Introduction

1. This Notice of Proposed Rulemaking (NOPR) proposes the addition of Standard Small Generator Interconnection Procedures (Proposed SGIP) and a Standard Small Generator Interconnection Agreement (Proposed SGIA) to the Open Access Transmission Tariffs (OATTs) of jurisdictional public utilities.[1] The Commission expects that this rulemaking will reduce interconnection time and costs for Interconnection Customers and Transmission Providers, prevent undue discrimination, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and variety of new generation

[1] Provisions of the Proposed SGIP are referred to as ''Sections'' whereas provisions of the Proposed SGIA are referred to as ''Articles.''

resources that will compete in the wholesale electricity market, and facilitate development of non-polluting alternative energy sources (such as photovoltaic, fuel cell, and wind generators).

2. The Proposed SGIP sets forth the procedures that Interconnection Customers and Transmission Providers would be required to follow during the interconnection process.[2] Included in the Proposed SGIP are (1) the application form (referred to as the Interconnection Request), (2) Super-Expedited Procedures for interconnecting Precertified Small Generating Facilities no larger than 2 MW to a Low-Voltage Transmission System (*i.e.*, less than 69 kilovolts), (3) Expedited Procedures for interconnecting Small Generating Facilities larger than 2 MW but no larger than 10 MW to a Low-Voltage Transmission System, (4) procedures for interconnecting Small Generating Facilities to a High-Voltage Transmission System (*i.e.*, 69 kilovolts and above) and Small Generating Facilities larger than 10 MW interconnecting with a Low-Voltage Transmission System.

3. The Proposed SGIA sets forth the legal rights and obligations of each Party, addresses cost responsibility issues, establishes Milestones for the completion of the interconnection, and lays out a process for the resolution of disputes.

4. In this NOPR, we propose standard procedures and a standard agreement to be used by a public utility to interconnect a Small Generator with the utility's transmission facilities or with its jurisdictional distribution facilities for the purpose of selling electric energy at wholesale in interstate commerce.

A. Background

5. This NOPR responds to business and technology changes in the electric industry. Where the electric industry was once primarily the domain of large, vertically integrated utilities generating power at large centralized plants, advances in technology have created a burgeoning market for small power plants that may offer economic, reliability, or environmental benefits.

6. With these developments in mind, the Commission continues to work to encourage fully competitive bulk power markets. The effort took its first significant step with Order No. 888,[3] which required public utilities to provide other entities comparable access to their transmission systems, and continued with Order No. 2000,[4] which began the process of developing Regional Transmission Organizations (RTOs). The Commission has taken numerous actions to establish and protect robust, seamless, and competitive wholesale electricity markets.[5] Concurrent with the issuance of this NOPR, the Commission is issuing a Final Rule establishing standard interconnection procedures and a standard agreement for large generators to further encourage fully competitive bulk power markets and much-needed investment in generation.[6]

7. The Commission continues to seek the establishment of robust competitive wholesale electric markets.[7] A recent Commission White Paper stated the Commission's intent to focus on the formation of RTOs and Independent System Operators (ISOs) and on ensuring that RTOs and ISOs have good wholesale market rules in place.[8] It proposed to require all public utilities to join an RTO or ISO. Further, the White Paper stated that all RTOs and ISOs would, with limited exceptions, be required to implement a wholesale market platform consisting of elements that must be in place for well-functioning wholesale markets: (1) Regional independent grid operation, (2) a regional transmission planning process, (3) fair cost allocation for existing and new transmission, (4) market monitoring and market power mitigation, (5) spot markets to meet real-time energy needs, (6) transparency and efficiency in congestion management, (7) firm transmission rights; and (8) a regional approach to ensuring resource adequacy. Also, an RTO or ISO may propose participant funding for transmission upgrades for a generator interconnection, and, for a transitional period not to exceed a year, a region may use participant funding as soon as an independent entity has been approved by the Commission and the affected states.

B. Generator Interconnections

8. While the subject of generator interconnection arose in the Order No. 888 rulemaking, no explicit reference to it appeared in the OATT. Nevertheless, interconnection is a critical component of open access transmission service, and the Commission must ensure that interconnection service is provided under just and reasonable terms and conditions.

9. Entities seeking to interconnect generators have been hindered by the lack of standard interconnection procedures and agreements. Standard interconnection procedures limit opportunities for public utilities that own both generation and transmission to favor their own generation and help produce just and reasonable interconnection charges for generators. A standard interconnection agreement reduces market entry costs for generators and offers them access to regional energy markets on standard terms.

10. As discussed below, after the Commission initiated its interconnection NOPR in Docket No. RM02–1–000, Standardization of Generator Interconnection Agreements and Procedures, it became apparent that the rule as proposed might not sufficiently encourage the development of small generators, and that there needed to be a separate interconnection agreement and set of procedures designed specifically for small generators.

11. The effort to generically address Small Generator interconnection issues presents numerous challenges. The electric industry is faced with the

[2] Unless otherwise defined in this Preamble, capitalized terms used in this NOPR have the meanings specified in Section 1 of the Proposed SGIP and Article 1 of the Proposed SGIA. The term Generating Facility means the specific device for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the Interconnection Customer. The entity with which the Generating Facility is interconnecting is referred to as the Transmission Provider. The term Small Generator is intended to refer to any energy resource having a capacity of no more than 20 megawatts, or the owner of such a resource. Likewise, Large Generator refers to any energy resource having a capacity of more than 20 megawatts, or the owner of such a resource.

[3] 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. and 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 relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[4] Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *aff'd sub nom.* Public Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[5] *E.g.,* Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55452 (Aug. 29, 2002), FERC Stats. & Regs. ¶32,563 (2002).

[6] Standardization of Generator Interconnection Agreements and Procedures, Final Rule, Docket No. RM02–1–000 (issued concurrently with this NOPR).

[7] E.g., Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55542 (Aug. 29, 2002), FERC Stats. & Regs. ¶32,563 (2002).

[8] White Paper: Wholesale Power Market Platform, Docket No. RM01–12–000 (Apr. 28, 2003) (White Paper).

competing needs for, on the one hand, maintaining electric system reliability and, on the other hand, encouraging increased generation, including generation using innovative technologies. To encourage small generators to participate in the interstate wholesale market, the interconnection process should be affordable and the terms and conditions should be clear, but these goals must not compromise the reliability of the electric system.

C. Large Generator Interconnection Rulemaking

12. The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) in Docket No. RM02–1–000 [9] (Large Generator Interconnection ANOPR) that was originally intended to develop standard generator interconnection procedures and a standard agreement for generators of all sizes. The Commission also initiated a collaborative process in which members of the electric industry and government (collectively, stakeholders) could draft standard interconnection procedures and interconnection agreement documents. Public meetings of these stakeholders culminated in the development of a Large Generator Interconnection Procedures (Consensus LGIP) and a Large Generator Interconnection Agreement (Consensus LGIA), which were filed with the Commission.[10]

13. The Commission then issued a Large Generator Interconnection NOPR.[11] The Commission proposed standard interconnection procedures for generators, which is referred to here as the Proposed LGIP. It also proposed a standard interconnection agreement for all generators, which is referred to here as the Proposed LGIA. Both would be incorporated into existing and future OATTs. The Proposed LGIP and Proposed LGIA generally followed the consensus documents filed with the Commission, but the Commission also resolved, for purposes of the NOPR, several issues that were left unresolved in the consensus documents. A Large Generator Interconnection Final Rule is being issued concurrently with the issuance of this NOPR.

D. Small Generator Interconnection ANOPR, Process, and Comments

14. Although the Proposed LGIP and Proposed LGIA provided for the expedited treatment of Small Generating Facilities, some commenters argued that the Commission should adopt separate standard interconnection procedures and agreements that address the unique concerns of Small Generators.[12] Small Generator Commenters proposed simplified standard procedures and agreements that would allow quicker, less costly, and simpler interconnection for Small Generating Facilities no larger than 2 MW, and different procedures and agreements for units larger than 2 MW but no larger than 20 MW. Persuaded that different procedures and agreements for Small Generators are needed, we severed consideration of Small Generating Facilities from the Large Generator Interconnection rulemaking and issued its Small Generator Interconnection ANOPR in August 2002.[13]

15. The Small Generator Interconnection ANOPR proposed two small generator interconnection procedures and two small generator interconnection agreements, with the distinction between the two sets of documents being the size of the Small Generator. These documents (hereafter, respectively, ANOPR SGIPs and ANOPR SGIAs) were offered by the Small Generator Commenters in their comments to the Large Generator Interconnection NOPR. We encouraged interested parties to pursue consensus on the ANOPR SGIPs and ANOPR SGIAs. To that end, the Commission convened a series of public meetings designed to enable the parties to discuss and reach as much agreement as possible.

16. The public meetings culminated in the negotiating parties [14] preparing two sets of standard small generator interconnection procedures and agreements (Coalition SGIPs and Coalition SGIAs, respectively) and submitting them to the Commission in November 2002. While the Coalition members reached consensus on some issues, significant disagreements remained. The documents nonetheless helped inform the Commission of the various challenges that confront both the owners of Small Generators and Transmission Providers. Public comments on the Small Generator Interconnection ANOPR were filed in December 2002.

II. Discussion

17. The results of the negotiations during the Small Generator Interconnection ANOPR process, the ANOPR comments, and the technical conference on queuing form the basis for the Proposed SGIP and Proposed SGIA that are included in this NOPR.

18. Coalition members drafted two Coalition SGIAs, one for Small Generating Facilities no larger than 2 MW, and a second for Small Generating Facilities larger than 2 MW but no larger than 20 MW. Likewise, they developed two sets of Coalition SGIPs. Although there was significant overlap between the two Coalition SGIAs as well as the two Coalition SGIPs, the Coalition members did not consolidate these four documents. To simplify the interconnection process and eliminate duplication, this NOPR offers a single Proposed SGIP and a single Proposed SGIA. The former incorporates different procedures for the processing of Interconnection Requests for Small Generating Facilities of various sizes.

19. Coalition members were often unable to reach consensus on an issue and the Commission needed to resolve the issue for the purpose of this NOPR. The Commission carefully evaluated the positions the Coalition members presented in the November 2002 consensus document as well as the ANOPR comments filed the following month. The Commission also acknowledges that NARUC has developed a model small generator interconnection procedures and agreement that is similar in many ways to the proposal contained in this NOPR. The NARUC model and its comments were very helpful in the development of this proposal.

20. Also, where appropriate, we are proposing some provisions and definitions identical or similar to those in the Large Generator Interconnection Final Rule (and the OATT) to ensure as much consistency as is reasonable between the large and small generator

[9] Standardizing Generator Interconnection Agreements and Procedures; Advance Notice of Proposed Rulemaking, 66 FR 55140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2002). The previously cited rulemaking is referred to here as the Large Generator Interconnection rulemaking, to distinguish it from the Small Generator Interconnection rule proposed here.

[10] While these consensus documents reflected significant agreement, they also identified disputed provisions and left a number of issues unresolved.

[11] Large Generator Interconnection NOPR, IV FERC Stats. & Regs. ¶ 32,560 (2002).

[12] Those commenters included The Solar Energy Industries Association, the U.S. Fuel Cell Council, the American Solar Energy Society, the U.S. Combined Heat and Power Association, the International District Energy Association, and the American Wind Energy Association (collectively, Small Generator Commenters).

[13] Standardization of Small Generator Interconnection Agreements and Procedures; Advance Notice of Proposed Rulemaking, 67 FR 54749 (Aug. 26, 2002), FERC Stats. & Regs. ¶ 35,544 (2002).

[14] The negotiating parties included representatives of small generators, the National Association of Regulatory Utility Commissioners, and transmission and distribution providers (collectively, ''Coalition'').

tariff provisions.[15] We invite comment on this approach, and ask interested parties to address whether Large Generators and Small Generators should be treated differently with respect to those parts of the Proposed SGIP and Proposed SGIA that follow the Final Rule LGIP and Final Rule LGIA.

21. The Coalition presents various procedures to determine whether certain Small Generators may interconnect safely with a Transmission Provider's Transmission System. In the Coalition's proposed SGIPs, some procedures would evaluate requests to interconnect Small Generators to a Transmission Provider's Distribution System, while others would evaluate requests to interconnect with its Transmission System. The Commission here proposes instead to use the voltage level of the Transmission Provider's Transmission System at which the interconnection is to be made as one basis for determining which procedure may be employed [16]—Low-Voltage procedures would apply to interconnections made at voltage levels below 69 kV, and High-Voltage procedures would apply to interconnections made at voltage levels of 69 kV and above. The Commission believes that this will assist the Parties by making clear which procedure applies to a particular Interconnection Request.

A. The Commission's Small Generator Interconnection Proposal

22. This NOPR includes a Proposed SGIP and a Proposed SGIA. The Proposed SGIP describes the process for evaluating the proposed interconnection. After the process is successfully completed, the Parties would then execute the Proposed SGIA, which sets forth the contractual rights and obligations of the Parties. To explain the contents of the Proposed SGIA and Proposed SGIP, we next present: (1) A discussion of our legal authority over a Small Generator's interconnection to a public utility's Transmission System, (2) a summary of the proposed interconnection process,[17] and (3) a discussion of significant issues that arose during the Small Generator Interconnection ANOPR process and how we propose to resolve them.

1. Jurisdiction

23. At the outset, it is important to clarify several terms when discussing the question of jurisdiction. ''Local distribution'' is a legal term; under FPA section 201(b)(1), the Commission lacks jurisdiction over local distribution facilities.[18] ''Distribution'' is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are ''local distribution'' facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

24. This NOPR proposes to apply the NOPR SGIA and NOPR SGIP in a manner consistent with the Large Generator Interconnection Final Rule. This is different from the authority proposed in the Small Generator Interconnection ANOPR, where, consistent with the jurisdiction proposed in the Large Generator Interconnection NOPR, we proposed to assert jurisdiction when the owner of a generator seeks to interconnect with a distribution facility to make a wholesale sale of electricity in interstate commerce.[19] Several commenters to the Small Generator Interconnection ANOPR object to the Commission asserting jurisdiction over interconnections to distribution facilities, both legally and as a matter of policy.[20] They argue, among other things, that the FPA reserves jurisdiction over local distribution facilities to the States and that the Commission lacks sufficient staff and expertise to regulate numerous Small Generator interconnections to Distribution Systems. These matters, they say, are best left to the States. Most of these commenters do not distinguish between distribution facilities owned by jurisdictional public utilities and those owned by non-public utilities.

25. The proposed rule proposes to apply to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT.[21] In other words, the standard interconnection procedures and contract terms would apply when an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made. Therefore, the NOPR proposes to apply to a request to interconnect to a public utility's facilities used for transmission in interstate commerce. It also would apply to a request to interconnect to a public utility's ''distribution'' facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT. But in such a case where the ''distribution'' facilities have a dual use, *i.e.*, the facilities are used for both wholesale sales and retail sales, the NOPR would apply to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce.[22]

26. For those Small Generator interconnections that would not be subject to the Final Rule SGIP and Final Rule SGIA, the Commission will make the Final Rule documents available as a guideline. The standardization of small generator terms and conditions would

[15] *See, e.g.*, Articles 4.1, 5.1.2, 5.1.2.1, 5.2, 6.1–6.9, 6.12–6.20, 7, and 8 of the Proposed SGIA.

[16] The other basis is generator size.

[17] To aid the reader, the Appendices contain flow charts that depict the interconnection process. Appendix 1 depicts the Super-Expedited Procedures for interconnecting Small Generating Facilities no larger than 2 MW to a Low-Voltage Transmission System. Appendix 2 depicts the procedures for interconnecting Small Generating Facilities to a High-Voltage Transmission System and Small Generating Facilities larger than 2 MW to a Low-Voltage Transmission System.

[18] 16 U.S.C. 824(b)(1) (2000).

[19] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 FR 22250 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 at 34,178 n.22 (2002).

[20] *E.g.,* Baltimore Gas & Electric Co., Commonwealth of Massachusetts Department of Telecommunications and Energy, Connecticut Department of Public Utility Control, Edison Electric Institute, FirstEnergy, NARUC, Public Service Commission of Wisconsin, and Southern Company Services Inc.

[21] For purposes of this paragraph, the term ''Commission-filed OATT'' means a tariff that is on file at, and has been approved by, the Commission.

[22] The Commission will exercise exclusive jurisdiction only over the Commission-jurisdictional service. *See* Laguna Irrigation District, 95 FERC ¶ 61,305 at 62,039 (2001) *aff'd sub nom. Pacific Gas & Electric Co.* v. *FERC,* 44 Fed. Appx. 170 (9th Cir. 2002); Tex-La Electric Cooperative of Texas, Inc., 67 FERC ¶ 61,019 at 61,055–56, *final order,* 69 FERC ¶ 61,269 (1994) (both noting that the Commission asserts jurisdiction over the service when the facilities are not purely ''transmission'' facilities). Accordingly, the Commission will continue to exercise exclusive jurisdiction over the rates, terms, and conditions of the Commission-jurisdictional service provided over the dual use ''distribution'' facility, but the Commission will not assert jurisdiction over all uses of that facility, because the regulation of ''local distribution'' of electricity to end users is reserved to the States.

benefit all customers nationwide by encouraging the development of small generation, including generation using innovative technologies.

27. Finally, the Commission proposes to apply the reciprocity requirements in Order No. 888 to this proceeding. Under the reciprocity provision in section 6 of the OATT, if the public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. A non-public utility that has adopted a ''safe harbor'' Tariff to comply with a reciprocity condition may add to its Tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the Final Rule SGIP and Final Rule SGIA if it wishes to continue to qualify for safe harbor treatment. A non-public utility that owns, controls, or operates transmission and that has not filed with the Commission a safe harbor Tariff and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement or seek a waiver of the OATT reciprocity condition from the public utility.

2. Summary of the Interconnection Process for Small Generating Facilities

28. To interconnect its Generating Facility with a Transmission Provider's Transmission System, an Interconnection Customer must first submit an Interconnection Request to the Transmission Provider. When the Transmission Provider deems the Interconnection Request complete, the Interconnection Request would be placed in the Transmission Provider's queue with other pending interconnection requests.

29. The Proposed SGIP divides Interconnection Requests into two groups according to whether the interconnection is to a High-Voltage Transmission System (69 kV or above) or a Low-Voltage Transmission System (below 69 kV). Interconnections to Low-Voltage Transmission Systems would be further divided into three groups depending on the size of the Small Generator being interconnected: (1) Small Generating Facilities larger than 10 MW but no larger than 20 MW, (2) Small Generating Facilities larger than 2 MW but no larger than 10 MW, and (3) Small Generating Facilities no larger than 2 MW.

30. The review of the proposed interconnection of a Small Generator with a High-Voltage Transmission System or a Small Generator larger than 10 MW with a Low-Voltage Transmission System would proceed as follows. Once the Interconnection Request is deemed complete, the Parties would conduct a Scoping Meeting to review the Interconnection Request and also review existing studies of the Transmission Provider's Transmission System that are relevant to the Interconnection Request. Interconnection Studies, including the Interconnection Feasibility Study, Interconnection System Impact Study, and Interconnection Facilities Study, would next be performed to evaluate the proposed interconnection.[23] These studies identify any Adverse System Impact[24] to the Transmission Provider's Transmission System that may occur as a result of the interconnection, and the Transmission System modifications that need to be made to address them. The Interconnection Customer pays for the Transmission Provider's actual costs of performing each study, and the Proposed SGIP includes time periods within which the studies must be completed. If the Interconnection Customer agrees to pay for any necessary modifications, the Transmission Provider must proffer an SGIA to the Interconnection Customer.

31. Although the activities performed in the Small Generator process are the same as those in the Large Generator Interconnection Final Rule, the time lines proposed here are shorter. Accordingly, a Small Generator is likely to be interconnected more quickly under the Proposed SGIP than under the Final Rule LGIP.

32. For Small Generating Facilities larger than 2 MW but no larger than 10 MW interconnecting with a Transmission Provider's Low-Voltage Transmission System, the proposed interconnection would be evaluated using the Proposed SGIP's Expedited Screening Criteria. If the proposed interconnection passes the screening criteria and the Transmission Provider agrees that the Generating Facility can be safely interconnected with its Low-Voltage Transmission System, the former shall proffer an SGIA to the Interconnection Customer. However, if the Transmission Provider believes that the Generating Facility cannot be safely interconnected, irrespective of whether the proposed interconnection passes or fails the Expedited Screening Criteria, the Parties would follow the same procedures for Small Generating Facilities larger than 10 MW interconnecting with Low-Voltage Transmission Systems; *i.e.*, conduct a Scoping Meeting and perform Interconnection Studies. The Transmission Provider, after consulting with the Interconnection Customer, may determine whether a particular Generating Facility in this class of Small Generators may be interconnected absent a Scoping Meeting and Interconnection Studies. This is because, although the proposed interconnection may pass the Expedited Screening Criteria, it may nonetheless cause an Adverse System Impact, depending upon where the Small Generator is physically located on the Transmission Provider's Transmission System. Since this cannot be reflected in the screening criteria, the Transmission Provider may evaluate the proposed interconnection in greater detail and, if it is concerned about an Adverse System Impact to its Transmission System, require that a Scoping Meeting be held and Interconnection Studies be conducted.

33. However, in order to encourage the Parties to use the Expedited Screening Criteria to the fullest extent possible, the Commission proposes that, if the Interconnection Feasibility Study conducted under these conditions indicates no Adverse System Impact, the Transmission Provider must bear the cost of the Interconnection Feasibility Study. If an Adverse System Impact is identified, however, the Interconnection Customer must pay for the cost of the Interconnection Feasibility Study.

34. Interconnections of Precertified Small Generating Facilities no larger than 2 MW with the Transmission Provider's Low-Voltage Transmission System would be evaluated under the Proposed SGIP's Super-Expedited Procedures. A Precertified Small Generator is one that has been certified by a national testing laboratory as having met applicable consensus industry and safety standards. If a proposed interconnection passes all the Super-Expedited Screening Criteria, the Transmission Provider would proffer an SGIA to the Interconnection Customer. If the proposed interconnection fails the

[23] The Interconnection Feasibility Study evaluates on a preliminary basis the impact of the proposed interconnection to the Transmission Provider's Transmission System. The Interconnection System Impact Study evaluates in detail the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, Affected Systems. The Interconnection Facilities Study determines the required modifications to the Transmission Provider's Transmission System, including the detailed costs and scheduled completion dates for such modifications, that would be required to accommodate the Interconnection Request.

[24] An Adverse System Impact means that technical or operational limits on conductors or equipment have been exceeded, which may compromise the safety or reliability of the electric power system.

Super-Expedited screening criteria: (1) The Transmission Provider could permit the interconnection anyway, after evaluating other factors such as the physical location of the Generating Facility on its Transmission System, or (2) the Interconnection Customer could ask the Transmission Provider to perform an Additional Review, to be paid for by the Interconnection Customer.

35. The Additional Review is an expedited engineering evaluation limited to six hours of engineering time that is intended to identify minor modifications to Transmission Provider's Transmission System that may permit the Generating Facility to interconnect safely and reliably. If the Additional Review indicates that minor modifications to Transmission Provider's Transmission System can indeed be made that would permit the Generating Facility to interconnect safely and reliably, and the Interconnection Customer agrees to pay for the modifications, the Transmission Provider would provide the Interconnection Customer an SGIA. If the Additional Review does not indicate that the Generating Facility can be interconnected safely and reliably, the Parties would follow the procedures for Small Generating Facilities larger than 2 MW but no larger than 10 MW interconnecting with Low-Voltage Transmission Systems.

36. Once the steps called for in the Interconnection Procedures are completed, the Transmission Provider would provide a best estimate of costs to be paid by the Interconnection Customer to effect the interconnection, and the Parties would negotiate Milestones for completing the interconnection, all of which would be incorporated into the SGIA. The SGIA would become effective upon execution by the Parties, subject to acceptance by the Commission, if necessary.[25]

37. The Commission next discusses several issues that either divided the parties seeking to reach consensus during the Small Generator ANOPR process or on which the Commission departs from the consensus position.

3. Maximum Capacity of a Small Generator (Proposed SGIP Section 1, Proposed SGIA Article 1)

38. Consistent with the Large Generator Interconnection Final Rule and the Small Generator Interconnection ANOPR, Small Generating Facilities no larger than 20 MW are considered Small Generating Facilities under the Proposed SGIA and Proposed SGIP. The Commission proposes to treat as a single Generating Facility the aggregated generation at a site for which an Interconnection Customer seeks a single Point of Interconnection.

39. The Commission recognizes that 10 MW is used as the threshold for small generators in Texas, California, New York and Ohio. In addition, several entities, such as the PJM Interconnection, Electric Reliability Council of Texas, and the California Independent System Operator use 10 MW as the threshold because generators under 10 MW are considered less likely to affect reliability and safety. In this NOPR, the Commission likewise proposes special procedures for generators no larger than 10 MW. The Commission, however, proposes to adopt the higher 20 MW threshold, which is used by the Midwest Independent System Operator, in this rulemaking because it would encourage the development of a greater number of Small Generators and promote the development of innovative small generation technologies.

40. Regarding Interconnection Requests that propose to increase the capacity at an existing Generating Facility, the Commission proposes that the new total capacity would determine how the Interconnection Request should be evaluated. For example, if an Interconnection Customer seeks to increase the capacity of an existing Generating Facility from 2 MW to 5 MW by the addition of a second generator, the Interconnection Request would be evaluated as if it were for a 5 MW Generating Facility. Likewise, the Commission proposes that if an Interconnection Customer seeks to increase the size of an existing Generating Facility from 10 MW to 25 MW, the Interconnection Request would be evaluated as if it were a request for a 25 MW Generating Facility. In this case, the Interconnection Request would not be eligible for evaluation under the Proposed SGIP, but rather the Final Rule LGIP. We also invite comment on whether single projects with multiple points of interconnection (as might occur for a windfarm or an industrial cogeneration project serving multiple facilities) should be treated as separate projects or as a single project for queuing and Interconnection Study purposes.

41. Some Interconnection Requests could specify a level of capacity below the maximum capacity of the Generating Facility. We seek comment on how such Interconnection Requests should be addressed. For example, should an interconnection request for a device with a maximum capacity of 22 MW but seeking an interconnection for only 20 MW (and agreeing to restrict delivery to the Transmission Provider's Transmission System below that level) be evaluated under the Final Rule SGIP or the Final Rule LGIP?

4. Precertification of Small Generating Facilities No Larger than 2 MW (Proposed SGIP Section 3.1)

42. A small number of states have procedures to precertify Small Generator equipment that meet specified operational and safety standards in order to expedite interconnections.[26] Precertification eliminates the need for the Transmission Provider to study the equipment for safety and reliability purposes.

43. Precertification of the Interconnection Customer's equipment does not mean that the Generating Facility can be immediately interconnected to the Transmission Provider's Transmission System. Before a Precertified Generating Facility may be interconnected, it must first be determined that the interconnection would have no Adverse System Impact on the Transmission Provider's Transmission System. The purpose of Precertification is to ensure the safety of the Generating Facility itself, not the safety or reliability of the Generating Facility's interconnection to the Transmission Provider's Transmission System.

44. Although precertification presumably has expedited the development of small generation in states where such programs exist, there is no national precertification program. Manufacturers tell us that they face the cost and delay associated with having their equipment evaluated in each state. Moreover, many states lack procedures for evaluating equipment. In these states, generator equipment is evaluated on a case-by-case basis by the Transmission Provider in the course of

[25] Under Order No. 2001, if an executed interconnection agreement conforms with a Commission-approved standard form of interconnection agreement, the utility does not have to file it with the Commission but must report it in the Electric Quarterly Reports. *See* Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (2002), FERC Stats. & Regs. ¶ 31,127 at P 178 (2002); *reh'g denied,* Order 2001–A, 100 FERC ¶ 61,074 (2002); *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342 (2002); *further order*, Order No. 200–C, 101 FERC ¶ 61,314 (2002). An interconnection agreement must be filed only if it contains terms and conditions that deviate from the utility's generic, Commission-approved interconnection agreement or is filed in unexecuted form.

[26] The New York Department of Public Service, for example, maintains a list of approved equipment on its Web site.

evaluating each Interconnection Request.

45. The Coalition proposes a single, uniform, nationwide precertification process for Small Generating Facilities no larger than 2 MW that would encourage the development of small generation while ensuring the safety of the electric system. The Coalition proposes that the Commission itself certify equipment and maintain a registry of equipment that has been certified.

46. This NOPR does not propose to adopt the Coalition's proposal in its entirety. In the Proposed SGIP, a Precertified Generating Facility is defined as one that has been tested by a nationally recognized testing laboratory to consensus industry standards in order to ensure that it will operate in a safe manner. The Commission in this NOPR concludes that certifying equipment and maintaining a registry should be done by an industry-recognized testing organization, not this agency. Accordingly, rather than establish and maintain a list of precertified equipment, as proposed by the Coalition, the Commission encourages cooperation and information sharing among the States and industry participants regarding the precertification of generating equipment. This would eliminate duplication of effort and encourage small generation development, while advancing the movement toward a nationwide set of precertification standards.

47. The Commission recognizes that the IEEE Standards Board approved IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems on June 12, 2003 to create uniform standards to interconnect distributed generation for safe and reliable operation. Together with other technical industry documents, IEEE 1547 could serve as the basis for a national standard for precertification. The Coalition proposed other documents that might be relevant to equipment precertification. The Commission requests comments about what role, if any, the Commission should have in assessing which entity or entities could perform this precertification function.

5. Use of Screening Criteria (Proposed SGIP Sections 3.3 and 4.3)

48. Screening criteria simplify the process of evaluating the interconnection of certain Small Generating Facilities to the Transmission Provider's Transmission System. Their purpose is to identify quickly those proposed interconnections that can be implemented with minimal or no impact on the Transmission Provider's Transmission System and can, therefore, be completed quickly. An example of a Super-Expedited Screening Criterion is that the capacity of a Small Generator proposed for a radial circuit shall not exceed five percent of that circuit's annual peak load.

49. The Coalition developed four screening criteria: (1) Primary screening criteria, (2) secondary screening criteria, (3) distribution impact screening criteria, and (4) transmission impact screening criteria. The first three only apply to proposed interconnections with the Transmission Provider's Distribution System. Not all parties in the ANOPR process supported the use of all four Coalition screening criteria, especially the last two.

50. The Proposed SGIP includes two screening criteria to evaluate proposed interconnections with a Transmission Provider's Low-Voltage Transmission System (*i.e.*, below 69 kV): (1) Super-Expedited Screening Criteria for the smallest generating facilities, and (2) Expedited Screening Criteria for somewhat larger but still small generating facilities. Although both screening criteria use similar evaluation standards, the latter are easier to satisfy than the former. The Commission does not propose screening criteria for: (1) Small Generating Facilities of any size interconnecting with the Transmission Provider's High-Voltage Transmission System and (2) Small Generating Facilities larger than 10 MW interconnecting with the Transmission Provider's Low-Voltage Transmission System. Because of the potential for an Adverse System Impact, such requests to interconnect are best evaluated using the Scoping Meeting and Interconnection Studies.

51. A proposed interconnection that fails the Super-Expedited Screening Criteria may still qualify for interconnection by being evaluated using the Additional Review and three sequential Interconnection Studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study. A proposed interconnection that fails the Expedited Screening Criteria may still qualify for interconnection by being evaluated using three sequential studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study.

a. Super-Expedited Screening Criteria (Appendix 1 to the Proposed SGIP)

52. The Super-Expedited Screening Criteria [27] are designed to evaluate proposed interconnections for Precertified Small Generating Facilities no larger than 2 MW that are to be interconnected with the Transmission Provider's Low-Voltage Transmission System. If the proposed interconnection passes the Super-Expedited Screening Criteria, the Interconnection Customer and Transmission Provider would sign an Interconnection Agreement without any further review. However, if the proposed interconnection does not pass, the Interconnection Customer can request an Additional Review to be followed by, if necessary, an Interconnection Feasibility Study, Interconnection System Impact Study, and Interconnection Facilities Study.

b. Expedited Screening Criteria (Appendix 2 to the Proposed SGIP)

53. The Expedited Screening Criteria [28] are used to evaluate the proposed interconnection of Small Generating Facilities larger than 2 MW but no larger than 10 MW with the Transmission Provider's Low-Voltage Transmission System. If the proposed interconnection passes the Expedited Screening Criteria and the Transmission Provider believes that it can interconnect the Generating Facility safely and reliably, the Interconnection Customer would sign an Interconnection Agreement without any further review. However, if the Generating Facility does not pass the Expedited Screening Criteria, or if the Transmission Provider believes that the interconnection will undermine the safety and reliability of its Transmission System even though the proposed interconnection passes the Expedited Screening Criteria, the Parties would conduct a Scoping Meeting to determine the appropriate Interconnection Studies to be performed. However, as stated above, in order to encourage the Parties to use the Expedited Screening Criteria to the fullest extent possible, the Commission proposes that, if a subsequent Interconnection Feasibility Study indicates no Adverse System Impact, the Transmission Provider must bear the cost of the Interconnection Feasibility Study. If an Adverse System Impact is identified, however, the Interconnection Customer would have

[27] The Coalition SGIP referred to Super-Expedited Screening Criteria as the Primary Screening Criteria.

[28] The Coalition SGIP referred to Expedited Screening Criteria as the Impact Screening Criteria.

to pay for the Interconnection Feasibility Study.

6. Dispute Resolution (Proposed SGIP Section 2.11 and Proposed SGIA Article 8)

54. In the Small Generator Interconnection ANOPR, the Commission proposed that the Parties use the Commission's alternative dispute resolution service or any other informal services available to them to resolve disputes. The Commission also proposed that the outcome of the dispute resolution process would be binding if the Interconnection Customer so chooses.

55. The Coalition SGIAs and SGIPs propose using Technical Masters to help resolve disputes between the Parties. According to the Coalition proposal, these Technical Masters would be certified by the Commission and provided by the Commission to the Parties at minimal or no cost. The Coalition proposal identifies Technical Masters as ''engineers with expertise in electric power transmission and distribution interconnection requirements who are qualified and independent.''[29]

56. Several commenters [30] to the ANOPR take exception to the Commission's proposal that arbitration be binding if the Interconnection Customer so chooses. They argue that the Parties should be able to retain their rights of appeal when using the arbitration process.

57. The Proposed SGIP and Proposed SGIA would adopt the dispute resolution process in the Large Generator Interconnection Final Rule. The Commission endorses the use of Technical Masters and agrees that they must have the requisite expertise to review, and where possible, resolve technical issues raised by the Parties. The proposed Dispute Resolution procedures satisfy these requirements.[31] The Commission, however, declines to adopt the Coalition's proposal that it certify Technical Masters. Instead, the Commission proposes to maintain on its Web site a list of Technical Masters who may be called upon by the Parties in the event of a technical dispute. However, the Commission will neither evaluate nor certify persons that wish to be placed on the list.

58. With respect to the Interconnection Customer's ability to elect that arbitration be binding, we propose to adopt the language contained in the Large Generator Interconnection Final Rule, which provides that external arbitration would be binding on the Parties. However, the Arbitrator's final decision must be filed with the Commission if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Upgrades. Parties may comment on this proposal and explain whether and why large and small generators should be treated differently.

7. Queuing (Proposed SGIP Sections 4.4 and 4.7)

59. The Commission proposes that each Transmission Provider maintain a single queue per geographic area. A queue sequentially lists Interconnection Requests based upon the date and time they are complete. The Queue Position of each Interconnection Request determines the order of performing Interconnection Studies for each generator, if required, and the Interconnection Customer's cost responsibility for any Upgrades to the Transmitting Provider's Transmission System necessary to accommodate the Interconnection Request.

60. Queuing was discussed at a January 21, 2003 Technical Conference convened by Commission staff. Some conference participants suggested that the Commission require the use of a single queue for each geographic area, with Interconnection Requests being evaluated in the order in which they are received. Such an approach, it was argued, is fair, makes the queue easier to administer, and allows more efficient processing of Interconnection Requests, including the use of clustering and other study techniques. Clustering of studies allows a Transmission Provider to study multiple Interconnection Requests at the same time. Clustering may reduce study costs and allow multiple Interconnection Customers to share the cost of Upgrades. Other conference participants suggested creating multiple queues based on generator size. This approach, they argued, would prevent small generator interconnections, with their comparatively short study times, from being unreasonably delayed by large generators ahead of them in the queue.

61. While we here propose that each Transmission Provider maintain a single queue per geographic area, a Small Generator's Queue Position does not necessarily determine how long it takes to actually interconnect. In the Proposed SGIP, if a proposed interconnection passes either the Super-Expedited Screening Procedures or the Expedited Screening Procedures, the Interconnection Customer would have no cost responsibility for Upgrades. Accordingly, the Small Generator could be interconnected very quickly, regardless of its Queue Position.

62. If the proposed interconnection does not pass either the Super-Expedited Screening Procedures or the Expedited Screening Procedures, Interconnection Studies will be required to evaluate the proposal. And, if Upgrades are required, Queue Position may affect the Interconnection Customer's cost responsibility for the Upgrades. This is because Upgrades for interconnections higher in the queue may affect the need for Upgrades for interconnections lower in the queue. This would impact the cost of the interconnection for a particular Small Generator. However, as such costs for Small Generating Facilities may be relatively small or localized, we would permit the Interconnection Customer to ask to be interconnected out of queue order if it agrees to pay the full cost of the required Upgrades.

8. Parties to the Proposed SGIA (Proposed SGIA Article 9)

63. In general, the Commission does not address issues in this NOPR that were treated in the Large Generator Interconnection Final Rule unless parties propose that Small Generating Facilities be treated differently. However, in the Small Generator ANOPR process, parties raised this issue repeatedly, and for this reason the Commission includes a discussion of the issue.

64. Representatives of Interconnection Customers and representatives of Transmission Providers could not agree on whether the Transmission Owner should be a signatory to the SGIA, if the Transmission Provider and the Transmission Owner are different entities. The Commission proposes here the same approach taken in the Final Rule LGIA; that is, if the Transmission Owner is not also the Transmission Provider, both parties should sign the SGIA. We believe that this would better define the relationship among the Parties in one document, protect the Interconnection Customer and, therefore, facilitate the development of new generation resources. In an RTO or

[29] Coalition SGIP, Attachment A Procedures Section 6, and Attachment B Procedures Section 1.11 (Nov. 12, 2002).

[30] *E.g.,* Bonneville Power Administration, Avista Corp., Central Maine Power Company, Public Service Company of New Mexico, and Public Service Electric and Gas Company.

[31] ''[A]rbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration).'' Article 27.2 of the LGIA in Standardization of Generator Interconnection Agreements and Procedures, Final Rule, Docket No. RM02–1–000 (issued concurrently with this NOPRA).

ISO where the Transmission Provider is not the Transmission Owner, the RTO's or ISO's compliance filing would be able to propose a modified interconnection agreement that provides different respective rights and obligations in the region. In other cases, we do not believe that the three party agreement would create an undue burden for either entity. Accordingly, the Commission proposes to require that both the Transmission Owner and the Transmission Provider, if applicable, sign the SGIA.

9. Affected Systems (Proposed SGIP Section 2.8)

65. The Coalition's proposal acknowledges that the interconnection of a Small Generator with a Transmission Provider's Transmission System may directly or indirectly affect other electric systems. Interconnection Customers generally prefer that the Transmission Provider be responsible for coordinating and performing all necessary Interconnection Studies and equipment Upgrades with the owner or operator of the Affected System.[32] Interconnection Customers also prefer that their interconnections not be made conditional on the completion of these studies and Upgrades. Transmission Providers, however, maintain that while they would use their best efforts to coordinate and complete necessary Affected System Interconnection Studies and Upgrades in time for the interconnection of a Small Generator, they cannot compel the owner/operator of the Affected System to perform within the specified time lines.

66. The Commission proposes to continue treating interconnection and delivery as separate aspects of transmission service and allowing Interconnection Customers to request interconnection separately from the delivery component of transmission service. In the vast majority of circumstances, interconnection alone is unlikely to affect the reliability of another electric system, especially if the generator being interconnected is a Small Generator. However, in those rare instances in which the mere interconnection itself may cause a reliability or safety problem on an Affected System, the Commission proposes to adopt the approach of Order No. 888 for Upgrades required to protect Affected Systems from reliability problems due to delivery service.[33] Under Order No. 888, the Transmission Provider is required to assist the customer in coordinating with the Affected System any Upgrades needed to protect the reliability of that system.[34] Also, we will allow the Transmission Provider to coordinate completion of Network Upgrades to its own Transmission System with the completion of the necessary Affected System Upgrades.[35]

67. Under Order No. 888, economic losses (*i.e.*, extra generating costs from having to redispatch generation) do not justify delaying the provision of the delivery component of transmission service, and the Commission proposes to adopt the same standard here for interconnections. As mentioned in the OATT, the Commission's Dispute Resolution Service is available should the Interconnection Customer wish to challenge the Transmission Provider's decision to delay construction pending completion of the Affected System's Upgrades.[36]

68. We also note that NERC Planning Standards already provide that Transmission Providers should work together to minimize effects on each other's systems. Whenever a Transmission Provider adds its own new generation to its Transmission System, it may cause reliability or safety effects on other systems that require coordination with the Affected Systems. A Transmission Provider must offer any Interconnection Customer service that is comparable to the service it provides for interconnections of its own generation.

69. The Commission notes that the proposed treatment of Affected Systems is comparable to that contained in the Large Generator Interconnection Final Rule and requests comments on if and why this approach should be modified for Small Generator interconnections.

10. Pricing/Cost Recovery for Upgrades (Proposed SGIA Article 5)

70. The Commission's current interconnection pricing policy for Transmission Systems that are operated by non-independent entities is to allocate the costs of the new facilities based on whether they are at or beyond the Point of Interconnection. Those transmission facilities that are at or beyond the Point of Interconnection are considered Network Upgrades, and are initially paid for by the Interconnection Customer. The costs are then refunded to the Interconnection Customer by the Transmission Provider in the form of transmission credits (with interest), with the result being that the costs of the Network Upgrades are rolled into the prices paid by all transmission customers.[37] Interconnection Facilities (meaning facilities on the Generating Facility's side of the Point of Interconnection) are considered sole use facilities and, accordingly, are directly assigned to and paid for by the Interconnection Customer.[38] Consistent with the Large Generator Interconnection Final Rule, we propose to retain this current pricing policy for Small Generating Facilities interconnecting with a Transmission System operated by a non-independent entity. The Commission seeks comments on whether this approach is appropriate for Small Generator interconnections. We also invite commenters to recount their recent experiences with interconnecting distributed generators to the Distribution System, in particular the process for determining whether Distribution Upgrades were necessary, and the cost assignment of those Upgrades.

71. For the Transmission Provider, such as an RTO or ISO, that is an independent entity, our current policy, and the policy that we adopted in the Large Generator Interconnection Final Rule, is to allow flexibility regarding the interconnection pricing policy that an independent entity may propose to adopt, subject to Commission approval. Also in that Final Rule, we permitted a Regional State Committee to establish criteria that an independent entity would use to determine which transmission system upgrades, including those required for generator interconnections, should be subject to incremental pricing (''participant funding'') and which should not. The

[32] The Proposed SGIA and the Proposed SGIP define Affected System as ''an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.''

[33] *See* section 21 of the OATT. *See also* Tampa Electric Co., 103 FERC ¶ 61,047 (2003), and Nevada Power, 97 FERC ¶ 61,227 (2001), *reh'g denied,* 99 FERC ¶ 61,347 (2002); *but see* American Electric Power Service Corporation, 102 FERC ¶ 61,336 (2003).

[34] Section 21.1 of the OATT states that: ''The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, provide any information or data required by such other electric system pursuant to Good Utility Practice.''

[35] Section 21.2 of the OATT states that: ''Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner.''

[36] *See* Section 21.2 of the OATT.

[37] *See* Consumer Energy Co., 95 FERC ¶ 61,233, *reh'g denied,* 96 FERC ¶ 61,132 (2001).

[38] *See* Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied,* 62 FERC ¶ 61,013 (1993).

Large Generator Interconnection Final Rule also permitted, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades for a generator interconnection as soon as an independent entity has been approved by the Commission and the affected states. The Commission proposes to adopt the same policies for Small Generating Facilities that interconnect with a Transmission System operated by an independent entity. We seek comments on whether this approach is appropriate for Small Generating Facilities which interconnect to a Transmission System.

72. Because a Small Generating Facility may interconnect to a Transmission Provider's jurisdictional distribution facility for the purpose of making a sale of electricity at wholesale in interstate commerce, this NOPR also addresses cost recovery for Distribution Upgrades at or beyond the Point of Interconnection.[39] Consistent with the Large Generator Interconnection Final Rule, we here propose that the costs of Distribution Upgrades would be directly assigned to the Interconnection Customer. This is because Distribution Upgrades do not generally benefit all users. Distribution facilities generally deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system as is the case for transmission facilities. Accordingly, it is not appropriate that all users share the cost of Distribution Upgrades. Rather, the Interconnection Customer itself should be solely responsible for the cost of Distribution Upgrades.

11. Liability, Indemnity, Force Majeure, and Insurance (Proposed SGIA Articles 6.13, 6.14, and 6.16)

73. In the Large Generator Interconnection Final Rule, the Commission adopted indemnification and Force Majeure provisions different from those applied to transmission service that appear in the OATT, and added a new provision limiting liability for consequential damages. This NOPR proposes a similar approach. The Commission asks commenters to address whether Small Generators should be treated differently from Large Generators with respect to liability, indemnity, and Force Majeure.[40]

74. Consistent with the Large Generator Interconnection Final Rule that is being issued concurrently with the issuance of this NOPR, we are including a provision in the proposed SGIA requiring the Parties to maintain minimum insurance coverage. However, we are not proposing specific coverage amounts in this NOPR. We request comments on whether the Small Generator Interconnection Final Rule should also include an insurance provision, and, if so, whether the provision should differ from the one contained in the Final Rule LGIA, what kind of insurance should be required, and at what level of coverage. Commenters should address how best to balance any need for insurance against the costs of insurance since such costs may discourage Small Generating Facilities from participating in the wholesale market.

75. The Commission also asks commenters to address two other issues regarding this proposed provision: first, should required insurance coverage coincide with the size of the facility? For example, a 20 MW generator would be subject to higher coverage amounts than a 10 MW generator, which itself would be subject to higher coverage amounts than a 5 MW generator. Similarly, should there be a megawatt cutoff that would exempt certain Small Generators (*e.g.*, those below a certain size) from some or all of the minimum insurance requirements. Second, should coverage types and amounts vary according to the type of generator so that, for example, solar or wind facilities would require different insurance coverages than gas-fired facilities.

12. Variations From the Final Rule on Compliance.

76. Regarding variations allowed from the Final Rule SGIP and Final Rule SGIA, consistent with the approach adopted in the Large Generator Interconnection Final Rule, we propose to apply a regional differences rationale to accommodate variations from the Final Rule during compliance, but with certain restrictions. We propose that a non-independent transmission provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination. Accordingly, we propose to allow an RTO or ISO greater flexibility than that allowed under the regional differences rationale to propose variations from the Final Rule provisions, as further discussed below.

77. Because we intend to supplement rather than supplant any standardization work that regional reliability groups already have undertaken regarding interconnection, we propose to permit a Transmission Provider, on compliance, to offer variations based on existing regional reliability requirements as part of its regional differences justification. Because we seek greater standardization of interconnection terms and conditions, we propose to permit a non-independent Transmission Provider to use the regional differences justification only due to established regional reliability standards.

78. For other proposed deviations from the Final Rule SGIP and Final Rule SGIA not made in response to established regional reliability requirements, we propose that a non-independent transmission provider justify variations in non-price terms and conditions of the Final Rule SGIP and Final Rule SGIA using the approach taken in Order No. 888, which allows them to propose variations on compliance that are ''consistent with or superior to'' the OATT.

79. To clarify, if on compliance a non-RTO or ISO Transmission Provider offers a variation from the Final Rule SGIP and Final Rule SGIA and the variation is in response to established (*i.e.*, approved by the Applicable Reliability Council) reliability requirements, then it would have to justify its variation using the regional difference rationale. If the variation is for any other reason, the non-RTO or ISO Transmission Provider must present its justification for the variation using the ''consistent with or superior to'' rationale that the Commission applies to variations from the OATT in Order No. 888.

80. With respect to an RTO or ISO, at the time its compliance filing is made, as discussed above, we propose to allow it to seek ''independent entity variations'' from the Final Rule pricing and non-pricing provisions. This is a balanced approach that 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. The RTO or ISO therefore would have greater flexibility to customize its interconnection procedures and agreements to fit regional needs.

81. Last, we invite comment on whether the proposed rule as drafted makes adequate provision to meet the

[39] The costs of all Interconnection Facilities, whether owned by the Small Generator or the Transmission provider, are directly assigned to the Interconnection Customer.

[40] The White Paper proposed that the Final Rule in Docket No. RM01–12–000 would limit the Liability of Regional Transmission Organizations, Independent System Operators, and transmission owners that belong to RTOs and ISO.

needs of the breadth of small generation technologies and fuel types (within the scope of those matters which are within the responsibility of this agency).

B. Summary of the Proposed SGIP and the Proposed SGIA

1. Standard Small Generator Interconnection Procedures (Proposed SGIP)

82. The Proposed SGIP sets forth the procedures that Interconnection Customers and Transmission Providers would be required to follow during the interconnection process, culminating in the signing of an interconnection agreement by the Parties.

83. *Section 1. Definitions*—Section 1 of the Proposed SGIP and Article 1 of the Proposed SGIA contain defined terms. For the sake of consistency, the proposed SGIP and proposed SGIA contain one common set of terms.

84. *Section 2. General Provisions*—Proposed Section 2 contains directions on which sections of the Proposed SGIP govern the interconnection of various sizes of Small Generating Facilities. Site Control, Material Modifications to a proposed Generating Facility, the coordination of studies between the Transmission Provider and Affected Systems, and the use of a single Point of Interconnection for multiple generators are also addressed. The Transmission Provider shall maintain records of all Interconnection Requests received, the times required to complete Interconnection Request approvals and disapprovals, and explanations for the actions taken on the Interconnection Requests.

85. Section 3. Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System [41]—The Transmission Provider shall use the Super-Expedited Screening Criteria to evaluate Interconnection Requests submitted under Section 3. Interconnection Customers whose Interconnection Requests fail the Super-Expedited Screening Criteria may request Additional Review and, if necessary, follow the procedures specified in Section 4.

86. Section 4. Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System [42]—Proposed Section 4.3 sets forth special Expedited Procedures for Small Generating Facilities no larger than 10 MW interconnecting with Low-Voltage Transmission Systems, using the Expedited Screening Criteria. Proposed Section 4.4 describes queuing priority. Proposed Sections 4.5–4.8 describe the accelerated procedures (as compared with the procedures in the Large Generator Interconnection Final Rule) for interconnecting Small Generating Facilities to High-Voltage Transmission Systems and Small Generating Facilities Larger than 10 MW to Low-Voltage Transmission Systems. These procedures include a Scoping Meeting and various Interconnection Studies that are used to evaluate Interconnection Requests.

87. *Charts*—Charts include a diagram of a typical Small Generating Facility installation and flowcharts depicting the Proposed Section 3 and Section 4 procedures.

88. *Appendices*—Appendix 1 lists the Super-Expedited Screening Criteria that are applicable to the interconnection of Precertified Small Generating Facilities no larger than 2 MW with Low-Voltage Transmission Systems. Appendix 2 lists the Expedited Screening Criteria that are applicable to the interconnection of Small Generating Facilities no larger than 10 MW with Low-Voltage Transmission Systems. Appendices 3–5 are pro forma agreements for the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study, respectively. The Commission does not expect that these agreements would be filed with the Commission when executed. Appendix 6 is the standard Interconnection Request (Application Form). Appendix 7 is the Standard Small Generator Interconnection Agreement.

2. Standard Small Generator Interconnection Agreement (Proposed SGIA)

89. The Proposed SGIA sets forth the legal rights and obligations of each Party, addresses cost responsibility issues, establishes Milestones for the completion of the interconnection, and lays out a process for the resolution of disputes.

90. *Article 1. Definitions*—Section 1 of the Proposed SGIP and Article 1 of the Proposed SGIA contain defined terms. For the sake of consistency, the Proposed SGIP and Proposed SGIA contain one common set of terms.

91. *Article 2. Scope and Limitations of Agreement*—Proposed Article 2 describes responsibilities of the Parties to construct, interconnect, operate, and maintain the Generating Facility and the Transmission Provider's Transmission System.

92. *Article 3. Inspection, Testing, Authorization, and Right of Access*—Proposed Article 3 describes Generating Facility testing and inspection requirements. The Transmission Provider must provide written authorization before the Interconnection Customer begins Parallel Operation. Proposed Article 3 also gives the Transmission Provider certain limited rights to access Interconnection Customer's property.

93. *Article 4. Effective Date, Term, Termination, and Disconnection*—Proposed Article 4 describes the Term of the Proposed SGIA and also addresses default (including cure), termination, and temporary disconnection rights.

94. *Article 5. Cost Responsibility, Milestones, Billing, and Payment*—Proposed Article 5 assigns financial responsibility for the costs of owning, operating, maintaining, repairing, and replacing the Interconnection Customer's Interconnection Facilities, and operating, maintaining, repairing, and replacing Transmission Provider's Interconnection Facilities. The Transmission Provider and the Interconnection Customer shall agree on Milestones related to the construction of the facilities for which each Party is responsible. Financial security arrangements and billing and payment obligations also are described.

95. *Article 6. Miscellaneous*—Proposed Article 6 contains a number of provisions, including: that the laws of the state where the Point of Interconnection is located will govern, the SGIA may be amended upon agreement of the Parties as approved by the Commission, expectations regarding system infrastructure and operational security, and provisions for successors or assigns. Also included are provisions governing rights of third party beneficiaries, waiver, notice and communications between the Parties, severability, Force Majeure, default, the use of subcontractors, consequential damages, environmental releases, and insurance. Several of these provisions were not included in the Coalition SGIAs. Commenters are requested to speak to whether these provisions should be modified in the Final Rule SGIA to accommodate the needs of Small Generators.

96. *Article 7. Confidentiality*—Proposed Article 7 describes how Confidential Information must be treated by the Parties.

97. *Article 8. Disputes*—Proposed Article 8 describes the Dispute Resolution procedure.

[41] *See* Appendix A for a flowchart depicting this procedure.

[42] *See* Appendix B for a flowchart depicting this procedure.

98. *Article 9. Signatures*—Proposed Article 9 provides for signatures of the Interconnection Customer, Transmission Provider and, if applicable, the Transmission Owner.

99. *Appendices*—The proposed SGIA includes the following additional information: (1) Description and costs of the Generating Facility, Interconnection Facilities, and metering equipment, (2) a one-line diagram depicting the Generating Facility, Interconnection Facilities, metering equipment, and Upgrades, (3) Milestones, (4) additional operating requirements for the Transmission Provider's Transmission System and Affected Systems needed to support the Interconnection Customer's needs, and (5) the Transmission Provider's description of its Network Upgrades and Distribution Upgrades and a best estimate of their costs.

III. Public Reporting Burden and Information Collection Statement

100. The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995. The Commission identifies the information provided under part 35 as FERC–516A.

101. Comments are solicited on the Commission's need for this information, whether the information would have practical use, the accuracy of the provided burden estimates, ways to enhance the quality, use, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the cost of preparing and submitting tariff changes to comply with the Commission's proposed regulation.

Public Reporting Burden:

ESTIMATED ANNUAL BURDEN

Data Collection FERC–516A	Number of Respondents	Number of Responses	Hours Per Response	Total Annual Hours
Reporting	176	1	25	4,400
Recordkeeping	176	1	2	352
Totals				4,752

Total Annual Hours for Collection (Reporting + Recordkeeping) = 4,400 hours (176 respondents × 1 filing × 25 hours) + 352 hours (176 respondents × 1 filing × 2 hours to develop interconnection agreement format) = 4,752 hours.

Information Collection Costs: The Commission seeks comment on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Startup Costs—Staffing requirements to review and prepare an interconnection agreement = $220,000 (176 respondents × $1,250 (25 hours @ $50 hourly rate)).

Annualized Costs (Operation & Maintenance)—The cost is equal to $5,984 (176 respondents × $34 (2 hours @ $17 hourly rate).

Total Annualized Costs (Startup and O&M) = $225,984.

102. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.11. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–516A, Small Generator Interconnection Procedures and Agreement.

Action: Proposed Data Collections.

OMB Control No: To be determined.

The Applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: The proposed rule would revise the reporting requirements contained in 18 CFR part 35. The Commission is proposing a standard SGIP and standard SGIA that public utilities must adopt. The adoption of these procedures and agreement will: (1) Reduce interconnection time and costs for Interconnection Customers and Transmission Providers, (2) limit opportunities for Transmission Providers to favor their own generation, (3) ease entry for new generation, and (4) encourage needed investment in the generation and transmission infrastructure.

103. Interconnection plays a growing crucial role in bringing much needed generation into the market to meet the needs of electricity customers. However, requests for interconnection frequently result in complex technical disputes about interconnection feasibility, cost and cost responsibility. The Commission expects that a standard SGIP and standard SGIA will reduce interconnection costs and time for Interconnection Customers and Transmission Providers, resolve most interconnection disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and improve system reliability.

104. *Internal Review:* The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Markets, Tariffs and Rates will use the data included in filings under section 203 and 205 of the Federal Power Act to evaluate efforts for the interconnection and coordination of the U.S. electric transmission system and to ensure the orderly implementation of the interconnection procedures and interconnection agreement as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry.

105. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov.*

106. For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: (202) 395–7285, e-mail *pamelabeverly@oirasubmission @omb.eop.gov.*

IV. Environmental Analysis

107. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[43] The Commission concludes that promulgating the proposed rule would not present a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[44] The proposed rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under section 205 of the Federal Power Act relating to the filing of schedules containing all rates and charges for any transmission or sale for resale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.[45] Consequently, neither an environmental assessment nor an environmental impact statement is required.

V. Regulatory Flexibility Act Certification

108. The Regulatory Flexibility Act of 1980 (RFA)[46] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This rule applies to public utilities that own, control or operate interstate transmission facilities, not to electric utilities per se. The total number of public utilities that, absent waiver, would have to modify their current open access transmission tariffs by filing the Interim Tariff is 176.[47] Of these only 6 public utilities, or less than two percent, dispose of 4 million MWh or less per year.[48] The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.[49]

VI. Comment Procedures

109. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

110. Comments are due October 3, 2003. Comments must refer to Docket No. RM02–12–000, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format. Comments should be double spaced and include an executive summary.

111. To facilitate the Commission's review of the comments, commenters are requested to identify each specific issue posed by the NOPR that their discussion addresses and to use headings that clearly identify the relevant Proposed SGIA article and Proposed SGIP section. Additional issues that commenters wish to raise should be identified separately. The Commission also invites commenters to explain the rationale for their support for any proposal in this NOPR.

112. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

113. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

114. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home page (*http://www.ferc.gov*) and in FERC'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 20426.

115. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

116. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our 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.*

List of Subjects in 18 CFR Part 35

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

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.28, paragraph (g) is added to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) Standard interconnection procedures and agreement for small generators.

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard small generator interconnection procedures and agreement contained in Order

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[43] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[44] 18 CFR part 380 (2003).

[45] 18 CFR 380.4(a)(15)(16) (2003).

[46] 5 U.S.C. 601–612 (2000).

[47] The sources for this figure are FERC Form No. 1 and FERC Form No. 1–F data.

[48] *Id.*

[49] The Regulatory Flexibility Act defines a ''small entity'' as ''one which is independently owned and operated and which is not dominant in its field of operation.'' *See* 5 U.S.C. 601(3) and 601(6) (2000); 15 U.S.C. 632(a)(1) (2000). In *Mid-Tex Elec. Coop.* v. *FERC,* 773 F.2d 327, 340–343 (DC Cir. 1985), the court accepted the Commission's conclusion that, since virtually all of the public utilities that it regulates do not fall within the meaning of the term ''small entities'' as defined in the Regulatory Flexibility Act, the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP). The CWIP rules applied to all public utilities. The Small Generator interconnection rules will apply only to those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule.

No._____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection) or such other small generator interconnection procedures and agreement as may be approved by the Commission consistent with Order No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection).

(i) The amendment required by this paragraph (g)(1) must be filed no later than [insert date that is 60 days after the effective date of the Final Rule].

(ii) Any public utility that seeks a deviation from the standard interconnection procedures and agreement contained in Order No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection), must demonstrate that the deviation is consistent with the principles of Order No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection).

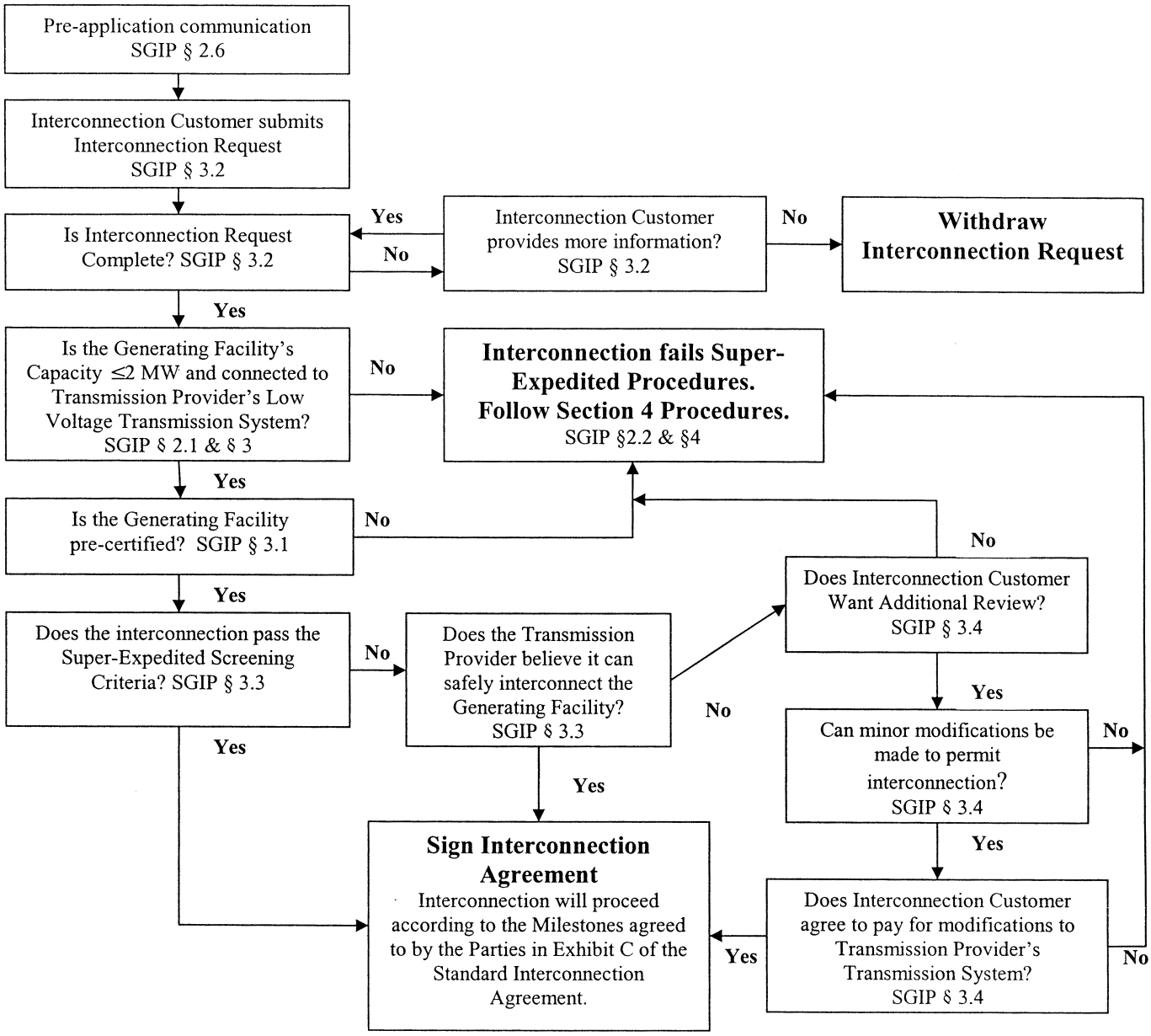
(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) of this section are applicable to the standard small generator interconnection procedures and agreement.

Note: The following appendices will not be published in the Code of Federal Regulations

BILLING CODE 6718–01–P

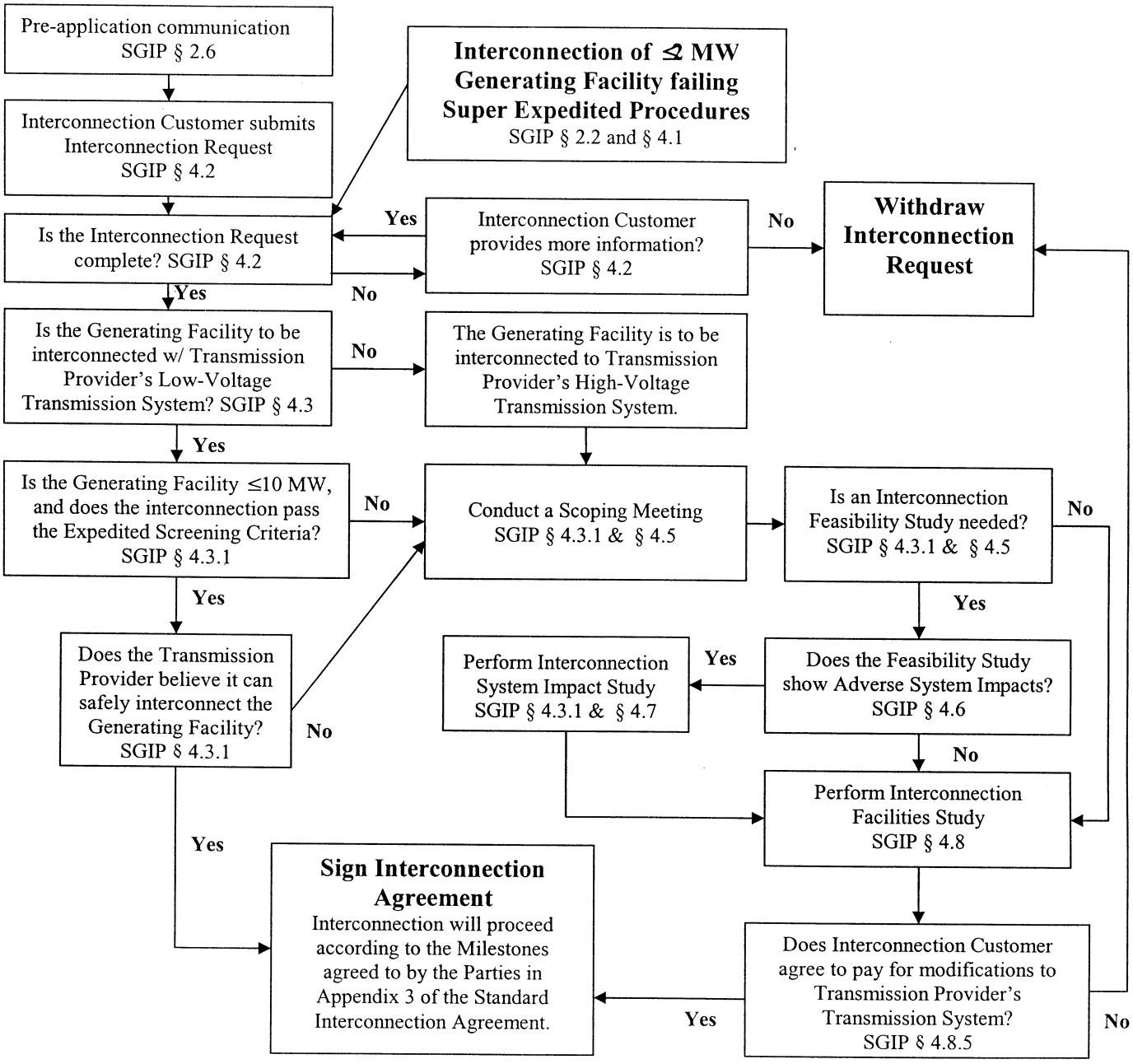
Appendix A

Flow Chart of Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System



Appendix B

Flow Chart of Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System



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Appendix C to the Small Generator Interconnection Preamble

Standard Small Generator Interconnection Procedures (SGIP) Including Standard Small Generator Interconnection Agreement (SGIA)

(Applicable To Generating Facilities No Larger Than 20 MW)

Table of Contents

Section 1. Definitions
Section 2. General Provisions
Section 3. Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System
- 3.1 Precertification
- 3.2 Interconnection Request
- 3.3 Initial Review
- 3.4 Additional Review
- 3.5 Interconnection of the Generating Facility

Section 4. Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System
- 4.1 General
- 4.2 Interconnection Request
- 4.3 Expedited Procedures for a Small Generating Facility No Larger than 10 MW Interconnecting with Transmission Provider's Low-Voltage Transmission System and a Small Generating Facility Failing the Super-Expedited Procedures
- 4.4 Queuing Priority
- 4.5 Scoping Meeting
- 4.6 Interconnection Feasibility Study
- 4.7 Interconnection System Impact Study
- 4.7.1 General
- 4.7.2 Distribution Interconnection System Impact Study
- 4.7.3 Transmission Interconnection System Impact Study
- 4.7.4 Coordinated Transmission and Distribution System Impact Studies
- 4.7.5 Interconnection System Impact Study Cost Sharing
- 4.8 Interconnection Facilities Study
- 4.9 Interconnection of the Generating Facility

Charts
- Chart 1—Diagram of a Typical Small Generating Facility Installation
- Chart 2—Flow Chart of Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System
- Chart 3—Flow Chart of Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System

Appendices
- Appendix 1—Super-Expedited Screening Criteria
- Appendix 2—Expedited Screening Criteria
- Appendix 3—Interconnection Feasibility Study Agreement
- Appendix 4—Interconnection System Impact Study Agreement
- Appendix 5—Interconnection Facilities Study Agreement
- Appendix 6—Small Generating Facility Interconnection Request (Application Form)
- Appendix 7—Standard Small Generator Interconnection Agreement

Section 1. Definitions

When used with initial capitalization, the following terms shall have the meanings specified or referred to below. Terms used in this document with initial capitalization that are not defined below shall have the meanings specified in the section in which they are used or as specified in the Transmission Provider's Open Access Transmission Tariff (OATT), as may be amended from time to time.

Additional Review shall mean a technical evaluation by the Transmission Provider of a proposed interconnection that has failed to pass the Super-Expedited Screening Criteria. The review will determine whether minor modifications to the Transmission Provider's Transmission System (*e.g.*, changing meters, fuses, relay settings) can be performed in order to enable the interconnection to be made safely and reliably.

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Applicable Laws and Regulations shall mean all duly promulgated applicable Federal, State and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Small Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Small Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Commercial Operation Date of a unit shall mean the date on which the Interconnection Customer commences commercial operation of the unit at the Generating Facility after testing of such unit has been completed.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 6.17 of the Standard Small Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Small Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property, or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected, or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; *provided,* that the Interconnection Customer is not obligated by the Standard Small Generator Interconnection Agreement to possess black start capability.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Expedited Procedures shall mean the process described in the Standard Small Generator Interconnection Procedures for (1) a Generating Facility no larger than 10 MW interconnecting with a Transmission Provider's Low-Voltage Transmission System, and (2) a Generating Facility failing the Super-Expedited Procedures. The Expedited Procedures use the Expedited Screening Criteria to determine whether the Small Generating Facility can be interconnected without any further Interconnection Studies.

Expedited Screening Criteria shall mean the technical variables that are employed in the Expedited Procedures for evaluating the impact of interconnecting the Small Generating Facility to the Transmission Provider's Transmission System as it exists at the time of the analysis.

Fault Current shall mean the current that is produced by an electrical fault, such as single-phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. The Fault Current is several times larger in magnitude than the current that normally flows through a circuit. A protective device must be able to interrupt this Fault Current within a few cycles. The Fault Current increases when a new generator is interconnected.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

High-Voltage shall mean voltage levels at or above 69 kV.

IEEE shall mean the Institute of Electrical and Electronics Engineers.

Initial Review shall mean the Transmission Provider's review of the Interconnection Customer's Interconnection Request using the Super-Expedited Screening Criteria described in Section 3 of the Standard Small Generator Interconnection Procedures.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined the Standard Small Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in the Standard Small Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 6 to the Standard Small Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Small Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility

were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Low-Voltage shall mean voltage levels below 69 kV.

Material Modification shall mean a modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Milestones shall mean the events and associated dates listed in Appendix 3 of the Standard Small Generator Interconnection Agreement. The Milestones describe events that are to be met by either Party as the Generating Facility proceeds to interconnection and Parallel Operation.

MW shall mean the abbreviation for megawatts, which is used to describe the capacity of a generating facility.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Generating Facility to the Transmission Provider's Transmission System.

Operating Requirements shall mean any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, Control Area, or Transmission Provider requirements, including those set forth in Appendix 4 of the Standard Small Generator Interconnection Agreement.

Parallel Operation shall mean the two-way flow of power between a generator and a Transmission System. Generators that operate in parallel with a Transmission System require additional protection and control devices. This may be contrasted with a stand-alone generator that operates isolated from the utility company's electric system.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Common Coupling shall mean the point in the interconnection of the Generating Facility with Transmission Provider's Transmission System at which the harmonic limits are applied.

Point of Interconnection shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Precertified shall describe a Generating Facility if an identical sample of the manufacturer's model has been submitted to a national testing laboratory and found, after appropriate testing, to be in compliance with applicable consensus industry operational and safety standards.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Rules shall mean the rules promulgated by FERC relating to the interconnection of generators.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Secondary Network shall mean a type of Low-Voltage electric system that is generally used in large metropolitan areas that are densely populated in order to provide high reliability of service (also known as secondary grid network or area network).

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility, (2) an option to purchase or acquire a leasehold site for such purpose, or (3) an exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of no more than 20 MW.

Standard Small Generator Interconnection Agreement (SGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Small Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Small Generator Interconnection Procedures (SGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Small Generating Facility that are included in the Transmission Provider's Tariff.

Spot Network shall mean a type of Low-Voltage system found within modern commercial buildings to provide high reliability of service. Spot Networks generally use 12 kV to 480/277 volt vaults on site.

Super-Expedited Procedures shall mean the process described in Section 3 of the Standard Small Generator Interconnection Procedures for Generating Facilities no larger than 2 MW interconnecting with Transmission Provider's Low-Voltage Transmission System. The Super-Expedited Procedures use the Super-Expedited Screening Criteria to determine whether the proposed interconnection may cause an Adverse System Impact on Transmission Provider's Transmission System.

Super-Expedited Screening Criteria shall mean the technical variables that are employed in the Super-Expedited Procedures for evaluating the interconnection of a Small Generating Facility no larger than 2 MW to a Transmission Provider's Low-Voltage Transmission System.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

Technical Master shall mean a person, as described in Article 8 of the Standard Small Generator Interconnection Agreement, with relevant technical experience selected to adjudicate disputes between the Parties.

Term shall mean the duration of the Standard Small Generator Interconnection Agreement.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of

Change of Ownership to the Point of Interconnection as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. The Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades shall mean the required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Section 2. General Provisions

2.1 An Interconnection Request to interconnect a Generating Facility no larger than 2 MW with Transmission Provider's Low-Voltage Transmission System shall be evaluated under the Super-Expedited Procedures set forth in Section 3 of these Procedures. If the Generating Facility fails to pass the procedures set forth in Section 3, it may then be evaluated pursuant to Section 4 of these Procedures.

2.2 An Interconnection Request to interconnect: (1) A Generating Facility larger than 2 MW but no larger than 20 MW with Transmission Provider's Low-Voltage Transmission System, or (2) a Generating Facility with Transmission Provider's High-Voltage Transmission System, or (3) a Generating Facility that does not pass the Super-Expedited Procedures as set forth in Section 3 of these Procedures, shall be evaluated pursuant to Section 4 of these Procedures.

2.3 If the Interconnection Request is for a Generating Facility that includes multiple energy production devices at a site for which Interconnection Customer seeks a single Point of Interconnection, the Interconnection Request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

2.4 If the Interconnection Request is for an increase in capacity for an existing Generating Facility, the Interconnection Request shall be evaluated on the basis of the new total capacity of the Generating Facility.

2.5 Transmission Provider shall maintain records of all Interconnection Requests received, the times required to complete Interconnection Request approvals and disapprovals, and justifications for the actions taken on the Interconnection Requests. Transmission Provider shall keep such records on file for three years.

2.6 To assist a prospective Interconnection Customer, Transmission Provider shall designate a contact person from whom information on the Interconnection Request and about Transmission Provider's Transmission System can be obtained through informal requests regarding a proposed project. Such information should include studies and other materials useful to an understanding of the feasibility of an interconnection at a particular point on Transmission Provider's Transmission System, except to the extent providing such materials would violate security requirements or confidentiality agreements, or be contrary to law or the Commission's Regulations. Transmission Provider shall comply with reasonable requests for access to or copies of such studies.

2.7 Transmission Provider shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems and include those results in the applicable study within the time frame specified in these procedures. Transmission Provider shall include Affected System representatives in all meetings held with Interconnection Customer as required by these procedures. Interconnection Customer shall cooperate with Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. An Affected System that is a Transmission Provider itself shall cooperate with Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. In no instance shall the processing of the Interconnection Request be delayed as a result of inaction by an Affected System.

2.8 Once an Interconnection Request is deemed complete, any Material Modification to the proposed Generating Facility, Interconnection Customer's Interconnection Facilities, or site of the interconnection not agreed to in writing by Transmission Provider, shall require submission of a new Interconnection Request.

2.9 Proof of Site Control for the Generating Facility shall be submitted with the Interconnection Request.

2.10 Transmission Provider may propose to interconnect more than one Generating Facility at a single Point of Interconnection in order to minimize costs. However, an Interconnection Customer may elect to pay the entire cost of separate Interconnection Facilities.

2.11 The following articles from the Standard Small Generator Interconnection Agreement are incorporated in these procedures by reference: Article 6.12 (Security Arrangements), Article 7 (Confidentiality), and Article 8 (Dispute Resolution).

Section 3. Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger Than 2 MW to a Low-Voltage Transmission System

3.1 *Precertification.* In order to qualify for the Super-Expedited Procedures described in this section, Interconnection Customer's Generating Facility must be precertified. The Generating Facility shall be considered precertified if an identical sample of the manufacturer's model has been submitted to a national testing laboratory and found, after appropriate testing, to be in compliance with applicable consensus industry operational and safety standards. No further design review, testing or additional equipment shall be required to meet the precertification requirements of this section.

3.2 *Interconnection Request.* Interconnection Customer shall submit to Transmission Provider an Interconnection Request (Application Form) in the form specified in Appendix 6 of these procedures. Transmission Provider shall notify Interconnection Customer within three Business Days of receipt of the Interconnection Request and inform Interconnection Customer of the date and time when it was received. Within ten Business Days from the date of receipt of the Interconnection Request, Transmission Provider shall notify Interconnection Customer whether the request is complete. If the Interconnection Request is not complete, Transmission Provider shall at the same time provide Interconnection Customer in writing a list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Request shall be deemed complete when the required information has been provided by Interconnection Customer, or the Parties have agreed that Interconnection Customer may provide additional information at a later time, as specified in Section 7 of the Interconnection Request.

3.3 *Initial Review.* Within 20 Calendar Days after Transmission Provider notifies Interconnection Customer it has received a completed Interconnection Request, Transmission Provider shall: (1) Evaluate the Interconnection Request using the Super-Expedited Screening Criteria in Appendix 1 of these procedures, (2) review Interconnection Customer's analysis using the same criteria (if provided by Interconnection Customer), and (3) provide Interconnection Customer with its evaluation, including a comparison of the results of its own analyses with those of Interconnection Customer (if applicable).

If Transmission Provider determines that the Interconnection Request: (1) passes the Super-Expedited Screening Criteria, or (2) fails one or more of the Super-Expedited Screening Criteria but determines that the Generating Facility can be interconnected safely and reliably, it shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days after such determination.

3.4 *Additional Review.* If Transmission Provider determines that the Interconnection Request fails the Super-Expedited Screening Criteria and cannot determine that the Generating Facility may be interconnected safely and reliably with its Transmission System, Interconnection Customer may offer to pay for an expedited Additional Review of the interconnection. The Additional Review shall not exceed six hours of Transmission Provider's engineering time (to be paid for by Interconnection Customer) and shall be completed within ten Business Days of the request. The review will determine whether minor modifications to Transmission Provider's Transmission System (*e.g.*, changing meters, fuses, relay settings) can be performed in order to enable the interconnection to be made safely and reliably. Transmission Provider shall provide Interconnection Customer with a copy of the review. If the Additional Review indicates that the interconnection can be made safely and reliably with minor modifications and Interconnection Customer agrees to pay these

additional costs, Transmission Provider shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days after such determination. If the review indicates that the interconnection cannot be made safely and reliably with minor modifications, the Interconnection Request shall be processed under Section 4 of these Procedures.

3.5 *Interconnection of the Generating Facility.* After the Standard Small Generator Interconnection Agreement is signed by the Parties, interconnection of the Generating Facility will proceed according to the Milestones agreed to by the Parties in Appendix 3 of the Standard Small Generator Interconnection Agreement.

Section 4. Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger Than 2 MW to a Low-Voltage Transmission System

4.1 *General.* An Interconnection Request to interconnect: (1) A Generating Facility larger than 2 MW but no larger than 20 MW with Transmission Provider's Low-Voltage Transmission System, or (2) a Generating Facility with Transmission Provider's High-Voltage Transmission System. Generating Facilities larger than 2 MW but no larger than 10 MW and Generating Facilities no larger than 2 MW that do not pass the Super-Expedited Procedures, that are to be interconnected with Transmission Provider's Low-Voltage Transmission System, shall be processed pursuant to the Expedited Procedures found in Section 4.3 of this section.

4.2 *Interconnection Request.* Interconnection Customer shall submit to Transmission Provider an Interconnection Request (Application Form) in the form specified in Appendix 6 of these procedures. Transmission Provider shall notify Interconnection Customer within three Business Days of receipt of the Interconnection Request and inform Interconnection Customer of the date and time when it was received. Within ten Business Days from the date of receipt of the Interconnection Request, Transmission Provider shall notify Interconnection Customer whether the request is complete. If the Interconnection Request is not complete, Transmission Provider shall at the same time provide Interconnection Customer in writing a list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Request shall be deemed complete when the required information has been provided by Interconnection Customer, or the Parties have agreed that Interconnection Customer may provide additional information at a later time, as specified in Section 7 of the Interconnection Request.

4.3 *Expedited Procedures for a Small Generating Facility No Larger Than 10 MW Interconnecting With Transmission Provider's Low-Voltage Transmission System and a Small Generating Facility Failing the Super-Expedited Procedures.* An Interconnection Customer may request that Transmission Provider use the Expedited Screening Criteria contained in Appendix 2 of these procedures to evaluate the Interconnection Request.

4.3.1 If Transmission Provider determines that the Generating Facility can be interconnected safely and reliably based upon its analysis using the Expedited Screening Criteria, it shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days after such determination.

If the Generating Facility passes the Expedited Screening Criteria, but Transmission Provider determines that the Generating Facility cannot be interconnected safely and reliably, the Parties shall conduct a Scoping Meeting. If at the Scoping Meeting the Parties conclude that an Interconnection Feasibility Study is required, and the study indicates no Adverse System Impact to Transmission Provider's Transmission System, the cost of the study shall be borne by Transmission Provider and no Interconnection System Impact Study shall be required. If the results of the Interconnection Feasibility Study indicate an Adverse System Impact to Transmission Provider's Transmission System, the cost of the study shall be borne by Interconnection Customer and an Interconnection System Impact Study shall be performed.

4.4 *Queuing Priority.* Transmission Provider shall assign a Queue Position based upon the date and time the Interconnection Request is deemed complete. The Queue Position of each Interconnection Request will be used to determine the cost responsibility for the facilities necessary to accommodate the interconnection.

4.5 *Scoping Meeting.* A Scoping Meeting will be held within ten Business Days, or as agreed to by the Parties, after Transmission Provider has notified Interconnection Customer that the Interconnection Request is deemed complete. The purpose of the meeting shall be to review the Interconnection Request, existing studies relevant to the Interconnection Request, and the results of the application of the Super-Expedited and/or Expedited Screening Criteria. Parties are expected to bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

4.5.1 If the Parties agree at the Scoping Meeting that an Interconnection Feasibility Study needs to be performed, Transmission Provider shall provide Interconnection Customer, no later than five Business Days after the Scoping Meeting, an Interconnection Feasibility Study Agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

4.5.2 If the Parties agree at the Scoping Meeting that an Interconnection Feasibility Study does not need to be performed, Transmission Provider shall provide Interconnection Customer, no later than five Business Days after the Scoping Meeting, an Interconnection Facilities Study Agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

4.6 *Interconnection Feasibility Study.* An Interconnection Feasibility Study will include the following analyses for the purpose of identifying a potential Adverse System Impact to Transmission Provider's Transmission System that would result from the interconnection: (1) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection, (2) initial identification of any thermal overload or voltage limit violations resulting from the interconnection, (3) initial review of grounding requirements and system protection, and (4) description and non-binding estimated cost of facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System in a safe and reliable manner.

4.6.1 If Interconnection Customer asks that the Interconnection Feasibility Study evaluate multiple potential points of interconnection, additional evaluations may need to be performed. All such evaluations are to be paid by Interconnection Customer.

4.6.2 An Interconnection System Impact Study shall not be required if the Interconnection Feasibility Study indicates no Adverse System Impact or if it identifies an Adverse System Impact, but Transmission Provider is able to identify a remedy without the need for an Interconnection System Impact Study. Otherwise an Interconnection System Impact Study shall be required.

4.7 *Interconnection System Impact Study.* The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, Affected Systems. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting. The study will consider all generating facilities that, on the date the Interconnection System Impact Study is commenced: (1) Are directly interconnected with Transmission Provider's Transmission System, (2) are interconnected with Affected Systems and may have an impact on the proposed interconnection, and (3) have a signed Interconnection Agreement to interconnect with Transmission Provider's Transmission System.

4.7.1 *General.* The Interconnection System Impact Study will consider, as appropriate, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews. The Interconnection System Impact Study will state the underlying assumptions of the study, show the results of the analyses, and list any potential impediments to providing the requested interconnection service. The study will indicate required Upgrades and a non-binding good faith estimate of cost and time to construct.

4.7.2 *Distribution Interconnection System Impact Study.* A distribution Interconnection System Impact Study shall be performed if a

potential Distribution System Adverse System Impact is identified in the Interconnection Feasibility Study. Transmission Provider shall send Interconnection Customer an Interconnection System Impact Study Agreement within five Business Days of transmittal of the Interconnection Feasibility Study report, including an outline of the scope of the study and a good faith estimate of the cost to perform the study. The study shall incorporate a load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, and the impact on system operation, as necessary.

4.7.3 *Transmission Interconnection System Impact Study.* Where the Interconnection Feasibility Study or a distribution Interconnection System Impact Study shows a potential Transmission System Adverse System Impact, within five Business Days following transmittal of the Interconnection Feasibility Study report and/or distribution Interconnection System Impact Study Report, Transmission Provider shall notify any Affected Systems in accordance with the procedures provided for in Transmission Provider's Tariff on file with FERC. Transmission Provider shall also send Interconnection Customer an Interconnection System Impact Study Agreement, including an outline of the scope of the study and a good faith estimate of the cost to perform the study.

4.7.4 *Coordinated Transmission and Distribution System Impact Studies.* Where transmission and distribution facilities are owned by different entities (such as in the case of transmission-dependent utilities (TDUs)) and no single entity is in a position to conduct an Interconnection System Impact Study covering both transmission and distribution electric systems, Transmission Provider, as applicable, shall conduct the Interconnection System Impact Study. Affected Systems shall participate in the study and provide all information necessary to prepare the study.

4.7.5 *Interconnection System Impact Study Cost Sharing.* Affected transmission and distribution providers may participate in the preparation of the Interconnection System Impact Study, with a division of costs among such entities as they may agree. All affected parties shall be afforded an opportunity to review and comment upon an Interconnection System Impact Study that covers potential Adverse System Impacts on their systems, and Transmission Provider has thirty additional Calendar Days to complete an Interconnection System Impact Study requiring review by Affected Systems.

4.8 *Interconnection Facilities Study.*

4.8.1 Within five Business Days of completion of the Interconnection System Impact Study, a report will be prepared and transmitted to Interconnection Customer along with an Interconnection Facilities Study Agreement, which shall include an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

4.8.2 The Interconnection Facilities Study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the Interconnection Feasibility Study and Interconnection System Impact Study to interconnect the Generating Facility. The Interconnection Facilities Study shall also identify: (1) The electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of Transmission Provider's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

4.8.3 Parties may agree to permit Interconnection Customer to separately arrange for a third party to design and construct the required Interconnection Facilities. In such cases, Transmission Provider may review the design of the facilities, under the provisions of the Interconnection Facilities Study Agreement. If the Parties agree to separately arrange for design and construction, and comply with any security and confidentiality requirements, Transmission Provider shall make all relevant information available to Interconnection Customer in order to permit Interconnection Customer to obtain an independent design and cost estimate for the facilities.

4.8.4 Upon completion of the Interconnection Facilities Study, and with the agreement of Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the Interconnection Facilities Study, Transmission Provider shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days.

4.9 *Interconnection of the Generating Facility.* After the Standard Small Generator Interconnection Agreement is signed by the Parties, interconnection of the Generating Facility will proceed according to the Milestones agreed to by the Parties in Appendix 3 of the Standard Small Generator Interconnection Agreement.

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Chart 1

Diagram of a Typical Small Generating Facility Installation

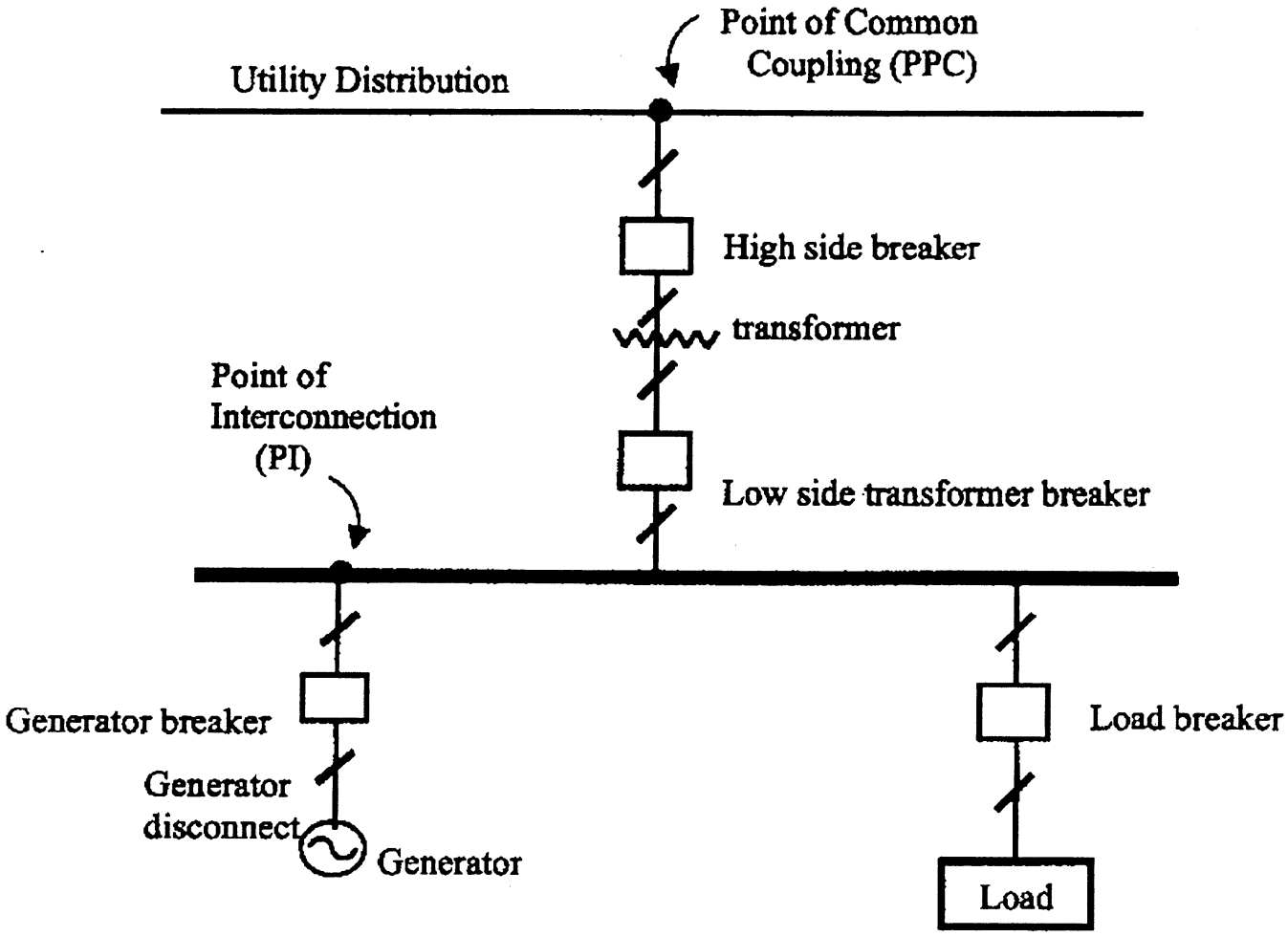


Chart 2

Flow Chart of Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System

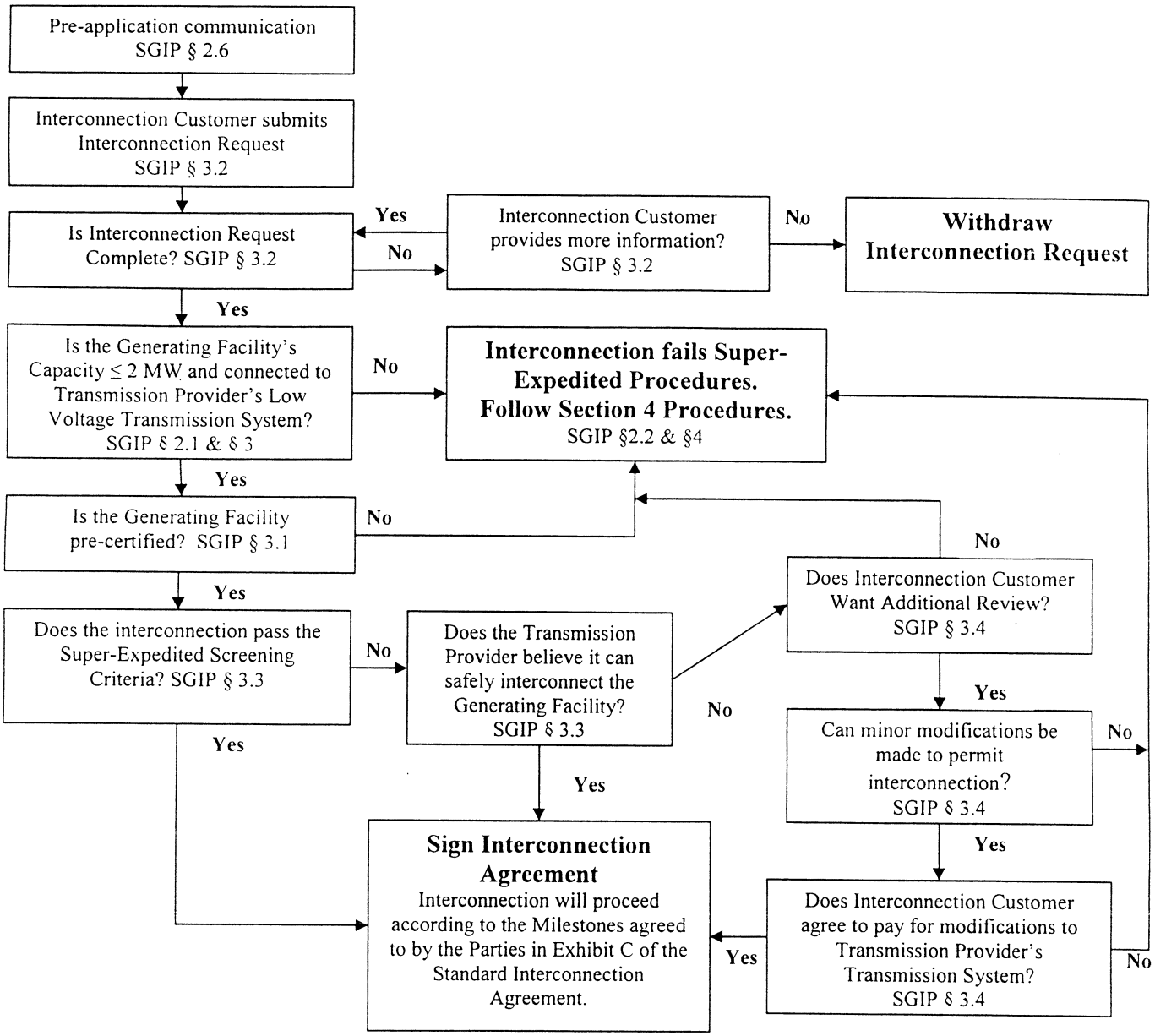
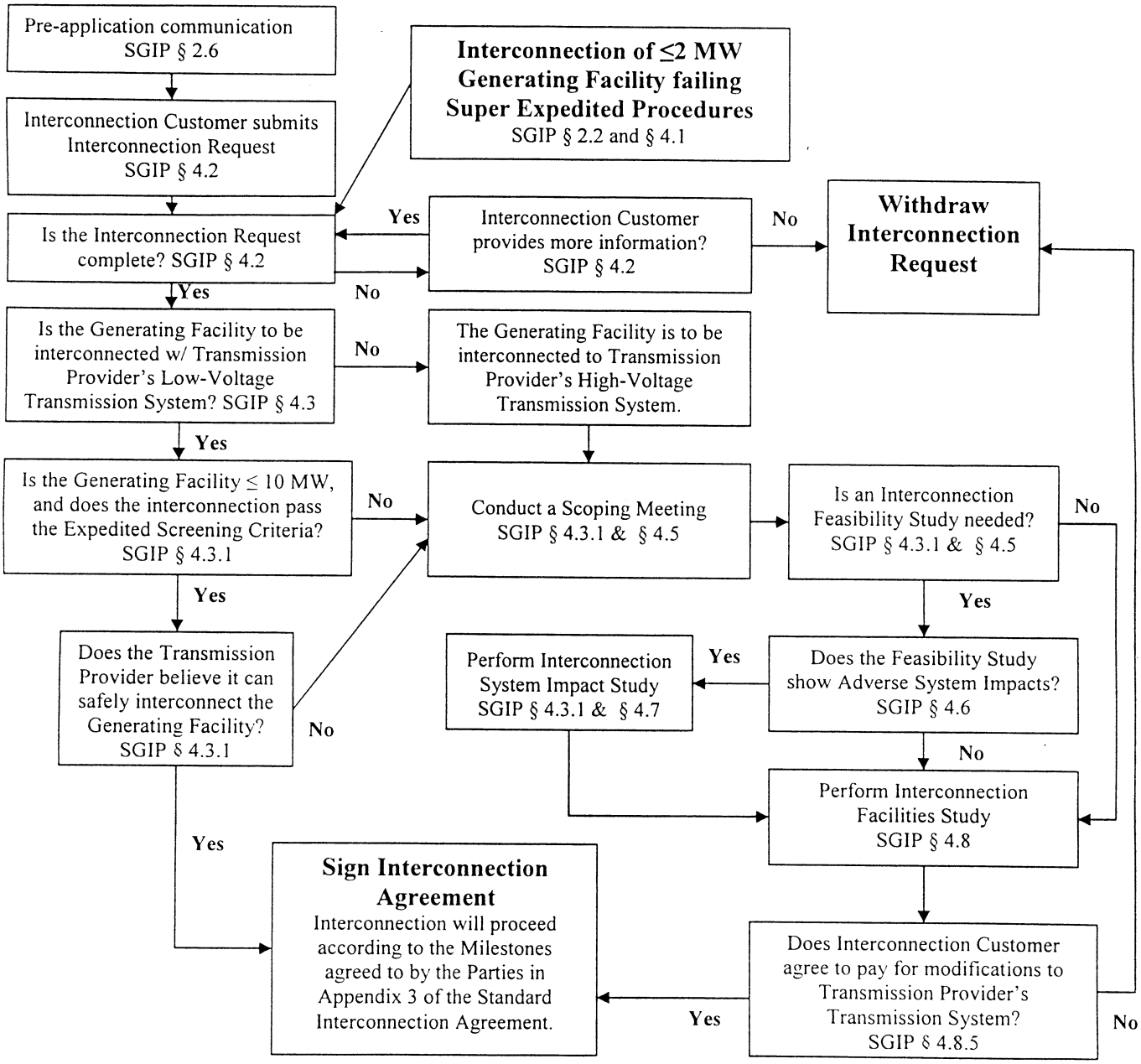


Chart 3

Flow Chart of Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System



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Appendix 1

Super-Expedited Screening Criteria (Applicable to Generating Facilities No Larger than 2 MW)

1.1 For interconnection of the Generating Facility to a radial Low-Voltage circuit, the aggregate new generation capacity on the circuit shall not exceed five percent of the total circuit annual peak load as most recently measured at the substation.

1.2 For interconnection of the Generating Facility to the load side of Spot Network protectors, the Generating Facility must utilize an inverter-based equipment package and, together with other inverter-based generation, shall not exceed the smaller of five percent of a Spot Network's maximum load or 50 kW.

1.3 The Generating Facility, in aggregation with other generation on the Low-Voltage circuit, shall not contribute more than ten percent to the circuit's

maximum Fault Current on the High-Voltage (primary) level nearest the proposed Point of Common Coupling.

1.4 The Generating Facility, in aggregate with other generation on the Low-Voltage circuit, shall not cause any protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the system to exceed 85 percent of the short circuit interrupting capability; nor is the interconnection proposed for a circuit that already exceeds 85 percent of the short circuit interrupting capability.

1.5 The Generating Facility, in aggregate with other generation interconnected to the Low-Voltage side of the substation transformer feeding the circuit where the Generating Facility proposes to interconnect, shall not exceed 10 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (*e.g.*, three or four High-Voltage busses from the point of interconnection).

1.6 For interconnection of a single-phase generator where the primary Low-Voltage electric system is three-phase, four-wire, the Generating Facility shall be connected line-to-neutral. For interconnection of a single-phase generator where the primary Low-Voltage electric system is three-phase, three-wire, the Generating Facility shall be connected line-to-line.

1.7 For interconnection of a proposed three-phase generator to a three-phase, four-wire Low-Voltage circuit or a Low-Voltage circuit having mixed three-wire and four-wire sections, the aggregate generation capacity including the Generating Facility shall not exceed ten percent of line section peak load.

1.8 If the Generating Facility is to be interconnected on single-phase shared secondary, the aggregate new generation capacity on the shared secondary shall not exceed 20 kVA.

1.9 If the Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

1.10 The Generating Facility's Point of Common Coupling shall be on a Low-Voltage electric system.

Appendix 2

Expedited Screening Criteria (Applicable to Generating Facilities No Larger than 10 MW)

1.1 For interconnection of the Generating Facility to a radial Low-Voltage circuit, the Generating Facility's capacity in aggregate with other generation on the circuit shall not exceed 15 percent of total circuit annual peak load as most recently measured at the substation; nor shall it exceed 15 percent of a Low-Voltage circuit line section design capacity. A line section is defined as that section of the Low-Voltage electric system between two sectionalizing devices.

1.2 The Generating Facility, in aggregation with other generation on the Low-Voltage circuit, shall not contribute more than ten percent to the Low-Voltage circuit's maximum Fault Current at the point on the primary level nearest the proposed Point of Common Coupling.

1.3 Interconnection of the Generating Facility in aggregate with other generation on the Low-Voltage circuit shall not cause any equipment, protective devices (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the system to exceed 90 percent of their short circuit interrupting capability; nor may the interconnection be proposed for a circuit that already exceeds the 90 percent capability limit.

1.4 The Generating Facility's Point of Common Coupling shall not be on a Low-Voltage secondary or Spot Network.

1.5 The Generating Facility, in aggregate with other generation interconnected to the Low-Voltage side of the substation transformer feeding the Low-Voltage circuit where the Generating Facility proposes to interconnect, shall not exceed 10 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (*e.g.*, three or four High-Voltage level busses from the point of interconnection).

Appendix 3

Interconnection Feasibility Study Agreement

This agreement is made and entered into this _____day of_____20____by and between_____, a_____organized and existing under the laws of the State of_____, (''Interconnection Customer,'') and_____, a _____existing under the laws of the State of_____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on_____; and

Whereas, Interconnection Customer desires to interconnect the Generating Facility with Transmission Provider's Transmission System; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Generating Facility to Transmission Provider's Transmission System, and of any Affected Systems;

Now, Therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this agreement shall have the meanings specified in Section 1 of the Standard Small Generator Interconnection Procedures.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Section 4.6 of the Standard Small Generator Interconnection Procedures in accordance with the Tariff.

3.0 The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this agreement.

4.0 The Interconnection Feasibility Study shall be based on the technical information provided by Interconnection Customer in the Interconnection Request, as may be modified as the result of the Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Section 4.5 (Scoping Meeting) of the Standard Small Generator Interconnection Procedures. If Interconnection Customer modifies its Interconnection Request, the time to complete the Interconnection Feasibility Study may be extended by agreement of the Parties.

5.0 In performing the study, Transmission Provider shall rely, to the extent reasonably practicable, on existing studies of recent vintage. The Interconnection Customer will not be charged for such existing studies; however, Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the Interconnection Feasibility Study.

6.0 The Interconnection Feasibility Study report shall provide the following information:

—Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection,

—preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection, and

—preliminary description and non-bonding estimated cost of facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System and to address the identified short circuit and power flow issues.

7.0 Transmission Provider may require a study deposit of the lesser of 100 percent of estimated non-binding good faith study costs or $1,000.

8.0 The Interconnection Feasibility Study shall be completed and the results shall be transmitted to Interconnection Customer within thirty Calendar Days after this agreement is signed by the Parties.

9.0 Study fees shall be based on actual costs and will be invoiced to Interconnection Customer after the study is transmitted to Interconnection Customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

10.0 Interconnection Customer shall pay any actual study costs that exceed the deposit without interest within thirty Calendar Days on receipt of the invoice. Transmission Provider shall refund any excess amount without interest within thirty Calendar Days of the invoice.

In witness whereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.
[Insert name of Transmission Provider]

_____

Signed _____

Name (Printed):

_____

Title _____

[Insert name of Interconnection Customer]
Signed _____

Name (Printed):

_____

Title _____

Attachment A to Interconnection Feasibility Study Agreement

Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Scoping Meeting held on_____:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by Interconnection Customer. Other assumptions (listed below) are to be provided by Interconnection Customer and Transmission Provider.

Appendix 4

Interconnection System Impact Study Agreement

This agreement is made and entered into this _____day of_____ 20____by and between_____, a_____organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____, a_____existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, Interconnection Customer desires to interconnect the Generating Facility with Transmission Provider's Transmission System;

Whereas, Transmission Provider has completed an Interconnection Feasibility Study and provided the results of said study to Interconnection Customer (This recital to be omitted if the Parties have agreed to forego the Interconnection Feasibility Study.); and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection System Impact Study to assess the impact of interconnecting the Generating Facility to Transmission Provider's Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this agreement shall have the meanings specified in Section 1 of the Standard Small Generator Interconnection Procedures.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection System Impact Study consistent with Section 4.7 of the Standard Small Generator Interconnection Procedures in accordance with the Tariff.

3.0 The scope of the Interconnection System Impact Study shall be subject to the assumptions set forth in Attachment A to this agreement.

4.0 The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study and the technical information provided by Interconnection Customer in the Interconnection Request. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection System Impact Study. If Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the Interconnection System Impact Study may be extended.

5.0 The Interconnection System Impact Study report shall provide the following information:

—Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection,

—Identification of any thermal overload or voltage limit violations resulting from the interconnection,

—Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and

—Description and non-binding, good faith estimated cost of facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 Transmission Provider may require a study deposit of the lesser of 50 percent of estimated non-binding good faith study costs or $3,000.

7.0 The distribution Interconnection System Impact Study, if required, shall be completed and the results transmitted to Interconnection Customer within thirty Calendar Days after this agreement is signed by the Parties. The transmission Interconnection System Impact Study, if required, shall be completed and the results transmitted to Interconnection Customer within forty-five Calendar Days after this agreement is signed by the Parties, or in accordance with Transmission Provider's queuing procedures.

8.0 Study fees shall be based on actual costs and will be invoiced to Interconnection Customer after the study is transmitted to Interconnection Customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

9.0 Interconnection Customer shall pay any actual study costs that exceed the deposit without interest within 30 Calendar Days on receipt of the invoice. Transmission Provider shall refund any excess amount without interest within thirty Calendar Days of the invoice.

In witness thereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.
[Insert name of Transmission Provider]

_____

Signed _____

Name (Printed):

_____

Title _____

[Insert name of Interconnection Customer]

_____

Signed _____

Name (Printed):

_____

Title _____

Attachment A to Interconnection System Impact Study Agreement

Assumptions Used in Conducting the Interconnection System Impact Study

The Interconnection System Impact Study shall be based upon the results of the Interconnection Feasibility Study, subject to any modifications in accordance with Section 4.7 of the Standard Small Generator Interconnection Procedures, and the following assumptions:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by Interconnection Customer. Other assumptions (listed below) are to be provided by Interconnection Customer and Transmission Provider.

Appendix 5

Interconnection Facilities Study Agreement

This agreement is made and entered into this _____ day of _____ 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____, a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, Interconnection Customer desires to interconnect the Generating Facility with Transmission Provider's Transmission System;

Whereas, Transmission Provider has completed an Interconnection System Impact Study and provided the results of said study to Interconnection Customer; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Generating Facility to Transmission Provider's Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this agreement shall have the meanings specified in Section 1 of the Standard Small Generator Interconnection Procedures.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 4.8 of the Standard Small Generator Interconnection Procedures to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to data provided in Attachment A to this agreement.

4.0 An Interconnection Facilities Study report (1) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Generating Facility to Transmission Provider's Transmission System and (2) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Impact Study.

5.0 Transmission Provider may require a study deposit of the lesser of 50 percent of estimated non-binding good faith study costs or $10,000.

6.0 In cases where no Upgrades are required, the Interconnection Facilities Study shall be completed and the results shall be transmitted to Interconnection Customer within thirty Calendar Days after this agreement is signed by the Parties. In cases where Upgrades are required, the Interconnection Facilities Study shall be completed and the results shall be transmitted to Interconnection Customer within forty-five Calendar Days after this agreement is signed by the Parties.

7.0 Study fees shall be based on actual costs and will be invoiced to Interconnection Customer after the study is transmitted to Interconnection Customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

8.0 Interconnection Customer shall pay any actual study costs that exceed the deposit without interest within 30 Calendar Days on receipt of the invoice. Transmission Provider shall refund any excess amount without interest within thirty Calendar Days of the invoice.

In witness whereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

_____

Signed _____

Name (Printed):

_____

Title _____

[Insert name of Interconnection Customer]

_____

Signed _____

Name (Printed):

_____

Title _____

Attachment A to Interconnection Facilities Study Agreement

Data To Be Provided by Interconnection Customer With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, *etc.*

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections: ____

Will an alternate source of auxiliary power be available during CT/PT maintenance? Yes ____ No ____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? Yes ____ No ____ (Please indicate on the one-line diagram).

What type of control system or PLC will be located at the Generating Facility?

_____

What protocol does the control system or PLC use?

_____

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider's Transmission System.

_____

Tower number observed in the field. (Painted on tower leg)*:

_____

Number of third party easements required for transmission lines*:

_____

* To be completed in coordination with Transmission Provider.

Is the Generating Facility located in Transmission Provider's service area?

Yes ____ No ____ If No, please provide name of local provider:

_____

Please provide the following proposed schedule dates:

Begin Construction Date: _____

Generator step-up transformers receive back feed power Date: _____

Generation Testing Date: _____

Commercial Operation Date: _____

Appendix 6

Small Generating Facility Interconnection Request (Application Form)

Instructions

Interconnection Customer declares its intention to sell electricity at wholesale in interstate commerce. Interconnection customer submits this request to interconnect its Small Generating Facility with the Transmission Provider's Transmission System pursuant to a Tariff.

In order for the Generating Facility to be considered for interconnection to Transmission Provider's Transmission System, Interconnection Customer must submit to Transmission Provider (1) a completed Interconnection Request (The Interconnection Request shall be deemed complete when the required information has been provided by Interconnection Customer, or the Parties have agreed that Interconnection Customer may provide additional information at a later time, as specified in Section 7 below), and (2) the appropriate non-refundable processing fee.

If requested information is not applicable, indicate by using ''N/A''.

Additional information to evaluate an Interconnection Request may be required by Transmission Provider as the application process proceeds.

Processing Fee

Indicate the amount of processing fee enclosed: $_____

Processing Fee for Small Generating Facilities No Larger than 2 MW:

The greater of:
$0.50/nameplate KVA rating, or
$100 for single phase generators no larger than 25 KVA, or
$500 for three phase generators and single phase generators larger than 25 KVA

Processing Fee for Small Generating Facilities Larger than 2 MW but No Larger than 20 MW:

$1,000 for generators no larger than 10 MW
$2,000 for generators larger than 10 MW

Section 1. Interconnection Customer Information

Interconnection Request (Application Form)

Indicate whether Interconnection Customer intends to participate as:

____ Network Resource
____ Energy-Only Resource
____ Non-Exporting Resource Participating in a Wholesale Market
____ Other (Describe: _____)

Indicate Generating Facility size:
____ 0–2.00 MW
____ 2.01–10.00 MW
____ 10.01–20.00 MW
Application is for:
____New Generating Facility
____ Capacity addition to Existing Generating Facility
If capacity addition to existing facility, please describe:
_____
_____
_____

Legal Name of Interconnection Customer (or, if an Individual, Individual's Name)
Name: _____
Mailing Address: _____
City: _____
State: _____
Zip: _____

Generating Facility Location (if different from above):
_____
Telephone:
Daytime: _____
Evening: _____
Fax: _____
E-Mail Address: _____

Alternative Contact Information (If different from Interconnection Customer information above)
Contact Name: _____
Title: _____
Address: _____
_____
_____
Telephone:
Daytime: _____
Evening: _____
Fax: _____
E-Mail Address: _____

For generators installed at locations with existing electric service to which the proposed Generating Facility will interconnect, provide:
_____
(Local Electric Service Provider Name*)
_____
(Current Account Number*)
(*To be provided by Interconnection Customer if the local electric service provider is different from Transmission Provider)
Contact Name: _____
Contact Title: _____
Address: _____
_____
_____
Telephone:
Daytime: _____
Evening: _____
Fax: _____
E-Mail Address: _____

Section 2. Generator Qualifications

Energy Source:
_____Hydro [Specify Type (*e.g.*, Run-of-River)_____]
_____ Solar
_____ Wind
_____ Diesel
_____ Natural Gas
_____ Fuel Oil
_____ Other (Specify _____)
Type of Generator:
_____ Synchronous
_____ Induction
_____ DC Generator or Solar with Inverter
Generator Nameplate Rating: _____ kW (Typical)
Generator Nameplate KVA: _____
Interconnection Customer or Customer-Site Load: _____ kW (if none, so state) (Typical)
_____ (Reactive Load, if known)
Maximum physical export capability requested: _____kW
List components of the Generating Facility that are Precertified:

Equipment Type	Precertifying Entity

Section 3. Generator Technical Information

Small Generating Facility (or solar collector) manufacturer, model name, number, and version: _____
Nameplate output power rating in kW: (Summer)_____ (Winter)_____
Nameplate output power rating in KVA: (Summer) _____ (Winter) _____
Individual generator power factor:
Rated power factor leading: _____
Rated power factor lagging: _____

Wind Generators

Number of generators to be interconnected pursuant to this Interconnection Request: __
Elevation: _____
____Single Phase
____ Three Phase
Inverter manufacturer, model name, number, and version:
_____
List of adjustable setpoints for the protective equipment or software:
_____

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for rotating machines)

Synchronous and Induction Generators:

Direct Axis Transient Reactance, X'_d: _____ P.U.
Direct Axis Unsaturated Transient Reactance, X'di: _____ P.U.
Direct Axis Subtransient Reactance, X''_d: _____ P.U.
Generator Saturation Constant (1.2): _____
Generation Saturation Constant (1.2): _____
Negative Sequence Reactance: _____ P.U.
Zero Sequence Reactance: _____ P.U.
KVA Base: _____
RPM Frequency: _____

Induction Generators:

(*) Field Volts: _____
(*) Field Amperes: _____
(*) Motoring Power (kW): _____
(*) Neutral Grounding Resistor (If Applicable): _____
(*) I_2^2t or K (Heating Time Constant): _____
(*) Rotor Resistance: _____
(*) Stator Resistance: _____
(*) Stator Reactance: _____
(*) Rotor Reactance: _____
(*) Magnetizing Reactance: _____
(*) Short Circuit Reactance: _____
(*) Exciting Current: _____
(*) Temperature Rise: _____
(*) Frame Size: _____
(*) Design Letter: _____
(*) Reactive Power Required In Vars (No Load): _____
(*) Reactive Power Required In Vars (Full Load): _____
(*) Total Rotating Inertia, H: __ Per Unit on KVA Base

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

Excitation and Governor System Data for Synchronous Generators Only

If determined to be required, provide appropriate IEEE model block diagram of excitation system, governor system, and power system stabilizer (PSS) in accordance with the regional reliability council criteria.

A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Section 4. Interconnecting Equipment Technical Data Information

Will a transformer be used between the Small Generating Facility and the Point of Interconnection? ____ Yes ____ No

Will the transformer be provided by Interconnection Customer? _____ Yes _____ No

Transformer Data for Interconnection Customer-Owned Transformer (if applicable)

The transformer is: _____ single phase _____ three phase Size: _____ KVA
Transformer impedance: _____ % on _____ KVA Base

If Three Phase:
Transformer Primary: _____ Volts _____Delta _____Wye _____ Wye Grounded
Transformer Secondary: _____ Volts _____ Delta _____ Wye _____Wye Grounded
Transformer fuse data for Interconnection Customer-owned fuse (if applicable): _____
_____

Note: Please attach a copy of fuse manufacturer's minimum melt and total clearing time-current curves

Fuse Manufacturer: _____
Type: _____ Size: _____
Speed: _____

Interconnecting Circuit Breaker (if applicable)

Manufacturer: _____
Type: _____
Load Rating (Amps):_____
Interrupting Rating (Amps): _____
Trip Speed (Cycles): _____

Interconnection Protective Relays (if applicable)

Note: Please attach a copy of any proposed time-overcurrent coordination curves

Manufacturer: _____
Type:_____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____

Current Transformer Data (if applicable)

Note: Please attach a copy of manufacturer's excitation & ratio correction curves

Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection:_____/5
Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection:_____/5

Potential Transformer Data (if applicable)

Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection:_____/5
Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection: _____/5

Section 5. General Information

Requested Point of Interconnection: _____
_____
Proposed In-Service Date: _____
Please attach a one-line diagram showing the configuration of all generating facility equipment, current and potential circuits, and protection and control schemes.
Is a one line diagram attached? _____ Yes _____No
Please attach any site documentation that indicates the precise physical location of the proposed generating facility (*e.g.*, USGS topographic map or other diagram or documentation).
Is site documentation attached? _____ Yes _____ No
Please attach any documentation that describes and details the operation of the protection and control schemes.
Is protection and control scheme documentation attached? _____ Yes _____ No
Proposed location of protective interface equipment on property (Include address if different from Interconnection Customer's address):
_____
_____
Please attach copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).
Are schematic drawings attached?
_____ Yes _____ No
Please attach Site Control documentation.
Is Site Control documentation attached?
_____ Yes _____ No
Does Interconnection Customer currently have control of the site? _____ Yes _____ No

Section 6. Signatures

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.
For Interconnection Customer (Printed): ____
_____
Signature: _____
Date: _____
I hereby determine that on the date and time specified below, Interconnection Customer has provided or agreed to provide per Section 7 all required information, and the Interconnection Request is considered complete.
For Transmission Provider (Printed): _____
_____
Signature: _____
Date: _____
Time: _____

Section 7. Agreement to Provide Data if Not Included With Initial Interconnection Request

Data Item	Date to be Provided

Data Item	Date to be Provided

Agreed to by:

For Transmission Provider Date

For Interconnection Customer Date

Appendix 7 to the Standard Small Generator Interconnection Procedures

STANDARD SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)

Table of Contents

Identification of Parties and Recitals
Article 1. Definitions
Article 2. Scope and Limitations of Agreement
2.1 Scope and Limitations of Agreement
2.2 Responsibilities of the Parties
2.3 Parallel Operation Obligations
2.4 Metering
Article 3. Inspection, Testing, Authorization, and Right of Access
3.1 Equipment Testing and Inspection
3.2 Authorization Required Prior To Parallel Operation
3.3 Right of Access
Article 4. Effective Date, Term, Termination, and Disconnection
4.1 Effective Date
4.2 Term of Agreement
4.3 Termination
4.4 Temporary Disconnection
4.4.1 Emergency Conditions
4.4.2 Routine Maintenance, Construction and Repair
4.4.3 Forced Outages
4.4.4 Adverse Operating Effects
4.4.5 Modification of the Generating Facility
4.4.6 Reconnection
Article 5. Cost Responsibility, Milestones, Billing, and Payment
5.1 Cost Responsibility
5.1.1 Interconnection Facilities
5.1.2 Network Upgrades
5.1.2.1 Refund of Amounts Advanced for Network Upgrades
5.1.3 Distribution Upgrades
5.1.4 Operating and Maintenance Expenses
5.1.5 General
5.2 Financial Security Arrangements
5.3 Milestones
5.4 Billing and Payment
5.4.1 Billing Procedure for Interconnection Facilities Construction
5.4.2 Final Accounting
Article 6. Miscellaneous
6.1 Governing Law, Regulatory Authority and Rules
6.2 Amendment
6.3 No Third Party Beneficiaries
6.4 Waiver
6.5 Assignment
6.6 Entire Agreement
6.7 Notices
6.8 Multiple Counterparts
6.9 No Partnership
6.10 Communications
6.11 Severability
6.12 Security Arrangements
6.13 Indemnity
6.14 Force Majeure
6.15 Environmental Releases
6.16 Insurance
6.17 Default
6.18 Subcontractors
6.19 Consequential Damages
6.20 Reservation of Rights
Article 7. Confidentiality
7.1 Confidentiality
7.2 Term
7.3 Scope
7.4 Release of Confidential Information
7.5 Rights
7.6 No Warranties
7.7 Standard of Care
7.8 Order of Disclosure
7.9 Termination of Agreement
7.10 Remedies
7.11 Disclosure to FERC or its Staff
7.12 Competitively Sensitive, Commercial or Financial Information
7.13 Information in Public Domain
Article 8. Disputes
8.1 Submission
8.2 External Arbitration Procedures
8.3 Arbitration Decisions
8.4 Costs
Article 9. Signatures
Appendix 1—Description and Costs of Generating Facility, Interconnection Facilities, and Metering Equipment
Appendix 2—One-line Diagram Depicting Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades
Appendix 3—Milestones
Appendix 4—Additional Operating Requirements for Interconnection Provider's Transmission System and Affected Systems Needed to Support the Interconnection Customer's Needs
Appendix 5—Transmission Provider's Description of Transmission System Upgrades and Best Estimate of Upgrade Costs

Identification of Parties and Recitals

This agreement is made and entered into this ____ day of _____, by _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ and having its principal place of business in _____ (''Transmission Provider'') and _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ and having its principal place of business in _____, _____ (''Interconnection Customer'').

Whereas, Interconnection Customer desires to engage in the interconnected operation of its Generating Facility with Transmission Provider's Transmission System;

Whereas, Interconnection Customer has applied for and been approved by Transmission Provider for interconnection pursuant to Transmission Provider's Small Generating Facility interconnection process and in accordance with the Standard Small Generator Interconnection Procedures; and

Whereas, Parties agree that interconnection of the Generating Facility will be expedited to the greatest extent possible.

Now, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

Article 1. Definitions

When used with initial capitalization, the following terms shall have the meanings specified or referred to below. Terms used in this document with initial capitalization that are not defined below shall have the meanings specified in the section in which they are used or as specified in the Transmission Provider's Open Access Transmission Tariff (OATT), as may be amended from time to time.

Additional Review shall mean a technical evaluation by the Transmission Provider of a proposed interconnection that has failed to pass the Super-Expedited Screening Criteria. The review will determine whether minor modifications to the Transmission Provider's Transmission System (*e.g.*, changing meters, fuses, relay settings) can be performed in order to enable the interconnection to be made safely and reliably.

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one

or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Small Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Small Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Commercial Operation Date of a unit shall mean the date on which the Interconnection Customer commences commercial operation of the unit at the Generating Facility after testing of such unit has been completed.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 6.17 of the Standard Small Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Small Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property, or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected, or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; *provided*, that the Interconnection Customer is not obligated by the Standard Small Generator Interconnection Agreement to possess black start capability.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Expedited Procedures shall mean the process described in the Standard Small Generator Interconnection Procedures for (1) a Generating Facility no larger than 10 MW interconnecting with a Transmission Provider's Low-Voltage Transmission System, and (2) a Generating Facility failing the Super-Expedited Procedures. The Expedited Procedures use the Expedited Screening Criteria to determine whether the Small Generating Facility can be interconnected without any further Interconnection Studies.

Expedited Screening Criteria shall mean the technical variables that are employed in the Expedited Procedures for evaluating the impact of interconnecting the Small Generating Facility to the Transmission Provider's Transmission System as it exists at the time of the analysis.

Fault Current shall mean the current that is produced by an electrical fault, such as single-phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. The Fault Current is several times larger in magnitude than the current that normally flows through a circuit. A protective device must be able to interrupt this Fault Current within a few cycles. The Fault Current increases when a new generator is interconnected.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq*.

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

High-Voltage shall mean voltage levels at or above 69 kV.

IEEE shall mean the Institute of Electrical and Electronics Engineers.

Initial Review shall mean the Transmission Provider's review of the Interconnection Customer's Interconnection Request using the Super-Expedited Screening Criteria described in Section 3 of the Standard Small Generator Interconnection Procedures.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined the Standard Small Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in the Standard Small Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 6 to the Standard Small Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Small Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Low-Voltage shall mean voltage levels below 69 kV.

Material Modification shall mean a modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Milestones shall mean the events and associated dates listed in Appendix 3 of the Standard Small Generator Interconnection Agreement. The Milestones describe events that are to be met by either Party as the Generating Facility proceeds to interconnection and Parallel Operation.

MW shall mean the abbreviation for megawatts, which is used to describe the capacity of a generating facility.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Generating Facility to the Transmission Provider's Transmission System.

Operating Requirements shall mean any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, Control Area, or Transmission Provider requirements, including those set forth in Appendix 4 of the Standard Small Generator Interconnection Agreement.

Parallel Operation shall mean the two-way flow of power between a generator and a Transmission System. Generators that operate in parallel with a Transmission System require additional protection and control devices. This may be contrasted with a stand-alone generator that operates isolated from the utility company's electric system.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Common Coupling shall mean the point in the interconnection of the Generating Facility with Transmission Provider's Transmission System at which the harmonic limits are applied.

Point of Interconnection shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Precertified shall describe a Generating Facility if an identical sample of the manufacturer's model has been submitted to a national testing laboratory and found, after appropriate testing, to be in compliance with applicable consensus industry operational and safety standards.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Rules shall mean the rules promulgated by FERC relating to the interconnection of generators.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including

any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Secondary Network shall mean a type of Low-Voltage electric system that is generally used in large metropolitan areas that are densely populated in order to provide high reliability of service (also known as secondary grid network or area network).

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility, (2) an option to purchase or acquire a leasehold site for such purpose, or (3) an exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of no more than 20 MW.

Standard Small Generator Interconnection Agreement (SGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Small Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Small Generator Interconnection Procedures (SGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Small Generating Facility that are included in the Transmission Provider's Tariff.

Spot Network shall mean a type of Low-Voltage system found within modern commercial buildings to provide high reliability of service. Spot Networks generally use 12 kV to 480/277 volt vaults on site.

Super-Expedited Procedures shall mean the process described in Section 3 of the Standard Small Generator Interconnection Procedures for Generating Facilities no larger than 2 MW interconnecting with Transmission Provider's Low-Voltage Transmission System. The Super-Expedited Procedures use the Super-Expedited Screening Criteria to determine whether the proposed interconnection may cause an Adverse System Impact on Transmission Provider's Transmission System.

Super-Expedited Screening Criteria shall mean the technical variables that are employed in the Super-Expedited Procedures for evaluating the interconnection of a Small Generating Facility no larger than 2 MW to a Transmission Provider's Low-Voltage Transmission System.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

Technical Master shall mean a person, as described in Article 8 of the Standard Small Generator Interconnection Agreement, with relevant technical experience selected to adjudicate disputes between the Parties.

Term shall mean the duration of the Standard Small Generator Interconnection Agreement.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. The Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades shall mean the required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Article 2. Scope and Limitations of Agreement

2.1 *Scope and Limitations of Agreement.* Transmission Provider and Interconnection Customer agree to interconnect the Generating Facility at the location described in Appendices 1 and 2 to this agreement, in accordance with this agreement. This agreement governs the facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System and contains the terms and conditions under which Interconnection Customer may interconnect the Generating Facility, as described in Appendices 1 and 2, and to operate in parallel with Transmission Provider's Transmission System. This agreement does not authorize Interconnection Customer to export power or constitute an agreement to purchase or wheel Interconnection Customer's power. The export, purchase, or wheeling of power and other services that Interconnection Customer may require from Transmission Provider will be covered under separate agreements and nothing in this agreement is intended to affect any other agreement between Transmission Provider and Interconnection Customer. Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with Transmission Provider, distribution provider, Independent System Operator, or Regional Transmission Organization (as applicable).

2.2 *Responsibilities of the Parties.*

2.2.1 The Parties shall perform all obligations of this agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

2.2.2 Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in compliance with all aspects of the Rules, in accordance with this agreement, and with Good Utility Practice.

2.2.3 Transmission Provider shall construct, operate, and maintain its Transmission System and Interconnection Facilities in compliance with all aspects of the Rules, in accordance with this agreement, and with Good Utility Practice.

2.2.4 Interconnection Customer agrees to cause its facilities or systems to be constructed in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. Interconnection Customer agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of the Generating Facility so as to reasonably minimize the likelihood of a disturbance, originating on the system or equipment affecting or impairing the system or equipment of Transmission Provider, or Affected Systems.

2.2.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in Appendices 1 and 2 of this agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the Point of Change of Ownership. Transmission Provider and Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect Transmission Provider's Transmission System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall

be delineated in Appendices 1, 2, 4, and 5 of this agreement.

2.2.6 Transmission Provider shall negotiate with all Affected Systems in support of Interconnection Customer's interconnection needs.

2.3 *Parallel Operation Obligations.* Once the Generating Facility has been authorized to commence Parallel Operation, Interconnection Customer shall abide by all rules and procedures pertaining to the Parallel Operation of the Generating Facility in the applicable Control Area, including, but not limited to, the rules and procedures concerning the operation of generation set forth in the Tariff or by the system operator for Transmission Provider's Transmission System and the Operating Requirements set forth in Appendix 4 of this agreement.

2.4 *Metering.* Interconnection Customer will be responsible for Transmission Provider's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 1 and 2 of this agreement. Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and operating requirements.

Article 3. Inspection, Testing, Authorization, and Right of Access

3.1 *Equipment Testing and Inspection.*

3.1.1 Interconnection Customer shall perform operational testing and inspection of the Generating Facility and Interconnection Facilities prior to interconnection. No fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection, Interconnection Customer shall notify Transmission Provider of such activities. Testing and inspection shall occur on a Business Day. Transmission Provider may send qualified personnel to the Generating Facility site to inspect the interconnection and observe the Generating Facility's testing. Interconnection Customer shall provide Transmission Provider a written test report when such testing and inspection is completed.

3.1.2 Upon completion of such operational testing and inspection and receipt of the written report, Transmission Provider shall provide to Interconnection Customer written acknowledgment that it has received Interconnection Customer's written report; provided, however, any such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by Transmission Provider of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by Interconnection Customer or the quality of power produced by the Generating Facility.

3.2 *Authorization Required Prior To Parallel Operation.* Transmission Provider will use its best efforts to identify any requirements applicable to safe and reliable Parallel Operation and to notify Interconnection Customer of any changed or additional requirements as soon as they are known. Transmission Provider will cooperate with Interconnection Customer in addressing and meeting such requirements (including information and study requirements), and to obtain appropriate notifications that such requirements are met. Interconnection Customer will notify Transmission Provider once it has complied with all such requirements. Upon such notification, Transmission Provider will provide Interconnection Customer with written authorization to operate the Generating Facility in parallel with Transmission Provider's Transmission System. Such authorization shall not be unreasonably withheld, conditioned or delayed.

3.3 *Right of Access.* Upon reasonable notice, and subject to any required or necessary regulatory approvals, Interconnection Customer shall furnish to Transmission Provider at no cost, and as agreed upon by all Parties, any rights of use, licenses, rights of way, or easements with respect to lands owned or controlled by Interconnection Customer and its agents that are necessary to enable Transmission Provider to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (1) Interconnect the Generating Facility with Transmission Provider's Transmission System, (2) operate and maintain the Generating Facility, Interconnection Facilities (if required), and Transmission Provider's Transmission System, and (3) disconnect or remove Interconnection Customer's facilities and equipment upon termination of this agreement. In exercising such licenses, rights of way, and easements, Transmission Provider shall not unreasonably disrupt or interfere with normal operation of Interconnection Customer's property and shall adhere to all applicable safety rules and procedures. In the event of Emergency Conditions or hazardous conditions, Transmission Provider and Interconnection Customer shall exercise all Reasonable Efforts to comply with these provisions.

Article 4. Effective Date, Term, Termination, and Disconnection

4.1 *Effective Date.* This agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this agreement with FERC upon execution, if required.

4.2 *Term of Agreement.* This agreement shall be effective on the Effective Date and shall remain in effect for a period of ten years from the Effective Date or such other longer period as the Parties may agree and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 4.3 of this agreement.

4.3 *Termination.* No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this agreement (if required), which notice has been accepted for filing by FERC.

4.3.1 Interconnection Customer may terminate this agreement at any time by giving Transmission Provider thirty Calendar Days written notice.

4.3.2 In the event that there is a material change in Applicable Laws and Regulations that would prevent Transmission Provider from performing its obligations under this agreement or would impose a substantial additional cost upon Transmission Provider to perform its obligations under this agreement, and for which cost Transmission Provider is not reimbursed by Interconnection Customer or any other party, Transmission Provider may terminate this agreement by giving Interconnection Customer at least thirty Calendar Days prior written notice.

4.4 *Temporary Disconnection.*

4.4.1 *Emergency Conditions.* Under Emergency Conditions, Transmission Provider shall have the right to immediately suspend Interconnection Service and temporarily disconnect the Generating Facility. Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects the Generating Facility or Transmission Provider's Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Generating Facility. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an emergency condition that may reasonably be expected to affect Transmission Provider's Transmission System or other Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, or the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

4.4.2 *Routine Maintenance, Construction and Repair.* Transmission Provider shall have the right to interrupt Interconnection Service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from Transmission Provider's Transmission System when necessary for routine maintenance, construction, and repairs on Transmission Provider's Transmission System. Transmission Provider shall provide Interconnection Customer with five Business Days notice prior to such interruption. Transmission Provider shall use its best efforts to coordinate such reduction or temporary disconnection with Interconnection Customer.

4.4.3 *Forced Outages.* During any forced outage of Interconnection Customer's facilities, Transmission Provider shall have the right to suspend Interconnection Service to effect immediate repairs on Transmission Provider's Transmission System; provided, however, Transmission Provider shall use its best efforts to provide Interconnection Customer with prior notice. If prior notice is not given, Transmission Provider will provide Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

4.4.4 *Adverse Operating Effects.* Transmission Provider shall notify Interconnection Customer that operation of the Generating Facility may cause disruption

or deterioration of service to other customers served from the same electric system or if operating the Generating Facility could cause damage to Transmission Provider's Transmission System or Affected Systems. If, after notice to Interconnection Customer has been provided and a reasonable time to correct such adverse operating effect has elapsed, consistent with the conditions, and Interconnection Customer has failed to make such corrections, Transmission Provider may disconnect the Generating Facility. Transmission Provider shall provide Interconnection Customer with five Business Days notice prior to such disconnection.

4.4.5 *Modification of the Generating Facility.* Interconnection Customer must receive written authorization from Transmission Provider before making any Material Modification to the Generating Facility. If Interconnection Customer makes such modification without Transmission Provider's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility. Such authorization shall not be unreasonably withheld.

4.4.6 *Reconnection.* The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and Transmission Provider's Transmission System to their normal operating state as soon as reasonably practicable following any reduction or temporary disconnection.

Article 5. Cost Responsibility, Milestones, Billing, and Payment

5.1 *Cost Responsibility.*

5.1.1 *Interconnection Facilities.* Interconnection Customer will pay for the cost of Interconnection Facilities itemized in Appendix 1 of this agreement. Transmission Provider will provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of Interconnection Customer, such other entities, and Transmission Provider.

5.1.2 *Network Upgrades.* Transmission Provider or Transmission Owner shall design, procure, construct, install, and own Network Upgrades described in Appendix 5 of this agreement. Unless Transmission Provider or Transmission Provider elect to initially pay for such facilities, the actual cost of the Network Upgrades, including overheads, shall be borne by Interconnection Customer.

5.1.2.1 *Refund of Amounts Advanced for Network Upgrades.* Interconnection Customer shall be entitled to a refund, equal to the total amount paid to Transmission Provider and Affected Systems, if any, for the Network Upgrades with interest, including any tax gross-up or other tax-related payments, to be paid to Interconnection Customer on a dollar-for-dollar basis, for the non-usage sensitive portion of transmission charges, as payments are made under Transmission Provider's Tariff and Affected Systems' Tariffs. Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and any Affected Systems may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and any Affected Systems refund all amounts paid by Interconnection Customer, with interest, within five years from the Commercial Operation Date. Transmission Provider and any Affected Systems shall provide refunds to Interconnection Customer only after commercial operation of the Generating Facility has been demonstrated. If the Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time provide refunds to Interconnection Customer for the amounts advanced for the Network Upgrades. Any refund shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a refund of such payment pursuant to this subparagraph. Interconnection Customer may assign such refund rights to any person.

Notwithstanding any other provision of this agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Generating Facility.

5.1.3 *Distribution Upgrades.* Transmission Provider or Transmission Provider shall design, procure, construct, install, and own the distribution Upgrades described in Appendix 5 of this agreement. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to Interconnection Customer.

5.1.4 *Operating and Maintenance Expenses.* Subject to the provisions herein addressing the use of facilities by others, and except for operating and maintenance expenses associated with modifications made for providing service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses, including overheads, associated with: (1) Owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing Transmission Provider's Interconnection Facilities.

5.1.5 *General.* If the Parties agree that the Generating Facility benefits Transmission Provider's Transmission System, Interconnection Customer's cost responsibility for Transmission Provider's Interconnection Facilities or Upgrades will be reduced commensurate with such benefit. Benefits must be measurable and verifiable.

Where multiple Interconnection Requests require Upgrades to Transmission Provider's Transmission System, Interconnection Customers will be assigned costs or benefits separately where impacts can be separately attributed to respective projects. Where such attribution is not possible, Interconnection Customers will share costs or benefits in proportion to their projected Generating Facility capacities.

5.2 *Financial Security Arrangements.* At least thirty Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider Interconnection Facilities and Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction where the Point of Interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring, and installing the applicable portion of Transmission Provider Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this agreement during its Term. In addition:

The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

5.3 *Milestones.* Parties shall agree on milestones for which each Party is responsible and list them in Appendix 3 of this agreement. A Party's obligations under this provision may be extended by agreement.

5.3.1 If Interconnection Customer fails to meet agreed milestones for which it is responsible, other than for reasons of Force Majeure, its responsibility for costs incurred to that point by Transmission Provider will increase at the rate of interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of failure until the date the Milestone is met.

5.3.2 If Transmission Provider fails to meet agreed milestones for which it is responsible, other than for reasons of Force Majeure, Interconnection Customer will be credited interest for costs incurred to that point (including the Interconnection Request processing fee and study costs incurred under the Standard Small Generator Interconnection Procedures) calculated at the rate in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of failure until the date the Milestone is met.

5.4 *Billing and Payment.* Billing and payment obligations for services rendered,

for which Interconnection Customer is responsible under this agreement shall be performed in accordance with Transmission Provider's Tariff or in accordance with the terms of this agreement.

5.4.1 *Billing Procedure for Interconnection Facilities Construction.* Transmission Provider shall bill Interconnection Customer for monthly expenditures for the design, engineering and construction of, or for other charges related to, Interconnection Facilities contemplated by this agreement. Interconnection Customer shall pay each bill within thirty Calendar Days after receipt thereof.

5.4.2 *Final Accounting.* Within forty-five Calendar Days after completion of the construction and installation of Transmission Provider's Interconnection Facilities and/or Upgrades described in Appendices 1, 2, and 5 of this agreement, Transmission Provider shall provide Interconnection Customer with a final accounting report of any difference between: (1) Interconnection Customer's cost responsibility for the actual cost of such facilities under this agreement, and (2) Interconnection Customer's previous aggregate payments to Transmission Provider for such facilities. If Interconnection Customer's cost responsibility under this agreement exceeds its previous aggregate payments, Transmission Provider shall invoice Interconnection Customer and Interconnection Customer shall make payment to Transmission Provider. If Interconnection Customer's previous aggregate payments exceed its cost responsibility under this agreement, Transmission Provider shall refund to Interconnection Customer an amount equal to the difference within forty-five Calendar Days of the provision of such final accounting report.

Article 6. Miscellaneous

6.1 *Governing Law, Regulatory Authority and Rules.* The validity, interpretation and enforcement of this agreement and each of its provisions shall be governed by the laws of the State where the Point of Interconnection is located, without regard to its conflicts of law principles. 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, Rules, or regulations of a Governmental Authority.

6.2 *Amendment.* The Parties may by mutual agreement amend this agreement by a written instrument duly executed by both of the Parties.

6.3 *No 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.

6.4 *Waiver.* The failure of a Party to this agreement to insist, on any occasion, upon strict performance of any provision of this agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either 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 Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this agreement shall, if requested, be provided in writing.

6.5 *Assignment.* This agreement may be assigned by either Party only with the written consent of the other; provided that either Party may assign this agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this agreement; and provided further that Interconnection Customer shall have the right to assign this agreement, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Generating Facility, provided that Interconnection Customer will require any secured party, trustee or mortgagee to notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this article is void and ineffective. Any assignment under this agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

6.6 *Entire Agreement.* This agreement, including all appendices attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this agreement.

6.7 *Notices.* Unless otherwise provided in this agreement, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

Transmission Provider: _____

_____

Interconnection Customer: _____

_____

Either Party may change the notice information by giving five Business Days written notice prior to the effective date of the change.

6.7.1 *Billings and Payments.* Billings and payments shall be sent to the addresses set out below:

Transmission Provider: _____

_____

Interconnection Customer: _____

_____

6.7.2 *Alternative Forms of Notice.* Any notice or request required or permitted to be given by either Party to the other and not required by this agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

Transmission Provider: _____

_____

Interconnection Customer: _____

_____

6.7.3 *Operations and Maintenance Notice.* Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to operations and maintenance the Party's facilities.

6.8 *Multiple Counterparts.* This agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

6.9 *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.

6.10 *Communications.* Each Party will provide the other Party with the name, title, address and phone numbers of its representative to receive operational communications and to conduct the daily communications which may be necessary or convenient for the administration of this agreement. Such designations, including names, addresses, and phone numbers, may be communicated or revised by one Party's notice to the other in accordance with Article 6.7.

6.11 *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.

6.12 *Security Arrangements.* Infrastructure security of Transmission

System equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Commission expects all Transmission Providers, market participants, and Interconnection Customers interconnected to electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

6.13 *Indemnity.* The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

Indemnified Person. If an Indemnified Person is entitled to indemnification under this article as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgement with respect to, or pay in full, such claim.

Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this article, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

Indemnity Procedures. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (1) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (2) shall not settle or consent to the entry of any judgement in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

6.14 *Force Majeure.* Economic hardship is not considered a Force Majeure event.

Neither Party shall be considered to be in Default with respect to any obligation hereunder other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

6.15 *Environmental Releases.* Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (1) Provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

6.16 *Insurance.* Each Party shall, at its own expense, maintain in force throughout the period of the Standard Small Generator Interconnection Agreement, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the State where the Point of Interconnection is located:

6.16.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the State in which the Point of Interconnection is located. The minimum limits for the Employers' Liability Insurance shall be ($____) each accident bodily injury by accident, ($____) each employee bodily injury by disease, and ($____) policy limit bodily injury by disease.

6.16.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of ($____) per occurrence/($____) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

6.16.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of ($____) per occurrence for bodily injury, including death, and property damage.

6.16.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of ($____) per occurrence/($____) aggregate.

6.16.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance polies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees (''Other Party Group'') as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of the Standard Small Generator Interconnection Agreement against the Other Party Group and provide thirty days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

6.16.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be

increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

6.16.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two years after termination of the Standard Small Generator Interconnection Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

6.16.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under the Standard Small Generator Interconnection Agreement.

6.16.9 Within ten days following execution of the Standard Small Generator Interconnection Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety days thereafter, each Party shall provide certification of all insurance required in the Standard Small Generator Interconnection Agreement, executed by each insurer or by an authorized representative of each insurer.

6.16.10 Notwithstanding the foregoing, each Party may self-insure to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 6.16.1 through 6.16.9. In the event that a Party is permitted to self-insure pursuant to this Article 6.16.10, it shall not be required to comply with the insurance requirements applicable to it under Articles 6.16.1 through 6.16.9.

6.16.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of the Standard Small Generator Interconnection Agreement.

6.17 *Default.*

6.17.1 *General.* No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 6.17.2, the defaulting Party shall have thirty Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty Calendar Days, the defaulting Party shall commence such cure within thirty Calendar Days after notice and continuously and diligently complete such cure within ninety Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

6.17.2 *Right To Terminate.* If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this agreement.

6.18 *Subcontractors.*

6.18.1 *General.* Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

6.18.2 *Responsibility of Principal.* The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

6.18.3 *No Limitation by Insurance.* The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

6.19 *Consequential Damages.* Other than as expressly provided for in this agreement, neither Party shall be liable under any provision of this agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

6.20 *Reservation of Rights.* Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

Article 7. Confidentiality

7.1 *Confidentiality.* Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

7.2 *Term.* During the term of this agreement, and for a period of three years after the expiration or termination of this agreement, except as otherwise provided in this article, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

7.3 *Scope.* Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party, (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party, (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential, (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party, (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this agreement, or (6) is required, in accordance with Article 7.8 (Order of Disclosure) to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal

proceeding establishing rights and obligations under this agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

7.4 *Release of Confidential Information.* Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this agreement, unless such person has first been advised of the confidentiality provisions of this article and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this article.

7.5 *Rights.* Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

7.6 *No Warranties.* By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

7.7 *Standard of Care.* Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this agreement or its regulatory requirements.

7.8 *Order of Disclosure.* If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

7.9 *Termination of Agreement.* Upon termination of this agreement for any reason, each Party shall, within ten Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

7.10 *Remedies.* The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this article. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this article, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this article, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this article.

7.11 *Disclosure to FERC or its Staff.* Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party may, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to this agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 38.112.

7.12 *Competitively Sensitive, Commercial or Financial Information.* Subject to the exception in Article 7.11, any information that a Party claims is competitively sensitive, commercial or financial information under this agreement (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute, (3) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld, or (4) necessary to fulfill its obligations under this agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

7.13 *Information in Public Domain.* This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

Article 8. Disputes

8.1 *Submission.* In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this agreement or its performance, such Party (the ''Disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this agreement.

8.2 *External Arbitration Procedures.* Any arbitration initiated under this agreement shall be conducted before a single neutral Arbitrator/Technical Master (hereinafter referred to as Arbitrator) appointed by the Parties. If the Parties fail to agree upon a single Arbitrator within ten Calendar Days of the submission of the dispute to arbitration, each Party shall choose one Arbitrator who shall sit on a three-member arbitration panel. The two Arbitrators so chosen shall within 20 Calendar Days select a third Arbitrator to chair the arbitration panel. In either case, the Arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The Arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein,

shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or Regional Transmission Organization rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this article, the terms of this article shall prevail.

8.3 *Arbitration Decisions.* Unless otherwise agreed by the Parties, the Arbitrator(s) shall render a decision within 90 Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The Arbitrator(s) shall be authorized only to interpret and apply the provisions of this agreement and shall have no power to modify or change any provision of this agreement in any manner. The decision of the Arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the Arbitrator(s) may be appealed solely on the grounds that the conduct of the Arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the Arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Upgrades.

8.4 *Costs.* Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the Arbitrator chosen by the Party to sit on the three-member panel and one half of the cost of the third Arbitrator chosen, or (2) one half the cost of the single Arbitrator jointly chosen by the Parties.

Article 9. Signatures

In witness whereof, Parties have caused this agreement to be executed by their respective duly authorized representatives.

For Transmission Provider

Name: _____
Title: _____
Date: _____

For Transmission Owner (If Applicable)

Name: _____
Title: _____
Date: _____

For Interconnection Customer

Name: _____
Title: _____
Date: _____

Appendix 1

Description and Costs of Generating Facility, Interconnection Facilities, and Metering Equipment

Equipment, including the Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by Interconnection Customer, Transmission Provider, or Transmission Owner. Transmission Provider will provide a best estimate itemized cost, including overheads, of its Interconnection Facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its Interconnection Facilities and metering equipment.

Appendix 2

One-line Diagram Depicting Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades

Appendix 3

Milestones

In-Service Date: _____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/Date	Responsible Party
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
(10)	
Agreed to by: For Transmission Provider	Date
For Transmission Owner (If Applicable)	Date
For Interconnection Customer	Date

Appendix 4

Additional Operating Requirements for Interconnection Provider's Transmission System and Affected Systems Needed To Support Interconnection Customer's Needs

Transmission Provider shall also provide requirements that must be met by Interconnection Customer prior to initiating Parallel Operation with Transmission Provider's Transmission System.

Appendix 5

Transmission Provider's Description of Transmission System Upgrades and Best Estimate of Upgrade Costs

Transmission Provider shall describe Upgrades and provide an itemized best estimate of the cost, including overheads, of the Upgrades and annual operation and maintenance expenses associated with such Upgrades. Transmission Provider shall functionalize Upgrade costs and annual expenses as either transmission or distribution related.

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Federal Register

Tuesday,
August 19, 2003

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2003–04 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by September 2, 2003.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2003–04 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and finalized the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 18–19, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, 2003, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations. In late August, we will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2003–04 season.

On July 30–31, 2003, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2003–04 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through July 31, 2003, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES.** We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 19, 2003.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions for breeding waterfowl have greatly improved over last year in most of the prairie survey areas. These improved conditions are reflected in the numbers of ponds counted this year. The estimate of May ponds (U.S. Prairies and Prairie and parkland Canada combined) of 5.2 ± 0.2 [SE] million is 91% higher than last year ($P < 0.001$) and 7% above the long-term average ($P = 0.034$). Numbers of ponds in Canada (3.5 ± 0.2 million) and the United States (1.7 ± 0.1 million) were above 2002 estimates (+145% in Canada and +30% in the U.S.; $P < 0.001$). Canadian ponds were similar to the 1974–2002 average ($P = 0.297$), while ponds in the United States were 10% above the 1974–2002 average ($P = 0.037$).

Most prairie areas had warm temperatures and abundant rain this spring. Two areas of dramatic improvement over the past several years were south-central Alberta and southern Saskatchewan, where conditions went from poor to good after much-needed precipitation relieved several years of drought. Other areas in the prairies also improved compared with 2002, but to a lesser extent. However, years of dry conditions in parts of the United States and Canadian prairies, combined with agricultural practices, have reduced the quality and quantity of residual nesting cover and overwater nest sites in many regions. This could potentially limit production for both dabbling and diving ducks, if the warm spring temperatures and good moisture of 2003 do not result

in rapid growth of new cover. Eastern South Dakota was the one area of the prairies where wetland habitat conditions were generally worse than last year, mostly due to low soil moisture, little winter precipitation, and no significant rains in April. This region received several inches of rain in May, but most birds had probably flown to other regions with more favorable wetland conditions.

In the northern part of the traditional survey area, habitat was in generally good condition and most areas had normal water levels. The exception was northern Manitoba, where low water levels in small streams and beaver ponds resulted in overall breeding habitat conditions that were only fair. Warm spring temperatures arrived much earlier this year than the exceptionally late spring last year. However, a cold snap in early May may have hurt early nesting species such as mallards and pintails, particularly in the northern Northwest Territories.

This spring, habitat conditions in the eastern survey area ranged from excellent to fair. In the southern and western part of this survey area, water and nesting cover were plentiful and temperatures were mild. Habitat quality decreased to the north, especially in northern and western Quebec, where many shallow marshes and bogs were either completely dry or reduced to mudflats. Beaver pond habitat was also noticeably less common than normal. To the east in Maine and most of the Maritime provinces, conditions were excellent, with adequate water and vegetation, and warm spring temperatures.

Weather and habitat conditions during the summer months can influence waterfowl production. Good wetland conditions increase renesting and brood survival. July wetland conditions were rated fair to good over most of Prairie Canada, the Dakotas, and eastern Montana, but poor conditions prevailed in eastern South Dakota, south-central Manitoba, central Saskatchewan, and north-central Montana. However, uniformly good conditions were found in the northern portions of the prairie provinces, and spring and summer rains made for good-to-excellent conditions along the border of Saskatchewan and eastern Montana. Results of the July Production Survey indicate that the number of ponds in Prairie Canada and the north-central United States combined was 2.5 ± 0.1 million ponds. This was 35 percent above last year's estimate of 1.8 ± 0.1 million ponds, but still 8 percent below the long-term average. July ponds in Prairie Canada were estimated to be 1.5 ± 0.1 million. This was 47 percent above last year's estimate of 1.0 ± 0.1 million but 16 percent below the long-term average. July ponds in the north-central United States were estimated at 1.0 ± 0.1 million. This was 21 percent above last year's estimate of 0.8± 0.1 million, but similar to the long-term average.

Breeding Population Status

In the traditional survey area, the total duck population estimate was 36.2 ± 0.7 million birds, 16 percent above ($P < 0.001$) last year's estimate of 31.2 ± 0.5 million birds, and 9 percent above ($P < 0.001$) the 1955–2002 long-term average. Mallard abundance was 7.9 ± 0.3 million birds, which was similar to last year's estimate of 7.5 ± 0.2 million birds ($P = 0.220$) and the long-term average ($P = 0.100$). Blue-winged teal abundance was estimated to be 5.5 ± 0.3 million birds. This value was 31 percent above last year's estimate of 4.2 ± 0.2 million birds ($P<0.001$) and 23 percent above the long-term average ($P = 0.001$). Estimates of shovelers (3.6 ± 0.2 million; +56%) and pintails (2.6 ± 0.2 million; +43%) were above 2002 estimates ($P < 0.001$), while estimates of gadwall (2.5 ± 0.2 million), wigeon (2.6 ± 0.2 million), green-winged teal (2.7 ± 0.2 million), redheads (0.6 ± 0.1 million), canvasbacks (0.6 ± 0.1 million), and scaup (3.7 ± 0.2 million) were unchanged from 2002 estimates ($P \geq 0.149$). Gadwall (+55%) and shovelers (+72%) were above their 1955–2002 averages ($P < 0.001$), as were green-winged teal (+46%; $P < 0.001$), which were at their second highest level since 1955. Pintails (−39%) and scaup (−29%) remained well below their long-term averages ($P < 0.001$). Estimates of wigeon, redheads, and canvasbacks were unchanged from their long-term averages ($P \geq 0.582$).

The eastern survey area comprises strata 51–56 and 62–69. The 2003 total duck population estimate for this area was 3.6 ± 0.3 million birds. This estimate is 17 percent lower than that of last year (4.4 ± 0.3 million birds, $P = 0.065$), but is similar to the 1996–2002 average ($P = 0.266$). Numbers of the individual species were similar to those of last year and the 1996–2002 average, with the exception of mergansers (0.6 ± 0.1 million), which decreased 30 percent from the 2002 estimate ($P = 0.035$).

Breeding Activity and Production

The number of broods in the north-central United States and Prairie Canada combined was 434,900, 23 percent higher than last year's estimate, and 7 percent below the long-term average. The number of broods in Prairie Canada and the north-central United States were 142 percent and 18 percent above last year's estimates, respectively. Brood indices in Prairie Canada were 24 percent below the long-term average, while brood counts were 31% above the long-term average in the north-central United States. Reflecting the lower concentration of ducks in the Canadian boreal forest this year compared to 2002, the brood index in this region was 72 percent lower than last year, and 76 percent below the long-term average. The late-nesting index, that is, the number of pairs and lone drakes without broods seen during July surveys, was 17 percent higher than last year, and 51 percent lower than the long-term average, for all areas combined. The late-nesting index was down 43 percent and 30 percent relative to last year in boreal Canada and Prairie Canada, respectively, but up 67 percent in the north-central United States. Late nesting indices were below the long-term average by 74 percent in boreal Canada, by 43 percent in the north-central United States, and by 46 percent in Prairie Canada.

Fall Flight Estimate

The size of the mid-continent mallard population, which comprises mallards from the traditional survey area, plus Michigan, Minnesota, and Wisconsin, was 8.8 million birds. This is similar to that of 2002 (8.6 million). The 2003 mid-continent mallard fall-flight estimate is 10.3 million birds, statistically similar to the 2002 estimate of 9.1 million birds. These estimates were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

See section 1.B. Regulatory Alternatives for further discussion on the implications of this information for this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (Branta canadensis), brant (B. bernicla), snow geese (Chen caerulescens), Ross's geese (C. rossii), emperor geese (C. canagicus), white-fronted geese (Anser albifrons) and tundra swans (Cygnus columbianus). The timing of snowmelt and goose nesting activities in most areas of the Arctic and subarctic was near average in 2003. Only Alaska's North Slope, Banks and adjacent Arctic Islands, and Akimiski Island reported substantially delayed nesting phenology this year. Although Alaska's Yukon-Kuskokwim Delta experienced an early

spring snowmelt, we observed poor production of young by brant, cackling Canada geese, and emperor geese, likely due to low wetland levels and high fox predation. Conditions in 2003 were especially favorable for greater snow geese. Of the 25 populations for which current primary population indices were available, 8 populations (Atlantic Population, Aleutian, Dusky, and 3 temperate-nesting populations of Canada geese; Pacific Population White-fronted Geese; and Eastern Population Tundra Swans) displayed significant positive trends, and only Short Grass Prairie Population Canada geese displayed a significant negative trend over the most recent 10-year period. Forecasts for production of geese and swans in North America in 2003 varied regionally, but generally will be similar to or higher than in 2002.

Waterfowl Harvest and Hunter Activity

During the 2002–03 hunting season, duck stamp sales, duck harvest, and goose harvest all declined from the previous year. United States waterfowl hunters bagged about 8 percent fewer ducks and 7 percent fewer geese than in 2001. Duck stamp sales totaled 1,583,847 (4 percent decrease) and 12,740,300 ducks (−8%) and 3,378,600 geese (−7%) were harvested. The five most commonly harvested duck species were mallard (4,915,600), green-winged teal (1,389,500), gadwall (1,251,400), wood duck (1,212,800), and blue-winged/cinnamon teal (765,700).

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the May 6, 2003, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 23, 2003, **Federal Register**, discussed the regulatory alternatives for the 2003–04 duck hunting season. Late-season comments are summarized below and numbered in the order used in the May 6 **Federal Register** document. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 6, 2003, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative, with the exception of some specific bag limits described below in sections 1.B. Regulatory Alternatives and 1.D. Special Seasons/Species Management. More specifically, recommendations concerned sections iii. Black Ducks, iv. Canvasbacks, v. Pintails, and viii. Wood Ducks.

Service Response: Currently, two stocks of mallards (midcontinent and eastern) are recognized for the purposes of Adaptive Harvest Management (AHM). This year, we will again use an approach to the optimization of these stocks' harvest, whereby the Atlantic Flyway regulatory strategy is based exclusively on the status of eastern mallards, and the regulatory strategy for the remaining Flyways is based exclusively on the status of midcontinent mallards. However, this approach continues to be considered provisional until its implications are better understood, and until such time that a more comprehensive approach to managing multiple duck stocks is developed.

For the 2003 hunting season, the Service made two significant changes to AHM, based on recommendations from the Flyway Councils: (1) The ''very-restrictive'' alternative was eliminated from the set of regulatory alternatives, and (2) consideration of a closed season in the western three Flyways is restricted to midcontinent (traditional survey plus Minnesota, Wisconsin, and Michigan) mallard breeding population levels <5.5 million. We also continue to offer extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives. The regulatory alternatives were discussed in the June 23 **Federal Register**.

The 2003 optimal regulatory strategy for midcontinent mallards was based on: (1) The revised regulatory alternatives, including the closed-season constraint; (2) updates of regulation-specific harvest rates; (3) current population models and updated model weights; and (3) the dual objectives to maximize long-term cumulative harvest and achieve a population goal of 8.8 million midcontinent mallards. Based on a spring population survey of 8.80 million mallards and 3.52 million Canadian ponds, the prescription is for a ''liberal'' season in 2003 for the three western Flyways.

The optimal regulatory strategy for eastern mallards was based on: (1) The revised regulatory alternatives; (2) current population models and updated model weights; and (3) an objective to maximize long-term cumulative harvest. The spring population size of eastern mallards (Northeast plot survey + Canada) this year was 1.04 million, suggesting that a ''liberal'' season in 2003 is appropriate for the Atlantic Flyway.

We support the recommendations of the Atlantic, Mississippi, Central and Pacific Flyways regarding selection of the ''liberal'' regulatory alternative and therefore propose to adopt the ''liberal'' regulatory alternative, as described in the June 23 **Federal Register**.

B. Regulatory Alternatives

Council Recommendations: The Central Flyway Council recommended the availability of two daily bag limit options, termed Options A and B. Under Option A, the daily bag limit would be 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females) 3 scaup, 2 redheads, 2 wood ducks, 1 pintail, 1 mottled duck, and 1 canvasback. The season for pintails and canvasbacks would be limited to 39 days (see further discussion under section 1.D. Special Seasons/Species Management). Under Option B, the daily bag limit would be 5 ducks, with species and sex restrictions as follows: 3 scaup, 2 redheads, 2 wood ducks, 1 pintail, 1 mottled duck, 1 hen mallard, and 1 canvasback. There would be no restrictions on the season length for canvasbacks or pintails.

Service Response: We do not support the Central Flyway's Option B. The regulatory alternatives for the 2003–04 hunting season were discussed in the June 23 **Federal Register**. We believe that new approaches to multispecies harvest management should be addressed in the overall context of AHM harvest management for ducks. The AHM Task Force, AHM Working Group, and Flyway Councils are considering development of multispecies approaches, and these forums would be appropriate places for further discussion of the Central Flyway proposal.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States the opportunity to return to a 2-black-duck daily bag limit providing they close the black duck season one day for each day a 2-black-duck bag limit is employed. No offset would be required for days when the black duck bag limit was restricted to 1 bird. Both increased bag days and closed days must be consecutive, except that 1 split is allowed. This regulation will be evaluated annually by the Atlantic Flyway Council.

Service Response: We do not support the Atlantic Flyway Council's recommendation. This request is similar to the Council's request last year, which the Service denied due to the difficulty in assessing options on a Flyway basis and the inability to assess whether or not these options are harvest-neutral. Until there is some formal agreement to manage black duck harvests on something less than a rangewide basis, we believe black ducks should continue to be managed at that level. Although black duck numbers may have improved slightly in recent years in some areas, they still remain below goal, and this spring's breeding population estimates declined 13 percent.

Presently, we are waiting for the International Black Duck Harvest Management Working Group to complete its report, which is due in November. Until we have some formal agreement among the stakeholders, including the Mississippi Flyway, we believe it is premature to consider the harvest strategy proposed by the Flyway.

iv. Canvasbacks

Council Recommendations: The Atlantic Flyway Council recommended modifying the 1994 Canvasback Harvest Strategy to allow for a limited canvasback harvest (season within a season) during years when the predicted harvest exceeds the allowable harvest, but can still be achieved by a more restrictive package (moderate, restrictive, or very restrictive). The season closure threshold would remain at a predicted spring breeding population of 500,000. For 2003, the Council recommended that the Service allow a restrictive canvasback season of 30 consecutive hunt days for the Atlantic Flyway, with a one-bird daily limit.

The Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a restrictive canvasback season of 30 consecutive hunt days for the Mississippi Flyway, with a one-bird daily limit.

The Central Flyway Council recommended that the existing interim harvest strategy for canvasbacks be followed during the 2003–04 season. The Council further recommended under Option A (described in section 1.B. Regulatory Alternatives) that the canvasback season be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The Pacific Flyway Council recommended a canvasback season of 86 days, plus 2 youth hunt days in the Pacific Flyway, with a daily bag limit of 1, and flexibility for States to select dates for canvasback seasons during any period within the duck season framework dates.

Service Response: We continue to support the harvest strategy adopted in 1994. This year, the strategy suggests that current population and habitat status, combined with the predicted harvests, would not support harvest of canvasbacks in the ''liberal'' season alternative. This spring, the estimate of canvasback abundance during the May survey was 558,000 birds, and the number of ponds in Prairie Canada was about 3.5 million. Using the model from the canvasback harvest management strategy, the number of birds that could be harvested in the United States during the 2003–04 hunting season, while still attaining the objective of 500,000 birds next spring, is about 102,000. The predicted harvest in the United States, associated with the ''liberal'' regulatory alternative in the United States, is about 119,000 birds.

We believe that if the harvest strategy indicates a full season cannot be allowed, in some cases, a limited harvest might be possible and still attain the spring abundance objective. Thus, we propose a season length at the level of the ''restrictive'' AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Hunting days must be taken consecutively and must be consistent with established zone/split hunting configurations approved for the regular duck season in each State.

Further, for the second time in the past 3 years, we have proposed a departure from the 1994 canvasback harvest strategy. During the coming year, we encourage the Flyway Councils to review the harvest strategy.

v. Pintails

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the regulations for pintails in 2003–04 be a 60-day season with a 1-bird bag limit.

The Central Flyway Council recommended that the existing interim harvest strategy for pintails be followed during the 2003–04 season. The Council further recommended under Option A (described in section 1.B. Regulatory Alternatives) that the pintail season be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The Pacific Flyway Council recommended a full-season framework for pintails, with a daily bag limit of 1 bird.

Service Response: Last year, the Flyway Councils and the Service agreed to depart from the established pintail harvest strategy and implement a ''season-within-a-season'' in all four Flyways for northern pintails. The season length employed was the season length for the restrictive alternative under the AHM protocol in all four Flyways. The overall harvest declined, although not as much as predicted by the current models. This year, the breeding population estimate increased to 2.6 million; however, this estimate is still about 40 percent below the long-term population average. The interim strategy recommends a 1-pintail daily bag limit nationwide. However, based on the models, the predicted harvest (slightly more then 600,000) is projected to result in a lower breeding population in 2004.

Implementation of another year of the restrictive season length for pintails is projected to result in about a 7 percent population increase. Since the use of the strategy has not achieved the desired population growth, and model projections suggest a population decline under a ''liberal'' season length with a 1-bird daily bag limit in all four Flyways, we propose that we again

depart from the harvest strategy and restrict pintail season length to those in the ''restrictive'' AHM alternative. Season length would be 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway. Hunting days must be consistent with established zone/split hunting configurations approved for the regular duck season in each State.

Further, for the second year in a row, we are proposing a departure from the interim harvest strategy for the reasons noted above, and in recognition that the habitat conditions in key pintail breeding areas offers some real chance to achieve population growth. During the coming year, we would like to review the harvest strategy with the Councils with regard to the provision in the interim strategy that permits seasons that are expected to reduce future breeding populations.

viii. Wood Ducks

Council Recommendations: The Atlantic Flyway Council recommends increasing the wood duck bag limit to three birds during October 1 through November 6 in the Atlantic Flyway for a 3-year experimental period (2003/04—2005/06).

Service Response: We do not support the Atlantic Flyway Council's recommendation. We are continuing to evaluate the usefulness of a modeling approach to the management of wood duck harvests; however, this work is not yet completed and we believe that changes in bag limits are premature at this time. Further, we are concerned about the potential effects of this change on local breeding populations.

4. Canada Geese

B. Regular Seasons

The Central Flyway Council recommended that regular season frameworks for dark geese in the west-tier States consist of a framework opening date of the Saturday nearest September 24 (September 27, 2003) and a framework closing date of the Sunday nearest February 15 (February 15, 2004). The season could be divided into 2 segments, except in Wyoming, where the season could be divided into 3 segments and evaluated in accordance with Service criteria. Season length would be 107 days, except in Colorado and Texas, where the season length would be 95 days. Daily bag limit would be five dark geese in the aggregate, with the following exceptions: (a) In the Western Goose Zone of Texas, the daily bag limit would be one white-fronted goose and three other dark geese (in the aggregate), and (b) in Colorado, the daily bag limit would be three dark geese in the aggregate. The possession limit would be twice the daily bag limit.

The Pacific Flyway Council recommended increasing the goose season length in eastern Washington from 100 to 107 days, creation of a new management area within Oregon's Northwest Special Permit Zone, elimination of California's San Joaquin Valley Special Management Area, and increasing the goose season length in Humboldt and DelNorte Counties, California, from 9 to 16 days.

Service Response: We concur with all the Council recommendations except for one aspect regarding the creation of a new management area within Oregon's Northwest Special Permit Zone. We continue to support efforts to address long-standing concerns about agricultural damage caused by Canada geese in this area, and would support the creation of the recommended zone with the condition that the daily bag limit on cackling Canada geese be reduced to two birds in the four-bird goose bag during the early portion of the goose season chosen for the new zone. We believe this restriction will help to minimize possible impacts on cackling Canada geese present in the area during this season. Cackling Canada geese are an important sport and subsistence resource and the population is currently 30 percent below objective levels and has not shown any increase in recent years. We believe that additional take of cackling Canada geese should not be encouraged at this time.

C. Special Late Season

Council Recommendations: The Atlantic Flyway Council recommended that Massachusetts' late Canada goose southern boundary of the coastal zone be extended from the present boundary in Duxbury, south to the Cape Cod Canal.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the experimental late (December) special Canada goose season in Minnesota be granted operational status.

Service Response: We concur.

8. Swans

Council Recommendations: The Central Flyway Council recommended that up to 200 tundra swan permits be temporarily transferred from South Dakota to North Dakota beginning in the 2003 season.

Service Response: We concur. The transfer of swan hunting permits within a Flyway is in accordance with guidelines in the Cooperative Flyway Management Plan for the Eastern Population of Tundra Swans.

In addition, the Service has completed the final environmental assessment (EA) for general swan seasons in the Pacific Flyway (the availability of the draft EA was announced in the May 16, 2003, **Federal Register** [68 FR 26642]). The EA includes a review of the 5-year experimental general swan hunting seasons that took place from 1995 to 2000, as well as a summary of the results of subsequent 2000–03 hunting seasons. Information from the most recent breeding and wintering populations surveys is also included in the EA. Three alternatives are evaluated to address the future of operational swan hunting seasons in Utah, Nevada, and the Pacific Flyway portion of Montana. The issuance of a new EA fulfills the Service commitment to assess the Pacific Flyway swan seasons at the end of the 2002–03 hunting season as established in the most recent EA on the issue, the availability of which was announced in the April 25, 2001, **Federal Register** (66 FR 20828). The EA focuses on the issue of whether or not to establish an operational approach for swan hunting. Related efforts to address population status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans are also discussed. Three alternatives, including the proposed action, were considered. Copies are available from the Service's Web site at *www.migratorybirds.fws.gov* or by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 N.E., 11th Avenue, Portland, Oregon 97232–4181.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two

considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in the near future.

The Service has also completed the final environmental assessment (EA) for general swan seasons in the Pacific Flyway. The EA includes a review of the 5-year experimental general swan hunting seasons that took place from 1995 to 2000, as well as a summary of the results of subsequent 2000–02 hunting seasons. Copies are available from the Service's Web site at *www.migratorybirds.fws.gov* or by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 N.E., 11th Avenue, Portland, Oregon 97232–4181.

Endangered Species Act Consideration

Prior to issuance of the 2003–04 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and are annually reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES.**

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.,* grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis). The Analysis was subsequently updated in 1996 and 1998 and will be updated again in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, it is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 8, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2003–04 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2003, and March 10, 2004.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of

migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days, except pintails and canvasbacks which may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland: Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

Massachusetts: NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey: Statewide: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: Southern James Bay Population (SJBP) Zone: A 70-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 25) and February 15, with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Pennsylvania: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 and

January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 60-day season between the Saturday nearest September 24 (September 27) and January 31, with a 3-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days, except that the season for pintails and canvasbacks may not exceed 30 days for each species, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 27) and March 10; for white-fronted geese not to exceed 86 days, with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 27) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 27) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 126,400 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 92 days or when 19,300 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone—The season for Canada geese will close after 92 days or when 24,100 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 92 days or when 28,600 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 20,200 birds. Of the 20,200-bird quota, 13,100 birds will be allocated to the Ballard Reporting Area and 5,050 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) MVP Zone—The total harvest of Canada geese will be limited to 94,800 birds. The framework opening date for all geese is September 16, and the season for Canada geese may extend for 55 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 50 days or when 3,000 birds have been

harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan and Central Michigan GMUs—A special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone.

(1) West Central Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Swan Lake Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the State—(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 90,000 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 26,100 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 1,000 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 58,400 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 93 days, except in the Mississippi River Subzone, where the season may not exceed 71 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 57,900 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: (1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no

more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13). A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Remainder of the Central Flyway: 74 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 27) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits: Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for pintails and canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 4 scaup, 2 redheads. A single pintail and canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the last Sunday in January (January 25). Basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 27), and the last Sunday in January (January 25). Basic daily bag limits are 3 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light

geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 1).

Balance-of-the-State Zone: An 86-day season may be selected. Limits may not include more than 3 geese per day, of which not more than 2 may be white-fronted geese and not more than 1 may be a cackling Canada goose or Aleutian Canada goose. Two areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, the open season for Canada geese may be 16 days. The daily bag limit shall contain no more than 1 Canada goose, cackling Canada goose or Aleutian Canada goose.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, in the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Harney, Klamath, Lake, and Malheur County Zone—For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose. Season dates in the Lower Columbia/N. Willamette Valley Management Area may be different than the remainder of the Northwest Special Permit Zone; however, for those season segments different from the Northwest Special Permit Zone, the cackling Canada goose limit is 2.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook County.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho

Northern Unit: The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit: The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone: The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Wyoming: The daily bag limit for dark geese is 4.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 29). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 4). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill-measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 14) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August, 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2003, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan

populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 4) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP L-Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H-Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington Counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire: Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Area: That area east and north of a continuous line extending along Route 11 from the New York-Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont State line.

St. Lawrence Area: New York State Wildlife Management Units (WMUs): 6A, 6C, and 6H.

Northeast Area: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, excluding the Lake Champlain and St. Lawrence Areas.

Southwest Area: Consists of the following WMUs: 9C, 9G, 9H, 9J, 9K, 9M, 9N, and 9R; that part of WMU 9A lying south of a continuous line extending from the New York-Ontario boundary east along Interstate Route 190 to State Route 31, then east along Route 31 to Route 78 in Lockport; that part of WMU 9F lying in Erie County; and that part of WMU 8G lying south and west of a continuous line extending from WMU 9F east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to WMU 9H.

South Central Area: Consists of the following WMUs: 3A, 3C, 3H, 3K, 3N, 3P, 3R, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 7R, 7S, 8T, 8W, 8X, 8Y, 9P, 9S, 9T, 9W, 9X, and 9Y; that part of WMU 3G lying in Putnam County; that part of WMU 3S lying northwest of Interstate Route 95; and that part of WMU 7M lying south of a continuous line extending from IR 81 at Cortland east along 41 Route to Route 26, then north along Route 26 to Route 23, then east along Route 23 to Route 8 at South New Berlin.

West Central Area: That area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81 and then south along Interstate Route 81 to the New York-Pennsylvania boundary, excluding the Southwest and South Central Areas.

East Central Area: That area east of Interstate 81 that is south of a continuous line extending from Interstate Route 81 east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, and northwest of Interstate Route 95 in Westchester County, excluding the South Central Area.

Western Long Island Area: That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west

along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to international waters.

Eastern Long Island Area: that area of Suffolk County that is not part of the Western Long Island Area.

Special Late Hunting Area: consists of that area of Westchester County lying southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York—Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer Counties and the area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

SJBP Zone: Erie, Mercer and Crawford Counties, except for the Pymatuning Zone (the area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line).

Pymatuning Zone: The area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line.

AP Zone: The area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

Special Late Canada Goose Season Area: The SJBP zone (excluding the Pymatuning zone) and the northern portion of the AP zone defined as east of U.S. Route 220 from the New York State line, east of U.S. Route 220 to the intersection of I–180, east of I–180 to the intersection of SR 147, east of SR 147 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of I–81, north of I–81 to the intersection of I–80, and north of I–80 to the New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont: Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia: Same zones as for ducks.

Mississippi Flyway

Alabama: Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas: Northwest Zone: Benton, Carroll, Baxter, Washington, Madison,

Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois: Same zones as for ducks, but in addition:

North Zone: Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone: Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone: Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana: Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa: Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia County, then easterly to the southwest corner of Clinton County, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then easterly to the southwest corner of Midland County, then northerly along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons: Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S.

59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons: Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri: Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio: Same zones as for ducks but in addition:

North Zone: Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin: Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver,

Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas/Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer/Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Charles Mix, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, and Sully Counties and that portion of Dewey County south of U.S. 212.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma State line.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Converse County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that Portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 4: Goshen and Platte Counties.

Pacific Flyway

Arizona

GMU 1 and 27: Game Management Units 1 and 27.

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of

intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican State line at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill

Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming (Pacific Flyway Portion)

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

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Federal Register

Vol. 68, No. 160

Tuesday, August 19, 2003

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FEDERAL REGISTER PAGES AND DATE, AUGUST

45157–45740 1
45741–46072 4
46073–46432 5
46433–46918 6
46919–47200 7
47201–47440 8
47441–47834 11
47835–48248 12
48249–48528 13
48529–48766 14
48767–49322 15
49323–49682 18
49683–50038 19

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12722 (See: Notice of July 31, 2003) 45739
12724 (See: Notice of July 31, 2003) 45739
13290 (See: Notice of July 31, 2003) 45739
13313 46073
13314 48249
13222 (See: Notice of August 7, 2003) 47833

Administrative Orders:
Notices:
Notice of July 31, 2003) 45739
Notice of August 7, 2003 47833
Presidential Determinations:
No. 1998–7 of December 5, 1997 (See No. 03–31 of August 8, 2003) 49325
No. 2003–30 of August 7, 2003 49323
No. 2003–31 of August 8, 2003 49325
No. 2003–28 47441
No. 2003–29 47443

5 CFR

Proposed Rules:
532 47877

7 CFR

51 46433
250 46434
340 46434
916 ..... 48251, 48767
917 ..... 48251, 48767
958 48529
993 46436
996 46919
1000 48770
1032 48770
1427 49327
1481 49329
1778 46077
1794 45157

Proposed Rules:
Ch. I 48574
52 46504
91 48322
96 48322
331 45787
762 49723
783 47499
Ch. IX 48574
983 45990
991 48575
Ch. X 48574
Ch. XI 48574
1124 ..... 46505, 49375
1131 46505
1135 49375
1778 46119
2200 48814
2201 48814
4279 46509

8 CFR

204 46925
212 46926
214 46926
231 46926
233 46926

9 CFR

77 47201
82 45741
94 47835
206 47802

10 CFR

72 49683
140 46929
1015 48531
1018 48531

Proposed Rules:
30 45172
72 49726
170 46439
171 46439
1015 48575
1018 48575

11 CFR

104 47386
107 47386
110 47386
9001 47386
9003 47386
9004 47386
9008 47386
9031 47386
9032 47386
9033 47386
9034 47386
9035 47386
9036 47386
9038 47386

12 CFR

19 48256
24 48771
263 48256
308 48256
513 48256
701 46439

Proposed Rules:
3 45900
7 46119
34 46119
208 45900

225.....45900
325.....45900
567.....45900
614.....47502
615.....47502

14 CFR

15.....48543
25 .....46428, 47202, 47445, 49332
39 .....46441, 46443, 46444, 47202, 47204, 47207, 47208, 47211, 47213, 47216, 47218, 47447, 47842, 48274, 48544, 48546, 487783, 49334, 49336, 49337, 49340, 49342, 49344, 49686, 49688
71 .....47447, 47448, 47449, 47637, 47844, 47846, 48994, 49345, 49346, 49348, 49349, 49350, 49546, 49690, 49691
97.....48276, 48277
119.....47798

Proposed Rules:

21.....46283
39 .....45176, 45177, 46514, 47267, 47513, 48326, 48576, 48833, 48835, 49390
61.....46283
65.....46283
71 .....47515, 47516, 47518, 49727
73.....48579
77.....46283
91.....47269
107.....46283
109.....46283
121.....46283, 47269
135.....46283, 47269
145.....46283
154.....46283
1260.....48837, 48838

15 CFR

902.....49683
911.....45160

Proposed Rules:

303.....45177

16 CFR

305.....47449

17 CFR

4.....47221
18.....48549
30.....46446
240.....46446

Proposed Rules:

1.....46516
240.....48724

18 CFR

35.....49846
1304.....46930

Proposed Rules:

2.....46452
35.....49974
284.....48133
388.....46456

19 CFR

4.....48279
103.....47453
111.....47455

Proposed Rules:

103.....48327

20 CFR

218.....45315
225.....45315

Proposed Rules:

404.....45180, 47877
416.....45180

21 CFR

172.....46364, 46403
510.....49703
522 .....48784, 49350, 49703
558.....47237
886.....49351

Proposed Rules:

310.....48133
334.....48133
510.....47272
558.....47272

22 CFR

41 .....46948, 47460, 49351
42.....49353

24 CFR

905.....45730

Proposed Rules:

960.....45734
3282.....47881

25 CFR

170.....48549

Proposed Rules:

Ch. 1 45787

26 CFR

1 .....45745, 45772, 46081
300.....48785
301.....46081
602.....46081

Proposed Rules:

1 .....46516, 46983, 48331
301.....49729

27 CFR

Proposed Rules:

9.....48839

28 CFR

549.....47847

Proposed Rules

16.....47519
522.....46138

29 CFR

697.....46949
4022.....48787
4044.....48787

Proposed Rules

Ch. X.....46983
1926.....48843

30 CFR

926.....46460
938.....48789

Proposed Rules

57.....48668
72.....47886
943.....48844

31 CFR

50.....48280
591.....45777
592.....45777

32 CFR

21.....47150
22.....47150
32.....47150
34.....47150
37.....47150

Proposed Rules

199.....46526, 49732

33 CFR

100 .....46087, 47237, 48553
117 .....45784, 47462, 47850, 47851
165 .....45164, 45165, 47237, 47239, 47241, 47243, 47245, 47464, 47465, 47852, 47854, 48282, 48284, 48555, 48798, 49356, 49359, 49704

Proposed Rules:

100.....48846
110.....45190
117 .....46139, 47520, 47522, 49393
165.....46984, 47277

36 CFR

4.....46477

Proposed Rules:

7.....47524
219.....49395
242.....49734
294.....49395

37 CFR

1.....48286
2.....48286

39 CFR

111.....49362
224.....47527
261.....47527
262.....47527
263.....47527
264.....47527
265.....47527
266.....47527
267.....47527
268.....47527
3001.....48293

Proposed Rules:

111.....45192, 49396

40 CFR

52 .....45897, 46089, 46099, 46101, 46479, 46484, 46487, 47466, 47468, 47473, 47477, 47482, 48557, 48803, 49706
60.....46489
62.....48558, 49363
63.....46102
70.....46489
71.....45167
81.....47964
86.....48561
180 .....46491, 47246, 48299, 48302, 48312
261.....46951
300.....48314

Proposed Rules:

Ch. 1 46435
19.....45788
27.....45788
51.....46436
52 .....46141, 46437, 47279, 47530, 45731, 47532, 47533
62.....48581, 49406
63.....46142
70.....46438
81.....48848
141.....47640, 49548
142.....47640, 49548
143.....49548
194.....47887
271.....45192
300.....48331, 49406
432.....48472

41 CFR

Proposed Rules:

51-3.....45195
51-4.....45195

42 CFR

409.....46036
411.....46036
412 .....45346, 45674, 47637
413.....45346, 46036
424.....48805
440.....46036
483.....46036
488.....46036
489.....46036

Proposed Rules:

410.....47966, 49030
414.....49030
419.....47966

44 CFR

65.....49365
67.....49371

46 CFR

188.....45785
189.....45785

47 CFR

1.....48446
2.....46957
13.....46957
25.....47856, 49372
54.....47253, 49707
69.....46500
80.....46957
73 .....45786, 46286, 46502, 47255, 47256, 48764, 49372

Proposed Rules:

2.....49409
25.....49409
73 .....46359, 47282, 47283, 47284, 47285, 49410

48 CFR

1806.....45168
1807.....45168
1811.....45168
1814.....45168
1815.....45168
1817.....45168
1819.....45168
1825.....45168
1827.....45168
1844.....45168
1852.....45168
1872.....45168

Proposed Rules:

1601.....48851
1602.....48851
1604.....48851
1615.....48851
1631.....48851
1632.....48851
1644.....48851

1652.....48851
2901.....48996
2902.....48996
2903.....48996
2904.....48996
2905.....48996
2906.....48996
2907.....48996
2908.....48996
2909.....48996
2910.....48996
2911.....48996
2912.....48996
2913.....48996
2914.....48996
2915.....48996
2916.....48996
2917.....48996
2918.....48996
2919.....48996
2920.....48996
2921.....48996
2922.....48996
2923.....48996
2924.....48996
2925.....48996
2926.....48996
2927.....48996
2928.....48996
2929.....48996
2930.....48996
2931.....48996
2932.....48996
2933.....48996
2934.....48996
2935.....48996
2936.....48996
2937.....48996
2938.....48996
2939.....48996
2940.....48996
2941.....48996
2942.....48996
2943.....48996
2944.....48996
2945.....48996
2946.....48996
2947.....48996
2948.....48996
2949.....48996
2950.....48996
2951.....48996
2952.....48996
2953.....48996

49 CFR

71.....49373, 49712
171.....48562
172.....48562
173.....48562
177.....48562
178.....48562
179.....48562
180.....48562
191.....46109
192.....46109
195.....46109
229.....49713
390.....47860
398.....47860
571.....47485, 48571
1500.....49718
1502.....49718
1503.....49718
1510.....49718
1511.....49718
1540.....49718
1542.....49718
1544.....49718
1546.....49718
1548.....49718
1550.....49718

Proposed Rules:

71.....47533
380.....47890, 48863
385.....49737
390.....49737
391.....47890
397.....49737
571 .....46539, 46546, 49756
585.....46546
586.....46546
589.....46546
590.....46546
596.....46546
1152.....48332
1507.....49410

50 CFR

17.....46684, 46870
300.....47256, 48572
622.....47498
635.....45169
648.....47264, 49693
660.....46112, 49721
679 .....45170, 45766, 46116, 46117, 46502, 47265, 47266, 47875, 49374

Proposed Rules:

15.....46559
17 .....46143, 46989, 48581
20.....47424, 50016
32.....48583
100.....49734
600.....45196
622.....48592
635.....45196, 47404
648.....49758
660.....49415
679.....49416

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 19, 2003

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Connecticut, Massachusetts, and Rhode Island; published 6-20-03
Wisconsin; published 6-20-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Estadiol Benzoate; published 8-19-03

HOMELAND SECURITY DEPARTMENT
Transportation Security Administration
Organization, functions, and authority delegations:
Agency transition to Homeland Security; published 8-19-03

SECURITIES AND EXCHANGE COMMISSION
Investment companies:
Research and development companies; nonexclusive safe harbor from investment company definition; published 6-20-03

TRANSPORTATION DEPARTMENT
Procedural regulations:
Chamorro Standard Time Zone; establishment; published 8-19-03

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad locomotive safety standards:
Headlights and auxiliary lights; published 8-19-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 8-25-03; published 7-25-03 [FR 03-18985]
Dates (domestic) produced or packed in—
California; comments due by 8-27-03; published 7-28-03 [FR 03-19128]
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 8-27-03; published 7-28-03 [FR 03-19129]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in—
California; comments due by 8-25-03; published 6-24-03 [FR 03-15832]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Disease-free regions; reestablishment procedures; comments due by 8-25-03; published 6-24-03 [FR 03-15907]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Hawaiian and territorial quarantine notices:
Sweetpotatoes from Hawaii; irradiation treatment; comments due by 8-25-03; published 6-26-03 [FR 03-16182]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Recordkeeping and registration requirements; policy statement; comments due by 8-25-03; published 6-25-03 [FR 03-15741]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
Pacific halibut—
Oregon sport fisheries; additional access; comments due by 8-29-03; published 8-14-03 [FR 03-20680]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Ocean and coastal resource management:
Coastal Zone Management Act; Federal consistency process; comments due by 8-25-03; published 7-7-03 [FR 03-17033]

COMMERCE DEPARTMENT
Patent and Trademark Office
Organization, functions, and authority delegations:
Power of attorney practice clarification and assignment rules revision; comments due by 8-26-03; published 6-27-03 [FR 03-16262]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
List of hazardous air pollutants, petition process, lesser quantity designations, and source category list; comments due by 8-28-03; published 5-30-03 [FR 03-13428]

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Methyl bromide; ban on trade with non-parties to Montreal Protocol; comments due by 8-25-03; published 7-25-03 [FR 03-18856]

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Methyl bromide; ban on trade with non-parties to Montreal Protocol; comments due by 8-25-03; published 7-25-03 [FR 03-18855]
Air quality implementation plans:
Preparation, adoption, and submittal—
Prevention of significant deterioration and non-attainment new source review; reconsideration; comments due by 8-29-03; published 7-30-03 [FR 03-19356]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Idaho; comments due by 8-29-03; published 7-30-03 [FR 03-19355]
Air quality implementation plans; approval and promulgation; various States:
Texas; comments due by 8-29-03; published 7-30-03 [FR 03-19278]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Texas; comments due by 8-29-03; published 7-30-03 [FR 03-19279]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Buprofezin; comments due by 8-25-03; published 6-25-03 [FR 03-15767]
Flufenacet, etc.; comments due by 8-25-03; published 6-25-03 [FR 03-15905]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 8-26-03; published 7-28-03 [FR 03-18741]
National priorities list update; comments due by 8-26-03; published 7-28-03 [FR 03-18740]
National priorities list update; comments due by 8-27-03; published 7-28-03 [FR 03-19006]

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Texas; comments due by 8-28-03; published 7-18-03 [FR 03-18148]

FEDERAL COMMUNICATIONS COMMISSION
Frequency allocations and radio treaty matters:
4.9 GHz band transferred from Federal government use; comments due by 8-29-03; published 6-30-03 [FR 03-16375]

FEDERAL COMMUNICATIONS COMMISSION
Radio broadcasting:
AM directional antennas; amendment; comments due by 8-29-03; published 7-28-03 [FR 03-19092]
Radio stations; table of assignments:
Arizona; comments due by 8-25-03; published 7-18-03 [FR 03-18248]

Texas and New York; comments due by 8-25-03; published 7-18-03 [FR 03-18231]

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:
Living trust accounts; insurance regulations; comments due by 8-29-03; published 6-30-03 [FR 03-16400]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Child Support Enforcement Program:
Federal tax refund offset; comments due by 8-25-03; published 6-26-03 [FR 03-14883]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
Liquid medicated and free-choice medicated animal feed; requirements; comments due by 8-26-03; published 5-28-03 [FR 03-12974]

Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc.; comments due by 8-26-03; published 6-27-03 [FR 03-16357]

Human drugs:
Oral health care products (OTC)—
Antigingivitis/antiplaque products; monograph establishment; comments due by 8-27-03; published 5-29-03 [FR 03-12783]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:
Skin protectant products (OTC)—
Astringent products; final monograph; comments due by 8-27-03; published 6-13-03 [FR 03-14818]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:
Skin protectant products (OTC)—
Astringent products; final monograph; comments due by 8-27-03; published 6-13-03 [FR 03-14819]
Topical antimicrobial products (OTC)—
Health-care antiseptic products; monograph amendment; comments due by 8-27-03; published 5-29-03 [FR 03-13317]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
Illinois and Iowa; comments due by 8-28-03; published 7-29-03 [FR 03-19257]
Massachusetts; comments due by 8-25-03; published 6-26-03 [FR 03-15999]

Ports and waterways safety:
Portland, OR; large passenger vessels; safety and security zone; comments due by 8-27-03; published 7-28-03 [FR 03-19145]
Ventura, CA; safety zone; comments due by 8-27-03; published 7-24-03 [FR 03-18761]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
Indian Housing Block Grant Program; minimum funding; comments due by 8-25-03; published 6-24-03 [FR 03-15817]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Marine mammals:
Incidental take during specified activities—
Polar bears and Pacific walrus; comments due by 8-25-03; published 7-25-03 [FR 03-18907]

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:
Good conduct time; aliens with confirmed orders of deportation, exclusion, or removal; comments due by 8-25-03; published 6-25-03 [FR 03-15823]

LABOR DEPARTMENT

Veterans Employment and Training Service

Services to veterans; Funding formats for grants to states; comments due by 8-29-03; published 6-30-03 [FR 03-16481]

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors; comments due by 8-30-03; published 7-30-03 [FR 03-19320]

PERSONNEL MANAGEMENT OFFICE

Basic concepts and definitions (general); regulatory review; plain language; comments due by 8-29-03; published 6-30-03 [FR 03-16410]

POSTAL SERVICE

Domestic Mail Manual:
Merchandise Return Service labels; routing barcodes; comments due by 8-25-03; published 7-25-03 [FR 03-18996]

STATE DEPARTMENT

Visas; nonimmigrant documentation:
Victims of severe forms of trafficking in persons; new visa classification (T) added; comments due by 8-25-03; published 6-26-03 [FR 03-16194]

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:
Medical review officers; reporting specimens as dilute or substituted; comments due by 8-26-03; published 5-28-03 [FR 03-13242]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Agusta S.p.A.; comments due by 8-25-03; published 6-26-03 [FR 03-15447]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 8-25-03; published 7-9-03 [FR 03-17318]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 8-29-03; published 6-30-03 [FR 03-15855]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing and McDonnell Douglas; comments due by 8-25-03; published 7-9-03 [FR 03-17317]
Fokker; comments due by 8-28-03; published 7-29-03 [FR 03-19195]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Goodrich Avionics Systems, Inc.; comments due by 8-29-03; published 6-30-03 [FR 03-15854]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
International Aero Engines; comments due by 8-25-03; published 6-25-03 [FR 03-15994]
Pratt & Whitney; comments due by 8-25-03; published 7-21-03 [FR 03-18244]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Pratt & Whitney; comments due by 8-29-03; published 6-30-03 [FR 03-15992]
Rolls-Royce Corp.; comments due by 8-29-03; published 6-30-03 [FR 03-15993]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 8-28-03; published 7-29-03 [FR 03-19158]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Alcohol and drug use control:
Random testing and other requirements application to employees of foreign railroad based outside U.S. and perform train or dispatching service in U.S.; comments due by 8-27-03; published 7-28-03 [FR 03-19042]

TREASURY DEPARTMENT

Foreign Assets Control Office

Iraqi sanctions regulations:
New transactions authorization; comments due by 8-26-03; published 6-27-03 [FR 03-16216]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Columbia Gorge, Hood River and Wasco Counties, OR and Skamania and Klickitat Counties, WA; comments due by 8-26-03; published 6-27-03 [FR 03-16324]

McMinnville, Yamhill County, OR; comments due by 8-26-03; published 6-27-03 [FR 03-16325]

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Certification of enrollment; comments due by 8-29-03; published 6-30-03 [FR 03-16265]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1018/P.L. 108–70

To designate the building located at 1 Federal Plaza in New York, New York, as the ''James L. Watson United States Court of International Trade Building''. (Aug. 14, 2003; 117 Stat. 886)

H.R. 1761/P.L. 108–71

To designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the ''Garner E. Shriver Post Office Building''. (Aug. 14, 2003; 117 Stat. 887)

Last List August 15, 2003

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