

# Attachment B

## **BINDING AGREEMENT TO PURCHASE TRANSMISSION CONGESTION CONTRACTS IN THE NYISO-ADMINISTERED INITIAL TCC AUCTIONS AND RECONFIGURATION AUCTIONS**

THIS BINDING AGREEMENT TO PURCHASE TRANSMISSION CONGESTION CONTRACTS (the "Purchase Agreement"), dated as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is given by \_\_\_\_\_, having a principal business address at \_\_\_\_\_ (the "Buyer").

### **RECITALS**

WHEREAS, pursuant to the terms of the New York Independent System Operator Open Access Transmission Tariff (the "ISO OATT"), and ISO Market Administration and Control Area Services Tariff ("ISO Services Tariff"), the New York Independent System Operator, Inc. ("NYISO") will conduct Initial Auctions ("Initial Auction") and subsequent monthly Reconfiguration Auctions ("Reconfiguration Auctions") (collectively, the "Auctions") as described in Attachment M of the ISO OATT and Attachment B of the ISO Services Tariff, in which holders of Transmission Congestion Contracts ("TCCs") may offer to sell TCCs and parties wishing to acquire TCCs may buy them;

WHEREAS, all capitalized terms that are not otherwise defined herein shall have the meaning set forth for such terms ascribed thereto in the ISO OATT, the ISO Services Tariff, and/or the Independent System Operator Agreement (the "ISO Agreement");

WHEREAS, a TCC represents to the right to collect, or the obligation to pay, the Day-Ahead Congestion Rents associated with one (1) megawatt of transmission between a specified Point of Injection ("POI") and specified Point of Withdrawal ("POW") for all hours of each day during the relevant period; as such Congestion Rents are determined and settled according to the ISO OATT and ISO Services Tariff; and

WHEREAS, Buyer has been designated a registrant name for purposes of the Auctions and intends that the submission of this Purchase Agreement, coupled with the submission of a properly formatted bid by electronic mail ("Electronic Bid") (together "Bid Package"), shall constitute an official bid for purposes of the Initial Auction and any Reconfiguration Auction and that the Bid Package shall be recorded and objectively analyzed pursuant to the applicable set of "Rules, Procedures and Guidelines for the Initial Auction and Reconfiguration Auctions of TCCs" ("Auction Rules"), and Attachment M and N of the ISO OATT, Attachment B of the ISO Services Tariff, and any other applicable provisions of the ISO OATT and ISO Services Tariff, any of which may be amended from time to time and copies of which have been delivered to and reviewed by the Buyer.

NOW THEREFORE, in consideration of the NYISO including Buyer's Bid Package in the Initial Auction or any of the Reconfiguration Auctions, which Buyer acknowledges and agrees is adequate consideration for its obligations hereunder, Buyer hereby agrees to the following:

### **1. Bids to Purchase TCCs**

- (a) The Buyer agrees to purchase TCCs in a quantity to be determined by the NYISO, or its designee, pursuant to the Auctions, provided that the TCCs to be purchased shall not exceed the number of TCCs set forth in the Electronic Bid, that the purchase price for each TCC shall be the Market Clearing Price established in the Auctions (as determined by the NYISO, or its designee), and the Market Clearing Price for each TCC awarded shall not exceed the Bid Price set forth in the Electronic Bid as described in the Rules.
- (b) The Buyer acknowledges that the Bid Package may be accepted in whole or in part and that the Buyer's submission of a valid Bid Package represents a firm commitment of the Buyer to pay for the number of TCCs designated by the NYISO pursuant to the terms hereof. The Buyer further acknowledges that the submission of a Bid Package does not obligate the NYISO to accept the Bid Package, in whole or in part, nor does the submission of a Bid Package grant any right to the Buyer to purchase any TCCs.
- (c) The Buyer acknowledges and understands that the Auctions shall be conducted in accordance with the applicable "Auction Rules, Procedures, and Guidelines for the Initial Auction and Reconfiguration Auctions of TCCs" ("Rules").
- (d) The Buyer acknowledges that its statements made in any Electronic Bid may be amended by the Buyer at any time during the period during which bids are accepted (the "Bidding Period") by submitting a new Electronic Bid, which must be received in accordance with this Section, the Rules, and Attachment M of the ISO OATT. If an amendment is timely, correctly, and completely submitted by the Buyer as provided herein, the most recently received Electronic Bid, as indicated by the date and time stamp of the Electronic Bid, will supersede any previous Electronic Bid(s) and any previous Electronic Bid(s) will have no further force or effect.
- (e) The Buyer hereby acknowledges that if it is qualified to be a Primary Holder, all TCCs awarded to it, if any, will entitle the Buyer to collect (or obligate the Buyer to pay) the difference in the Congestion Component of the Day-Ahead LBMP at the POW of the TCC and the Congestion Component of the Day-Ahead LBMP at the POI of the TCC, for each TCC awarded, for each hour of the effective period of validity of such TCCs.
- (f) The Buyer hereby acknowledges that this Purchase Agreement must be submitted to the address referenced in the Rules via an overnight mail or delivery service that requires the signature of the addressee as a record of the date and time of delivery.

- (g) The Buyer acknowledges that the timely delivery of a Bid Package does not guarantee that the Bid Package is valid for inclusion in any Auction, and that a Bid Package that has not been completed in conformity with the Rules, in the NYISO's sole judgment, shall be invalid and shall be rejected.
- (h) The Buyer acknowledges that the Buyer bears the sole responsibility for submitting a correct and complete Bid Package in accordance with the Rules.

## **2. Billing and Payment of TCCs Awarded**

- (a) The NYISO, or its designee, shall distribute written notice to Buyer (the "Award Notice"), according to the schedule established by these Rules, which notice shall specify the number of TCCs, if any, that the Buyer shall be required to purchase ("Awarded TCCs"), the Market Clearing Price of each Awarded TCC, the POI and the POW, the Total Purchase Price (the product of the number of Awarded TCCs to be purchased and the Market Clearing Price of the Awarded TCCs, "Total Purchase Price") and wiring instructions for paying the Total Purchase Price for the TCCs.
- (b) If the Total Purchase Price is greater than zero, within three (3) business days of Buyer's receipt of the Award Notice, Buyer shall cause funds to be wired to the accounts specified in the Award Notice in an amount equal to the Total Purchase Price as set forth in the Award Notice.
- (c) If the Total Purchase Price is less than zero, within six (6) business days of Buyer's receipt of the Award Notice, Buyer shall give wiring instructions to the NYISO, or its designee, designating the account(s) to which funds generated from any Auction will be disbursed and allocated by the NYISO pursuant to the Rules and Attachment M of the ISO OATT.
- (d) Within two (2) business days after receipt of an Award Notice to the Buyer, to the extent that the Buyer disagrees with the calculation of the Total Purchase Price due and payable, the Buyer shall give written notice to the NYISO, or its designee, setting forth in reasonable detail the basis for any such disagreement ("Dispute"). If the Buyer does not give written notice within the two (2) business day period, the Buyer shall be deemed to have irrevocably accepted the Total Purchase Price in the manner specified in the Award Notice as delivered to the Buyer by the NYISO, or its designee.
- (e) If a timely filed written notice of Dispute is given, the Buyer and the NYISO, or its designee, shall promptly commence good faith negotiations with a view to resolving the Dispute(s) within five (5) business days of the NYISO's receipt of such notice. If a Dispute is not resolved within the five (5) business day period, then the Dispute shall thereafter be referred by either the Buyer or the NYISO, or its designee, to Richard L. Miles, Director, of the FERC's Office of Dispute Resolution Service, or his successor in office (the "Director") for a resolution of such Dispute in accordance with this Purchase Agreement and the Rules. The resolution of the Dispute shall be conducted in the following manner:

- (i) Within three (3) business days after being notified of a Dispute, the Director shall identify and create a list of five (5) arbitrators, who must be knowledgeable regarding businesses engaged in the energy industry, to be delivered to the Buyer and the NYISO, or its designee.
- (ii) Within five (5) business days of receipt of such list from the Director, the Buyer and the NYISO, or its designee, separately, shall select three (3) arbitrators from the Director's list and resubmit their selections to the Director.
- (iii) Within two (2) business days of the Director's receipt of the resubmitted list of arbitrators from the Buyer and the NYISO, or its designee, the Director shall select in its sole discretion one arbitrator (the "Arbitrator") to resolve the Dispute in accordance with the terms and conditions of this Purchase Agreement and the Rules. The decision and resolution of the Arbitrator shall be rendered within twenty (20) business days after referral of the Dispute to the Arbitrator and shall be final and binding upon the parties. During this twenty (20)-business day period, the Buyer and the NYISO, or its designee, shall be allowed to make written and oral presentations to the Arbitrator. The Buyer and the NYISO, or its designee, shall use their best efforts to cause the Arbitrator to render its decision within the twenty (20) business day period described above, and each shall cooperate with the Arbitrator and provide the Arbitrator with access to the books, records, and representatives of each as the Arbitrator may require in order to render a determination. All of the fees and expenses of any Arbitrator retained pursuant to this Section shall be paid by the party who does not prevail in the Dispute.
- (iv) To the extent that the Buyer disputes the calculation of the Total Purchase Price due and payable, the Buyer or the NYISO, depending on which is the obligated party, shall remain obligated to make payment in full for the TCCs, as indicated in the Award Notice. However, if it is later determined, in accordance with this Section 2, that an overpayment or underpayment has been made, the NYISO shall refund that overpayment or underpayment, including interest calculated from the date that the overpayment or underpayment was made, in accordance with the methodology specified for interest on refunds in the FERC regulations at 18 C.F.R. § 35.19a(a)(2)(iii).
- (f) If a mistake is discovered in the calculation of information provided in an Award Notice after its delivery, the NYISO reserves the right to revise the Award Notice and the information therein, and the Buyer acknowledges that it will be obligated to make arrangement for payment or receipt of payment in accordance with the revised Award Notice.

### 3. Representations and Warranties of the Buyer

- (a) The Buyer hereby represents and warrants to the NYISO as follows:
- (i) Buyer is an Eligible Customer and the sale or purchase of Transmission Congestion Contracts is done as part of Buyer's business;
  - (ii) Buyer has full power and authority to execute and deliver the Bid Package and to perform its obligations thereunder. The Bid Package constitutes a valid and legally binding obligation of the Buyer.
  - (iii) The execution and delivery of the Bid Package and the consummation of the transactions contemplated thereby have been duly and validly approved by all requisite action, corporate or otherwise, on the part of Buyer, and no other proceedings, corporate or other, on the part of Buyer are necessary to approve and submit the Bid Package and to consummate the transactions contemplated thereby.
  - (iv) Buyer is qualified to purchase the TCCs in accordance with the Rules and the ISO OATT and has sufficient funds to purchase the TCCs as contemplated herein.
  - (v) Buyer has received and reviewed a copy of the ISO OATT and the Rules and understands the terms and conditions contained in each.
  - (vi) Buyer shall meet all requirements of the NYISO Credit Policy.
  - (vii) Buyer shall hold, use, and transfer any TCCs purchased pursuant to the Auctions in accordance with the terms and conditions set forth in the ISO OATT and the Rules.
  - (viii) Buyer holds all licenses, franchises, permits, and authorizations in compliance with any applicable laws, rules, and regulations that are necessary for the lawful ownership and use of the TCCs.
  - (ix) Other than providing the information required by this Agreement, Buyer has not amended or changed this Purchase Agreement in any way to make it different from the "Purchase Agreement," found at Attachment B to the Rules.
- (b) All representations and warranties contained herein shall apply to each purchase and sale of TCCs in all Auctions contemplated in this Purchase Agreement.
- (c) It is understood and agreed by the Buyer that if the Buyer is found to be in breach of Section 3(a)(vii), then the NYISO shall be entitled, in addition to such other remedies, damages, and relief as may be available under applicable law, to revoke any TCCs that may be awarded hereunder and to seek equitable relief, including an injunction prohibiting the Buyer from using any awarded TCC, and the Buyer shall not resist such application for relief on the basis that the NYISO has an adequate remedy at law.

**4. Indemnification; Release of Liability**

- (a) Buyer agrees to indemnify and save and hold harmless the NYISO, and all of its respective officers, directors, employees, and agents, from and against any and all losses, damages, expenses, liabilities, claims, or demands, including attorney's fees, (collectively, the "Damages") whatsoever suffered or incurred by such parties resulting, arising from or relating to Buyer's breach of any of its agreements, covenants, representations, or warranties contained herein, except for those Damages resulting from NYISO's gross negligence or willful misconduct.
- (b) Buyer hereby releases the NYISO, and all of its officers, directors, employees and agents, from any and all liability arising from or relating to the Auctions, except with respect to any gross negligence or willful misconduct on the part of the NYISO, its officers, directors, employees, or agents.

**5. Miscellaneous**

- (a) All inquires, notices and communications can be given to the Buyer as follows, except that the NYISO may deliver the Award Notice by posting all required information to a secure location on the NYISO's website that is accessible to Buyer:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
**E-mail:** \_\_\_\_\_

- (b) All representations, warranties, covenants, and obligations of this Purchase Agreement shall survive the purchase of the TCCs by the Buyer.
- (c) It is understood and agreed that the provisions of this Purchase Agreement are intended for the benefit of the Buyer and the NYISO and may be enforced directly by the NYISO against Buyer or by the Buyer against the NYISO.
- (d) This Purchase Agreement and all Electronic Bids shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of law provisions.

IN WITNESS WHEREOF, this Purchase Agreement has been submitted as of the date first above written.

NAME OF BUYER:

By: \_\_\_\_\_ (signature)

Name: \_\_\_\_\_ (please print clearly or type)

Title: \_\_\_\_\_

(must be Corporate Officer or employee with legal authority to bind Bidder)

New York Independent System Operator, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_