

INDEPENDENT SYSTEM OPERATOR

AGREEMENT

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## ISO AGREEMENT

**AGREEMENT** made as of the        day of        , {1997} [1999], by and among CENTRAL HUDSON GAS & ELECTRIC CORPORATION {("Central Hudson")} [{"Central Hudson"}], CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. {("Con Edison")}, LONG ISLAND LIGHTING COMPANY {("LILCO")} [{"Con Edison"}], NEW YORK STATE ELECTRIC & GAS CORPORATION {("NYSEG")} [{"NYSEG"}], NIAGARA MOHAWK POWER CORPORATION {("NMPC")} [{"NMPC"}], ORANGE AND ROCKLAND UTILITIES, INC. {("O&R")} [{"O&R"}] and ROCHESTER GAS AND ELECTRIC CORPORATION {("RG&E")} [{"RG&E"}], all corporations organized under the laws of the State of New York, and POWER AUTHORITY OF THE STATE OF NEW YORK {("NYPA")}, a [{"NYPA"}] and LIPA<sup>1</sup>, corporate municipal {instrumentality} [instrumentalities] of the State of New York (collectively the {("Incorporating Parties")} [{"Incorporating Parties"}]);

### WITNESSETH:

**WHEREAS**, the Incorporating Parties[, ] other than NYPA[, ] established the New York Power Pool {("NYPP")} [{"NYPP"}] by agreement made as of the 21st day of July, 1966, and NYPA subsequently joined the NYPP on October 11, 1967; and

**WHEREAS**, the Incorporating Parties are the current Member Systems of the NYPP under an Agreement made as of the 16th day of July, 1991 [{"NYPP Agreement"}]; and

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<sup>1</sup> LIPA is a subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York.

**WHEREAS**, on December 30, 1996, the Incorporating Parties filed a proposed amendment to the NYPP Agreement with the ~~{FERC}~~ [Commission] to comply with Order Nos. 888 ~~et{.}~~ seq.;

and

**WHEREAS**, the Incorporating Parties have invested in and operate the interconnected NYS Power System and intend that their customers and shareholders, as the case may be, reasonably benefit from its use; and

**WHEREAS**, the Incorporating Parties believe and expect that through their initiatives, as well as those of Federal and State regulatory bodies, competition in the Wholesale Market will be enhanced in New York State; and

**WHEREAS**, the Incorporating Parties desire to maintain the reliable operation of their electric systems and to provide a more efficient means whereby all interested parties can participate in the competitive Wholesale Market in New York; and

**WHEREAS**, the Incorporating Parties have established and staffed facilities necessary to monitor the NYS Power System ~~{("Power Control Center")}~~ facility located near Albany, New York [("Control Center" )], for the principal purposes of:

- (1) coordinating the operations of the Incorporating Parties insofar as they may affect the reliability of the NYS Power System;
- (2) dispatching Energy requirements on an economic basis; and
- (3) monitoring the internal and external operations of the NYS Power System to ensure the unimpaired overall security of bulk power supply at all times; [

[and{

†

**WHEREAS**, the Incorporating Parties desire to create a New York Independent System Operator (“ISO”) and the [Incorporating] Parties agree that the principal mission of the ISO shall be:

- (1) to maintain the safety and short-term reliability of the NYS Power System in conformance with Reliability Rules promulgated by the New York State Reliability Council (“NYSRC”) so as to maintain the integrity and reliability of the interconnected NYS Power System; ~~†and~~

†

- (2) to maintain the internal and external operations of the NYS Power System which may have an impact on the security of the interconnected NYS Power System in accordance with the terms of the ISO Agreement; and
- (3) to comply with the ~~{FERC’s}~~ [Commission’s] ISO principles as stated in Order Nos. 888 et seq.[;]  
[and]

**WHEREAS**, the Incorporating Parties agree that the ISO shall:

- (1) provide open access to the NYS Transmission System; ~~†and~~

†

- (2) provide non-discriminatory treatment for all Market Participants; and
- (3) provide for meaningful involvement by Market Participants in the oversight of the NYS Transmission System in accordance with the provisions of this ISO Agreement~~†;~~  
~~and~~[.]

**WHEREAS**, the Incorporating Parties have contemporaneously created a NYSRC, with the principal mission of establishing and maintaining Reliability Rules, protocols, and standards for use by the ISO; and

**WHEREAS**, the Incorporating Parties agree that a competitive Wholesale Market can be operated in a reliable and efficient fashion most effectively by the ISO, the Power Exchanges, and other Market Participants; and

**WHEREAS**, nothing in the ISO Agreement is intended to inhibit or prevent the ~~{future}~~ [further] development of a competitive retail electric market; and

**WHEREAS**, the Incorporating Parties agree that the ISO should establish and operate an Open Access Same-Time Information System ~~{("OASIS")}~~[("OASIS")];

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein set forth, the [Incorporating] Parties do hereby agree with each other, for themselves and for their successors and assigns, to create and operate the ISO in accordance herewith.

## **ARTICLE 1: DEFINITIONS**

~~{The ISO Filing Definitions Document, as it exists on the date it is filed with FERC, is hereby incorporated in its entirety into this ISO Agreement.}~~ [Terms used in this Agreement will have the meaning set forth in this Article.

### **1.1 Affiliate.**

With respect to a person or entity, any individual, corporation, partnership, firm, joint venture,

association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “Control” shall have the meaning set forth in this Article.

### **1.2 Ancillary Services.**

Services necessary to support the transmission of Energy from Generators to Loads, while maintaining reliable operation of the NYS Power System in accordance with Good Utility Practice and Reliability Rules. Ancillary Services include Scheduling, System Control and Dispatch Service; Reactive Supply and Voltage Support Services (or “Voltage Support Service”); Regulation and Frequency Response Service (or “Regulation Service”); Energy Imbalance Service; Operating Reserve Service; and Black Start Capability.

### **1.3 Annual Transmission Revenue Requirement.**

The total annual cost for each Transmission Owner (other than LIPA) to provide transmission service subject to review and acceptance by the Commission.

### **1.4 At-Large Member.**

An entity that is entitled to hold a seat on a Committee as the representative of more than one party or entity.

### **1.5 Automatic Generation Control (“AGC”).**

The automatic regulation of the power output of electric Generators within a prescribed range in response to a change in system frequency, or tie-line loading, to maintain system frequency or scheduled interchange with other areas within predetermined limits.



**1.6 Bid.**

Offer to purchase and/or sell Energy, Transmission Congestion Contracts and/or Ancillary Services at a specified price that is duly submitted to the ISO pursuant to ISO Procedures.

**1.7 Bid Price.**

The price at which the Supplier offering the Bid is prepared to provide the product or service, or the buyer offering the Bid is willing to pay to receive such product or service.

**1.8 Bilateral Transaction.**

A Transaction between two or more parties for the purchase and/or sale of Capacity, Energy, and/or Ancillary Services other than those in the ISO Administered Markets.

**1.9 Capability Period.**

Six (6) month periods which are established as follows: (1) from May 1 through October 31 of each year (“Summer Capability Period”); and (2) from November 1 of each year through April 30 of the following year (“Winter Capability Period”); or such other periods as may be determined by the Operating Committee of the ISO. A Summer Capability Period followed by a Winter Capability Period shall be referred to as a “Capability Year.” Each Capability Period shall consist of On-Peak and Off-Peak periods.

**1.10 Capacity.**

The capability to generate or transmit electrical power, measured in megawatts (“MW”).

**1.11 Code of Conduct.**

The rules, procedures and restrictions concerning the conduct of ISO Directors and employees contained in Attachment F to the ISO Open Access Transmission Tariff.

**1.12 Commission (“FERC”).**

The Federal Energy Regulatory Commission, or any successor agency.

**1.13 Committee.**

The Management Committee, the Business Issues Committee or the Operating Committee of the ISO, as the context may require.

**1.14 Completed Application.**

An Application that satisfies all of the information and other requirements of an ISO Tariff.

**1.15 Confidential Information.**

Information and/or data that has been designated by an entity taking service under an ISO Tariff to be proprietary and confidential, provided that such designation is consistent with ISO Procedures and the applicable ISO Tariff, including the ISO Code of Conduct.

**1.16 Congestion.**

A characteristic of the transmission system produced by a constraint on the optimum economic operation of the power system, such that the marginal price of Energy to serve the next increment of Load, exclusive of losses, at different locations on the transmission system is unequal.

**1.17 Congestion Rent.**

The opportunity costs of transmission Constraints on the NYS Transmission System. Congestion Rents are collected by the ISO from Loads through its facilitation of the LBMP Market Transactions and the collection of Transmission Usage Charges from Bilateral Transactions, and paid

to Primary Holders.

#### **1.18 Control.**

The possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control. There is a rebuttable presumption that an entity controls another entity if, either directly or indirectly: (i) an entity has ten percent or more of the ownership interest of another entity; or (ii) an entity has the ability to exercise ten percent or more of the voting interests of another entity, including an organization, association or group of entities authorized to serve as an At-Large Member of a Committee or to appoint an At-Large Member of a Committee.

#### **1.19 Control Area.**

An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the Generators within the electric power system(s), and capacity and energy purchased from entities outside the electric power system(s), with the Load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

#### **1.20 Control Area Services.**

Services provided by the ISO under the ISO Services Tariff related to the ISO's responsibilities as the Control Area operator for the NYCA.

**1.21 Curtailment or Curtail.**

A reduction in Firm or Non-Firm Transmission Service in response to a transmission capacity shortage as a result of system reliability conditions.

**1.22 Customer.**

An entity taking services under the ISO Services Tariff.

**1.23 Day-Ahead.**

Nominally, the twenty-four (24) hour period directly preceding the Dispatch Day, except when this period may be extended by the ISO to accommodate weekends and holidays.

**1.24 Day-Ahead Market.**

The ISO Administered Market in which Capacity, Energy and/or Ancillary Services are scheduled and sold Day-Ahead consisting of the Day-Ahead scheduling process, price calculations and Settlements.

**1.25 Direct Sale.**

The sale of TCCs directly to a buyer by the Primary Owner through a non-discriminatory auditable sale conducted on the ISO's OASIS, in compliance with the requirements and restrictions set forth in Commission Order Nos. 888 et seq. and 889 et seq.

**1.26 Dispatch Day.**

The twenty-four (24) hour period commencing at the beginning of each day (0000 hour).

**1.27 Dispute Resolution Administrator ("DRA").**

An individual hired by the ISO to administer the Dispute Resolution Process established in the ISO Tariffs and ISO Agreement.

**1.28 Dispute Resolution Process (“DRP”).**

The procedures: (1) described in the ISO Tariffs and ISO Agreement that are used to resolve disputes between Market Participants and the ISO involving services provided under the ISO Tariffs (excluding applications for rate changes or other changes to the ISO Tariffs or rules relating to such services); and (2) described in the ISO/NYSRC Agreement that are used to resolve disputes between the ISO and NYSRC involving the implementation and/or application of the Reliability Rules.

**1.29 Emergency.**

Any abnormal system condition that requires immediate automatic or manual action to prevent or limit loss of transmission facilities or Generators that could adversely affect the reliability of an electric system.

**1.30 Energy (“MWh”).**

A quantity of electricity that is bid, produced, purchased, consumed, sold, or transmitted over a period of time, and measured or calculated in megawatt hours.

**1.31 Energy Service Company (“ESCO”).**

A load serving entity, a retail load aggregator or a provider of comprehensive energy services or a formal group of such entities, serving customers in New York State.

**1.32 Environmental Party.**

An environmental organization that is certified by the ISO Board as a non-Market Participant and is a Party to the ISO Agreement.

**1.33 Existing Transmission Agreement (“ETA”).**

An agreement between two or more Transmission Owners, or between a Transmission Owner and another entity, that was executed and was in effect on the date that the ISO commenced operations, including amendments and superseding issues thereof (including service agreements) under individual Transmission Owners open access tariffs (provided that the Points of Injection (“POI” ) and Points of Withdrawal (“POW”) and contract amounts do not change). Existing Transmission Agreements are either Transmission Wheeling Agreements or Transmission Facility Agreements, and are listed in the ISO OATT.

#### **1.34 External Transactions.**

Purchases, sales or exchanges of Energy, Capacity or Ancillary Services for which either the Point of Injection (“POI” ) or Point of Withdrawal (“POW”) or both are located outside the NYCA (i.e. Exports, Imports or Wheels Through).

#### **1.35 Federal Power Act (“FPA”).**

The Federal Power Act, as may be amended from time-to-time (See, 16. U.S.C. §§ 796 et seq.).

#### **1.36 Generator.**

A facility capable of supplying Energy, Capacity and/or Ancillary Services that is accessible to the NYCA or the Energy, Capacity and/or Ancillary Services from such facilities.

#### **1.37 Good Utility Practice.**

Any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or 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 delineate acceptable practices, methods, or acts generally accepted in the region.

**1.38 Government Bonds.**

Tax-exempt bonds issued by the New York Power Authority pursuant to Section 103 and related provisions of the Internal Revenue Code, 26 U.S.C. § 103.

**1.39 Independent System Operator (“ISO”).**

The New York Independent System Operator, Inc., a not-for-profit corporation established pursuant to the ISO Agreement.

**1.40 Independent System Operator Agreement (“ISO Agreement”).**

The agreement that establishes the New York ISO.

**1.41 Independent System Operator/New York State Reliability Council Agreement (“ISO/NYSRC Agreement”).**

The agreement between the ISO and the NYSRC governing the relationship between the two organizations.

**1.42 Independent System Operator/Transmission Owner Agreement (“ISO/TO Agreement”).**

The agreement that establishes the terms and conditions under which the Transmission Owners transferred to the ISO Operational Control over designated transmission facilities.

#### **1.43 Industry Sector Group or Industry Sector Groups.**

As the context may require, individually or collectively, Transmission Owners, Wholesale Parties (including Wholesale Marketers and Generators) and Retail Parties (including ESCOs, Retail Marketers, large end users, municipal and cooperative systems, representatives of residential and small commercial consumers and representatives of industrial and large commercial consumers).

#### **1.44 Installed Capacity.**

A Generator or Load facility that complies with the requirements in the Reliability Rules and is capable of supplying and/or reducing the demand for Energy in the NYCA for the purpose of ensuring that sufficient Energy and Capacity are available to meet the Reliability Rules. The Installed Capacity requirement, established by the NYSRC, includes a margin of reserve in accordance with the Reliability Rules.

#### **1.45 Interconnection or Interconnection Points (“IP”).**

The point(s) at which the NYCA connects with a distribution system or adjacent Control Area. The IP may be a single tie line or several tie lines that are operated in parallel.

#### **1.46 Interface.**

A defined set of transmission facilities that separate Load Zones and that separate the NYCA from adjacent Control Areas.

#### **1.47 Investor-Owned Transmission Owners.**

At the present time these include: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric



Corporation.

**1.48 ISO Administered Markets.**

The Day-Ahead Market and the Real-Time Market (collectively the LBMP Markets) and any other market administered by the ISO.

**1.49 ISO OATT.**

The ISO Open Access Transmission Tariff.

**1.50 ISO Procedures.**

The procedures adopted by the ISO in order to fulfill its responsibilities under the ISO OATT, the ISO Services Tariff and the ISO Related Agreement, and consistent with the Reliability Rules.

**1.51 ISO Related Agreements.**

Collectively, the ISO Agreement, the ISO/TO Agreement, the NYSRC Agreement and the ISO/NYSRC Agreement.

**1.52 ISO Services Tariff.**

The ISO Market Administration and Control Area Services Tariff.

**1.53 ISO Tariffs.**

The ISO OATT and the ISO Services Tariff, collectively.

**1.54 LBMP Markets.**

A term that collectively refers to both the Real-Time Market and the Day-Ahead Market.

**1.55 LBMP Transition Period Payments (“LTPP”).**

Fixed monthly payments, as detailed in Attachment K of the ISO OATT, made between or among the Investor-Owned Transmission Owners to mitigate transmission cost-shifting as the

competitive market is introduced for Energy and transmission pricing.

**1.56 LIPA Tax-Exempt Bonds.**

Obligations of the Long Island Power Authority, the interest on which is not included in gross income under the Internal Revenue Code.

**1.57 Load.**

A term that refers to either a consumer of Energy or the amount of demand (MW) or Energy (MWh) consumed by certain customers.

**1.58 Load Serving Entity (“LSE”).**

Any entity, including a municipal electric system and an electric cooperative, authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers located within the NYCA, including an entity that takes service from the ISO to supply its own Load within the NYCA.

**1.59 Load Shedding.**

The systematic reduction of system demand by temporarily decreasing Load in response to a transmission system or area Capacity shortage, system instability, or voltage control considerations under the ISO OATT.

**1.60 Local Furnishing Bonds.**

Tax-exempt bonds issued by a Transmissions Owner under an agreement between the Transmission Owner and the New York State Research and Development Authority (“NYSERDA”), or its successor, or by a Transmission Owner itself, and pursuant to Section 142(f) of the Internal Revenue Code, 26 U.S.C. § 142(f).

**1.61 Locality.**

A single LBMP Load Zone or set of adjacent LBMP Load Zones within one Transmission District within which a minimum level of Installed Capacity must be maintained.

**1.62 Local Reliability Rule.**

A Reliability Rule established by a Transmission Owner, and adopted by the NYSRC to meet specific reliability concerns in limited areas of the NYCA, including without limitation, special conditions and requirements applicable to nuclear plants and special requirements applicable to the New York City metropolitan area.

**1.63 Locational Based Marginal Pricing (“LBMP”).**

A pricing methodology under which the price of Energy at each location in the NYS Transmission System is equivalent to the cost to supply the next increment of Load at that location (i.e., the short-run marginal cost). The short-run marginal cost takes generation Bid Prices and the physical aspects of the NYS Transmission System into account. The short-run marginal cost also considers the impact of Out-of-Merit Generation (as measured by its Bid Price) resulting from the Congestion and Marginal Losses occurring on the NYS Transmission System which are associated with supplying an increment of Load. The term LBMP also means the price of Energy bought or sold in the LBMP Markets at a specific location.

**1.64 Locational Installed Capacity Requirement.**

A determination by the ISO of that portion of the state-wide Installed Capacity requirement that must be electrically located within a Locality in order to ensure that sufficient Energy and Capacity are available in that Locality and that appropriate reliability criteria are met.

**1.65 Marginal Losses.**

The NYS Transmission System Real Power Losses associated with each additional MWh of consumption by Load, or each additional MWh transmitted under a Bilateral Transaction as measured at the Points of Withdrawal.

**1.66 Market Participant.**

An entity, excluding the ISO, that produces, transmits, sells and/or purchases for resale Capacity, Energy or Ancillary Services in the Wholesale Market. Market Participants include: Transmission Customers under the ISO OATT, Customers under the ISO Services Tariff, Power Exchanges, Transmission Owners, Primary Holders, LSEs, Suppliers and their designated agents. Market Participants also include entities buying or selling TCCs.

**1.67 Market Power Monitoring Program.**

The program approved by the Commission and implemented by the ISO that is intended to review and analyze data with respect to the possible exercise of market power in an ISO Administered Market.

**1.68 Market Services.**

Services provided by the ISO under the ISO Services Tariff related to the ISO Administered Markets for Energy, Capacity and Ancillary Services.

**1.69 Member.**

The individual that is entitled to hold a seat on an ISO Committee as a representative of a Party or Parties or the representative of an entity authorized to hold a seat on a Committee under the terms

of this Agreement.

**1.70 Member Systems.**

The eight Transmission Owners that comprise the membership of the New York Power Pool.

**1.71 Modified Wheeling Agreement (“MWA”).**

A Transmission Agreement in existence, as amended, between Transmission Owners, that is associated with existing Generators or power supply contracts, that will be modified effective upon LBMP implementation. The terms and conditions of the MWA will remain the same as the original agreement, except as noted in the ISO OATT.

**1.72 NERC.**

The North American Electric Reliability Council.

**1.73 New York Control Area (“NYCA”).**

The Control Area that is under the control of the ISO which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as amended from time-to-time, and Generation located outside the NYS Power System that is subject to protocols (e.g., telemetry signal biasing) which allow the ISO and other Control Area operator(s) to treat some or all of that Generation as though it were part of the NYS Power System.

**1.74 New York Power Pool (“NYPP”)**

An organization established by agreement (the “New York Power Pool Agreement”) made as of July 21, 1996, and amended as of July 16, 1991, by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and the Power Authority of the State of New York. LIPA became a Member of the NYPP on May 28, 1998 as a result of the acquisition of the Long Island Lighting Company by the Long Island Power Authority.

**1.75 New York State Reliability Council (“NYSRC”).**

An organization established by agreement among the Member Systems to promote and maintain the reliability of the NYS Power System ( “NYSRC Agreement”).

**1.76 Normal State.**

The condition that the NYS Power System is in when the Transmission Facilities Under ISO Operational Control are operated within the parameters listed for Normal State in the Reliability Rules. These parameters include, but are not limited to, thermal, voltage, stability, frequency,

operating reserve and Pool Control Error limitations.

**1.77 NPCC.**

The Northeast Power Coordinating Council.

**1.78 NRC.**

The Nuclear Regulatory Commission, or any successor thereto.

**1.79 NYPA**

The Power Authority of the State of New York.

**1.80 NYPA Transmission Adjustment Charges (“NTAC”).**

A surcharge on all Energy Transactions designed to recover the Annual Transmission Revenue Requirement of NYPA which cannot be recovered through its TSC, TCCs, or other transmission revenues, including, but not limited to, its ETA revenues. This charge will be assessed to all Load state-wide, as well as Transmission Customers in Wheels Through and Exports.

**1.81 NYS Power System.**

All facilities of the NYS Transmission System, and all those Generators located within the NYCA or outside the NYCA, some of which may be from time-to-time subject to operational control by the ISO.

**1.82 NYS Transmission System.**

The entire New York State electric transmission system, which includes: (1) the Transmission Facilities Under ISO Operational Control; (2) the Transmission Facilities Requiring ISO Notification; and (3) all remaining transmission facilities within the NYCA.

**1.83 Off-Peak.**

The hours between 11 p.m. and 7:00 a.m., prevailing Eastern Time, Monday through Friday, and all day Saturday and Sunday, and NERC-defined holidays, or as otherwise decided by the ISO.

**1.84 On-Peak.**

The hours between 7 a.m. and 11 p.m. inclusive, prevailing Eastern Time, Monday through Friday, except for NERC-defined holidays, or as otherwise decided by the ISO.

**1.85 Open Access Same-Time Information System (“OASIS”).**

The information system and standards of conduct contained in Part 37 of the Commission’s regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

**1.86 Operating Capacity.**

Capacity that is readily converted to Energy and is measured in MW.

**1.87 Operating Reserves.**

General Capacity that is available to supply Energy, or Interruptible Load Resources that are available to Curtail Energy usage, in the event of contingency conditions which meet the requirements of the ISO. Operating Reserves include spinning reserve, ten-minute non-synchronized reserves, and thirty-minute reserves.

**1.88 Operational Control**

Directing the operation of the Transmission Facilities Under ISO Operational Control to maintain these facilities in a reliable state, as defined by the Reliability Rules. The ISO shall approve operational decisions concerning these facilities, made by each Transmission Owner before the



Transmission Owner implements those decisions. In accordance with ISO Procedures, the ISO shall direct each Transmission Owner to take certain actions to restore the system to the Normal State. Operational Control includes security monitoring, adjustment of generation and transmission resources, coordination and approval of changes in transmission status for maintenance, determination of changes in transmission status for reliability, coordination with other Control Areas, voltage reductions and Load Shedding, except that each Transmission Owner continues to physically operate and maintain its facilities.

**1.89 Order Nos. 888 et seq.**

The Final Rule entitled Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, issued by the Commission on April 24, 1996, in Docket Nos. RM95-8-000 and RM94-7-001, as modified on rehearing, or upon appeal. (See FERC Stats. & Regs. [Regs. Preambles January 1991- June 1996] ¶ 31,036 (1996) (“Order No. 888”), on reh’g, III FERC Stats. & Regs. ¶ 31,048 (1997) (“Order No. 888-A”), on reh’g, 81 FERC ¶ 61,248 (1997) (“Order No. 888-B”), order on reh’g, 82 FERC ¶ 61,046 (1998) (“Order No. 888-C”) (“Order No. 888-C”).

**1.90 Order Nos. 889 et seq.**

The Final Rule entitled Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, issued by the Commission on April 24, 1996, in Docket No. RM95-9-000, as modified on rehearing, or upon appeal. (See FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶ 31,035 (1996) (“Order No. 889”), on reh’g, III FERC Stats. & Regs. ¶ 31,049 (1997) (“Order No. 889-A”), on reh’g, 81 FERC ¶ 61,253 (1997) (“Order No. 889-B”).

**1.91 Out-of-Merit Generation.**

Generators producing at a different level of output than they would produce in a dispatch to meet Load which was not security constrained. Out-of-Merit Generation occurs to maintain system reliability or to provide Ancillary Services.

**1.92 Party.**

The signatories to the respective agreements.

**1.93 Point(s) of Injection (“POI” or “Point of Receipt”).**

The point(s) on the NYS Transmission System where Energy, Capacity and Ancillary Services will be made available to the ISO by the delivering party under the ISO OATT or the ISO Services Tariff. The Point(s) of Injection shall be specified in the Service Agreement.

**1.94 Point(s) of Withdrawal (“POW” or “Point of Delivery”).**

The point(s) on the NYS Transmission System where Energy, Capacity and Ancillary Services will be made available to the receiving party under the ISO OATT or the ISO Services Tariff. The Point(s) of Withdrawal shall be specified in the Service Agreement.

**1.95 Pool Control Error (“PCE”).**

The difference between the actual and scheduled interchange with other Control Areas, adjusted for frequency bias.

**1.96 Power Exchange (“PE”).**

A commercial entity meeting the requirements for service under the ISO OATT or the ISO Services Tariff that facilitates the purchase and/or sale of Energy, Capacity and/or Ancillary Services in a New York Wholesale Market. A PE may transact with the ISO on its own behalf or as an agent

for others.

**1.97 Power Flow.**

A simulation which determines the Energy flows on the NYS Transmission System and adjacent transmission systems.

**1.98 Primary Holder.**

A Primary Holder of each TCC is the Primary Owner of that TCC or the party that purchased that TCC at the close of the centralized TCC auction. With respect to each TCC, a Primary Holder must be: (1) a Transmission Customer that has purchased the TCC in the centralized TCC auction, and that has not resold it in that same auction; (2) a Transmission Customer that has purchased the TCC in a Direct Sale and has not resold it through an auction or through a Direct Sale with another Transmission Customer; (3) the Primary Owner who has retained the TCC and did not sell it through the auction; or (4) the Primary Owners of the TCC that allocated the TCC to certain Transmission Customers or sold it in the Secondary Market or sold through a Direct Sale to an entity other than a Transmission Customer. The ISO shall settle Congestion Rents with the Primary Holder of each TCC.

**1.99 Primary Owner.**

The Primary Owner of each TCC is the Transmission Owner or other party that has acquired the TCC through conversion of rights under an existing Transmission Agreement or the Transmission Owner that acquired the TCC through the ISO's allocation of residual TCCs, in accordance with the provisions of the ISO OATT.

**1.100 PSC.**

The Public Service Commission of the State of New York or any successor agency thereto.

**1.101 Real-Time Market.**

The ISO Administered Market resulting from the operation of the Security Constrained Dispatch (“SCD”).

**1.102 Reliability Rules.**

Those rules, standards, procedures and protocols developed and promulgated by the NYSRC, including Load Reliability Rules, in accordance with NERC, NPCC, FERC, PSC and NRC standards, rules and regulations and other criteria, and pursuant to the NYSRC Agreement.

**1.103 Retail Marketer.**

A Party that buys electricity at wholesale and sells at retail.

**1.104 Safe Operations.**

Actions that avoid placing personnel and equipment in peril with regard to the safety of life and equipment damage.

**1.105 Security Constrained Dispatch (“SCD”).**

The allocation of Load to Generators by the ISO through the operation of a computer algorithm which continuously calculates individual Generator loading at minimum Bid cost, balancing Load and scheduled interchange with Generation while meeting all Reliability Rules and Generator performance Constraints consistent with the terms of the ISO Services Tariff.

**1.106 Service Agreement.**

The agreement, in the form of Attachment A to the ISO OATT or the ISO Services Tariff, and any amendments or supplements thereto entered into by a Transmission Customer and the ISO for Transmission Service under the ISO OATT or between the ISO and a Customer for services under the ISO Services Tariff or any unexecuted Service Agreement, amendments or supplements thereto, that the ISO unilaterally files with the Commission.

**1.107 Settlement.**

The process of determining the charges to be paid to, or by, a Transmission Customer or a Customer to satisfy its obligations.

**1.108 Strandable Costs.**

Prudent and verifiable expenditures and commitments made pursuant to a Transmission Owner's legal obligations that are currently recovered in the Transmission Owner's retail or wholesale rate that could become unrecoverable as a result of a restructuring of the electric utility industry and/or electricity market, or as a result of retail-turned-wholesale customers, or customers switching generation or transmission service suppliers.

**1.109 Stranded Investment Recovery Charge.**

A charge established by a Transmission Owner to recover Strandable Costs.

**1.110 Supplemental Resource Evaluation ("SRE").**

A determination of the least cost selection of additional generators, which are to be committed, to meet changed conditions that may cause the original system dispatch to be inadequate to meet load and/or reliability requirements.

**1.111 Supplier.**

A Party that is supplying the Capacity, Energy and/or associated Ancillary Services to be made available under the ISO OATT or the ISO Services Tariff, including Generators and Demand Side Resources that satisfy all applicable ISO requirements.

**1.112 TCC Market Clearing Price.**

The market clearing price for TCCs awarded in the centralized TCC auction is the price at which all TCCs between specific POIs and POWs in a specific stage of the auction are sold for the duration of the centralized TCC auction period.

**1.113 Third Party Transmission Wheeling Agreements (“Third Party TWAs”).**

A Transmission Wheeling Agreement, as amended, between Transmission Owner or between a Transmission Owner and an entity that is not a Transmission Owner associated with the purchase (or sale) of Energy, Capacity, and/or Ancillary Services for the benefit of an entity that is not a Transmission Owner. These agreements are listed in Attachment L, Table 1.

**1.114 Transfer Capability.**

The measure of the ability of interconnected electrical system to reliably move or transfer power from one area to another over all transmission facilities (or paths) between those areas under specified system conditions.

**1.115 Transmission Congestion Contract (“TCC”).**

The right to collect or obligation to pay Congestion Rents associated with a single MW of transmission between a specified POI and POW. TCCs are financial instruments that enable Energy buyers and sellers to hedge fluctuations in the price of transmission.

**1.116 Transmission Customer.**

Any entity (or its designated agent) that receives Transmission Service pursuant to a Service Agreement and the terms of the ISO OATT.

**1.117 Transmission District.**

The geographic area served by the Investor-Owned Transmission Owner and LIPA, as well as the customers directly interconnected with the transmission facilities of the Power Authority of the State of New York.

**1.118 Transmission Facilities Under ISO Operation Control.**

The transmission facilities of the Transmission Owners listed in Appendix A-1 of the ISO/TO Agreement, (“Listing of Transmission Facilities Under ISO Operational Control”), that are subject to the Operational Control of the ISO. This listing may be amended from time-to-time as specified in the ISO/TO Agreement.

**1.119 Transmission Facilities Requiring ISO Notification.**

The transmission facilities of the Transmission Owners listed in Appendix A-2 of the ISO/TO Agreement, “Listing of Transmission Facilities Requiring ISO Notification,” whose status of operation must be provided to the ISO by the Transmission Owners (for the purposes stated in the ISO Tariffs, and in accordance with, the ISO Tariffs and ISO/TO Agreement) prior to the Transmission Owners making operational changes to the state of these facilities. This listing may be amended from time-to-time as specified in the ISO/TO Agreement.

**1.120 Transmission Facility Agreement.**

The agreements listed in Attachment L, Table 2 of the ISO Tariff governing the use of specific

or designated transmission facilities pursuant to which the provider or owner of said transmission facilities charges all, or a portion, of the costs to install, own, operate, or maintain said transmission facilities, to the customer under the agreement. These agreements may or may not have provisions to provide Transmission Service utilizing said transmission facilities.

**1.121 Transmission Owner.**

An entity that owns, controls and operates facilities in New York State used for the transmission of Energy in interstate commerce. A Transmission Owner must own, individually or jointly, at least 100 circuit miles of 115 kV or above in New York State and has become a signatory to the ISO/TO Agreement.

**1.122 Transmission Service.**

Point-To-Point Network Integration or Retail Access Transmission Service provided under the ISO OATT.

**1.123 Transmission Service Charge (“TSC”).**

A charge under the ISO OATT designed to ensure recovery of the embedded cost of a Transmission Owner’s transmission system.

**1.124 Transmission System.**

The facilities operated by the ISO that are used to provide Transmission Services under the ISO OATT.

**1.125 Transmission Usage Charge (“TUC”).**

Payments made by the Transmission Customer to cover the cost of Marginal Losses and, during periods of time when the transmission system is constrained, the marginal cost of Congestion. The



TUC is equal to the product of: (1) the LBMP at the POW minus the LBMP at the POI (in \$/MWh); and (2) the scheduled or delivered Energy (in MWh).

**1.126 Transmission Wheeling Agreement (“TWA”).**

The agreements listed in Table 1 of Attachment L to the ISO OATT governing the use of specific or designated transmission facilities that are owned, controlled or operated by an entity for the transmission of electric Energy in interstate commerce.

**1.127 Wholesale Market.**

The sum of purchases and sales of Energy and Capacity for resale along with Ancillary Services needed to maintain reliability and power quality at the transmission level coordinated together through the ISO and Power Exchanges. A Party who purchases Energy, Capacity or Ancillary Services in the Wholesale Market to serve its own Load is considered to be a participant in the Wholesale Market.

**1.128 Wholesale Marketer.**

A Party that buys and sells electricity at wholesale.]

**ARTICLE 2: SCOPE AND PARTIES**

**2.01 Scope.**

The Incorporating Parties agree to create a New York State non-share, not-for-profit corporation known as the New York Independent System Operator, Inc. (“ISO”).

The ISO shall maintain the reliable, safe, and efficient operation of the NYS Power System (including adjustment of generation, and coordination of maintenance and outage schedules of certain

Generators and transmission facilities), and the administration of the ISO ~~{Tariff}~~ [Open Access Transmission Tariff (the “ISO OATT”) and the ISO Market Administration and Control Area Services Tariff (the “ISO Services Tariff”)], in accordance with the Reliability Rules and the terms of the ~~{ISO/TP Agreement, the ISO/NYSRC Agreement, the NYSRC Agreement, and this ISO Agreement.}~~ [ISO Related Agreements.]

The ISO will have Operational Control over those facilities listed in Appendix A-1 of the ~~{ISO/TP Agreement that the Transmission Providers place under ISO Operational Control}~~ [ISO/TO Agreement,] in accordance with the ~~{ISO/TP}~~ [terms of the ISO/TO] Agreement. The Facilities Requiring ISO Notification are listed in Appendix A-2 of the ~~{ISO/TP}~~ [ISO/TO] Agreement.

## **2.02 Parties~~{-}~~**

All Incorporating Parties and all ~~{entities that sign this Agreement are considered}~~ [Market Participants that sign a Service Agreement under the ISO Services Tariff are eligible to become] Parties to this Agreement. Any [eligible] Market Participant may become a Party to this Agreement and participate in the governance of the ISO [by signing this Agreement]. Non-Market Participants also may become Parties to this Agreement and participate in the governance of the ISO. The ISO Board ~~{of Directors shall establish criteria for}~~ [shall permit] the following types of organizations or groups ~~{for participation in}~~ [to participate in the governance of] the ISO as Non-Market Participants:

~~{•}~~ Organizations that represent residential ~~{customers; and}~~ [and/or small commercial consumers, which shall mean those organizations (including governmental bodies) with experience in electric utility regulatory or electricity-related matters in New York State, that in whole or in part

advocate on behalf of New York consumers in residential classes and/or commercial consumers having a peak load of less than two megawatts, and are not an Affiliate of a Transmission Owner, utility, Retail or Wholesale Marketer, Wholesale Party, Retail Party or Environmental Party, regardless of where located.]

~~{•Organizations that promote the production, transmission, and distribution of electricity with the goal}~~ [Environmental Organizations that are non-profit corporations, partnerships, associations or other non-profit entities having the primary purpose] of protecting the environment ~~{or the public interest. }~~ [, with experience in electric utility regulatory or electricity-related matters in New York State, and which are not an Affiliate of a Transmission Owner, utility, Retail or Wholesale Marketer, Wholesale Party, or Retail Party, regardless of where located. An organization meeting the foregoing requirements shall not be excluded from the definition of an Environmental Organization if it also has a purpose of promoting energy conservation or the generation of electricity from renewable resources.]

~~{The ISO}~~ [The ISO Board] shall certify that a Non-Market Participant organization or group is eligible to be a Party to the ISO Agreement and participate in the ~~{ISO's}~~ [ISO's] governance. In order to become a Party, an eligible Market Participant or Non-Market Participant must sign the ISO Agreement.

[Non-Market Participant: an organization that represents residential and/or small commercial consumers or an Environmental Organization that is certified by the ISO Board pursuant to the provisions of Section 2.02 of the Agreement as eligible to participant in the governance of the ISO.]

### **ARTICLE 3: EFFECTIVE DATE AND TERMINATION**

### 3.01 Term.

This Agreement shall become effective upon the execution of this Agreement by the Incorporating Parties and on the latest of: (i) the ~~{first Monday that is at least sixty (60) days after the latest of the date(s) FERC}~~ [date(s) the Commission] approves, without condition or material modification: (a) this ISO Agreement; (b) ~~{the ISO Tariff; (c)}~~ the NYSRC Agreement; ~~{(d)}~~ [(c)] the ISO/NYSRC Agreement; ~~{and (e) the ISO/TP Agreement (collectively, "the ISO Tariffs and Agreements")}~~ [(d) the ISO/TO Agreement; (e) the ISO OATT; and (f) the ISO Services Tariff]; (ii) the date on which both the ~~{FERC}~~ [Commission] and the PSC grant all necessary approvals to the Transmission ~~{Providers}~~ [Owners] to transfer operational control of any facilities to the ISO or otherwise dispose of any of their property including, without limitation, any approvals required under ~~{PSL §70 and FPA §203; (iii) the date of receipt of an IRS ruling that formation and operation of the ISO will not jeopardize the tax-exempt status of Local Furnishing Bonds or the Power Authority of the State of New York's ("NYPA's") bonds}~~ [Section 70 of the New York Public Service Law and Section 203 of the Federal Power Act; (iii) September 1, 1999]; or (iv) such later date specified by ~~{FERC}~~ [the Commission].

The implementation of the ISO ~~{by}~~ [is premised upon] the Investor-Owned Transmission ~~{Providers is premised upon their}~~ [Owners and LIPA] being provided a reasonable opportunity to recover prudent and verifiable expenditures and commitments [made] pursuant to their legal obligations.

### 3.02 Termination and Withdrawal.

After the fifth anniversary of the effective date of this Agreement, this Agreement may be

terminated by a unanimous vote of the Incorporating Parties or their successors or assigns. If the Incorporating Parties vote to terminate this Agreement, they will file with ~~{FERC}~~ [the Commission] and the PSC an explanation of their action and a proposal for an alternate plan for the safe, reliable and efficient operation of the NYS Transmission System.

~~{Any}~~ [Except as otherwise provided in this Section 3.02, any] Party may withdraw from this Agreement upon ninety (90) ~~{days}~~ [days] prior written notice to the ISO Board. ~~{Such notice shall be published in the Federal Register.}~~ In the case of an Investor-Owned Transmission ~~{Provider}~~ [Owner], no further approval by ~~{FERC}~~ [the Commission] is needed for such withdrawal from the ISO Agreement, if such Investor-Owned Transmission ~~{Provider}~~ [Owner] has on file with ~~{FERC}~~ [the Commission] its own open access transmission tariff. Any modification to this Article shall provide any Party with the right to withdraw from the Agreement pursuant to the unmodified provisions of this Article, within ninety (90) days of the effective date of such modification. [If the tax-exempt status of LIPA's Tax Exempt Bonds are jeopardized by LIPA's participation in the ISO, LIPA may withdraw from this Agreement upon thirty (30) days prior written notice to the ISO Board; however, LIPA shall provide earlier notice whenever and as soon as it is reasonably practicable to do so. Any such notice shall contain an explanation in reasonably sufficient detail of the grounds for withdrawal. To the extent reasonably requested by LIPA, the ISO shall treat this explanation as confidential consistent with the ISO's confidentiality procedures.]

### **3.03 Survival.**

Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination or expiration of this Agreement shall survive such termination or

expiration. The surviving provisions shall include, but shall not be limited to: (i) those provisions necessary to permit the orderly conclusion of transactions entered into prior to the decision to terminate this ISO Agreement; (ii) those provisions necessary to conduct final billing, collection, and accounting with respect to all matters arising hereunder; and (iii) the indemnification provisions as applicable to periods prior to such termination or expiration by a Party.

#### **ARTICLE 4: ORGANIZATIONAL STRUCTURE**

The ISO will be governed by a ten (10) person unaffiliated Board of Directors ~~{(see)}~~ [as per] Article 5 ~~{)}~~ [herein.] The day[-]to[-]day operation of the ISO will be managed by ~~{an Executive Director, that}~~ [a President, who] will serve as an ex-officio member of the [ISO] Board ~~{of Directors (See)}~~ [in accordance with] Article 5 ~~{)}~~ [herein]. There shall be a Management Committee ~~{(See)}~~ [as per] Article 7 ~~{)}~~ [herein], which shall report to the [ISO] Board, and shall be comprised of all Parties to the Agreement. Voting on the Management Committee will be by a weighted vote as set forth in Article 7. There shall be at least two additional standing committees, the Operating Committee, as provided for in Article 8, and the Business Issues Committee[,], as provided for in Article 9, both of which shall report to the Management Committee. A Dispute Resolution Process will be established and administered by the ISO Board in accordance with Article 10.

#### **ARTICLE 5: [ISO] BOARD OF DIRECTORS AND VOTING**

##### **5.01 Composition Of The [ISO] Board And Voting.**

The ISO Board ~~{of Directors (“Board”)}~~ shall be comprised of ten (10 ) members (or “

Directors” ), none of ~~{which}~~ [whom] shall be affiliated with any Market Participant. Attendance or participation by proxy by six (6) Directors shall constitute a quorum. Each Director shall have one vote. An affirmative vote by six (6) Directors shall be required to pass a measure. Voting may be done in person or by proxy. A Director must be a natural person.

A Director shall be deemed “affiliated” with a Market Participant or its Affiliate if:

- a. ~~{such}~~ [Such] person or his or her spouse or minor children owns, controls, or holds with power to vote, securities of a Market Participant or any of its Affiliates; provided, however, (i) that each newly elected Director shall dispose of such securities in accordance with the terms of the ISO’s Code of Conduct, (ii) if such person or his or her spouse or minor children owns, controls or holds with power to vote such securities as a result of an entity becoming a Market Participant, such person shall dispose of such securities in accordance with the terms of the ISO’s Code of Conduct, and (iii) if such person or his or her spouse or minor children owns, controls or holds with power to vote such securities as a result of a gift, inheritance, distribution of marital property or other involuntary acquisition, such person shall dispose of such securities in accordance with the terms of the ISO’s Code of Conduct;
- b. ~~{such}~~ [Such] person or his or her spouse or minor children purchases securities of any Market Participant or any Affiliate of any Market Participant while such person is a Director;
- c. ~~{such}~~ [Such] person is an officer, director, partner or employee of a Market

Participant or any of its Affiliates;

- d. ~~{such}~~ [Such] person (i) is a former executive officer of a Market Participant which Market Participant, together with its Affiliates, has three percent or more of the voting shares on the Management Committee or of any Affiliate of such Market Participant and (ii) is receiving continuing benefits under an existing employee benefit plan, arrangement or policy of such Market Participant or any of its Affiliates~~{, or}~~ [, ~~except to the extent permitted under the ISO Code of Conduct; or~~]

- ~~{e. such}~~ [e. Such] person has a material ongoing business or professional relationship with a Market Participant or any of its Affiliates; provided, however, that such person shall not be deemed to have a material ongoing business relationship with a Market Participant or any of its Affiliates solely as a result of being served, as a customer, with electricity or gas by such Market Participant or its Affiliates.

The term “securities” used above is defined in the ISO’s Code of Conduct.

## **5.02 Selection of the Nine Initial Directors~~{.}~~**

The nine (9) initial members of the ISO Board ~~{of Directors}~~ shall be chosen by a Selection Committee. The Selection Committee will be comprised of eighteen (18) members chosen as follows:

- a. Eight (8) members will be selected by the eight (8) current ~~{member systems}~~ [Member Systems] of the NYPP.



- b. Eight (8) members shall be selected from among interested ~~{parties}~~ [Parties] (the “Non-Utility Parties”). The selection of these eight members will be facilitated by a PSC Administrative Law Judge, with all Non-Utility Parties having an opportunity to participate. The eight members selected by the Non-Utility Parties shall consist of representatives of the following groups: generators (2 members), consumer representatives (2 members), marketers (1 member), municipals systems (1 member), energy services companies (1 member), and public interest groups (1 member).
- c. Two (2) members will be staff members of the New York State Department of Public Service selected by the ~~{Public Service Commission}~~ [PSC].

The Selection Committee shall choose the nine (9) initial Directors from a list of approximately one-hundred (100) candidates provided by a professional executive search firm retained by the Selection Committee. The nine (9) initial Directors shall possess a cross-section of skills and experience (such as, for purposes of illustration but not by way of mandate or limitation, FERC electric regulatory affairs, electric utility management, corporate finance, bulk power systems, human resources administration, power pool operations, public policy, consumer advocacy, environmental affairs, business management, law, and information systems) to ensure that the ISO has sufficient relevant knowledge and expertise to perform its obligations under this ISO Agreement. At least three (3) of the Directors shall have prior relevant experience in the electric industry. In addition, to ensure sensitivity to regional concerns, strong preference shall be given to electing members from New York to the extent that qualified candidates are available and such representation can be accomplished consistent with the ISO’s conflict of interest policy and Code of Conduct and

so long as it does not violate the requirements that Directors be unaffiliated.

The Selection Committee will develop a process by which it will reduce the pool of qualified candidates to a smaller number, of approximately thirty-five (35) individuals, along with a separate process for the selection of the nine initial Directors from the smaller pool of thirty-five candidates. Approval by ~~{67}~~ [sixty-seven (67)] percent of the members of the Selection Committee shall be required for appointment of a member of the ISO Board.

### **5.03 The Selection Process For the ~~{Executive Director}~~ [President].**

The nine (9) initial Directors shall select ~~{an Executive Director}~~ [a President] of the ISO that shall also serve, ex[-]officio, as the tenth member of the Board. The nine (9) initial Directors shall hire a search firm to develop a pool of no fewer than ten (10) qualified candidates for the position of ~~{Executive Director}~~ [President]. After interviewing all the candidates, the nine (9) initial Directors may request that the search firm provide them with additional candidates, if necessary. The method of narrowing the candidate pool and selecting the ~~{Executive Director}~~ [President] shall be left to the nine (9) initial Directors. Prior to the selection of the ~~{Executive Director}~~ [President], the ISO Board shall submit the names of the candidates under consideration to the ~~{Management}~~ [Selection] Committee for its evaluation. The ~~{Executive Director will}~~ [President shall] have extensive experience and knowledge in the field of electric power systems. In considering candidates for ~~{Executive Director,}~~ [President,] the [ISO] Board also shall give substantial weight to significant managerial experience and knowledge and experience in electricity markets.

### **5.04 Future [ISO] Board Vacancies.**

The ISO Board shall be self-perpetuating. Vacancies on the [ISO] Board ~~{will}~~ [shall] be filled by the Directors then in office and new Directors ~~{will have}~~ [shall] to meet the same basic qualifications as the nine (9) initial Directors. The [ISO] Board shall always be comprised of at least three (3) Directors with prior relevant experience in the electric industry. The Management Committee ~~{will}~~ [shall] assist the [ISO] Board in the filling of [ISO] Board vacancies. The Management Committee ~~{will}~~ [shall] conduct a search for new Directors and provide the [ISO] Board with a list of at least three (3) qualified candidates for each vacancy. The ISO Board may seek candidates from other sources, including an executive search firm. The ISO Board ~~{will}~~ [shall] provide the Management Committee with an opportunity to review the qualifications of candidates not forwarded to the [ISO] Board by the Management Committee and to comment on their qualifications prior to the selection of a new ~~{Board Member}~~ [Director].

#### **5.05 Regulatory Approval.**

The process of selecting the individual ISO Directors shall be subject to ~~{FERC}~~ [Commission] approval.

#### **5.06 The Chairperson of the Board.**

The Directors shall elect a Chairperson of the Board. The ~~{Executive Director will}~~ [President shall] not be eligible to serve as the Chairperson of the Board. The Chairperson shall serve a term of one (1) year and will be eligible for re-election.

#### **5.07 Board Review of Matters.**

The Board ~~{will}~~ [shall] review and determine appeals from actions of the Management

Committee. The Board may suspend an action by any ISO ~~{committee}~~ [Committee] pending appeal, if the Board determines that such action is warranted. The [ISO] Board also may review any matter, complaint, or ~~{committee}~~ [Committee] action on its own motion. The [ISO] Board shall establish procedures for reviewing such matters, ~~{committee}~~ [Committee] actions, or complaints, and for the suspension of ~~{committee}~~ [Committee] actions pending appeal. The [ISO] Board may delegate to one or more of its members the authority to suspend a ~~{committee}~~ [Committee] action pending appeal, subject to ratification by the [ISO] Board. This should include, but not be limited to, the [ISO] Board establishing procedures to assure prompt action on matters that are brought to it for action on an emergency or urgent basis.

The [ISO] Board shall designate an ISO ~~{Representative}~~ [representative] to each ISO Committee that shall serve as a ~~{Non-Voting}~~ [non-voting] Member of such ~~{committee}~~ [Committee].

#### **5.08 Scope of Responsibilities of the ISO Board.**

The ISO Board will have ultimate responsibility for the operation of the ISO and the effective implementation of its basic responsibilities, including, but not limited to: the safe, reliable, and efficient operation of the NYS Power System; the provision of Transmission Service to all Transmission Customers on a non-discriminatory basis ~~{;}~~ [in accordance with the ISO OATT; the provision of Market Services and Control Area Services under the ISO Services Tariff, including the] administration of the Day-Ahead ~~{Unit Commitment}~~ [unit commitment] and real[-]time dispatch~~;~~ and for~~;~~ [the] administration of centrally coordinated markets for Energy, Capacity and Ancillary

Services [and the administration of Installed Capacity requirements for LSEs. The ISO]{-

The } Board may appoint from time to time such employees and other agents as it deems necessary, each of which shall hold office at the pleasure of the [ISO] Board, receive such reasonable compensation and have such authority and perform such duties as the [ISO] Board may determine. The [ISO] Board will establish appropriate personnel, employment and salary policies for the day-to-day administration of the ISO. The [ISO] Board may establish committees and sub-committees as it sees fit, in addition to the committees described in Articles 7, 8, and 9 of this Agreement.

The [ISO] Board also shall be responsible for the financial affairs of the corporation, including the ISO's capital and operating budgets. The [ISO] Board shall appoint an independent auditor. Audits may be performed at the request of the [ISO] Board, or at the request of a Party. If a Party requests an audit, the cost of such audit shall be borne by the requesting Party.

The [ISO] Board shall have a fiduciary duty to faithfully execute the powers and responsibilities of the ISO and shall not represent or favor the interests of any entity.

Upon request, the [ISO] Board shall make provisions for representatives of {FERC} [the Commission] and the PSC to attend meetings of the [ISO] Board. {FERC} [The Commission] and PSC representatives may participate, but not vote, in a meeting of the [ISO] Board.

#### **5.09 The {Executive Director} [President] of the ISO.**

The {Executive Director} [President] of the ISO, {that is an ex-officio Director,} shall be responsible for the day to day operations of the ISO. The {Executive Director} [President] shall be

responsible for hiring and supervising the staff of the ISO. The ~~{Executive Director}~~ [President] also shall be responsible for ensuring that all Voting Shares for purposes of committee participation and voting are calculated accurately and fairly. The ~~{Executive Director}~~ [President] shall serve at the pleasure of the [ISO] Board and shall enter into a contract with the [ISO] Board detailing the terms of his/her employment, including salary terms and benefits. [The President shall serve as an ex-officio director and shall not be a member of the Corporation.]

#### **5.10 Removal of a Director For Cause.**

The [ISO] Board shall have the power to remove a Director from office for cause by an affirmative vote of seven (7) Directors, taken at a special meeting of the [ISO] Board. A Director or the Management Committee may propose the removal of a Director for cause. If the [ISO] Board fails to remove a Director after a petition by the Management Committee, the Management Committee may appeal to ~~{FERC}~~ [the Commission]. Grounds for removal for cause include, but are not limited to: failure to attend meetings, affiliation with a Market Participant, felony conviction, misappropriation of funds, sexual harassment, mental incapacity, and misconduct.

#### **5.11 Term and [ISO] Board Compensation.**

Except for the ~~{Executive Director, that}~~ [President, who] serves as an ex[-]officio member of the [ISO] Board, Directors shall serve staggered four (4) year terms and may be reelected. The terms of the initial Directors shall be staggered, as determined by the Selection Committee. Except for the ~~{Executive Director}~~ [President, whose compensation shall be set forth in a separate contract], Directors shall be compensated by an annual retainer and meeting fees, and shall be

reimbursed for their expenses. The retainer and meeting fees will initially be established by the Selection Committee. Any change in ~~{Directors'}~~ [Directors'] compensation will be subject to [the ISO] Board approval, after the Management Committee has had an opportunity to review and comment on any proposed change.

#### **5.12 Meetings.**

The [ISO] Board shall meet at least quarterly, and at such other times as the Chairperson may direct. Attendance at ~~{a}~~ [an ISO] Board meeting by ~~{seven (7)}~~ [six (6)] Directors shall constitute a quorum.

### **ARTICLE 6: DUTIES OF THE ISO**

#### **6.01 General.**

The ISO shall carry out and perform its duties consistent with the provisions of the ~~{ISO/TP}~~ [ISO/TO] Agreement, the ISO/NYSRC Agreement and the Reliability Rules, which include Local Reliability Rules[,] and Good Utility Practice.

The ISO shall perform its functions on non-discriminatory terms and conditions and shall ~~{administer the ISO}~~ [provide services under the ISO OATT and the ISO Services] Tariff to all Market Participants impartially.

The ISO shall exercise due diligence and care in coordinating the operation of the NYS Power System and in carrying out its other duties under this ISO Agreement.

The ISO shall have a fiduciary responsibility to the Incorporating Parties to protect the transmission assets over which the ISO assumes control and/or direction and to protect the

Incorporating Parties from any liability or potential liability that may arise from their ownership of such transmission assets.

The ISO shall act as the NERC defined Control Area operator for the NYS Power System.

The ISO shall interact with other Control Area operators as required to effect External Transactions pursuant to the ISO [OATT and the ISO Services] Tariff.

The ISO will have responsibility for administering ~~{any market power monitoring program}~~ [a Market Power Monitoring Program] that is approved by ~~{FERC,}~~ [the Commission,] including [hiring an outside market advisor and] ensuring that the ISO compliance staff and the outside advisor have access to all necessary information.

The ISO shall provide, to the extent permitted by law, that all policies and operations of ISO shall be developed and applied in a comparable manner so that the ISO makes available to all Market Participants the same non-Confidential Information at the same time, and all Market Participants are provided the same opportunity to participate in the purchase and sale of ~~{Electric}~~ Capacity, Energy, and Ancillary Services in the Wholesale Market in ~~{New York State}~~ [the NYCA] on a comparable and non-discriminatory basis.

The ISO will prepare and file with the appropriate regulatory commission or commissions such agreements, operating procedures, and other procedures necessary to provide Transmission Service ~~{to Transmission Customers}~~ [under the ISO OATT and to provide Market Services and Control Area Services under the ISO Services Tariff], and to maintain the reliable and efficient operation of the NYS Power System. These operating procedures and other procedures shall be consistent with the Reliability Rules and the terms of the ISO Agreement[, the ISO/NYSRC



Agreement] and the ~~{ISO/TP}~~ [ISO/TO] Agreement. As a condition to receiving ~~{service}~~ [Transmission Service] from the ISO, the ISO shall require ~~{all Market Participants}~~ [a Transmission Customer] to sign [a] Service ~~{Agreements}~~ [Agreement] with the ISO ~~{agreeing}~~ [whereby the Transmission Customer agrees] to comply with ~~{these}~~ [the ISO] policies and procedures and all other requirements of the ISO ~~{Tariff. The ISO, consistent with the provisions of the ISO Tariff, the ISO/TP Agreement, and the Reliability Rules developed and promulgated by the NYSRC, shall adopt and modify, as appropriate, the operating and billing procedures, and methods and procedures of the New York Power Pool}~~ [OATT. As a condition to receiving Market Services and Control Area Services from the ISO, the ISO shall require a Market Participant to sign a Service Agreement with the ISO whereby the Market Participants agrees to comply with the ISO policies and procedures and all other requirements for services under the ISO Services Tariff].

The ISO shall develop, maintain and promulgate operating and billing procedures as necessary to carry out its responsibilities under the ISO ~~{Agreement and ISO}~~ [OATT, the ISO Services Tariff and the ISO Related Agreements. These procedures shall be consistent with the ISO's responsibilities under the ISO Related Agreements and the Reliability Rules adopted by the NYSRC. Except for those procedures modified or superseded by the ISO Tariffs or ISO Related Agreements, the operating procedures of the New York Power Pool will remain in effect under the ISO, unless and until modified or eliminated by the ISO, consistent with the provisions of the ISO Related Documents.

The ISO shall diligently evaluate and enforce the creditworthiness standards of the ISO OATT and the ISO Services] Tariff.

The ISO shall provide local control center system operator training.

The ISO shall facilitate [and/or perform] financial settlements [and billing functions] of Market Participants [in accordance with the provisions of the ISO OATT and the ISO Services Tariff].

The ISO shall conduct performance audits of Market Participants on a random basis and, if necessary, impose specific penalties, in accordance with Article 15, for failure to perform.

To the extent practicable and subject to reasonable confidentiality requirements, the ISO shall make information concerning its operations available to Market Participants and to {state} [State] and {federal} [Federal] regulatory agencies.

The ISO shall establish procedures for the appointment of {members} [Members], other than those appointed by the Transmission {Providers} [Owners], to the Executive Committee of the NYSRC, as provided for in the NYSRC Agreement.

## **6.02 Operation.**

The ISO shall maintain the safety and the short-term reliability of the NYS Power System, including the implementation of emergency procedures consistent with the Reliability Rules. The ISO shall exercise Operational Control over Transmission Facilities Under ISO Operational Control.

The ISO [OATT and the ISO Services] Tariff will require those entities having a Service Agreement with the ISO to comply with the Reliability Rules and {the ISO's} [ISO] Procedures regarding the reliability of the NYS Power System and to furnish data to the ISO as required.

The ISO will require and obtain by contract or tariff sufficient control over Generators, transmission facilities, and other NYS Power System facilities necessary for the reliable and efficient operation of the NYS Power System.

### **6.03 Transmission Service, {Tariff} [Tariffs] and the Wholesale Market.**

Subject to Articles 15 and 19 of this Agreement and the {ISO/TP} [ISO/TO] Agreement, the ISO shall provide Transmission Service and Ancillary Services over the NYS Transmission System in accordance with the ISO [OATT, and shall provide Market Services and Control Area Services in accordance with the ISO Services] Tariff.

Subject to the terms of the ISO Agreement {and the ISO/TP Agreement, }[, and the ISO/TO Agreement, the ISO/NYSRC Agreement and the Reliability Rules,] the ISO will administer the ISO [OATT and the ISO Services] Tariff and from time-to-time file with {FERC} [the Commission], as required, amendments to the ISO {Tariff} [Tariffs] in accordance with the provisions set forth in Article 19 of this Agreement.

Consistent with the Reliability Rules, the ISO will operate a Day-Ahead {SCUC} [Security Constrained Unit Commitment (“SCUC”)], using Bid data furnished by Customers and other sources. The ISO shall implement a {SCD} [Security Constrained Dispatch (“SCD”)], on the Dispatch Day to maintain reliability.

### **6.04 Maintenance.**

The ISO shall coordinate planned outages and schedules for those Generators that are under contract to provide Installed Capacity to the NYS Power System.

The ISO shall have the authority to approve or deny all requests for transmission outages on Transmission Facilities Under ISO Operational Control as defined in the {ISO/TP} [ISO/TO] Agreement and in accordance with {Attachment D to} the ISO {Tariff} [OATT]. The ISO shall be notified of the maintenance scheduled on Transmission Facilities Requiring ISO Notification, and shall

advise the Transmission ~~{Provider}~~ [Owner] of potential adverse reliability impacts in accordance with ~~{Attachment D to}~~ the ISO ~~{Tariff}~~ [OATT].

#### **6.05 Capacity Requirements.**

The ISO shall establish the ~~{locational}~~ [Locational Installed] Capacity Requirements for New York State, consistent with the Reliability Rules, ~~{which include}~~ Local Reliability Rules, and the provisions of the ISO/NYSRC Agreement. In establishing ~~{locational}~~ [Locational Installed] Capacity Requirements, the ISO shall consider the availability of the NYS ~~{transmission system}~~ [Transmission System] to the extent necessary to maintain reliability.

The ISO, through procedures adopted by the Operating Committee and consistent with the Reliability Rules, shall require that all ~~{Load Serving Entities and Transmission Customers}~~ [LSEs] entering into Service Agreements under the ISO [Services] Tariff maintain appropriate levels of Installed Capacity and Operating Capacity. In the case of Installed Capacity, the ISO shall determine the amount of Installed Capacity by location that is needed on an annual basis to meet all Reliability Rules, which includes Local Reliability Rules. In the event that a Party fails to meet its Installed or Operating Capacity requirement, the ISO shall impose the penalties set forth in the ISO [Services] Tariff.

#### **6.06 Code of Conduct.**

The ISO shall prepare and apply a Code of Conduct. The Code of Conduct, among other provisions, shall provide that any ISO ~~{Employees}~~ [employees] and Directors are foreclosed from providing any information of commercial value supplied by a Party or Market Participant, to any other Party or any Market Participant or potential participant in commercial transactions involving

the NYS Power System, except to the extent that such information flow is part of the ~~{ISO's}~~ [ISO's] routine responsibilities. Such information may, however, be provided to another employee or Director of the ISO if the information is needed for the normal execution of the other ~~{employee's}~~ [employee's] or Director's duties. ~~{Such}~~ Confidential Information includes, without limitation, all information received from a Party or any Market Participant or potential participant with respect to price or other terms upon which such person or entity is willing to sell ~~{electric}~~ Capacity and/or Energy or other services. If such information is required to be divulged in compliance with an order of a court or regulatory authority having jurisdiction, or a subpoena, the ISO will seek to obtain an appropriate protective order from the court or regulatory authority. The ISO shall notify the ~~{parties}~~ [Parties] providing the Confidential Information when such an order or a subpoena is received from a court or regulatory authority and shall not be held liable by a ~~{party}~~ [Party] for any losses, consequential or otherwise, resulting from the ISO divulging such Confidential Information pursuant to a subpoena or an order of a court or regulatory authority. The Code of Conduct will preclude any individual serving as a Director or as a member of an ISO committee from also serving as a [representative of a] member of the Executive Committee of the NYSRC.

#### **6.07 Planning and Transmission System Expansion.**

Consistent with the provisions of Article 18 of this Agreement, the ISO shall develop, maintain and promulgate a NYS Transmission System expansion and reliability assessment process to be performed in compliance with the Reliability Rules. This process shall include an annual compilation of a NYS Transmission Plan.

The ISO shall collect and publish information regarding the amount and cost of historical

transmission congestion to facilitate the decision-making process of Market Participants.

## ARTICLE 7: MANAGEMENT COMMITTEE

### 7.01 Membership.

There shall be a Management Committee comprised of each Party to the ISO Agreement.

### 7.02 Scope of Responsibilities.

The Management Committee shall have the following responsibilities:

~~Supervision~~ [a. ~~Supervision~~] and review of the work of the other ISO committees;

~~Review~~ [b. ~~Review~~] and determination of appeals from actions of the other committees, and the ability to suspend an action by another committee pending appeal if the Management Committee determines that such action is warranted;

~~Development~~ [c. ~~Development~~] of positions on ISO operations, policies and procedures and ~~providing~~ [provision of] recommendations to the other committees and the Board;

~~Preparation~~ [d. ~~Preparation~~] of the ISO capital and operating budgets for review and approval by the ISO Board; [and

e. ~~Subject~~ ~~subject~~ to Article 19, proposing changes to the ISO ~~tariff~~ [OATT and the ISO Services Tariff] and reviewing and making

recommendations with respect to tariff changes proposed by the ISO Board.

The Management Committee shall meet at least quarterly. Decisions by the Management Committee may be appealed to the ISO Board by any Party.

### **7.03 Representation on the Management Committee.**

A Party may designate any person to represent the Party on the Management Committee. Such representative will serve until replaced by the Party by written notice or until the Party ceases to be a Party. [To the extent practicable, provisions shall be made for Parties to attend and participate in meetings of the Management Committee through teleconference or other methods. In addition, with reasonable safeguards, provisions shall be made to permit Parties not physically present at a meeting to submit paper or electronic ballots and to vote by proxy.]

The ISO Board may assign a member of its staff to the Management Committee. The ISO staff member may participate in committee proceedings on a non-voting basis. Any Party on the Management Committee and the ISO representative, may appeal a ~~{committee}~~ [Committee] action to the ISO Board. The Management Committee shall establish procedures for the review of appeals from the actions of other committees and for the suspension of actions pending appeal in appropriate circumstances. The Management Committee shall make provisions for attendance at ~~{committee}~~ [Committee] meetings by representatives of ~~{FERC and the PSC.~~ }[the Commission and the PSC.

The Management Committee shall select members to act as chairperson, vice-chairperson and secretary, who shall serve terms of one (1) year and shall be eligible for re-election. The Management Committee shall meet quarterly and at such other times as the chairperson may determine. An

executive session of the Management Committee may be called at the discretion of the chairperson, or upon a vote of the members of the Committee representing sixty-seven (67) percent of the total Voting Shares.]

#### **7.04 Voting and Voting Formula.**

Each Party shall have a Voting Share, as a member of the Management Committee, representing the percentage of the aggregate Voting Shares of all Parties to which the Party is entitled. A quorum for a meeting of the Management Committee shall consist of ~~{67}~~ [the attendance in person or by proxy of sixty-seven (67)] percent of the aggregate Voting Shares of all Parties. An affirmative vote ~~{of 67}~~ [in person or by proxy of sixty-seven (67)] percent of the aggregate Voting Shares of all Parties shall be required to pass a measure. For the first five (5) years after the ISO commences operation, the Voting Shares shall be recalculated on a quarterly basis. After the fifth year, Voting Shares shall be recalculated on an annual basis. The percentage of the aggregate Voting Shares of all Parties to which a Party is entitled shall be determined in accordance with the following formula:

$$V = 0.15 (P/P') + 0.15 (E/E') + 0.15 (C/C') + 0.15 (X/X') + 0.15 (M/M') \\ + 0.15 (R/R') + 0.1 (Y/Y')$$

where:

V = the Party's Voting Share as a percentage of the aggregate Voting Shares of all Parties;

P = the average in megawatts of the Party's Monthly Peaks [in the NYCA] for the most recently completed 12 months;



- P' = the sum of the averages in megawatts of the non-coincident Monthly Peaks [in the NYCA] of all Parties for the most recently completed 12 months;
- E = the average in megawatt hours of the Party's Monthly Loads [in the NYCA] for the most recently completed 12 months;
- E' = the sum of the averages of the Monthly Loads [in the NYCA] of all Parties for the most recently completed 12 months;
- C = the average in megawatts of the Party's Monthly Generation Ownership Shares, as defined in this Section for the most recently completed 12 months.
- C' = the sum of the averages in megawatts of the sum for each month of the Generation Ownership Shares of all Parties for the most recently completed 12 months;
- X = the average sum for the most recently completed 12 months of: (i) a number of kilowatt-hours equal to the kilowatts of the Party's Generation Ownership Shares, times the number of hours in the month; plus (ii) the number of kilowatt-hours that the Party was entitled to receive in each hour with respect to its energy entitlements under supply contracts, less any resale in whole or part of any such energy entitlement into the retail market, times, in the case of each contract, the number of hours the contract was in effect in the month. Parties performing multiple market functions will have their weighted vote for each market function computed independently and aggregated.
- X' = the sum of the average sums for the most recently completed 12 months of : (i) a number of kilowatt-hours equal to the kilowatts of the Generation Ownership Shares

of all Parties, times the number of hours in the month; plus (ii) the number of kilowatt-hours that all Parties were entitled to receive in each hour with respect to their Energy entitlements under unit contracts or system contracts, less any resale in whole or in part of any such Energy entitlement into the retail market, times, in the case of each contract, the number of hours the contract was in effect in the month. Parties performing multiple market functions will have their weighted vote for each market function computed independently and aggregated;

M = the circuit miles of the Party's Transmission and Distribution Facility ("TDF") Ownership Shares, as defined in this Section, times, in the case of each transmission or distribution line, the nominal operating voltage of the line;

M' = the aggregate of the circuit miles of the TDF Ownership Shares of all Parties, times, in the case of each transmission or distribution line, the nominal operating voltage of the line;

R = the Party's TDF Ownership Shares revenue requirement consisting of the sum of: (i) the Annual Transmission Revenue Requirements of the Party as of the beginning of the current calendar year as determined by ~~{FERC}~~ [the Commission or as otherwise lawfully established]; plus (ii) the Annual Distribution System Revenue Requirements of the Party as of the beginning of the current calendar year as determined by the PSC or as otherwise [lawfully] established;

R' = the aggregate TDF Ownership Shares revenue requirement consisting of the sum of: (i) the aggregate Annual Transmission Revenue Requirements of all Party as of the

beginning of the current calendar year as determined by ~~{FERC}~~ [the Commission or as otherwise lawfully established]; plus (ii) the aggregate Annual Distribution System Revenue Requirements of all Parties as of the beginning of the current calendar year as determined by the PSC or as otherwise [lawfully] established;

Y = 1; and

Y' = the number of ISO Parties at the beginning of the quarter; †

†provided, however, that a Party and its Affiliates may not have aggregate Voting Shares exceeding ~~{25}~~ [20] percent of the aggregate Voting Shares of all Parties. The amount of a Voting Share greater than ~~{25}~~ [20] percent shall be allocated to the other [non-capped] Parties on a pro rata basis in accordance with their unadjusted ~~{voting strength}~~ [Voting Shares (i.e., each Party's share of the excess Voting Share will be determined by dividing such Party's weighted Voting Share by an amount equal to one hundred percent of the total Voting Share of the Parties less the weighted Voting Share, determined prior to the application of the cap to the Party or Parties to which it is applicable; provided, however, that no Party may be assigned a reallocation that would cause it to exceed the 20 percent individual Party Voting Share cap]. To the extent that the ~~{Incorporating Parties'}~~[Transmission Owners'] actual aggregate (affirmative or negative) vote for a given issue exceeds ~~{60}~~ [55] percent of the aggregate Voting Shares, the difference between the ~~{Incorporating Parties'}~~[Transmission Owners'] actual aggregate vote and ~~{60}~~ [55] percent shall be reallocated to all other Parties[.

The "excess" vote above this aggregate Transmission Owner cap of 55 percent that results from the application of the Section 7.04 formula, will be reallocated to the Parties, other than

Transmission Owners, that comprise the Management Committee] on a pro rata basis in accordance with their ~~{unadjusted voting strength}~~ [“unadjusted” Voting Shares (i.e., each Party’s share of this excess Voting Share shall be determined by dividing such Party’s weighted Voting Share by an amount equal to one hundred percent of the total Voting Shares of all Parties excluding the weighted Voting Shares of those Incorporating Partners that contributed to the vote that exceeded the cap); provided, however, that no Party may receive a reallocation that would cause it to exceed the 20 percent individual Party Voting Share cap and provided further that “adjusted” Voting Shares shall mean the Voting Shares as determined above.]

For purposes of the preceding formula (i) if an entity has been a Party for less than twelve months, the amounts to be taken into account for purposes of “P”, “E”, “~~{C}~~ [A]” and “X” in the formula shall be for the period during which the entity has been a Party; (ii) for purposes of “X” and “X” in the formulas, the number of kilowatt-hours to be taken into account with respect to any Energy entitlements under a supply ~~{resources}~~ [contract], under which a Party is entitled to receive Energy from outside the ~~{ISO Control Area}~~ [NYCA] shall be computed on the basis of the number of kilowatts of Installed Capability credit, or Monthly Peak reduction, for which the Party is given credit in determining whether it has satisfied its Installed Capacity ~~{Responsibility}~~ [responsibility].

In the event a Party participates in one or more market segments, inclusive of TDF Ownership Shares, the Party shall be entitled to divide its vote on any matter as the Party determines by notice given to the Secretary of the Management Committee at or prior to the meeting at which the vote is to be cast.

For purposes of this Section, the Generation Ownership Shares of a Party means and includes:

- (1) the direct ownership interest which the Party has, as either a sole or joint owner, of a Generator which is subject to the ISO's dispatch or selling Energy into the New York Wholesale Market,
- (2) the indirect ownership interest which the Party has as a shareholder of a Generator which is subject to the ISO's dispatch or selling Energy into the New York Wholesale Market, provided the corporation or partnership is itself not a Party;
- (3) any other interest which the Party has in a Generator which is subject to the ISO [Services] Tariff under a lease or other contractual arrangement, provided the other party to the arrangement is itself not a Party and the Management Committee determines, at the request of the affected Party, that the Party has benefits and rights, and assumes risks, under the arrangement with respect to the Generator which are substantially equivalent to the benefits, rights and risks of an owner; and
- (4) an interest which the Party shall be deemed to have in the direct ownership interest, or the indirect ownership interest as a shareholder or general or limited partner, of an Affiliate of the Party of a Generator which is subject to the ISO [Services] Tariff, provided the Affiliate is not ~~{automatically considered}~~ [itself] a Party.

For the purposes of this Section, the term Monthly Loads means and includes: The total amount for each [month] of the Party's electric energy ~~{in the NYCA}~~[,] expressed in megawatt-hours delivered to or by a system, part of a system or a piece of equipment to the Party's retail customers [in the NYCA]. Voting Shares based on Monthly Loads shall also be allocated to Parties that are large commercial and industrial customers provided that such ~~{Party's}~~ [Party's] peak

load within the NYCA for any month in the most recent twelve months equals or exceeds five megawatts.

For the purpose of this Section, the term Monthly Peaks means and includes: The maximum for each month of the rate ~~{averages}~~ [averaged] over a period of sixty (60) minutes and expressed in megawatts, at which the Party's electric energy is delivered to or by a system or a piece of equipment to the Party's retail customers within the NYCA. Voting Shares based on Monthly Peaks shall also be allocated to Parties that are large commercial and industrial customers, provided that such ~~{Party's}~~ [Party's] peak load within the NYCA for any month in the most recent twelve months equals or exceeds five megawatts.

For purposes of this Section, the ~~{Transmission and Distribution Facilities (“TDF”)}~~ [TDF] Ownership Shares of a Party ~~{means}~~ [mean] and ~~{includes}~~ [include] the items listed below. All such facilities must be within the NYCA or listed in Appendices A-1 or A-2 of the ~~{ISO/TP}~~ [ISO/TO] Agreement.

- (1) the direct ownership interest which the Party has as a sole or joint owner of TDF;
- (2) the indirect ownership interest which the Party has, as a shareholder in a corporation, or as a general or limited partner in a partnership, in TDF owned by such corporation or partnership, provided the corporation or partnership is not itself a Party;
- (3) any other interest which the Party has in TDF under a lease or other contractual arrangement, provided the other party to the arrangement is not itself a Party and the Management Committee determines, at the request of the affected Party, that the Party has benefits and rights, and assumes risks, under the arrangement with respect

to the TDF which are substantially equivalent to the benefits, rights and risks of an owner; and

- (4) an interest which the Party shall be deemed to have in the direct ownership interest, or the indirect ownership interest as a shareholder or general or limited partner, of an Affiliate of the Party in TDF, provided the Affiliate is [not] itself ~~not~~ a Party.

#### **7.05 Confidential Information.**

The Management Committee shall develop procedures to define and provide for the handling of Confidential Information.

### **ARTICLE 8: OPERATING COMMITTEE**

#### **8.01 Scope of Responsibilities.**

The responsibilities of the Operating Committee shall include the following:

- ~~{= establishment}~~ [a.        Establishment] of procedures related to the coordination of the operations of the NYS Power System;
- ~~{= establishment}~~ [b.        Establishment] of procedures related to the safe and reliable operation of the NYS Power System;
- ~~{= ensuring}~~ [c.        Ensuring] that all ISO procedures and practices are consistent with the Reliability Rules, and serving as liaison to the NYSRC;
- ~~{= oversight}~~ [d.        Oversight] and coordination of operating and performance studies;
- ~~{= review}~~ [e.        Review] and approval of operating limits;

- ~~{= establishment}~~ [f.      Establishment] of procedures for coordinating the maintenance schedules for the NYS Power System in order to maintain system reliability;
- ~~{= determination}~~ [g.      Determination] of the minimum system Operating ~~{Capacity}~~ [Reserves] required to be available within the NYS Power System and establishing methods of allocating a portion thereof to responsible entities as minimum Operating Capacity. In determining Operating ~~{Capacity}~~ [Reserve] requirements, the committee shall take into consideration the locational capacity needs of New York State;
- ~~{= establishing}~~ [h.      Establishment of] procedures for determining ~~{required}~~ Operating ~~{Capacity}~~ [Reserve requirements] and, if experience or the results of studies indicate the desirability of change, recommending changes thereto to the Management Committee;
- ~~{= development of locational}~~ [i.      Development of Locational] Installed Capacity ~~{requirements}~~ [Requirements], consistent with the Reliability Rules, Local Reliability Rules, the ~~{ISO/TP}~~ [ISO/TO] Agreement and the ISO Agreement; [and
- j.      Any]~~{= any}~~ additional responsibilities assigned by the Management Committee.



Procedures adopted by the Operating Committee will be implemented by the staff of the ISO unless suspended or overruled by the Management Committee or the Board. In carrying out its responsibilities, the Operating Committee shall seek input and recommendations from ISO staff.

### **8.02 Planning.**

The Operating Committee shall implement the transmission system expansion process described in Article 18. The Operating Committee shall review and approve ISO staff assessments of proposed projects that impact transmission capability to confirm that those projects meet all applicable reliability criteria.

The Operating Committee shall review and approve the NYS Transmission Plan prepared by the ISO staff and reliability assessments performed using such NYS Transmission Plan, to ensure conformance with the Reliability Rules.

The Operating Committee shall review and approve illustrative NYS Transmission System expansion options developed by ISO staff in response to PSC requests.

[The Operating Committee, at the request of a Committee member, may review the adequacy of cost recovery mechanisms for transmission expansion.

### **8.03 Representation on the Operating Committee] {8.03 Appointment of Members}.**

The Operating Committee shall consist of {a minimum of fourteen (14) members,} [Members representing a total of twenty-five (25) votes] appointed pursuant to the provisions of this Article. For the first five (5) years following commencement of operations by the ISO, new {members} [Members] will be added on a quarterly basis. After the fifth year, new {members} [Members] will

be added only on an annual basis.

~~{Each Party with a Voting Share, as determined under Article 7, of 3 percent or more, or with TDF Ownership Shares in excess of 100 circuit miles rated at 115 kV or above, shall appoint one (1) member of the Operating Committee. Parties that do not qualify to appoint a member of this committee shall be represented by the industry sector group described below that best describes their primary function. The industry sector groups are as follows:~~

~~a. A group consisting of Parties that are engaged in the NYCA principally in the business of owning or operating Generators and selling the output of such Generators.~~

~~b. A group consisting of Parties that are engaged in the NYCA principally in the business of supplying Energy, Capacity and/or Ancillary Services to retail customers.~~

~~c. A group consisting of those Parties that are engaged in the NYCA principally in the business of buying and selling Energy, Capacity, and/or Ancillary Services in the Wholesale Market, other than those Parties engaged principally in the business of owning or operating generators.~~

~~d. A group consisting of Parties that are municipally owned or cooperatively owned utilities in the NYCA.~~

~~e. A group consisting of Parties that are large industrial or commercial customers with a peak load for any month in the most recent twelve (12) month period that is equal to or greater than five (5) megawatts within the NYCA.~~

~~f. A group consisting of Parties that meet the criteria established by the ISO Board for participating in the ISO as a Non-Market Participant.~~

~~The Parties in each of these industry sector groups shall appoint and be represented by as many~~

~~members of the Operating Committee as is obtained by dividing the aggregate Voting Shares of the Parties in each group by 3, and rounding the result to the nearest integer. There shall be no less than one (1) committee member representing each group during the first five (5) years following the commencement of operations by the ISO. After the initial five (5) year period, a committee member representing one (1) of the groups with aggregate Voting Shares of less than 1.5 percent of the aggregate Voting Shares of all Parties may participate in the meetings of the Operating Committee but may not vote, except that this provision shall not apply to those committee members representing Parties that have met the ISO Board's criteria for participation in the ISO as a Non-Market Participant.~~ [Parties shall be represented by a fixed number of Members from the Industry Sector Group described below that best describes their primary function. The Industry Sector Groups are as follows: Members representing Transmission Owners will exercise eight votes, Members representing Wholesale Parties will exercise eight votes, Members representing Retail Parties will exercise eight votes, and a Member representing Environmental Parties will exercise one vote.

The total number of votes; the allocation of eight votes to each of the three Industry Sector Group and one vote to a Member representing Environmental Parties, and the methodology for the selection of Members will remain as specified in this Agreement unless modified by the ISO Board in accordance with the authority provided in Article 19.

The selection of Members may be done on a Committee-by-Committee basis using the methods provided in this Article. The same individual or Party need not be selected to serve as a Member on both Committees, although the same individual or Party may be selected to serve as a Member of both Committees at the same time.

#### **8.04 Quorum and Voting Rules:**

- a. The quorum required to conduct Committee business will be Members who represent seventeen votes. Seventeen affirmative votes will be required to carry a motion. To the extent practicable, provisions will be made for Members to attend and participate in committee meetings through teleconference or other methods. In addition, with reasonable safeguards, provisions will be made to permit Members not physically present at a meeting to submit paper or electronic ballots and to vote by proxy. Meetings of the Committee will be open to all Parties.
- b. Each Member will have one vote, except as otherwise provided in paragraph (d) of this Section and paragraph (a) of Section 8.06.
- c. Each Member of a Committee must be a Party to the ISO Agreement, the designated representative of a Party or Parties, or the designated representative of an entity qualified for a seat under the provisions of this Agreement.
- d. A Party may not hold more than one vote within an Industry Sector Group on a Committee unless there are fewer Parties within the Industry Sector Group than votes allocated to that Group.
- e. A Party or other entity may not be a Member in one Industry Sector Group and at the same time be a Member, or Control a Member, in another Industry Sector Group; and a Party or other entity may not Control Members in more than one Industry Sector Group.

An entity that is a Member in one Industry Sector Group or its Affiliate may, however, belong

to a group of Parties or an association that serves as an At-Large Member in the same or another Industry Sector Group, and may participate in the selection of an At-Large Member in the same or another Industry Sector Group; provided that if the entity or its Affiliate Controls a group of Parties or association that serves as an At-Large Member, the entity or its Affiliate shall be disqualified from participating in the selection of the At-Large Member unless the entity or its Affiliate ceases to Control the group of Parties or association, as the term “Control” is defined in Section 1.18 of Article 1 of this Agreement; and provided further, that an employee of a Committee Member or its Affiliate may not serve as the At-Large Member representing a group of Parties or association on the Committee.

**8.05 Selection of Members and Terms:**

**A. Transmission Owners Industry Sector Group**

- (i) Each of the existing eight Transmission Owners shall select its representative to be a Member of the Transmission Owners Industry Sector Group on each Committee.

**B. Wholesale Parties Industry Sector Group**

- (i) The eight Members of the Wholesale Parties Industry Sector Group selected to serve on the Committee will consist of five Members representing the five largest Wholesale Parties and three At-Large Members. The three At-Large Members will be selected by the Wholesale Parties that did not qualify as one of the five largest Wholesale Parties.
- (ii) The selection of the five largest Wholesale Parties will be made using the

following method:

- a. fifty (50) percent of a Wholesale Party's total weight will be based on the Wholesale Party's total kilowatt hours sold in New York State in the most recent twelve months for which there are reliable and verifiable records available, as determined by the ISO;
- b. fifty (50) percent of a Wholesale Party's total weight will be based on the Wholesale Party's total installed generating Capacity that has been installed in New York State or that has been committed to the Installed Capacity market in New York State during the same most recent twelve-month period.
- c. The Wholesale Party's final weight for Energy will be determined by dividing the Party's total kilowatt-hour sales in New York State by the total kilowatt-hour sales in New York State by all of the Wholesale Parties. The Wholesale Party's final weight for Capacity will be determined by dividing the total amount of the Wholesale Party's Capacity (in kilowatt months) by the total Capacity of all Wholesale Parties (in kilowatt months). If a generating facility of a Wholesale Party is not geographically located within New York State, the eligible Capacity of that facility will be the average of the Installed Capacity which the Wholesale Party has provided from the facility to the New York Control Area for at least the last full Capability Period.

The Wholesale Party's final weight will be the sum of the Party's final weight for energy and the Party's final weight for capacity.

- d. Any Wholesale Party seeking one of the five seats based on size may be required by the ISO to submit, subject to appropriate confidentiality protections, verified records of its Energy sales and the Capacity of its facilities.

(iii) All Wholesale Parties that have participated in the New York State wholesale electricity market during the most recent twelve months, other than the five largest Wholesale Parties, will be eligible to participate in the determination of the three At-Large Members. The determination of the three At-Large Wholesale Party Members on a Committee will be made using the following methods:

- a. Each eligible Wholesale Party may nominate itself or another eligible Wholesale Party to serve as an At-Large Member;
- b. Each eligible Wholesale Party may cast one vote;
- c. The three nominees receiving the highest number of votes, and receiving a minimum of fifteen percent of the votes cast, will be elected to the three At-Large seats on a given Committee. If fewer than three nominees are elected in the first round of voting, subsequent rounds will be held as necessary, until all three seats are filled. In the subsequent rounds, all remaining nominees not elected

in a preceding round will be eligible to participate in any further round of voting;

- d. In the last round of voting, the nominee who receives the next highest amount of votes to the last representative elected will serve as the alternate to the At-Large Members of the Wholesale Parties Group. There will be no fifteen percent voting requirement to serve as an alternate. The alternate will be able to cast one of the At-Large Wholesale Party's votes on the Committee to which the alternate is selected if a holder of an At-Large seat does not attend a meeting, does not provide for a proxy or does not meet any other requirements for representation as established by the ISO.

C. Retail Parties Industry Sector Group

1. The eight Members of the Retail Parties Industry Sector Group selected to serve on the Committee will consist of two representatives selected based on size, one At-Large representative of residential and small commercial consumers, one At-Large representative of municipal and cooperative systems, two At-Large ESCO representatives and two At-Large representatives of industrial and large commercial consumers.
2. The two Members selected based on size shall be the two Parties within the Retail Parties Group having the highest weighted vote determined by the "P" and "E" variables, as those terms are set forth and defined in Section 7.04,



each weighted fifty (50) percent. An aggregator, or formal group of aggregators, serving load in New York State may be considered as one entity for purposes of this determination.

3. One seat shall be set aside and filled by an At-Large representative of residential and small commercial consumers in New York. The Member will be selected by the ISO Board from among the Parties that qualify as organizations that represent residential and/or small commercial consumers, after consultation with those Parties. The ISO Board will select the organization that best represents residential and small commercial consumers (including farms) throughout the State, giving due consideration to the demonstrated ability of the candidate organizations to provide sufficient resources to identify and to represent the interest of such consumers before federal, state and local governmental agencies, and to coordinate with other groups having similar interest.
4. One seat shall be set aside and filled by an At-Large representative of Parties that are municipal and cooperative systems located in New York State. The Member will be selected by the municipal and cooperative systems on the basis of a “one Party-one vote” rule.
5. Two seats shall be set aside and filled by At-Large representatives of Parties that are ESCOs and that have engaged in business in New York State in the most recent period for which there are verifiable records, as determined by the

ISO Board. Such records will be subject to confidentiality provisions. One of these seats will be set aside for an At-Large representative of ESCO Parties serving the residential and small commercial (less than 500 kilowatts of peak demand) market segments in New York State, and the other seat will be set aside for an At-Large representative of ESCO Parties serving other market segments in New York State; provided that one ESCO party, or group of ESCO Parties, may not hold both seats.

ESCO Parties eligible to nominate and to participate in the election of these two Members include: i) those ESCO Parties that have been certified by the PSC to do business and have actively served retail access customers in New York State; ii) those ESCO Parties that have actively served as buyers or aggregators or agents for retail customers in New York State; and iii) those ESCO Parties that have provided comprehensive energy services to retail customers in New York State; provided, however, that no activities of an ESCO with respect to market segments other than the residential and small commercial (less than 500 kilowatts of peak demand) market segments will be considered for purposes of determining the eligibility of an ESCO to participate in the selection of an At-Large Member representing the residential and small commercial market segments, or for purposes of determining the number of votes that the ESCO is entitled to cast in the selection of an At-Large Member representing the residential and small commercial market segments. An ESCO Party that is a provider of comprehensive energy services must be certified as a performance contractor by the NYSERDA to participate in the selection process.

The initial election shall be based on data from the most recent six months for which the ISO determines reliable and verifiable data are available. Subsequent elections will be based on data from the most recent twelve months for which the ISO determines reliable and verifiable data are available.

Each ESCO Party eligible to participate in the selection of these At-Large Members by virtue of the above paragraphs may cast a single vote. In addition, an ESCO Party eligible to vote will also be entitled to cast ten (10) additional votes if, during the relevant time period established by the ISO, it has met one or more of the following three threshold criteria with respect to the market segments to be represented by the At-Large Member: (a) it provided service to more than five hundred customers in New York State; (b) it provided more than one thousand kilowatts of non-coincident peak demand served in New York; (c) it provided more than 500,000 kWh in electric energy savings in New York State during the initial six month period or, during any subsequent twelve month period selected by the ISO; or (d) it provided more than 1,000,000 kWh in electric energy or electric energy savings in New York State. Determination of energy savings will be made by the ISO based upon the NYSERDA method until such time as internal ISO records are sufficiently complete, accurate and verifiable to employ. The ISO may incorporate such methods of validation of claimed savings as the ISO determines appropriate. The responsibility of demonstrating an ESCO Party's entitlement to vote, and to additional votes, shall rest on the ESCO Party.

The candidate qualifying as serving residential and small commercial market segments that obtains the highest number of votes of all qualifying ESCOs within those market

segments will be elected as the large Member to represent those market segments. The candidate that obtains the highest number of votes of all qualifying ESCOs will be elected as the other At-Large Member; provided that it has not been selected as the At-Large Member representing ESCO's who serve the residential and small commercial market segments. An ESCO entitled to hold a seat pursuant to paragraph 2 of subdivision C of this Section by virtue of size computations will not be eligible to be one of the At-Large Members at the same time or to participate in the voting for the At-Large Members.

6. Two seats will be set aside and filled by At-Large representatives of industrial and large commercial (i.e., a peak load greater than two megawatts) electric consumers located within New York State. One seat shall be filled by a representative of the entity representing the largest total combined industrial and large commercial electrical loads "upstate," measured in total kWh for the most recent twelve month period for which the ISO determines reliable and verifiable statewide data are available. The other seat shall be filled by a representative of the entity representing the largest total combined industrial and large commercial electrical loads "downstate," measured in total kWh for the same past twelve month period. An entity may include an incorporated or unincorporated association. For these purposes, "upstate" shall consist of the preexisting electric service territories of Central Hudson, NYSEG, NMPC and RG&E (including municipal and cooperative systems located in those areas) and "downstate" shall consist of the remainder of New York State.

Each entity seeking to fill either of these seats shall be required by the ISO to submit information delineating: (i) the industrial and large commercial customers represented by the

entity: and (ii) the respective loads of each of these customers. This information will be deemed to be Confidential Information.

D. Environmental Parties Representative.

The member on the Committee representing Environmental Parties will be selected by environmental organizations that are certified by the ISO Board as non-Market Participants and have become Parties to the ISO Agreement, on a “one Party-one vote” basis.

**8.06 Review and Update of Committee Members:**

A. Transmission Owners Industry Sector Group.

1. Members within the Transmission Owners Industry Sector Group will have a term of one year and may be reappointed. If the number of Transmission Owners increases or decreases in the future, the Transmission Owners will have the responsibility and authority to develop revised procedures for the selection of Members and voting rules within the Transmission Owners Industry Sector Group; provided, however, that the total number of votes exercised by the Members within the Transmission Owners Industry Sector Group on the Committee will remain at eight.

B. Wholesale Parties Industry Sector Group

1. Members will have a term of one year and may be reelected or reappointed. However, the term of a Member may be terminated after six months in the event of a change in the identity of any of the five largest Wholesale Parties, as determined by the ISO using the procedure set forth below.

Every six months after the initial selection of the eight Wholesale Parties Group Members, the ISO shall recalculate, using updated data, the Energy and Capacity values used to determine the five largest Wholesale Parties. The data may be obtained from internal ISO sources, or publicly reported data that the ISO determines are accurate and verifiable. The ISO may also require any Party within the Wholesale Parties Group to provide information to update the energy and capacity values used to determine the election of the five Wholesale Parties Members based on size.

In the event that such recalculation using updated data results in any change in the identity of the Wholesale Parties qualified to hold the five seats based on size, the five new largest Wholesale Parties shall be selected immediately to occupy the five Wholesale Party seats based on size. A new election for the three At-Large Members also will be held and new At-Large Members also shall be selected immediately.

If the recalculation using updated data does not result in any change in the identity of the Wholesale Parties qualified to hold the five seats based on size, there will not be a new election for the At-Large seats; provided, however, that a new election process for the three At-Large seats on each Committee shall be held not later than twelve months after the preceding election.

C. Retail Parties Industry Sector Group

1. Members will have a term of one year and may be reelected or reappointed.

The selection of Members and the updating of relevant information will be conducted annually.

2. With respect to the two seats to be filled by representatives of the two entities to be selected based on size, the ISO shall recalculate annually the weight of each of

the entities eligible to fill those two seats, using the “P” and “E” formula set forth in Section 7.04.

The Member on the Committee representing residential and small commercial consumers will be appointed annually by the ISO Board.

The Members that represent Parties that are municipal and cooperative systems and the two At-Large Members that represent ESCO Parties will be elected annually.

With respect to the two seats to be filled by At-Large Members representing upstate and downstate industrial consumers and the total combined loads represented by the entities eligible to fill those seats.

#### D. Environmental Parties Representative

The selection of the Members representing Environmental Parties on the Committee will be conducted annually.]

The ISO Board may assign a member of its staff to participate in committee meetings on a non-voting basis. Any member of the committee, and the representative of the ISO, may appeal a committee action to the Management Committee. The Operating Committee shall make provisions for attendance at committee meetings by representatives of {FERC and the PSC;} [the Commission and the PSC.]

#### ~~{8.04 Voting:~~

~~Each member of the Operating Committee shall have one (1) vote. An affirmative vote of 67 percent of the Operating Committee members is needed to pass a measure.~~

#### ~~8.05 Terms of Members:~~

~~Each member of the Operating Committee shall hold office until such member is replaced by the Party or Parties that appointed the member or until such Party ceases to be a Party. A Party shall effect the replacement of its representative by written notice to the Chairman of the Committee.~~

~~8.06~~ [8.07] **Committee Procedures.**

The Operating Committee shall select members to act as chairperson ~~{and}~~[,] vice chairperson, [and secretary] that shall serve terms of one (1) year and shall be eligible for ~~{reelection}~~ [re-election]. The Operating Committee shall meet at regularly scheduled times and at such other times as the chairperson may determine.

An executive session of the Operating Committee may be called at the discretion of the chairperson, or upon a vote of ~~{67}~~ [sixty-seven (67)] percent of the members of the committee.

~~{8.07}~~ [8.08] **Confidential Information.**

The Operating Committee shall develop procedures to deal with Confidential Information.

**ARTICLE 9: BUSINESS ISSUES COMMITTEE**

**9.01 Scope of Responsibilities.**

The responsibilities of the Business Issues Committee shall include the following:

~~{= establishment}~~ [a. Establishment] of procedures related to the efficient and non-discriminatory operation of electricity markets centrally coordinated by the ISO, including procedures related to bidding, Settlements and the calculation of market prices;

~~{= development}~~ [b. Development] of procedures related to the implementation of the



commercial aspects associated with the procedures developed by the Operating Committee;

~~{=development}~~ [c. Development] of procedures related to the commercial aspects of the ISO's operations;

~~{=formation}~~ [d. Formation] of uniform standards and procedures for the bidding, scheduling, and financial Settlement of bulk power transactions consistent with the Reliability Rules and with the provisions of the ISO ~~{Tariff}~~ [Tariffs], the ISO/NYSRC Agreement, the ~~{ISO/TP}~~ [ISO/TO] Agreement, and this ISO Agreement;

~~{=establishing}~~ [e. Establishment], subject to the review and approval or modification of the Management Committee, [of] policies and procedures related to the maintenance of sufficient working capital to fund the operations of the ISO, and the establishment of credit arrangements and accounts with financial and commercial institutions, including banks; [and

f.]~~{=}~~ Any additional responsibilities assigned by the Management Committee.

Procedures adopted by the Business Issues Committee will be implemented by the staff of the ISO unless suspended or overruled by the Management Committee or ISO Board. In carrying out its responsibilities, the Business Issues Committee shall seek input and recommendations from ISO staff.

**9.02 ~~{Appointment of Members.Each Party with a Voting Share, as defined in Article 7, of 3 percent or more, or with TDF Ownership Shares in excess of 100~~**

~~circuit miles rated at 115 kV or above, shall appoint one (1) member}~~

**[Representation on the Business Issues Committee.**

The composition] of the Business Issues Committee [will be subject to the same rules and requirements as those applicable to the Operating Committee, under Section 8.03.

**9.03 Quorum and Voting Rules.**

The quorum and voting rules for the Business Issues Committee will be the same as those applicable to the Operating Committee, under the provisions of Section 8.04.

**9.04 Selection of Members and Terms.**

The rules with respect to the selection of Members of the Business Issues Committee and their terms shall be the same as those applicable to the Operating Committee, under the provisions of Section 8.05.

**9.05 Review and Update of Committee Members.**

The rules with respect to the review and update of] {

~~Parties that do not qualify to appoint a member of this committee shall be represented by the industry sector group described below that best describes their primary function. The industry sector groups are as follows:~~

- ~~1) A group consisting of Parties that are engaged in the NYCA principally in the business of owning or operating Generators and selling the output of such Generators.~~
- ~~2) A group consisting of Parties that are engaged in the NYCA principally in the business of supplying Energy, Capacity and/or Ancillary Services to retail customers.~~

~~3) A group consisting of those Parties that are engaged in the NYCA principally in the business of buying and selling Energy, Capacity, and/or Ancillary Services in the Wholesale Market, other than those Parties engaged principally in the business of owning or operating Generators.~~

~~4) A group consisting of Parties that are municipally owned or cooperatively owned utilities in the NYCA.~~

~~5) A group consisting of Parties that are large industrial or commercial customers with a peak load for any month in the most recent twelve (12) month period that is equal to or greater than five (5) megawatts within the NYCA.~~

~~6) A group consisting of Parties that meet the criteria established by the ISO Board for participating in the ISO as a Non-Market Participant.~~

The Parties in each of these industry groups shall appoint and be represented by as many } members of the Business Issues Committee [shall be the same as those applicable to the Operating Committee, under the provisions of Section 8.06.] {as is obtained by dividing the aggregate Voting Shares of the Parties in each sector group by 3, and rounding the result to the nearest integer. There shall be no less than one (1) committee member representing each industry sector group during the first five (5) years following the commencement of operations by the ISO. After the initial five (5) year period, a committee member representing one (1) of the groups with aggregate Voting Shares of less than 1.5 percent of the aggregate Voting Shares of all Parties may participate in meetings of the Business Issues Committee but may not vote, except that this provision shall not apply to those committee members representing Parties that have met the ISO

~~Board's criteria for participating in the ISO as a Non-Market Participant.~~

~~The Business Issues Committee shall consist of a minimum of fourteen (14) members, appointed pursuant to the provisions of this Article. For the first five (5) years following commencement of operations by the ISO, new members may be added on a quarterly basis. After the fifth year, new members will be added on an annual basis.~~

~~The ISO Board may assign a member of its staff to participate in committee meetings on a non-voting basis. Any member of the Committee, and the representative of the ISO, may appeal a committee action to the Management Committee. The Business Issues Committee shall make provisions for attendance at committee meetings by representatives of FERC and the PSC.~~

#### ~~9.03 Voting.~~

~~Each member of the Business Issues Committee shall have one (1) vote. An affirmative vote of 67 percent of the Business Issues Committee members is needed to pass a measure.~~

#### ~~9.04 Terms of Members.~~

~~Each member of the Business Issues Committee shall hold office until such member is replaced by the Party which appointed the member or until such Party ceases to be a Party.~~

~~A Party shall effect the replacement of its representative by written notice to the chairman of the committee.~~

#### ~~9.05 Committee Procedures.}~~

The Business Issues Committee shall select members to act as chairperson ~~{and}~~[,] vice chairperson [and secretary], that shall serve terms of one (1) year and shall be eligible for reelection.

The Business Issues Committee shall meet at regularly scheduled times and at such other times as the

chairperson may determine.

An executive session of the Business Issues Committee may be called at the discretion of the chairperson, or upon a vote of ~~{67}~~ [sixty-seven (67)] percent of the ~~{members}~~ [Members] of the ~~{committee}~~ [Committee].

#### **9.06 Confidential Information.**

The Business Issues Committee shall develop procedures to deal with Confidential Information.

### **ARTICLE 10: DISPUTE RESOLUTION**

#### **10.01 Overview.**

The ISO Board shall establish a Dispute Resolution Process ~~{("DRP")}~~ [("DRP")] and shall retain a Dispute Resolution Administrator ("DRA") to manage the DRP.

In administering the DRP, the DRA shall be responsible for the following:

- a. maintaining lists of qualified arbitrators and mediators, and updating these lists annually;
- b. scheduling, administering, and facilitating the DRP;
- c. responding to written disputes in a timely manner consistent with the time limits specified in the ISO [OATT and the ISO Services] Tariff;
- d. determining whether written disputes are subject to non-binding mediation or arbitration;
- e. maintaining records of all dispute resolutions and making these records available for

inspection subject to the rules of confidentiality described in the ISO ~~{Tariff}~~ [Tariffs] and this Agreement; and

- f. providing supervision of the dispute resolution processes and developing appropriate procedures which will further the fair and equitable resolution of disputes.

The DRA shall establish and, from time to time, update a list of qualified arbitrators and mediators. Qualified arbitrators and mediators shall be knowledgeable in matters regarding the planning and operation of interconnected electric systems and in relevant regulatory policies and requirements. The list of arbitrators and mediators may be subdivided by the DRA into categories of disputes in which an arbitrator or mediator has expertise. The list of arbitrators and mediators can also include names supplied by the American Arbitration Association. The DRA may, from time to time, arrange for appropriate training for potential arbitrators and mediators.

#### **10.02 Submission of a Dispute.**

Any dispute between or among a Market Participant(s), a ~~{Direct}~~ Customer, and/or the ISO involving transmission or other services under the ISO ~~{Tariff}~~ [Tariffs] shall be presented directly to a senior representative of each of the parties to the dispute for resolution on an informal basis as promptly as practicable.

In the event the designated representatives are unable to resolve the dispute by mutual agreement within thirty (30) days such dispute may be submitted to the DRA. The party submitting the matter to the DRA shall include a written statement describing the nature of the dispute and the issues to be resolved. Any subsequent mediation or arbitration process shall be limited to the issues

presented for resolution.

Within thirty (30) days, the DRA shall decide whether the dispute should be referred to: (1) non-binding mediation; or (2) arbitration.

### **10.03 Referral of a Dispute To Mediation or Arbitration.**

The DRA may submit disputes to non-binding mediation where the subject matter of the dispute involves the proposed change or modification of an ISO procedure, rate, Service Agreement, or ISO Tariff provision. The DRA may submit disputes to arbitration which involve the interpretation of an ISO ~~procedure~~ [Procedure], rate, Service Agreement, or ISO Tariff provision. Both the mediator and the arbitrator shall have the authority to dismiss a dispute if:

1. The dispute did not arise under the ISO Agreement or the ISO [OATT or the ISO Services] Tariff; or
2. The claim is de minimis.

### **10.04 Non-Binding Mediation.**

If the DRA refers the dispute to non-binding mediation, the following procedure will apply:

1. The DRA shall have ten (10) days from the date of such referral to distribute a list of ten (10) qualified mediators to the disputing parties.
2. Absent the express written consent of all disputing parties, no person shall be eligible for selection as mediator that is a past or present officer, employee or consultant to any of the disputing parties, or of any entity related to or affiliated with any of the disputing parties or has an interest in the matter to be mediated. Any individual desig-

nated as mediator shall make known to the disputing parties any such disqualifying relationship or interest and a new mediator shall be designated.

3. If the disputing parties cannot agree upon a mediator, the disputing parties shall take turns striking names from a list supplied by the DRA with a disputing party chosen by lot striking the first name. The last remaining name shall be designated as the mediator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected that is able and willing to serve.
4. The disputing parties shall attempt in good faith to resolve their dispute in accordance with the schedule established by the mediator. In no event may the schedule extend beyond ninety (90) days from the date of appointment of the mediator.
5. The mediator may require the disputing parties to:
  - a. submit written statements of issues and positions;
  - b. meet for discussions;
  - c. provide expert testimony and exhibits; and
  - d. comply with the mediation procedures designated by the ~~{DRC}~~ [DRA] and/or the mediator.
6. If the disputing parties have not resolved the dispute within ninety (90) days of the date the mediator was appointed, the mediator shall promptly provide the disputing parties and the ~~{DRC}~~ [DRA] with a written, confidential, non-binding



recommendation to resolve the dispute. The recommendation shall include an assessment by the mediator of the merits of the principal positions being advanced by each of the parties to the dispute.

7. The parties to the dispute shall then meet in a good faith attempt to resolve the dispute in light of the ~~{mediator's}~~ [mediator's] recommendation. This recommendation shall be limited to resolving the specific issues presented for mediation.
8. If the disputing parties are still unable to resolve the dispute:
  - a. any dispute not involving the proposed change or modification of a ISO Procedure, rate, Service Agreement, or [an] ISO Tariff provision may be referred to the arbitration process described below; or
  - b. any disputing party may resort to regulatory or judicial proceedings as provided under the ISO [OATT or the ISO Services] Tariff; and
  - c. the recommendation of the mediator and any statement made by any party during the mediation process shall not be admissible for any purpose in any subsequent proceeding.
9. Each party to the dispute will bear a pro rata share of the costs associated with the time, expenses, and other charges of the mediator. Each party shall bear its own costs, including attorney and expert fees.

#### **10.05 Arbitration.**

If the DRA or the mediator refers the dispute to binding arbitration, then the following procedure will ~~(be)~~ apply:

1. The DRA shall have ten (10) days from the date of such decision to distribute a list of qualified arbitrators to the disputing parties.
2. Absent the express written consent of all disputing parties, no person shall be eligible for selection as an arbitrator that is a past or present officer, employee of or consultant to any of the disputing parties, or of an entity related to or affiliated with any of the disputing parties, or has an interest in the matter to be arbitrated. Any individual designated as an arbitrator shall make known to the disputing parties any such disqualifying relationship or interest and a new arbitrator shall be designated.
3. If the disputing parties cannot agree upon an arbitrator, they shall take turns striking names from a list of ten qualified individuals supplied by the ~~{DRC}~~ [DRA] with a party chosen by lot striking the first name. The last remaining name shall be designated as the arbitrator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected that is able and willing to serve.
4. The arbitrator shall have no power to modify or change any agreement, tariff or rule, or otherwise create any additional rights or obligations for any party. The scope of the ~~{arbitrator's}~~ [arbitrator's] decision shall be limited to the issues presented for arbitration.

5. The arbitrator shall determine discovery procedures, intervention rights, how evidence shall be taken, what written submittals may be made, and other procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed, and the extent to which the credibility of witnesses is relevant to a resolution. Each disputing party shall produce all evidence determined by the arbitrator to be relevant to the issues presented. To the extent such evidence involves proprietary or Confidential Information, the arbitrator may issue an appropriate protective order which shall be complied with by all disputing parties. The arbitrator may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.
6. The arbitrator shall consider all issues underlying the dispute, and shall take evidence submitted by the disputing parties in accordance with procedures established by the arbitrator and may request additional information including the opinion of recognized technical bodies or experts. Disputing parties shall be afforded a reasonable opportunity to rebut any such additional information.
7. Absent an agreement to the contrary by all disputing ~~{Parties}~~ [parties], no person or entity that is not a party to the dispute shall be permitted to intervene.
8. Within ninety (90) days of the appointment of the arbitrator, and after providing the Parties with an opportunity to be heard, the arbitrator shall render a written decision, including findings of fact and the legal basis for the decision. The arbitrator will follow

the Commercial Arbitration Rules of the American Arbitration Association.

9. Under the following circumstances, the decision of the arbitrator shall be final and binding on the parties:
  - a. all parties agree that the decision will be binding; or
  - b. the dispute involves a claim that a party owes another party a sum of money less than \$500,000.
10. If the arbitrator concludes that no proposed ~~{Award}~~ [award] is consistent with this ISO Agreement, the FPA and ~~{FERC's}~~ [the Commission's] then-applicable standards and policies, or would address all issues in dispute, the arbitrator shall develop a compromise solution consistent with the terms of this Agreement. A written decision explaining the basis for the ~~{Award}~~ [award] shall be provided by the arbitrator to the parties and the ~~{DRC.}~~ [DRA.] No ~~{Award}~~ [award] shall be deemed to be precedential in any other arbitration related to a different dispute.
11. All costs associated with the time, expenses and other charges of the arbitrators shall be borne by the unsuccessful party. Each party shall bear its own costs, including attorney and expert fees.
12. ~~{Any arbitration decision that affects matters subject to the jurisdiction of FERC under the FPA may be filed with FERC}~~ [All arbitration decisions shall be filed with the Commission]. Any arbitration decision that affects matters subject to the jurisdiction of the PSC under the New York State Public Service Law may be filed

with the PSC.

13. The judgment of the arbitrator may be entered on the ~~{Award}~~ [award] by any court in New York having jurisdiction. Within one (1) year of the arbitral decision, a party may request that ~~{FERC}~~ [the Commission] or any other federal, state, regulatory or judicial authority (in the state of New York) having jurisdiction over such matter vacate, modify, or take such other action as may be appropriate with respect to any arbitration decision that is:

- a. based upon an error of law;
- b. contrary to the statutes, rules, or regulations administered by such authority;
- c. violative of the Federal Arbitration Act or Administrative Dispute Resolution Act;~~or~~

†

- d. based on conduct by an arbitrator that is violative of the Federal Arbitration Act or Administrative Dispute Resolution Act[; or
- e. ~~involves a dispute in excess of \$500,000.]~~.

†

14. Nothing in this Article shall restrict the rights of any party to file a complaint or a rate, tariff, or other contract change with ~~{FERC}~~ [the Commission] under the relevant provisions of the Federal Power Act.

15. No arbitrator shall render an Award which requires the transmission of electricity

under circumstances where the ~~{FERC}~~ [Commission] is precluded from ordering Transmission Services pursuant to FPA Section 212(h).

## **ARTICLE 11: RELATIONSHIP OF THE ISO AND MARKET PARTICIPANTS**

### **11.01 Service Agreements.**

Consistent with the terms of the ISO [OATT and the ISO Services] Tariff, the ISO will enter into non-discriminatory Service Agreements with all ~~{Direct}~~ Customers, ~~{Power Exchanges,}~~ Market Participants and Transmission Customers seeking to obtain ~~{Transmission}~~ [Eligible] Service [or other ISO services] on the NYS ~~{Transmission}~~ [Power] System.

### **11.02 Scheduling Transactions and Invoicing.**

~~{The parties seeking}~~ [Except for] Transmission Service [on the Northport-Norwalk intertie, the parties seeking service under the ISO Tariffs] will submit schedules to the ISO and schedule transactions with and through the ISO. [LIPA will be the only party authorized to submit schedules to the ISO for Transmission Service on the Northport-Norwalk intertie.] The ISO will render invoices [and Settlement information] to the various parties [consistent with the provisions of the ISO OATT and the ISO Services Tariff. All parties seeking Transmission Service into and out of the Long Island Transmission District shall obtain pre-approval from LIPA before scheduling transactions with and through the ISO. LIPA shall electronically certify to the ISO pre-approved customers and transactions. If a party or transaction is not so pre-approved and certified by LIPA and the party submits a schedule for such a transaction to the ISO, the ISO shall reject the schedule and advise such party that it must obtain LIPA approval].

## **ARTICLE 12: RELATIONSHIP BETWEEN THE ISO AND THE NYSRC**

### **12.01 Compliance with Reliability Rules.**

The Incorporating Parties have separately created an NYSRC, which shall establish, and monitor the compliance with~~{,}~~ its Reliability Rules.

### **12.02 Implementation of Reliability Rules.**

The ISO shall implement the Reliability Rules and shall [cooperate with the Transmission Owners with respect to those Reliability Rules implemented by the Transmission Owners. The ISO shall] maintain the safety and short-term reliability of the NYS Power System in accordance with the Reliability Rules and in accordance with the ISO/NYSRC Agreement and the ~~{ISO/TP}~~ [ISO/TO] Agreement.

### **12.03 Audit.**

The ISO shall allow the NYSRC to review and audit the ISO's compliance with the Reliability Rules. Upon a request from the NYSRC, the ISO will provide sufficient information and data to the NYSRC to demonstrate that the ISO is in compliance with the Reliability Rules.

### **12.04 Disputes.**

Disputes between the ISO and the NYSRC with respect to the implementation or terms of a Reliability Rule or a Local Reliability Rule shall be resolved in accordance with the ISO/NYSRC Agreement.

## **ARTICLE 13: ~~{OPEN ACCESS SAME-TIME INFORMATION SYSTEM}~~ [OASIS AND OTHER NOTIFICATION REQUIREMENTS]**

The ISO shall establish and operate an OASIS which shall be available to all Market Participants at a reasonable cost. ~~{At a minimum, the OASIS will provide the information required in FERC's Revised OASIS Standards and Protocols Document issued September 10, 1996, in Docket No. RM95-9-000. The OASIS will be used by the ISO to meet FERC's}~~ [The ISO shall satisfy regulatory] requirements to make information available to all Market Participants on a same-time, non-discriminatory basis [subject to any regulatory waiver]. Additionally, network models, or the results of certain studies, may be required from time to time to be available for download by Market Participants.

Market Participants will be required to communicate all information to the ISO ~~{and/or to their power exchanges, if appropriate,}~~ that is necessary for the ISO to dispatch their resource or ~~{load. The}~~ [Load using the OASIS. As part of the OASIS, the] ISO shall establish and operate an exchange mechanism using an electronic technology to process the bids.

## **ARTICLE 14: SALE OF TRANSMISSION CONGESTION CONTRACTS**

### **14.01 Primary Sales.**

Transmission Congestion Contracts ("TCCs") ~~{will}~~ [shall] be sold in the primary market by either a centralized auction process or directly by the individual Transmission ~~{Providers}~~ [Owners] in a non-discriminatory manner.

### **14.02 Secondary Sales.**

TCCs may be offered, resold, and assigned on a secondary market, either in their entirety or subdivided. ~~{The Primary Holder of the TCC retains all liability for payments unless the purchaser}~~



~~provides similar surety and the assignment is accepted by the ISO.~~

#### **14.03 Auction Bids.**

The TCC ~~{Auction}~~ [auction] bids will be made in accordance with the ISO ~~{Tariff}~~ [OATT].

#### **14.04 Market Clearing Prices.**

Each winning bidder in the ~~{Auction}~~ [auction] shall pay the Market Clearing Price for the TCCs ~~{allocated to each defined delivery path}~~. The total revenues received from the sale of TCCs, the Market Clearing Prices, and the entities awarded TCCs shall be posted on OASIS.

#### **14.05 Revenues Remitted.**

Any and all revenue received from the sale of ~~{TCCs}~~ [a TCC] shall be remitted to the ~~{owners}~~ [Primary Owner of the TCC or the owner] of the applicable transmission assets.

## **ARTICLE 15: TAX-EXEMPT FINANCING**

### **15.01 Tax-Exempt Financing Pursuant to Section 142(f) of IRC.**

Except for Section 15.05, this Article is applicable only to Transmission ~~{Providers}~~ [Owners] that have financed facilities for the local furnishing of electricity as described in Section 142(f) of the Internal Revenue Code (“Local Furnishing ~~{Bonds}~~ [Bond]”). Notwithstanding any other provision of the ISO Agreement or [an] ISO Tariff, neither the ISO nor a Transmission ~~{Provider}~~ [Owner] shall be required to provide Transmission Service [or any other service] to any Customer pursuant to ~~{the}~~ [an] ISO Tariff if the provision of such Transmission Service [or other service] would result in the loss of tax-exempt status of any Local Furnishing Bonds used to finance the Transmission ~~{Provider’s}~~ [Owner’s] facilities.

Notwithstanding any other provision of this Agreement, no Transmission ~~{Provider}~~ [Owner] shall be required to accept or consent to any request, recommendation, or decision, including, without limitation, a recommendation or a decision of an Arbitrator, or to build any facilities or to take any action, including, without limitation, the providing of Transmission Service [or any other service], or to enter into any agreement if, in the sole judgment of such Transmission ~~{Provider}~~ [Owner], such request, recommendation, decision, facilities, action, Transmission Service or agreement might reasonably be expected to result in litigation related to the tax-exempt status of the Local Furnishing Bonds or any other tax-exempt debt obligation, or might reasonably be construed to adversely affect or bring into question the tax-exempt status of interest on bonds or other obligations issued by or for the benefit of such Transmission ~~{Provider}~~ [Owner], or adversely affect or bring into question the

ability of such Transmission ~~{Provider}~~ [Owner] to deduct interest payments or to access the benefits of tax-exempt financing in the future.

#### **15.02 Alternative Procedures for Requesting Transmission Service.**

- a. If a Transmission ~~{Provider}~~ [Owner] determines that the provision of Transmission Service to be provided under the ISO ~~{Tariff}~~ [OATT] would jeopardize the tax-exempt status of any Local Furnishing Bonds, the Transmission ~~{Provider}~~ [Owner] shall advise the ISO within thirty (30) days of receipt of a Completed Application by an Customer requesting such service, or the date on which the ISO ~~{Tariff}~~ [OATT] becomes effective.
- b. If a Customer thereafter renews its request for the same Transmission Service referred to in (a) by tendering an application under Section 211 of the FPA, the Transmission ~~{Provider}~~ [Owner], within ten (10) days of receiving a copy of the Section 211 request, will waive its right to receive a request for service under Section 213(a) of the FPA. The Commission, upon receipt of the Transmission ~~{Provider's}~~ [Owner's] waiver of its right to a request for service under Section 213(a) of the FPA, shall issue an Order under Section 211 of the FPA. Upon issuance of the Order under Section 211 of the FPA, the ISO and the Transmission ~~{Provider}~~ [Owner] shall be required to provide the requested Transmission Service in accordance with the terms and conditions of the ISO Tariff.

**15.03{ Effectiveness of Agreement.**

~~This Agreement shall not become effective until the Internal Revenue Service issues a Letter Ruling that, in the opinion of the Transmission Provider's Bond Counsel, which shall be a nationally recognized bond counsel, participation in the ISO, NYSRC, and any power exchange as set forth in the various tariffs and agreements establishing the ISO, NYSRC, and any power exchange will not adversely affect the tax-exempt status of any bonds or other obligations issued by those Transmission Providers seeking such Letter Ruling, nor adversely affect the ability of such Transmission Providers to deduct interest payments, nor adversely affect the ability of such Transmission Providers to issue future tax-exempt obligations.~~

**15.04} Section 211 Order.**

The provision of Transmission Service under the ISO {Tariff} [OATT] shall also constitute the provision of Transmission Service pursuant to an Order by {FERC} [the Commission] under Section 211 of the {Federal Power Act} [FPA] with respect to the transmission of electricity on Con Edison's and {LILCO's} [LIPA's] transmission systems.

**{15.05} [15.04] Tax-Exempt Financing Pursuant to Section 103 and related provisions of Internal Revenue Code.**

This provision is applicable only to NYPA which has financed transmission facilities with the proceeds of bonds issued pursuant to Section 103 and related provisions of the Internal Revenue Code ("Government Bonds"). Notwithstanding any other provision of the ISO [OATT] Tariff, neither the ISO nor NYPA shall be required to provide Transmission Service to any Market

Participant pursuant to the ISO ~~{Tariff}~~ [OATT] if the provision of such Transmission Service would result in the loss of the tax-exempt status of any Government Bonds or impair NYPA's ability to issue future tax-exempt obligations.

~~{15.06}~~ [15.05]      **Responsibility of Costs Associated With Loss of Tax-Exempt Status.**

If, by virtue of an order issued by the ~~{FERC}~~ [Commission] pursuant to Section 211 of the FPA, the ISO or a Transmission ~~{Provider}~~ [Owner] is required to provide Transmission Service that would adversely affect the tax-exempt status of a Transmission ~~{Provider's}~~ [Owner's] Local Furnishing Bonds or any other tax-exempt debt obligations, then the Market Participant receiving such Transmission Service will compensate the Transmission ~~{Provider}~~ [Owner] for all costs, if any, associated with the loss of tax-exempt status plus the normal costs of Transmission Service.

**[15.06] Transmission Service Effects on Tax-Exempt Financing by LIPA**

This provision is applicable only to LIPA which has financed transmission facilities with the proceeds of LIPA's tax-exempt bonds issued pursuant to the Internal Revenue Code. Notwithstanding any other provisions of the ISO OATT or the ISO Services Tariff, neither the ISO nor the Transmission Owner shall be required to provide transmission service to any Customer pursuant to an ISO Tariff if the provisions of such Transmission Service would result in loss of tax-exempt status of any tax-exempt bonds or impair LIPA's ability to issue future tax exempt obligations. If, by virtue of an order issued by the Commission pursuant to Section 211 of the FPA, the ISO or a Transmission Owner is required to provide Transmission Service that would adversely

affect the tax-exempt status of LIPA's tax-exempt bonds or any other tax-exempt debt obligations, then the Customer receiving such Transmission Service will compensate LIPA for all costs, if any, associated with the loss of tax-exempt status of LIPA's tax-exempt bonds on such other tax exempt obligations plus the normal costs of Transmission Service.]

## **ARTICLE 16: PENALTIES FOR NON-PERFORMANCE**

### **16.01 ISO Rights and Obligations.**

In the event that a Transmission ~~{Provider}~~ [Owner], Generator, marketer, or ~~{Load Serving Entity}~~ [LSE] should perform, or fail to perform, or fail to follow the ~~{ISO's}~~ [ISO's] instructions or orders in such a way as to violate a Reliability Rule, or otherwise to endanger the reliability of the NYS Power System, the [ISO] Board ~~{of Directors of the ISO}~~ shall have the right and obligation to take appropriate action and assess appropriate penalties against the offending entity, as set forth below.

### **16.02 ISO Actions and Penalties.**

The actions and/or penalties that may be assessed by the ISO shall be set forth in the ISO ~~{Tariff}~~ [Tariffs] and/or relevant contracts.

### **16.03 ~~{FERC}~~ [Commission] Filings.**

The ISO shall make a filing with ~~{FERC}~~ [the Commission] as to the penalties that it may assess against any Market Participant or ~~{party}~~ [Party]. The ISO may petition ~~{FERC}~~ [the Commission] and/or any court of competent jurisdiction to enforce these sanctions.

### **16.04 Dispute Resolution Process.**

Any Market Participant or ~~{party}~~ [Party] upon which a penalty is imposed under this Article may treat it as a dispute and utilize the Dispute Resolution Process set forth in Article ~~{11}~~ [10] of this Agreement.

## **ARTICLE 17: FINANCIAL SETTLEMENTS**

### **17.01 Settlement Procedures.**

The ISO shall implement such Settlement ~~[and billing]~~ procedures as necessary to implement the provisions of the ISO ~~{Tariff}~~ [Tariffs].

### **17.02 Settlement Records and Bills.**

Settlement records will be maintained, prepared, and disseminated by ISO personnel. Within five (5) business days after the first day of each month, the ISO shall provide Settlement ~~{information}~~ [and billing information to customers who take service under an ISO Tariff consistent with the Settlement and billing provisions of the applicable Tariff]. Bills for charges made under the ISO ~~{Tariff}~~ [Tariffs] shall be paid directly to the ~~{party}~~ [Party] designated by the ISO, or into an account maintained by the ISO for such purposes by the first banking day common to all ~~{parties}~~ [Parties] after the nineteenth day of the month. Payments for bills related to Bilateral Transactions will be settled by the ~~{parties}~~ [Parties] to the transactions.

### **17.03 Financial Obligations after Withdrawal and Termination.**

Any financial obligation incurred by a {party} [Party] under this Article prior to withdrawal by the {party} [Party] from this Agreement or prior to the termination of this Agreement pursuant to Article 3 herein shall remain due and owing subsequent to such withdrawal or termination. The ISO Board and the {party} [Party] or {parties} [Parties] to which the obligation is owed retain all legal rights and authority to recover such amounts.

### **17.04 Facilitation of Settlements.**

The ISO shall facilitate [or perform (as required by the ISO OATT or the ISO Services Tariff)] the Settlement of financial transactions between and among the various {power exchanges, Direct} Customers and other Market Participants{,} receiving [or providing] services pursuant to the ISO {Tariff} [Tariffs], and the ISO. Settlements shall include, without limitation, the provision of necessary information to facilitate collection and disbursement of moneys associated with ISO Tariff charges and payments, payments to the Transmission {Providers} [Owners], payments related to the sale of TCCs, and charges associated with ISO operational costs. The ISO also shall facilitate the financial Settlement of any Congestion Rents.

~~{The ISO will collect and/or disburse funds only as necessary when other methods of clearing transactions are not appropriate, as determined by the ISO Board.~~

### **17.05 Transmission Provider} [17.05 Transmission Owner] Rights.**

Nothing in this Agreement shall affect the right of individual Transmission {Providers} [Owners] to directly bill and collect the revenues associated with their individual TSCs.

## **ARTICLE 18: TRANSMISSION SYSTEM EXPANSION**



~~{The ISO will be responsible for the following types of transmission planning and expansion functions:}~~ **[18.01 Transmission System Expansion ]**

~~{18.01 Analysis of Transmission Expansion Options as Requested by Market Participants:~~

- a. ~~If requested by a Market Participant, the ISO staff will perform a transmission expansion study to assess system reliability impacts of a potential transmission project to determine whether the project would meet all applicable reliability criteria.~~
- b. ~~The ISO staff also will identify changes in Interface Transfer Capability resulting from the project.~~
- c. ~~The ISO staff will prepare reports covering the above analyses, subject to rules and guidelines established in advance by the Operating Committee.~~
- d. ~~The ISO will charge a cost-based fee for this service.~~
- e. ~~Nothing in this Agreement shall prevent Market Participants from conducting their own studies, or contracting with a third party for such studies, using publicly available data provided by the ISO together with other appropriate sources of data}~~ **[The ISO will exercise the responsibilities with respect to transmission system expansion set forth in the ISO OATT. The ISO Operating Committee will have the primary role in the implementation of the ISO's transmission system expansion responsibilities. The ISO will not have the authority to order a Transmission Owner to construct new facilities or to modify existing facilities].**

**18.02 Confirmation That Proposed Projects Meet Reliability Standards.**

- a. Transmission projects proposed by Transmission ~~{Providers}~~ **[Owners]** and projects proposed by other Market Participants, including generation, that impact Interface Transfer Capability, shall be submitted to the ISO Operating Committee to confirm

that all applicable reliability criteria would be met.

- b. The ISO Operating Committee analysis will include identification of changes in Interface Transfer Capability resulting from the project and measures that might mitigate reduction in Transfer Capability.
- c. The ISO staff will prepare reports covering the above analyses, with Transmission ~~{Provider}~~ [Owner] support and participation, for Operating Committee review and approval.
- d. ~~{Local distribution utilities}~~ [Transmission Owners and municipal electric systems] will evaluate the impact of transmission expansion proposals on local reliability.

### **18.03 Compilation of a New York State Transmission Plan.**

- a. The ISO will compile a consolidated New York State Transmission Plan (the “Plan”) [as described in the ISO OATT,] which will be comprised of all transmission projects proposed by Transmission ~~{Providers}~~ [Owners], as well as projects proposed by other Market Participants, that are found to meet all applicable criteria and include appropriate Transfer Capability mitigation measures, and that have pending applications for construction permits or approvals.
- b. The Plan shall be compiled in coordination with the transmission systems of neighboring ~~{ISO}~~ [ISOs, Control Areas,] and Canadian systems.
- c. The Plan shall conform with applicable NYSRC standards, in accordance with ~~{procedures}~~ [ISO Procedures] detailed in ~~{NYISO}~~ [ISO] manuals.
- d. The Plan will be compiled by the ISO staff, with Transmission ~~{Provider}~~ [Owner]

support and participation, for Operating Committee review and approval.

**18.04 Assessment of the Overall Reliability of the New York State Transmission System.**

- a. The ISO will conduct planning and reliability assessments of the NYS Transmission Plan in accordance with the Reliability Rules.
- b. The overall security and adequacy of the NYS Transmission System will be assessed to ensure conformance with NERC, NPCC, and NYSRC planning criteria.
- c. The ISO Operating Committee will participate in inter-regional studies and assessments to ensure the interconnected systems are planned and developed on a coordinated basis to preserve reliability.
- d. The ISO staff, with Transmission ~~{Provider}~~ [Owner] support and participation, will prepare reliability assessments for Operating Committee review and approval.

**18.05 Preparation of Actual Congestion Information.**

- a. The ISO, upon formation, will compile actual Power Flows and Congestion Cost information for all New York ~~{Transmission}~~ [transmission] Interfaces, including those with neighboring systems. This information will include histograms of hourly MW flows and congestion costs and total monthly Congestion Costs by Interface.
- b. The ISO staff will publish reports covering this information, subject to [audits.]  
~~{accuracy audits.}~~

~~18.06 Development of Transmission Reinforcement Options:~~

- ~~a. At the request of the PSC, the ISO will develop a limited number of illustrative transmission~~

~~reinforcement options to increase Transfer Capability Limits on Interfaces identified by the PSC as having significant Congestion Costs. Development of such illustrative options will not reflect the impacts of alternatives that may be proposed by Market Participants, including generation projects, which could increase or decrease transmission Interface Transfer Capability as well as Congestion Costs.~~

~~b. "Order of magnitude" cost estimates (based on readily available data) of these options will be provided.~~

~~c. The overall impact on the Transfer Capability of each transmission Interface will be estimated for each transmission reinforcement option.~~

~~d. The ISO staff will prepare these studies, with Transmission Provider support and participation, for Operating Committee review and approval. The studies will be made available to all Market Participants.~~

~~e. There will be no charge to the PSC for this service.~~

~~f. The ISO does not have the authority to order a Transmission Provider to construct new facilities, or to modify its existing facilities.~~

**ARTICLE 19: AMENDMENT OF THIS AGREEMENT AND [THE] ISO {TARIFF}  
[TARIFFS]**

**19.01 Modifications.**

Without waiving or limiting any rights of the Incorporating Parties under this Agreement, the {ISO/TP} [ISO/TO] Agreement or the ISO/NYSRC Agreement, the Parties agree that this Agreement{, the ISO Tariff, and the ISO Filing Definitions Document only as it pertains to this Agreement and/or the ISO Tariff,} [the ISO OATT, and the ISO Services Tariff ]may be modified only upon:

- a. submission of the proposed amendment to the ISO Management Committee and the ISO Board;
- b. approval of the proposed amendment by both the ISO Management Committee and the ISO Board; and
- c. approval or acceptance for filing of the amendment by {FERC} [the Commission] (and/or any other regulatory body with jurisdiction thereof), subject to the following requirements:
  - (i) If the ISO Board and the ISO Management Committee both agree to an amendment of this Agreement or {the} [an] ISO Tariff, the ISO shall file the proposed amendment with {FERC} [the Commission] pursuant to Section 205 of the Federal Power Act. Nothing herein is intended to limit the rights of any Party or other person to oppose the filing of such proposal to amend this Agreement or {the} [an] ISO Tariff.

- (ii) If the ISO Board and Management Committee do not agree on a proposed amendment to this Agreement or ~~the~~ [an] ISO Tariff, the ISO Board, the Management Committee or any ~~party~~ [Party] or other person shall have the right to ~~submit the proposed amendment to FERC pursuant to Section 206 of the Federal Power Act~~ [make application to the Commission for a change in rates, terms, conditions, charges or classifications of service, provision of additional new Ancillary Services, Service Agreement, rule or regulation under the FPA and pursuant to the Commission's rules and regulations promulgated thereunder]. Nothing herein is intended to limit the rights of any Party or other person to oppose the filing of such proposal to amend this Agreement or ~~the~~ [an] ISO Tariff.

### **19.02 FPA Section 206 Filings.**

Subject to Section 19.01, nothing in this Agreement shall be construed in any way as affecting the rights of any party to make a filing with ~~FERC~~ [the Commission] pursuant to Section 206 of the Federal Power Act.

### **19.03 Proposed Amendments.**

All proposed amendments to the ISO Agreement must be filed with ~~FERC~~ [the Commission].

## **ARTICLE 20: ADDITIONAL CONDITIONS**

### **20.01 Recovery Under State-Approved Tariffs.**

Nothing in this ISO Agreement shall preclude any party from recovering under its

PSC-approved [or other lawfully established] electric service tariffs the costs associated with the sale or delivery of electric Capacity or Energy to customers served under such ~~{State-approved}~~ tariffs.

#### **20.02 Recovery of Start-Up and Development Costs.**

As provided for in the ~~{ISO/TP}~~ [ISO/TO] Agreement, as soon as practicable, the ISO shall reimburse the Transmission ~~{Providers}~~ [Owners] for all costs associated with the start-up and establishment of the ISO. Such costs shall include, but are not limited to, the costs associated with: the transfer of the current NYPP Energy Control Center buildings and facilities to the ISO ~~{, and}~~ start-up and development costs, including but not limited to software development and licensing costs, project development costs, and regulatory costs.

#### **20.03 Assumption of Existing Obligations.**

As provided for in the ~~{ISO/TP}~~ [ISO/TO] Agreement, the ISO shall assume all existing contractual and other obligations of the NYPP. If the ISO decides to take action to terminate any such contract or obligation, it will bear any costs related thereto. The ISO shall utilize the current facilities and equipment of the NYPP and retain NYPP employees to the greatest extent practicable.

### **ARTICLE 21: REGULATORY JURISDICTION**

~~{Nothing}~~ [Subject to Section 19.01, nothing] in this Agreement shall restrict the rights of the Parties to file a complaint with or submit any action to ~~{FERC}~~ [the Commission] or any other appropriate regulatory authority under relevant provisions of the Federal Power Act or other relevant statutory provisions, nor shall anything in this Agreement affect the jurisdiction of ~~{FERC}~~ [the Commission] or any other regulatory authority over matters arising under this Agreement.

### **ARTICLE 22: ASSIGNMENT**

**22.01 Limitations on Assignment.**

Except as specifically provided in Section 22.02 hereof, this Agreement may not be assigned or otherwise transferred by any of the Parties without the express prior written consent of the ISO Board which consent shall not be unreasonably withheld or delayed. Any person to which an assignment or transfer is made shall be required to demonstrate, to the reasonable satisfaction of the ISO Board, that it is capable of fulfilling the requirements of this Agreement, and such assignee shall pay all costs and expenses, including reasonable attorney fees, in connection with such assignment. Unless otherwise expressly provided in a written instrument approved by the [ISO] Board in connection with the consummation of such assignment or transfer, any such assignment or other transfer by a Party of any of its rights and obligations under this Agreement shall not release, or in any way modify, the assigning or transferring party's liability for the performance of its obligations hereunder.

**22.02 Assignment.**

Notwithstanding the provisions of Section 22.01 of this Agreement, the Parties hereby consent to the assignment of this Agreement by any Incorporating Party:

- a. to any entity or entities pursuant to a plan of restructuring approved by the PSC in conjunction or compliance with, or in furtherance of, the PSC restructuring as outlined in PSC Case No. 94-E-0952, and Opinion 96-12 issued in such proceeding or any related order; or
- b. to any entity or entities in connection with a merger, consolidation, reorganization, or other change in organizational structure of the assigning Incorporating Party



provided that the surviving entity(ies) agree, in writing, to be bound by the terms of this Agreement.

## **ARTICLE 23: INDEMNIFICATION**

### **23.01 Indemnification.**

The ISO shall indemnify, save harmless and defend a Transmission {Provider} [Owner] including its directors, officers, employees, trustees, and agents, or each of them, from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, [exemplary or] punitive damages and economic costs) and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by a Transmission {Provider} [Owner] in any actions or proceedings between a Transmission {Provider and } [Owner and another Transmission Owner,] a third party, Market Participant, the ISO, or any other party) arising out of or related to the Transmission {Provider's} [Owner's] or the ISO's acts or omissions related in any way to performance under the ISO [Services] Tariff, the {ISO/TP} [ISO/TO] Agreement, the NYSRC Agreement, the ISO/NYSRC Agreement, or this Agreement, except to the extent a Transmission {Provider} [Owner] is found liable for gross negligence or intentional misconduct.

### **23.02 Survival.**

The provisions of this Article 23 shall survive the termination of this ISO Agreement.

## **ARTICLE 24: CLAIMS BY EMPLOYEES AND INSURANCE**

The ISO shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any workers' compensation law. The

ISO shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

Additionally, the ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the ISO carrying out its obligations, including the obligation to indemnify the Transmission ~~{Providers}~~ [Owners]. The ISO shall provide the Transmission ~~{Providers}~~ [Owners] with the details of such insurance and shall have them named as additional insureds to the extent of their insurable interests.

## **ARTICLE 25: LIMITATION OF LIABILITY**

### **25.01 Limitation of Liability of ISO.**

For the purpose of this Section, the term Market Participant shall not include a Transmission ~~{Provider}~~ [Owner] either in its role as a Transmission ~~{Provider}~~ [Owner] or in its role as a Market Participant. Subject to [the provisions of] Article 23, the ISO shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to any Market Participant or any third party for [any] damages whatsoever, including without limitation, direct, incidental, consequential, punitive, special[, exemplary] or indirect damages resulting from any act or omission in any way associated with this Agreement, except in the event that the ISO is found liable for gross negligence or intentional misconduct, in which case the ISO will not be liable for any incidental, consequential, punitive, special, exemplary, or indirect damages[; provided, however, that the liability of the ISO related services provided under the ISO OATT shall be governed by the provisions of the ISO OATT].

### **25.02 Limitations of Liability of Transmission ~~{Providers}~~ [Owners].**

A Transmission {Provider} [Owner] shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO, any Market Participant, any third party, or any other Party, for any damages whatsoever, including without limitation, direct, incidental, consequential, punitive, special[, exemplary] or indirect damages resulting from any act or omission in any way associated with this Agreement, except to the extent that the Transmission {Provider} [Owner] is found liable for gross negligence or intentional misconduct, in which case the Transmission {Provider} [Owner] shall not be liable for any incidental, consequential, punitive, special, exemplary, or indirect damages[; provided, however, that the liability of a Transmission Owner related to services provided under the ISO OATT shall be governed by the provisions of the ISO OATT].

## **ARTICLE 26: OTHER PROVISIONS**

### **26.01 Governing Law[;] Jurisdiction.**

The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement was made and performed entirely in New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State Courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

### **26.02 Headings.**

The section headings herein are for convenience and reference only, and in no way define or limit the scope of this ISO Agreement or in any way affect its provisions. Whenever the terms hereto,

hereunder, herein or hereof are used in this ISO Agreement, they shall be construed as referring to this entire ISO Agreement, rather than to any individual section, subsection, or sentence.

**26.03 Mutual Agreement.**

Nothing in this ISO Agreement is intended to limit the ~~{Parties}~~ [Parties'] ability to mutually agree upon taking a course of action different than that provided for herein, provided that doing so will not adversely affect any other ~~{Parties}~~ [Parties'] rights under this Agreement.

**26.04 No Third Party Rights.**

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

**26.05 Not Partners.**

Nothing contained in this Agreement shall be construed to make the Parties partners or joint venturers or to render any Party liable for the debts or obligations of any other Party.

**26.06 Waiver.**

Any waiver, at any time, of the rights of any Party as to any default on the part of any other Party or Parties to this Agreement, or as to any other matter arising hereunder, shall not be deemed a waiver as to any default or other matter subsequently occurring.

**26.07 Contract Supremacy.**

In the case of a conflict between the terms of this Agreement and the terms of the ~~{ISO/TP}~~ [ISO/TO] Agreement, the terms of the ~~{ISO/TP}~~ [ISO/TO] Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of ISO/NYSRC Agreement, the terms of the ISO/NYSRC Agreement shall prevail.

**26.08 Force Majeure.**

A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected party.

**26.09 Counterparts.**

This Agreement may be executed in counterparts.

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

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

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

Date: \_\_\_\_\_

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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

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

Date: \_\_\_\_\_

~~{LONG ISLAND LIGHTING COMPANY}~~ [LIPA]

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

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

Date: \_\_\_\_\_

NEW YORK STATE ELECTRIC & GAS CORPORATION

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

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

Date: \_\_\_\_\_

NIAGARA MOHAWK POWER CORPORATION

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

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

Date: \_\_\_\_\_

ORANGE AND ROCKLAND UTILITIES, INC.

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

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

Date: \_\_\_\_\_

~~{POWER AUTHORITY OF THE STATE OF NEW YORK}~~ [ROCHESTER GAS AND  
ELECTRIC CORPORATION]

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

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

Date: \_\_\_\_\_

~~{ROCHESTER GAS AND ELECTRIC CORPORATION}~~ [POWER AUTHORITY OF THE  
STATE OF NEW YORK]

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

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

Date: \_\_\_\_\_



**AGREEMENT BETWEEN NEW YORK  
INDEPENDENT SYSTEM OPERATOR AND  
TRANSMISSION {PROVIDERS} [OWNERS]**

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**AGREEMENT BETWEEN  
NEW YORK INDEPENDENT SYSTEM OPERATOR  
AND  
{NEW YORK} TRANSMISSION {PROVIDERS} [OWNERS]**

This Agreement is made as of the {~~21~~} [ ] day of \_\_\_\_\_, {1997} [1999], by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., {~~Long Island Lighting Company,~~} New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., {and} Rochester Gas and Electric Corporation (referred to collectively as the “Investor-Owned Transmission {Providers}” and) [Owners”), the] Power Authority of the State of New York {“NYPA”} (the ~~Investor-Owned Transmission Providers and NYPA are~~) (“NYPA”), a corporate municipal instrumentality of the State of New York, and LIPA (a subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York) (herein referred to collectively as the {“Transmission Providers”} [“Transmission Owners”]) and the New York Independent System Operator {“ISO”} [“ISO”], a not-for-profit corporation. The Transmission {Providers} [Owners] and the ISO are herein referred to collectively as the {“} Parties. {“}

WITNESSETH: [

] WHEREAS, the Investor-Owned Transmission {Providers} [Owners] established the New York Power Pool {“NYPP”} [“NYPP”] by agreement made as of the 21st day of July, 1966, and

NYPA subsequently joined NYPP on October 11, 1967[, and LIPA joined the NYPP on May 28, 1998]; and

WHEREAS, the Transmission ~~{Providers}~~ [Owners] have ~~{individually}~~ created, invested in and operated the interconnected transmission facilities in New York State and each Investor-Owned Transmission ~~{Provider}~~ [Owner] has fiduciary responsibilities to assure, among other things, the receipt of adequate ~~{~~ revenues to maintain the facilities, a reasonable rate of return on ~~{their}~~ [its] transmission facilities, and [to] provide for recovery of the capital invested in ~~{their Transmission}~~ [its transmission] facilities; and

WHEREAS, the ~~{ISO's}~~ [ISO's] principal mission is to maintain the integrity and reliability of the interconnected transmission facilities of the Transmission ~~{Providers}~~ [Owners], which will require the ISO to exercise Operational Control of ~~{some of}~~ the transmission facilities of the Transmission ~~{Providers}~~ [Owners], referred to as ~~{“Transmission”}~~ [“Transmission”] Facilities Under ISO Control, ~~{”}~~ [”] and will further require the ISO, among other things, to function as the successor to NYPP with respect to certain NYS Power System operational activities heretofore conducted by NYPP; and

WHEREAS, the Investor-Owned Transmission ~~{Providers}~~ [Owners] have legal obligations to provide safe and reliable service to the public, including assuring suitable use of their individual transmission facilities to attain and maintain compliance with this obligation; and

WHEREAS, the Transmission ~~{Providers}~~ [Owners] will continue to own, physically operate, modify, and maintain the Transmission Facilities Under ISO Operational Control[, ] and the Investor-Owned Transmission ~~{Providers}~~ [Owners] will continue to have fiduciary obligations to their investors to protect their transmission facilities and to protect their investors from liability that

may result from the operation of those facilities;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties do hereby agree with each other, for themselves and their successors and assigns, as follows:

## **ARTICLE 1.0: DEFINITIONS**

~~{The ISO Filing Definitions Document, as it exists on the date it is filed with FERC, is}~~

**[1.01]** The definitions contained in Article 1 of the Independent System Operator Agreement (“ISO Agreement”) as it existed on the date this Agreement is signed by the Parties are] hereby incorporated by reference in {its} [their] entirety into this Agreement. [Modifications to such definitions under the ISO Agreement shall apply to this Agreement, only if the Parties to this Agreement agree in writing pursuant to Section 6.14 below.]

## **ARTICLE 2.0: RESPONSIBILITIES OF THE TRANSMISSION {PROVIDERS} [OWNERS]**

**2.01 Transmission Facilities.** The Transmission {Providers} [Owners] have specified transmission facilities over which the ISO will have day-to-day Operational Control. These facilities shall be collectively known as the {“Transmission”}[“Transmission] Facilities Under ISO Operational Control,{”}[“] and are listed in Appendix A-1. The Transmission {Providers} [Owners] also will be responsible for providing notification to the ISO with respect to actions related to other specified {Transmission} [transmission] facilities. These facilities shall be collectively known as {“Transmission”}[“Transmission] Facilities Requiring ISO Notification,{”}[“] and are listed in Appendix A-2. Transmission facilities may be added to, or deleted from, the lists of facilities provided in Appendices A-1 and A-2 by mutual written agreement of the ISO and the Transmission {Provider} [Owner] owning and controlling such

facilities. A current version of such list will be posted on the ISO's OASIS.

**2.02 Transmission System Operation.** Each Transmission ~~{Provider}~~ [Owner] shall operate and maintain its facilities that are designated as Transmission Facilities Under ISO Operational Control and Transmission Facilities Requiring ISO Notification in accordance with the terms of this Agreement and in accordance with all Reliability Rules and all other applicable operating instructions, and ISO ~~{procedures.}~~ [Procedures. The Operating Committee of the ISO will promulgate procedures to provide for the assumption of authority by the Transmission Owners' control centers to respond to an Emergency. These procedures shall provide for the coordination of such response with the ISO. The procedures will provide that, in situations where immediate action is required, the Transmission Owners' control centers will have the authority to take actions, including without limitation, the following:

1. exercising control over facilities listed in Appendix A-1 of this Agreement and generating units;
2. starting quick start generation and the adjustment of generation;
3. re-energizing transmission facilities following breaker trips;
4. implementing emergency Load Shedding and voltage reduction measures and subsequent restoration;
5. voltage/VAR control during an Emergency;
6. changing ratings of transmission facilities; and
7. taking other measures consistent with Good Utility Practice that are required to respond to the Emergency.

Until the Operating Committee promulgates such procedures, the

Transmission Owners will exercise the above responsibilities during an Emergency.]

**2.03 Local Area Transmission System Facilities.** Transmission {System} [system] facilities not designated as Transmission Facilities Under ISO Operational Control or as Transmission Facilities Requiring ISO Notification shall be collectively known as "Local Area Transmission System Facilities." Each Transmission {Provider} [Owner] shall have sole responsibility for the operation of its {""} Local Area Transmission System Facilities, {""} provided, however, that such operation by each Transmission {Provider} [Owner] shall not compromise the reliable and secure operation of the NYS Transmission System. Each Transmission {Provider} [Owner] shall promptly comply to the extent practicable with a request from the ISO to take action with respect to coordination of the operation of its Local Area Transmission System Facilities.

**2.04 Safe Operations.** Notwithstanding any other provision of this Agreement, a Transmission {Provider} [Owner] may take such action with respect to the operation of its facilities as it deems necessary to maintain Safe Operations. [To ensure Safe Operations, all Transmission Owner local operating rules shall govern the connection and disconnection of generation with transmission facilities. Safe Operations include the application and enforcement of rules, procedures and protocols that are intended to ensure the safety of personnel operating on performing work or tests or transmission facilities.]

**2.05 Local Control Center[, Metering and Telemetry].** Each Transmission {Provider} [Owner] shall operate, or arrange for a suitable third party to operate, on a twenty-four (24) hour basis, a suitable control center, and shall install and maintain all other

~~{required}~~ equipment and facilities ~~{necessary}~~ [reasonably required] for the ISO to exercise Operational Control over Transmission Facilities Under ISO Operational Control. Operation of the NYS Power System will be a cooperative effort coordinated by the ISO control center in conjunction with each Transmission ~~{Provider's}~~ [Owner's] control center and will require ~~{instantaneous exchange of all scheduling information. Each Transmission Provider}~~ [the exchange of all reasonably necessary information. The Transmissions Owners' control centers must provide the ISO with Supervisory Control and Data Acquisition ("SCADA") information on facilities listed in Appendices A-1 and A-2 as well as on certain generation resources in their Transmission Districts.

- a. Each Transmission Owner shall have the responsibility for providing metering data in its Transmission District to the ISO, unless other parties are authorized by the appropriate regulatory authority to provide metering data. Each Transmission Owner shall be responsible for collecting and making available to the ISO billing quality metering data and any other information for the Transmission District required by the ISO for billing purposes. The Parties agree that the metering and data acquisition systems currently in place will be acceptable for initial ISO operation. The Transmission Owner shall cooperate with the ISO in implementing reasonable metering enhancements and new metering installations that the ISO may deem necessary, provided that mechanisms satisfactory to each Transmission Owner are in place for their recovery of all associated costs. Each Transmission Owner] shall continue to



receive †

†telemetry from existing Generators in its ~~{control area}~~ [Transmission District] and provide for the receipt of such information from new Generators. ~~{Each Transmission Provider}~~ [Automatic Generation Control (“AGC”) will be implemented via each Transmission Owner’s control center. Each Transmission Owner shall operate its control center to comply with current AGC procedures, as well as any revised or new AGC procedures reasonably adopted by the ISO. In addition, each Transmission Owner shall provide backup control services to the ISO in the event the ISO’s computer systems malfunction. In such situations, Bid curves will be made available to the Transmission Owners’ control centers to facilitate the continued economic operation of the system. Each Transmission Owner] will maintain a strict Code of Conduct to prevent such information from reaching any ~~{generation Affiliate it may have.}~~ [unauthorized person or entity.]

~~{2.06}~~ [b. The Transmission Owners’ control centers shall review the Security Constrained Unit Commitment (“SCUC”) results as determined by the ISO as well as other components of the ISO's Day-Ahead operating plan. Each Transmission Owner’s control center will have the authority to direct the commitment of additional Generators or make other changes to the Day-Ahead operating plan, as may be required, to ensure the reliability of the system. This authority will be subject to audit by the ISO.

**2.06 SCUC Adjustments.** A Transmission Owner may request commitment of additional Generators (including specific output level(s) if it determines that an additional Generator is needed to ensure local area reliability in accordance with the Local Reliability Rules. The ISO will use Supplemental Resource Evaluation (“SRE”) to

fulfill a Transmission Owner's request for additional units.

**2.07] Design, Maintenance and Rating Capabilities.** Each Transmission ~~{Provider}~~ [Owner] shall comply with the provisions of this Agreement and all Reliability Rules, ISO ~~{operating procedures}~~ [Procedures], and Good Utility Practice with respect to the design, maintenance and rating of capabilities of NYS Transmission System facilities.

~~{2.07}~~ **[2.08] Maintenance Scheduling.** The Transmission ~~{Providers}~~ [Owners] shall schedule maintenance of their facilities designated as Transmission Facilities Under ISO Operational Control and schedule any outages (other than forced transmission outages) of said transmission system facilities in accordance with outage schedules approved by the ISO. The Transmission ~~{Providers}~~ [Owners] shall comply with maintenance schedules coordinated by the ISO, pursuant to this Agreement, for Transmission Facilities Under ISO Operational Control. ~~{The}~~ [Each] Transmission ~~{Provider will also}~~ [Owner shall] be responsible for providing notification of maintenance schedules to the ISO for Facilities Requiring ISO Notification.

~~{(See ISO Tariff, Attachment D.)}~~

~~2.08]~~ **[2.09] Investigations and Restoration.** Each Transmission ~~{Provider}~~ [Owner] shall promptly conduct investigations of equipment malfunctions and failures and forced transmission outages in a manner consistent with applicable FERC, PSC, NRC, NERC, NPCC and NYSRC rules, principles, guidelines, standards and requirements, ~~{~~ ISO Procedures and Good Utility Practice. Each Transmission ~~{Provider}~~ [Owner] shall supply the results of such investigations to the NYSRC, the ISO and the other Transmission ~~{Providers.}~~ [Owners.] Each Transmission ~~{Provider}~~ [Owner] shall determine the level of resources to be

applied to restore facilities to service following a failure, malfunction, or forced transmission outage.  
[Following a total or partial system interruption, restoration shall be coordinated between the ISO  
and the Transmission Owners' control centers. The Transmission Owners' control centers shall have  
the authority, in coordination with the ISO, to restore the system and to re-establish service if doing  
so would minimize the period of service interruption.]

**2.10] {2.09} Information and Support.** The Transmission {Providers} [Owners] shall obtain from the ISO and the ISO shall provide to the Transmission {Providers} [Owners] the necessary information and support services to comply with their obligations under this Article.

### **ARTICLE 3.0: RESPONSIBILITIES OF THE ISO**

**3.01 Operation and Coordination.** The ISO shall direct the operation of, and coordinate the maintenance scheduling of, certain facilities of the NYS Power System, including coordination with control centers maintained by the Transmission {Providers} [Owners] in accordance with the Reliability Rules, as follows:

- a. Assuming responsibility for Control Area operations of the NYS Power System previously performed by NYPP;
- b. Performing balancing of {generation} [Generation] and Load while ensuring the safe, reliable and efficient operation of the NYS Power System; {and

†

- c. Exercising Operational Control over certain facilities of the NYS Power System under normal operating conditions and system Emergencies to maintain system reliability; and

d. Coordinating the NYS Power System equipment outages and maintenance [and maintaining]†.

e. ~~Maintaining~~† the safety and short ~~(-)~~term reliability of the NYS Power System.

**3.02 Tariff Administration.** The ISO shall administer the ISO [OATT and the ISO Services] Tariff in accordance with ~~(its)~~ [their] provisions and the provisions of the ISO ~~(Agreement, the ISO/NYSRC Agreement, the NYSRC Agreement and this Agreement.)~~ [Related Agreements.]

~~{3.03}~~ **[3.03 Amendment of ISO Tariffs.** Notwithstanding any other provisions in the Agreement, the ISO OATT and the ISO Services Tariff may be modified only upon:

- a. submission of the proposed amendment to the ISO Management Committee and the ISO Board;
- b. approval of the proposed amendment by both the ISO Management Committee and the ISO Board; and
- c. approval or acceptance for filing of the amendment by any regulatory body with jurisdiction thereof, including the Commission.

The above stated conditions are subject to the following requirements:

- a. If the ISO Board and the ISO Management Committee both agree to an amendment of an ISO Tariff, the ISO shall file the proposed amendment with the Commission pursuant to Section 205 of the Federal Power Act. Nothing herein is intended to limit the rights of any person to oppose the filing of such proposal to amend an ISO Tariff.
- b. If the ISO Board and the ISO Management Committee do not agree

on a proposed amendment of a Tariff, the ISO Board, the Management Committee or any other person shall have the right to commence a proceeding pursuant to Section 206 of the Federal Power Act. Nothing herein is intended to limit the rights of any person to oppose the filing of such a Section 206 filing.

Subject to the foregoing provisions, nothing in this Agreement shall be construed in any way as affecting the rights of any person to make a filing with the Commission pursuant to Section 206 of the Federal Power Act.

**3.04] Granting of Authority.** The ISO responsibilities set forth in Article 3 of this Agreement, are granted by each Transmission ~~{Provider}~~ [Owner] to the ISO only so long as each of the conditions set forth below is met and continues to be met throughout the term of this Agreement:

- a. The ISO fully implements all Reliability Rules including, without limitation, requiring all Market Participants to maintain appropriate levels of Installed Capacity and Operating Capacity, consistent with [the ISO OATT, the ISO Services Tariff and] all Reliability Rules;
- b. The ISO has a FERC-accepted transmission tariff(s) which provide(s) for full recovery by each of the Investor-Owned Transmission ~~{Providers}~~ [Owners] of its Annual Transmission Revenue Requirement, NTAC[, the annual transmission revenue requirement of LIPA,] and any Stranded Investment Recovery Charge approved or accepted by FERC~~{;}~~[.]

~~{c. The ISO has a FERC-accepted transmission tariff (s) which provide(s) for~~

~~full recovery by NYPA of its Annual Transmission Revenue Requirement;~~

~~d.~~ [c.] The ISO does not materially and adversely affect the right of any Transmission ~~{Provider}~~ [Owner] concerning transitional arrangements set forth in the ISO ~~{Tariff}~~ [Tariffs], pertaining or relating to Existing Transmission Agreements ~~{and Existing Transmission Capacity for Native Load}~~ which are in effect at the commencement of ISO operations;

~~e. The Internal Revenue Service issues to}~~ [d.] Con Edison, ~~{LILCO}~~ [LIPA] and NYPA ~~{rulings}~~ [have] adequate~~{,}~~ [assurance] in the opinion of each such entity, ~~{to assure}~~ [of] the continued tax-exempt status of ~~{the relevant}~~ [their respective tax-exempt] bonds, ~~{to confirm}~~ [of] the ability of such Investor-Owned Transmission ~~{Providers}~~ [Owners] to deduct interest payments[,], and ~~{to assure}~~ [of] the ability of ~~{such}~~ [the] Transmission ~~{Providers}~~ [Owners] to secure future tax-exempt financing;

~~f.~~ [e]. PSC and FERC approvals [are rendered] in form and substance acceptable to ~~{the}~~ [each] Investor-~~{owned}~~ [Owned] Transmission ~~{Provider}~~ [Owner,] that ~~{provides}~~ [provide] a reasonable opportunity [for each Investor-Owned Transmission Owner] to recover prudent and verifiable expenditures and commitments made pursuant to its legal obligations;

~~g.~~ [f]. The ISO does not act in violation of PSC or FERC Orders;

~~h. The ISO maintains tariff provisions that address liability and}~~ [g.

The ISO does not file a request under Section 205 of FPA to revise the provisions in

the ISO Services Tariff related to] indemnification and limitation of liability  
{containing the language set forth in Appendix B of this Agreement, }[;]

{i} [h]. Additions to the NYS Transmission System remain the  
responsibility of the Transmission {Providers} [Owners],  
consistent with FERC and PSC requirements and subject to  
review by the ISO;

{j} [i]. The ISO does not have a financial interest in any commercial  
{transactions} [transaction] involving the use of the NYS Power  
System or any other electrical system;

{k} [j]. The ISO does not modify any provisions of the ISO [OATT  
or the ISO Services] Tariff so as to require, directly or indirectly,  
involuntary wheeling to end-users or in a sham wholesale transaction  
(as defined in the FPA Section 212(h));

{and

{l} [k]. The ISO does not take any action or fail to take any action [in a manner] that would be  
inconsistent with the provisions of this Agreement or the ISO/NYSRC Agreement{.} [;]

{3.04} [l]. The ISO distributes revenues from the collection of  
transmission charges to the Transmission Owner in a timely  
manner; and

m. The ISO diligently evaluates and ensures the creditworthiness  
standards of the ISO, the ISO OATT and the ISO Services Tariff.

**3.05] Collection and Billing.** {Upon request by a Party entitled to revenue from wholesale  
transmission system-related financial activities, the ISO shall act as agent for the

~~requesting Party in the collection and/or billing of those revenues. Such transmission system-related financial activities shall include, without limitation}~~ [The ISO shall facilitate and/or perform the billing and collection of revenues related to services provided by the ISO pursuant to the terms of the ISO OATT and the ISO Services Tariff. The ISO shall facilitate and/or perform billing and collection with respect to the following]:

- a. Transmission Congestion Contract sales revenues;
- b. Congestion Rent and revenues;
- c. Modified Wheeling Agreement charges and revenues;
- d. Transmission Service Charges and revenues;
- e. LBMP Transition Period Payments and revenues;
- f. Ancillary Service charges and revenues;
- g. Energy sales and revenues;
- h. Installed Capacity costs and revenues;
- i. NYPA Transmission Adjustment Charges and revenues; ~~and~~

†

- j. Transmission Usage Charges and revenues[; and]{.}

~~{3.05 NYPA Annual}~~[k. The Rate Schedule 1 charges of the ISO OATT and ISO Services Tariff including the collection of revenues owed to the ISO Clearing Account and bad debts.

**3.06 NYPA Annual Transmission] Revenue Requirement.** This Agreement is premised on NYPA recovering its full annual [transmission] revenue requirement. This is to be



achieved through a mechanism known as the NTAC. NYPA will submit its annual revenue requirement for FERC approval. NYPA will be entitled to receive from the ISO the difference between its FERC-approved revenue requirement and the sum of revenues it collects from contracts and from TSCs associated with its current transmission system. The ISO will credit any TCC revenues associated with NYPA's facilities and allocate the remainder on a kWh basis to all transmission Load the ISO serves. ~~{NYPA's}~~ [NYPA's] recovery pursuant to NTAC is limited as described in Attachment ~~{C}~~ [H] to the ~~{Tariff}~~ [ISO OATT]. This Agreement is further premised on each Investor-Owned Transmission ~~{Provider}~~ [Owner] being able to fully recover NTAC charged to its transmission and retail customers and that any necessary regulatory approvals for such full recovery will be granted by the PSC and FERC.

~~{3.06}~~ [3.07] **Proposed ~~{Transmission System}~~ [Material] Modifications [to the NYS Power System]**. The ISO shall establish procedures to evaluate the impact of any proposed [material] modifications to the ~~{transmission system in New York State}~~ [NYS Power System]. If the ISO or a Transmission ~~{Provider}~~ [Owner] determines that a proposed modification will have a negative impact on system reliability or on total Interface ~~{Transfer Capability}~~ [transfer capability] over an Interface or Interfaces, the ISO or the Transmission ~~{Provider}~~ [Owner] may refer the issue ~~{to the PSC}~~ for resolution pursuant to procedures comparable to those set forth in Article 5 of the ISO/NYSRC Agreement. However, the approval of the NYSRC or the ISO shall not be required to submit the issue to the PSC for resolution. [This Section does not and shall not be deemed to expand the obligations of the

Transmission Owner to modify or expand its transmission system beyond: (a) those obligations it contractually assumes; or (b) the requirements of the FPA.

**3.08] {3.07} OASIS.** The ISO shall maintain the OASIS for the Transmission {Providers,} [Owners'] direct sale of TCCs{,} and the Centralized TCC Auction as described in the ISO {Tariff.} [OATT.]

**{3.08} [3.09] Transmission {Provider} [Owner] Reimbursement and Assumption of Existing Obligations.** As soon as practicable, [or no later than a date to be mutually agreed upon by the Parties,] the ISO shall reimburse the Transmission {Providers} [Owners] for all costs associated with the start-up and establishment of the ISO. Such costs shall include, but are not limited to, the costs associated with: the transfer of the current NYPP {Energy} Control Center buildings and facilities to the ISO; and start-up and development costs, including but not limited to software development and licensing costs, project development costs, and regulatory costs.

The ISO shall assume all existing contractual and other obligations of the NYPP. If the ISO decides to take action to terminate any such contract or obligation, {and} [or its] assumption of existing obligations, it will bear any costs related thereto. The ISO shall utilize the current facilities and equipment of the NYPP and retain NYPP employees to the greatest extent practicable.

**{3.09} [3.10] Retention of {non} [Non]-Transferred Obligations.** Any and all other rights and responsibilities that have not been specifically transferred to the ISO under {Article 3.0 of} this Agreement will remain with the Transmission {Providers-

{Owners.

**3.11 LIPA Scheduling Procedures.** LIPA shall develop and file with the ISO procedures

that will be implemented by LIPA on a nondiscriminatory basis. The procedures shall cover: (a) LIPA's scheduling of transactions on the Northport-Norwalk intertie; (b) submitting such schedules to the ISO by the ISO's deadline for submitting schedules; (c) developing a preapproved list of transactions that the ISO may schedule and list of Transmission Customers that may withdraw Energy from and inject Energy into the Long Island Transmission District; and (d) any additional procedures required for LIPA to coordinate transaction scheduling with the ISO. LIPA will be the only party authorized to submit schedules to the ISO for Transmission Service on the Northport-Norwalk intertie. All parties seeking Transmission Service into and out of the Long Island Transmission District shall obtain pre-approval from LIPA before scheduling transactions with and through the ISO. LIPA shall electronically certify to the ISO pre-approved customers and transactions. If a party or transaction is not so pre-approved and certified by LIPA and such party submits a schedule for such a transaction to the ISO, the ISO shall reject the schedule and advise such party that it must obtain LIPA approval.]

#### **ARTICLE 4.0: ASSIGNMENT**

**4.01 Limitations of Assignment by the ISO.** This Agreement cannot be assigned by the ISO.

**4.02 Transmission {Provider} [Owner] Assignments.** This Agreement may be assigned by any Transmission {Provider} [Owner] including, without limitation, to:

- a. any entity(ies) formed pursuant to a plan of restructuring approved by the PSC in conjunction or compliance with or in furtherance of PSC Case No. 94-E-0952 Opinion 96-12 and/or other related orders; or

- b. any entity(ies) in connection with a merger, consolidation, reorganization or other change in the organizational structure of the assigning Transmission {Provider} [Owner], provided that the surviving entity(ies) agree, in writing, to be bound by the terms of this Agreement.

## **ARTICLE 5.0: LIMITATION OF LIABILITY AND INDEMNIFICATION**

**5.01 Limitations of Liability.** {The} [Except as otherwise provided under the ISO OATT, the] Transmission {Providers} [Owners] shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO or any Market Participant or any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive[, exemplary] or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the Transmission {Provider} [Owner] is found liable for gross negligence or intentional misconduct, in which case the Transmission {Provider} [Owner] shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages.

**5.02 Additional Limitations of Liability.** {In no event shall} [Except as otherwise provided under the ISO OATT,] a Transmission {Provider} [Owner shall not] be liable for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost revenues or profits, the cost of replacement power or the cost of capital, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any

exclusive or other remedy.

**5.03 Indemnification.** The ISO shall indemnify, save harmless and defend the Transmission ~~{Providers}~~ [Owners], including their directors, officers, employees, trustees, and agents, or each of them, from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, [exemplary or] punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the Transmission ~~{Providers}~~ [Owners] in any actions or proceedings between ~~{the}~~ [one or more] Transmission ~~{Providers}~~ [Owners and one or more Transmission Owners] and a third party, Market Participant, the ISO, or any other party) arising out of or related to the Transmission ~~{Provider's}~~ [Owner's] or the ~~{ISO's}~~ [ISO's] acts or omissions related in any way to performance under the ISO [Services] Tariff, the ISO Agreement, the ISO/NYSRC Agreement, NYSRC Agreement, or this Agreement, except to the extent the Transmission ~~{Provider(s)}~~ [Owner(s)] is found liable for gross negligence or intentional misconduct.

~~5.04 Survival. The provisions of this Article, "Limitations of Liability and Indemnification," shall survive the termination or expiration of this Agreement or the ISO Tariff.~~

~~5.05 Force Majeure.~~ A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act,

omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such ~~{Party's}~~ [Party's] reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental,

military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected party.

~~{5.06}~~ **[5.05] Claims by Employees and Insurance.** A Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any ~~{workers'}~~ [workers'] compensation law. A Party shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement. Additionally, the ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the ISO carrying out its obligations, including the obligation to indemnify the Transmission ~~{Providers}~~ [Owners]. The ISO shall provide the Transmission ~~{Providers}~~ [Owners] with the details of such insurance and shall have them named

as additional insureds to the extent of their insurable interests.

**[5.06 Survival.** The provisions of this Article, "Limitations of Liability and Indemnification" shall survive the termination or expiration of this Agreement or the ISO Tariffs.]

## **ARTICLE 6.0: OTHER PROVISIONS**

**6.01 Term and Termination.** This Agreement shall become effective upon the execution of this Agreement by the Transmission ~~{Providers}~~ [Owners] and the ISO and on the latest of ~~{(i) the first of the month that is at least sixty (60) days after the latest of}~~ [(i) ]the date(s) FERC accepts for filing, without condition or material modification: (a) this Agreement; (b) the ISO ~~{Tariff}~~ [Tariffs]; (c) the ISO Agreement; ~~{and}~~ (d) the NYSRC Agreement~~{,}~~ [; and] (e) the ~~{ISO-NYSRC}~~ [ISO/NYSRC] Agreement~~{,}~~ ~~(collectively, the~~ [{"ISO Tariffs"}] and [{"ISO Related} Agreements"]); (ii) the date on which FERC, the PSC and any other regulatory ~~{agencies}~~ [agency] having jurisdiction grant all necessary approvals, including, without limitation, any approvals required under Section 70 of the Public Service Law and Section 203 of the FPA; (iii) ~~{the receipt of an IRS ruling that formation and operation of the ISO and NYSRC will not jeopardize the tax-exempt status of Local Furnishing Bonds, Government Bonds, or other obligations of any Party; or}~~ [September 1, 1999; or (iv)] on such later date specified by FERC.

The implementation of the ISO by the ~~{Investor-Owned}~~ Transmission ~~{Providers}~~ [Owners and LIPA] is premised upon their being provided a reasonable opportunity to recover prudent and verifiable expenditures and commitments pursuant to their legal obligations.

Without waiving or limiting any of its other rights under this Article, if a Transmission ~~{Provider}~~ [Owner] determines that any of the conditions set forth in Section ~~{3.03}~~ [3.04] hereof are not ~~{be}~~ [being] met or cease to be in full force and effect that Transmission [Owner] ~~{Provider}~~ may withdraw from this Agreement, the ISO Agreement and the ISO ~~{tariff}~~ [Tariffs] and withdraw its assets from the ~~{ISO's}~~ [ISO's] control and administration on ~~{90}~~ [ninety (90)] days prior written notice to all Parties to this Agreement and FERC. Such notice shall identify the condition or conditions set forth in Section ~~{3.03}~~ [3.04] that ~~{has}~~ [have] not been met or is no longer in full force and effect. However, the Transmission ~~{Provider}~~ [Owner] who submitted the notice of termination may withdraw the notice or extend the termination date ~~{if, in the sole judgment of that Transmission Provider, the effectiveness of the condition or conditions has been met or restored or a reasonable plan exists for meeting or restoring the effectiveness of such condition or conditions}~~.

In addition to the foregoing provision, after the fifth anniversary of the effective date of this Agreement, this Agreement may be terminated by a unanimous vote of the Transmission ~~{Providers}~~ [Owners] or their successors or ~~{assignors}~~ [assignees]. If the Transmission ~~{Providers}~~ [Owners] vote to terminate this Agreement, they will file with FERC and the PSC an explanation of their action and



a proposal for an alternative plan for the safe, reliable and efficient operation of the NYS Transmission System.

**6.02 Withdrawal.** Any Transmission ~~{Provider}~~ [Owner] may withdraw from this Agreement[, the ISO Agreement and the ISO Tariffs and withdraw its assets from the ISO control and administration] upon ninety (90) days written notice to the ISO Board. ~~{Such notice shall be published in the Federal Register.}~~  
In the case of an Investor-Owned Transmission ~~{Provider}~~ [Owner], no further approval by FERC ~~{is needed}~~ [shall be required] for such withdrawal from this Agreement, if such Investor-Owned Transmission ~~{Provider}~~ [Owner] has on file with FERC its own open access transmission tariff. Any modification to this Article shall provide any party †

†with the right to withdraw from the Agreement pursuant to the unmodified provisions of this Article, within ninety (90) days of the effective date of such modification. [In the event that the tax-exempt financing of a Party is jeopardized by its participation in the ISO, the Party may withdraw from this Agreement upon thirty (30) days prior written notice to the ISO Board.]

**6.03 Obligations after Termination or Withdrawal[.]**

- a. Following termination or withdrawal from the Agreement, a Party shall remain liable for all obligations arising hereunder prior to the effective date of termination or withdrawal, including all continuing obligations[, just accrued prior to the effective date,] imposed on the Party by this Agreement or the ISO ~~{Tariff}~~ [Tariffs] or other [ISO Related] Agreements.
- b. Termination or the withdrawal from this Agreement shall not relieve a Party

of any continuing obligation it may have under ~~{any of}~~ the ~~{other}~~ ISO Tariffs and [ISO Related] Agreements, ~~{including the ISO Tariff,}~~ unless the Party also withdraws from the ISO ~~{Tariff}~~ [Tariffs] or ~~{other}~~ [ISO Related] Agreements.

**6.04 Winding ~~up~~ [Up].** Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination or withdrawal from this Agreement shall survive such termination or withdrawal. The surviving provisions shall include, but shall not be limited to (i) those provisions necessary to permit the orderly conclusion, or continuation pursuant to another agreement, or transactions entered into prior to the [termination of] or withdrawal from this Agreement, (ii) those provisions necessary to conduct final billing, collection, and accounting with respect to all matters arising hereunder, and (iii) the indemnification [and limitation of liability] provisions as applicable to periods prior to such, termination or withdrawal.

## 6.05 Confidentiality[.]

~~(a)~~ [A]. **Party Access.** No Party shall have a right hereunder to receive or review any documents, data or other information of another Party, including documents, data or other information provided to the ISO, to the extent such documents, data or information have been designated as confidential pursuant to the procedures specified in the ISO ~~{Tariff}~~ [Tariffs] or to the extent that they have been designated as confidential by such other Party; provided, however, that a Party may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Party's confidential data or information.

~~(b)~~ [B]. **Required Disclosure.** Notwithstanding anything in this Section to the contrary, if a Party is required by applicable law, or in the course of administrative or judicial proceedings, or subpoena, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section, that Party may make disclosure of such information; provided, however, that as soon as the Party learns of the disclosure requirement and prior to making [such] disclosure, that Party shall notify the affected Party or Parties of the requirement and the terms thereof and the affected Party or Parties may, at their sole discretion and cost, assert any challenge to or defense against the disclosure requirement and the Party shall cooperate with such ~~†~~

~~†~~affected Parties to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. Each Party shall cooperate with the affected Parties to obtain proprietary or confidential treatment of such information by the person to whom such information

is disclosed prior to any such disclosure.

**6.06 Governing Law; Jurisdiction{.}[.]** The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

**6.07 Headings{.}[.]** The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.

**6.08 Mutual Agreement{.}[.]** Nothing in this Agreement is intended to limit the Parties' ability to mutually agree upon taking a course of action different than that provided for herein; provided that doing so will not adversely affect any other Parties' rights under this Agreement.

- 6.09 Contract Supremacy.** In the case of a conflict between the terms of this Agreement and the terms of the ISO Agreement, the terms of this Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the ISO-NYSRC Agreement, the terms of this Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of ~~the~~ [an] ISO Tariff the terms of this Agreement shall prevail.
- 6.10 Additional Remedies.** The Parties agree that remedies at law will be inadequate to protect the interests of the Transmission ~~Providers~~ [Owners] and that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the ISO in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that the Transmission ~~Providers~~ [Owners], or any Transmission ~~Provider~~ [Owner], individually or in conjunction with one or more other Transmission ~~Providers~~ [Owners], shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or ~~the~~ [an] ISO Tariff by the ISO and ~~the~~ specific performance to enforce specifically the terms and provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the Transmission ~~Providers~~ [Owners] are entitled at law or in equity.
- 6.11 No Third Party Rights.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.
- 6.12 Not Partners.** Nothing contained in this Agreement shall be construed to make the

Parties partners or joint venturers or to render any Party liable for the debts or obligations of any other Party.

**6.13 Waiver.** Any ~~{Waiver}~~ [waiver] at any time of the rights of any Party as to any default or failure to require strict adherence to any of the terms herein, on the part of any other Party or Parties to this Agreement or as to any other matters arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

**6.14 No Modification.** This Agreement ~~{may not be modified, altered, or amended, unless such modification, alteration or amendment is in writing and signed by the Parties hereto.}~~ [is not subject to change under Sections 205 and 206 of the FPA, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section 6.14 that, to the maximum extent permitted by law, the terms and conditions of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of a Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner.]

**6.15 Counterparts.** This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all of the Parties, and this Agreement shall be binding upon all the Parties with the same force and effect as if all the Parties had signed the same document, and each such signed counterpart shall constitute an original of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

New York Independent System Operator

By:

{\_\_\_\_\_}[\_\_\_\_\_]  
\_\_\_\_\_

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

Date: \_\_\_\_\_]

Central Hudson Gas & Electric Corporation

By:

{\_\_\_\_\_}[\_\_\_\_\_]  
\_\_\_\_\_

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

Date: \_\_\_\_\_]

Consolidated Edison Company of New York, Inc.

By:

{\_\_\_\_\_}[\_\_\_\_\_]  
\_\_\_\_\_]

{~~Long Island Lighting Company~~}

[Title: \_\_\_\_\_]

{By:

\_\_\_\_\_}[Date: \_\_\_\_\_]

[Redacted]

LIPA

By: [Redacted]

Title: [Redacted]

Date: [Redacted]

New York State Electric & Gas Corporation

By:

{ [Redacted]

[Redacted]

Title: [Redacted]

Date: [Redacted]

Niagara Mohawk Power Corporation

By:

{ [Redacted]

[Redacted]

Title: [Redacted]



Date: \_\_\_\_\_ ]

Orange and Rockland Utilities, Inc.

By:

{ \_\_\_\_\_ } [ \_\_\_\_\_ ]  
\_\_\_\_\_

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

Date: \_\_\_\_\_ ]

Rochester Gas and Electric Corporation

By:

{ \_\_\_\_\_ } [ \_\_\_\_\_ ]  
\_\_\_\_\_

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

Date: \_\_\_\_\_ ]

Power Authority of the State of New York

By:

{ \_\_\_\_\_ } [ \_\_\_\_\_ ]  
\_\_\_\_\_

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

Date: \_\_\_\_\_ ]

**APPENDIX A-1**

**LISTING OF TRANSMISSION FACILITIES**

**UNDER ISO OPERATIONAL CONTROL**



**APPENDIX A-2**

**LISTING OF TRANSMISSION FACILITIES**

**REQUIRING ISO NOTIFICATION**

**NEW YORK STATE RELIABILITY COUNCIL**

**AGREEMENT**

**NEW YORK STATE RELIABILITY COUNCIL AGREEMENT**

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**NEW YORK STATE RELIABILITY COUNCIL AGREEMENT**

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, {1997} [1999], by and among Central Hudson Gas & Electric Corporation {("Central Hudson")} [{"Central Hudson"}], Consolidated Edison Company of New York, Inc. {("Con Edison")}, Long Island Lighting Company {("LILCO")} [{"Con Edison"}], New York State Electric & Gas Corporation {("NYSEG")} [{"NYSEG"}], Niagara Mohawk Power Corporation {("NMPC")} [{"NMPC"}], Orange and Rockland Utilities, Inc. {("O&R")} [{"O&R"}], and Rochester Gas and Electric Corporation {("RG&E")} [{"RG&E"}], all corporations organized under the laws of the State of New York, and Power Authority of the State of New York {("NYPA")} [{"NYPA"}] and LIPA, (a subsidiary of the Long Island Power Authority), a corporate municipal instrumentality of the State of New York[]) (collectively the {("Parties")} [{"Parties"}]);

**WITNESSETH:**

**WHEREAS**, the Parties have invested tens of billions of dollars in facilities to provide reliable electric service in the State of New York; and

**WHEREAS**, reliable electric service is critical to the economic and social welfare of the [ ] millions of residents and businesses in the State of New York; and

**WHEREAS**, the Parties currently are members of the New York Power Pool {("NYPP")} [{"NYPP"}] and through NYPP have coordinated their electric operations to enhance reliability; and

**WHEREAS**, the reliable and efficient operation of the NYS Power System is fundamental to achieving and maintaining reliability of supply; and

**WHEREAS**, the reliable and efficient operation of the NYS Power System requires extensive coordination of system design and Reliability Rules; and

**WHEREAS**, in order to maintain the reliability of the NYS Power System, it is necessary to have standards of performance and Reliability Rules that must be used in planning and operating the NYS Power System; and

**WHEREAS**, in the future, the Independent System Operator ~~{("ISO")}~~["ISO"] will be responsible for exercising Operational Control over the Transmission Facilities Under ISO Operational Control; and

**WHEREAS**, network interactions and transmission congestion on the NYS Transmission System create special conditions that require the development and promulgation of Reliability Rules that must effectively be implemented in order to maintain the reliable operation of the NYS Transmission System; and

**WHEREAS**, the unique circumstances and complexities related to the maintenance of reliable transmission service to the New York City metropolitan area and the dire consequences that would result from a failure to provide uninterrupted service to that region of the state, as has been demonstrated in the past, further require the development of Reliability Rules in New York State; and

**WHEREAS**, the Parties own the transmission facilities that comprise the NYS Transmission System, and will continue to be responsible for the safe and reliable operation of those facilities and for protecting their respective interests in the safe and reliable operation of those facilities; and

**WHEREAS**, the development and promulgation of Reliability Rules for the NYS Power



System will allow the ISO to determine the most appropriate and efficient means of implementing those Reliability Rules; and

**WHEREAS**, it is essential that the restructuring of the electric industry in New York State and the deregulation of certain aspects of that industry not create a risk of any degradation of the current level of reliability of the NYS Power System; and

**WHEREAS**, upon implementation of the New York State Reliability Council ~~{("NYSRC")}~~**[("NYSRC")]** and the ISO, the Parties intend to dissolve the NYPP; and

**WHEREAS**, it is essential to maintain the reliable operation of the Transmission ~~{Providers'}~~**[Owners']** electric systems consistent with Good Utility Practice and the Transmission ~~{Providers'}~~**[Owners']** legal and fiduciary responsibilities; and

**WHEREAS**, the Parties have concluded that it is appropriate and necessary to establish the NYSRC with the appropriate authority to establish Reliability Rules that will be implemented by the ISO and enforce compliance with the Reliability Rules, including Local Reliability Rules; and

**WHEREAS**, the primary mission of the NYSRC is to promote and preserve the reliability of electric service on the NYS Power System within New York State;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

## ARTICLE 1: DEFINITIONS

~~{The ISO Filing Definitions Document, as it exists on the date filed with FERC, is }~~**[1.01**

The definitions contained in the Independent System Operator Agreement (the "ISO Agreement") as they existed on the date this Agreement is signed by the Parties are] hereby incorporated by reference in ~~{its}~~ **[their]** entirety into this NYSRC Agreement. **[Modifications to such definitions, under the ISO Agreement shall apply to this Agreement only if the Parties to this Agreement agree in writing pursuant to Article 19 below.]**

## ARTICLE 2: SCOPE AND MISSION

**2.01** The Parties hereby agree to create the NYSRC, an organization comprising the Transmission ~~{Providers}~~ **[Owners]** and certain participants in New York ~~{State's}~~ **[State's]** Wholesale Market. The Parties will seek any necessary authorizations, regulatory approvals and rulings to give effect to this Agreement.

**2.02** The mission of the NYSRC is to promote and preserve the reliability of electric service on the NYS Power System by developing, maintaining, and, from time-to-time, updating the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric **[transmission, ancillary services, energy and]** power transactions on the NYS Power System. The NYSRC shall carry out its mission with no intent to advantage or disadvantage any Market Participant's commercial interests.

**2.03** The ~~{NYSRC's}~~ **[NYSRC's]** mission also includes monitoring compliance with the Reliability Rules by working in consultation with the ISO to assure compliance, including when necessary,

seeking compliance through the dispute resolution procedure contained in the ISO/NYSRC Agreement, and [ ]taking such other actions which may be necessary to carry out the purpose of the NYSRC Agreement.

**2.04** The NYSRC will be governed by an Executive Committee as set forth in [ ] Article 4.

### **ARTICLE 3: DUTIES OF THE NYSRC**

#### **3.01 General Reliability Rules**

Using the reliability standards, regulations, criteria, procedures, and rules established or imposed by NERC, NPCC, FERC, PSC, NRC, and any other government agency with jurisdiction over the reliability of the NYS Power System, other reliability criteria, and Local Reliability Rules, the NYSRC shall develop, establish, maintain, assure compliance with, and, from time-to-time, update the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric power transactions on the NYS Power System. The NYSRC shall initially adopt those existing rules, policies, and procedures of the NYPP that relate to or affect the reliability of the NYS Power System. The NYSRC shall adopt or create from time-to-time such additional Reliability Rules that it deems necessary to meet the unique reliability needs of New York State. [The NYSRC may apply Reliability Rules to the entire NYS Power System or to a particular sub-region thereof as is deemed necessary by the NYSRC to ensure that the reliability needs of the New York Control Area are met.]

The ISO or a member of the NYSRC may petition the NYSRC Executive Committee to seek specific and limited exceptions to NERC and NPCC criteria, provided the intent of the criteria is not

compromised. Subject to Article 8, the Executive Committee shall be responsible for granting such exceptions. The NYSRC shall adopt all new mandatory compliance rules of NERC and NPCC unless existing Reliability Rules are more stringent.

### 3.02 Local Reliability Rules

The NYSRC shall adopt as a Reliability Rule each Local Reliability Rule in existence at the time this Agreement becomes effective. ~~{Such existing} Local Reliability Rules {cannot be modified or eliminated by the NYSRC without the consent of the Transmission Provider who implemented such Local Reliability Rule. A Transmission Provider}~~ [shall be treated the same as other Reliability Rules. A Transmission Owner] may promulgate a new Local Reliability Rule if that Transmission ~~{Provider}~~ [Owner] determines that a new Local Reliability Rule is necessary to protect the reliable delivery of electricity over its transmission and/or distribution facilities. ~~{Any such}~~ [Such promulgated] new Local Reliability ~~{Rule shall be adopted by the NYSRC}~~ [Rules will be reviewed and voted on for adoption] as a Reliability Rule ~~{and such rules will be recognized by the ISO in the operation of the NYS Power System. Such new Local Reliability Rules may not be modified or eliminated by the NYSRC without the consent}~~ [at the request] of the Transmission ~~{Provider who implemented the rule. The Transmission Provider must indicate whether it consents to the modification within 60 days.}~~ [Owner who promulgated that rule in accordance with Section 4.05 of this Agreement]

~~{The Board of Directors of the ISO or the NYSRC may request that the PSC review a Local Reliability Rule. In the event the ISO Board or the NYSRC seeks to modify or eliminate any Local Reliability Rule, and the Transmission Provider promulgating that rule does not agree to modify or~~

~~eliminate that rule, that Local Reliability Rule can be modified or eliminated only pursuant to an order by the PSC or FERC. All parties reserve their rights under the Federal Power Act to appeal to FERC to review a specific Local Reliability Rule.~~

### ~~3.03~~ **Installed and Operating Capacity Requirements**

The NYSRC shall establish the state-wide [annual] Installed Capacity requirements for New York State consistent with NERC and NPCC standards. The NYSRC will initially adopt the Installed Capacity requirement as set forth in the current NYPP Agreement and currently filed with FERC. Any changes to this requirement will require an appropriate filing and FERC approval. In establishing the state-wide [annual] Installed Capacity requirements, consideration will be given to the configuration of the system, generation outage rates, assistance from neighboring systems and Local Reliability Rules.

The NYSRC shall develop Reliability Rules, to be implemented by the ISO to ensure that sufficient Operating Capacity is committed on a Day-Ahead basis and remains available to ensure the reliable operation of the NYS Power System during the next day.

### **3.04 Relationship with ISO**

The NYSRC shall enter into an agreement with the ISO (the [“]ISO/NYSRC ~~{Agreement}~~ ~~[Agreement”]~~) which shall define the terms and conditions of their relationship. The ISO/NYSRC Agreement shall provide that the ISO will implement and comply with all Reliability Rules established by the NYSRC. The NYSRC shall monitor and audit the ~~{ISO’s}~~ [ISO's] compliance with the Reliability Rules and with the provisions of the ISO/NYSRC Agreement.

The NYSRC shall have the authority to require the ISO to provide it with information and

data demonstrating the ~~{ISO's}~~ [ISO's] compliance with the Reliability Rules. If the NYSRC determines, in its sole discretion, that the ISO has failed to comply with or has improperly implemented the Reliability Rules, representatives of the NYSRC shall discuss this issue with representatives of the ISO. If a satisfactory resolution of the differences cannot be reached within thirty (30) days, then the issue may be referred to dispute resolution in accordance with the provisions of the ISO/NYSRC Agreement.

The NYSRC shall represent New York State at NPCC and NERC. The NYSRC shall review and comment on all ~~{statewide}~~ [state-wide] documents prepared by the ISO that are filed with the NPCC and NERC.

#### **ARTICLE 4: MEMBERSHIP ON THE NYSRC EXECUTIVE COMMITTEE AND VOTING**

**4.01** The NYSRC Executive Committee shall be comprised of thirteen (13) ~~{Members}~~ [members] (collectively the ~~{"Members" or "Executive"}~~ ["Members" or "Executive"] Committee ~~{Members}~~ [Members"]). The Members will be selected as follows:

Each Transmission ~~{Provider}~~ [Owner] (or ~~{their}~~ [its] successors or assigns) shall select one Member (for a total of eight (8) Transmission ~~{Provider}~~ [Owner] Members). The ISO Board ~~{of Directors}~~ will establish procedures for the selection of Members to represent the following groups:

- Parties who are engaged in the NYCA principally in the business of selling electricity in the ~~{wholesale market}~~ [Wholesale Market] (1 Member).
- Parties who are large commercial or industrial consumers of electricity in the NYCA (1 Member).
- Parties who are municipally owned or cooperatively owned ~~{utilities}~~ [electric

systems] in the NYCA (1 Member).

- Parties who are not affiliated with any Market Participant (2 Members). For the purpose of this Article, the term “affiliated” shall have the same meaning as set forth in Article 5 of the ISO Agreement.

**4.02** The ISO Board ~~{of Directors}~~ may designate a member of its staff to participate in meetings of the Executive Committee on a non-voting basis. The Executive Committee will make provisions for the attendance at committee meetings for non-voting representatives of ~~{FERC}~~ [the Commission] and the PSC.

**4.03** Each Member of the Executive Committee shall have substantial knowledge and/or experience in the reliable operation of bulk power electric systems. Each Member of the Executive Committee shall file a notice with ~~{FERC}~~ [the Commission] stating that he/she has been selected as a Member of the Executive Committee.

**4.04** Executive Committee Members shall serve two (2) year terms, with no limitation on the number of terms that an Executive Committee Member can serve. The Executive Committee Members will serve from August 1 of each year to July 31 of the following year, and shall be eligible for reappointment. A vacancy in a seat held by a Member representing a Transmission ~~{Provider}~~ [Owner] shall be filled by that Transmission ~~{Provider}~~ [Owner]. Vacancies in seats held by other Members of the Executive ~~{committee}~~ [Committee] shall be filled pursuant to procedures adopted by the ISO Board.

**4.05** Attendance or participation by proxy of nine (9) Members of the Executive Committee shall constitute a quorum. A vote of nine (9) Members is needed to pass a measure. All Executive

Committee Members shall have the right to vote on all measures brought before the Executive Committee. Executive Committee Members not physically present may vote by proxy, telephone, signed facsimile, or a duly authorized alternate.

**4.06** Each Executive Committee Member may designate one or more representatives with full authority to act on its behalf in carrying out the work of the Executive Committee.

**4.07** The Executive Committee shall elect a chairperson ~~{and}~~[,] vice chairperson, and ~~{a}~~ secretary with a one (1) year term of office. The chairperson shall have the power to call meetings of the Executive Committee and such other powers as set forth in this Agreement. The vice chairperson shall exercise any powers delegated by the chairperson.

**4.08** The NYSRC shall act through the Executive Committee. ~~{Subject to Section 3.02, the}~~ [The] Executive Committee shall approve all Reliability Rules and changes to Reliability Rules issued by the NYSRC. Any Member of the Executive Committee may propose modifications to the Reliability Rules, including specific exceptions, additions, or deletions. The Executive Committee shall seek input and recommendations from the ISO, as appropriate, on proposed modifications to the Reliability Rules. ~~{Subject to Section 3.02 and Article 8, modifications}~~ [Modifications] to the Reliability Rules shall be within the exclusive authority and discretion of the Executive Committee of the NYSRC.

**4.09** The Executive Committee, or the chairperson acting pursuant to the direction of the Executive Committee, shall direct the activities of the NYSRC, create subcommittees as necessary, and make assignments to these subcommittees.

**4.10** The Executive Committee shall have the authority to employ such staff members, temporary



workers, independent consultants, auditors, and counsel as necessary to carry out such assignments and functions.

**4.11** Minutes of meetings of the Executive Committee will be made available to any entity requesting a copy. A reasonable charge may be made for copies furnished to any entity other than Members and regulatory agencies.

~~4.12~~ **4.12** The unaffiliated Members of the Executive Committee shall receive a fee for meetings and have their expenses reimbursed by the NYSRC.

**4.13** If costs associated with a study or any other activity undertaken by the NYSRC can be directly assigned to a specific person or entity the costs associated with such study or activity shall be borne by that person or entity. Costs not so assigned shall be paid out of the NYSRC budget.

**4.14** The Executive Committee shall determine the ~~{NYSRC's}~~ [NYSRC's] annual budget and assess annual dues. Such dues shall not be allocated to the ~~{Unaffiliated}~~ [unaffiliated] Members.

**4.15** Members shall be required to provide the NYSRC with appropriate personnel, on a temporary basis, to enable the NYSRC to carry out its functions.

**4.16** The costs associated with membership and participation in meetings and committee work shall be borne by the individual Members. These costs include, but are not limited to, travel to and from meetings and the costs of providing the NYSRC with personnel on a temporary basis to carry out the administrative and technical functions of the NYSRC.

**4.17** The NYSRC may request the ISO to perform certain studies on behalf of the NYSRC.

**4.18** The Executive Committee shall meet at least quarterly and at any other such time as agreed to by nine (9) of the Executive Committee Members.

[4.19] Each Member of the Executive Committee shall be bound by terms of this Agreement.]

## **ARTICLE 5: PUBLICATION OF RELIABILITY RULES**

**5.01** The secretary of the Executive Committee shall be responsible for ensuring that all Reliability Rules, including Local Reliability Rules, are published, updated, and maintained in a Reliability Rules ~~{Manual}~~ [manual]. Copies of the Reliability Rules ~~{Manual}~~ [manual], along with any updates, are to be made available to: the Members, the ~~{FERC}~~ [Commission], the PSC, the ISO, all ISO ~~{Direct Customers}~~ [customers] and any Market Participant that requests a copy. A reasonable charge may be made for copies furnished to entities other than Members and regulatory agencies.

**5.02** Costs associated with the publication and dissemination of the Reliability Rules ~~{Manual}~~ [manual] are to be apportioned as determined by the Executive Committee.

## **ARTICLE 6: RESPONSIBILITIES OF THE PARTIES**

**6.01** Each Party shall maintain and operate its portion of the NYS Power System in accordance with the Reliability Rules established by the NYSRC.

**6.02** Each Party shall use its best efforts to assure that, whenever it enters into ~~{electric}~~ Energy, Capacity, Ancillary Services, or Transmission Service ~~{Agreements}~~ [agreements] with non-parties, such arrangements will be in accord with the Reliability Rules and criterion established by NERC or the regional reliability council established in the areas in which the facilities used for such arrangements are located.

## **ARTICLE 7: EFFECTIVE DATE AND TERMINATION**

**7.01** This ~~{NYSRC}~~ Agreement, once executed by the Parties, shall become effective on the date on which ~~{FERC}~~ [the Commission], the PSC and other regulatory ~~{authorities}~~ [agency] of competent jurisdiction, to the extent applicable, grant all the necessary approvals and the ~~{NYSRC}~~ Agreement is executed by the Parties.

**7.02** Any Party may withdraw from this ~~{NYSRC}~~ Agreement upon ninety (90) days written notice to all other Parties; provided, however, that any Party submitting notice of intent to withdraw shall continue to be obligated to pay its allocated share of the administrative expenses of the NYSRC for one (1) full year commencing with the date such termination shall become effective.

## **ARTICLE 8: DISPUTE RESOLUTION**

**8.01** If there is a dispute between the ISO and the NYSRC regarding the necessity, terms or the implementation and/or application of a Reliability Rule by the ISO or in the enactment of a specific Reliability Rule by the NYSRC, the dispute shall be resolved in accordance with the dispute resolution process contained in the ISO/NYSRC Agreement.

## **ARTICLE 9: CODE OF CONDUCT**

**9.01** The NYSRC shall prepare and apply a code of conduct with respect to the treatment by Members ~~{or}~~[,] their representatives [or NYSRC Staff] of any information of a commercial value provided by a Customer or Market Participant to the NYSRC. The code of conduct will establish protocols to ensure that Members ~~{and}~~[,] their representatives [or NYSRC Staff] shall not favor their own commercial interests in carrying out their NYSRC responsibilities.

**9.02** An individual serving as a ~~{Member's}~~ [Member's] designated representative or ~~{alternative}~~ [alternate] on the Executive Committee of the NYSRC is precluded from serving on the ISO Board or on any ISO ~~{committee}~~ [Committee].

**9.03** The NYSRC shall adopt appropriate procedures to maintain the confidentiality of Confidential Information in the possession of the NYSRC.

#### **ARTICLE 10: ASSIGNMENT**

**10.01** This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the respective Parties.

#### **ARTICLE 11: FORCE MAJEURE**

**11.01** A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from an act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such ~~{Party's}~~ [Party's] reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due

hereunder or pursuant to a Service Agreement. Any party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except [that] the settlement of any labor disturbance shall be in the sole judgment of the affected party.

#### **ARTICLE 12: LIMITATION OF LIABILITY**

**12.01** The NYSRC and the Parties shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to any Party, Market Participant or third party for any damages whatsoever, including without limitation direct, special, indirect, punitive, incidental, [exemplary] or consequential damages resulting from any act or omission in any way associated with this NYSRC Agreement except to the extent that the NYSRC or a Party is found liable for gross negligence or willful misconduct, in which case the NYSRC or the Party will not be liable for any incidental, consequential, [exemplary,] punitive, special or indirect damages.

#### **ARTICLE 13: REGULATORY JURISDICTION**

**13.01** ~~{Nothing}~~ [Subject to Article 19, nothing] in this NYSRC Agreement shall restrict the rights of the Parties to file a complaint with or submit any action to ~~{FERC}~~ [the Commission] or any appropriate regulatory authority under relevant provisions of the Federal Power Act or other relevant statutory provisions, nor shall anything in this Agreement affect the jurisdiction of ~~{FERC}~~ [the Commission] or any other regulatory authority over matters arising under this Agreement.

#### **ARTICLE 14: GOVERNING LAW AND JURISDICTION**

**14.01** The interpretation and performance of this NYSRC Agreement shall be in accordance with, and shall be controlled by, the laws of the State of New York. With respect to any claim or

controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or the State Courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

**ARTICLE 15: HEADINGS**

**15.01** The section headings herein are for convenience and reference only, and in no way define or limit the scope of this NYSRC Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire NYSRC Agreement, rather than to any individual section, subsection or sentence.

**ARTICLE 16: NO THIRD PARTY RIGHTS**

**16.01** Nothing in this NYSRC Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this NYSRC Agreement.

**ARTICLE 17: NOT PARTNERS**

**17.01** Nothing contained in this NYSRC Agreement shall be construed to make the Parties partners or joint ~~venturers~~ [ventures] or to render any Party liable for the debts or obligations of any other Party.

**ARTICLE 18: WAIVER**

**18.01** Any waiver at any time of the rights of any Party as to any default on the part of any other Party or Parties to this NYSRC Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

## **ARTICLE 19: AMENDMENTS**

**19.01** This ~~{NYSRC}~~ Agreement is not subject to change ~~{absent the prior}~~ [under Section 205 and 206 of the FPA, as either section may be amended or superseded, absent the mutual] written agreement of the Parties. [It is the intent of this Section 19.01 that, to the maximum extent permitted by law, the terms and conditions of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of a Party, (b) by a Party, (c) by a third party, or (d) in any other manner.]

## **ARTICLE 20: CLAIMS BY EMPLOYEES AND INSURANCE**

Each Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under, and covered by, any ~~{workers'}~~[workers'] compensation law. Each of the Parties shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this NYSRC Agreement to be executed in its corporate name by its proper officers as of the date first written above.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

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

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

Date: \_\_\_\_\_

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

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

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

Date: \_\_\_\_\_

~~{LONG ISLAND LIGHTING COMPANY}~~ [LIPA]

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

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

Date: \_\_\_\_\_

NEW YORK STATE ELECTRIC & GAS CORPORATION

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

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

Date: \_\_\_\_\_



NIAGARA MOHAWK POWER CORPORATION

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

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

Date: \_\_\_\_\_

ORANGE AND ROCKLAND UTILITIES, INC.

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

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

Date: \_\_\_\_\_

ROCHESTER GAS AND ELECTRIC CORPORATION

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

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

Date: \_\_\_\_\_

POWER AUTHORITY OF THE STATE OF NEW YORK

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

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

Date: \_\_\_\_\_

**AGREEMENT BETWEEN THE NEW YORK  
INDEPENDENT SYSTEM OPERATOR AND THE  
NEW YORK STATE RELIABILITY COUNCIL**

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**AGREEMENT BETWEEN THE NEW YORK INDEPENDENT SYSTEM OPERATOR  
AND THE NEW YORK STATE RELIABILITY COUNCIL**

This AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_, by and between the NEW YORK INDEPENDENT SYSTEM OPERATOR ~~{("ISO")}~~["ISO"], a not-for-profit corporation formed by certain participants in the competitive Wholesale Market in New York State and the NEW YORK STATE RELIABILITY COUNCIL ~~{("NYSRC")}~~["NYSRC"], a voluntary organization comprised of certain participants in the Wholesale Market in New York State (collectively, the ISO and the NYSRC are referred to as the ~~{("Parties")}~~["Parties"]).

**W I T N E S S E T H:**

WHEREAS, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., ~~{Long Island Lighting Company}~~ [LIPA<sup>1</sup>], New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation ~~{(hereinafter referred to as the "Utility Parties")}~~ established the New York Power Pool ~~{("Power Pool")}~~["NYPP"] by Agreement made as of the 21st day of July, 1966, and Power Authority of the State of New York ~~{("NYPA")}~~ subsequently["NYPA"] joined the ~~{Power Pool}~~ [NYPP] on October 11, 1967 [(the "Member Systems")]; and

WHEREAS, the ~~{Utility Parties and NYPA}~~ [Member Systems] have created, invested in, and operate the interconnected NYS Power System and have the responsibility to maintain the reliable operation of the NYS Power System; and

---

<sup>1</sup> A subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, which joined the New York Power Pool on May 28, 1998.

WHEREAS, the ~~{Utility Parties and NYPA}~~ [Member Systems] have agreed to create the ISO and ~~{the Utility Parties and NYPA}~~ agree that a competitive Wholesale Market can be operated in a reliable and efficient fashion most effectively by the creation of the ISO, the ~~{Power Exchanges and the}~~ NYSRC, as proposed by the ~~{Utility Parties and NYPA}~~ [Member Systems]; and

WHEREAS, the ~~{Utility Parties and NYPA}~~ [Member Systems] believe and expect that through their initiatives, as well as those of federal and state regulatory agencies, a competitive Wholesale Market will be created in New York State; and

WHEREAS, the ~~{ISO's principal mission is to}~~ [ISO shall] exercise Operational Control over certain facilities in the NYS Power System and ~~{to}~~ maintain the safety, efficiency, and short-term reliability of the NYS Power System; and

WHEREAS, the ~~{NYSRC's}~~ [NYSRC's] principal mission is to establish Reliability Rules for use by the ISO to maintain the integrity and reliability of the NYS Power System such that it is not compromised as a result of the operation of the competitive Wholesale Market in New York State; and

WHEREAS, the reliable and efficient operation of the NYS Power System is fundamental to achieving and maintaining reliability of power supply, requiring extensive coordination of system design and operations; and

WHEREAS, the NYSRC is the appropriate entity to establish and assess conformance with appropriate design and operating criteria by all entities whose electric operations may have a significant impact on system reliability; and

WHEREAS, in order to facilitate the coordination of the responsibilities of the ISO and the reliability functions performed by the NYSRC in such a way as to minimize any adverse commercial

impacts, a relationship between those two entities, whereby certain information is exchanged between them, is necessary; and

WHEREAS, nothing in this Agreement is intended to inhibit or prevent the future development of a voluntary competitive retail electric market.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the Parties hereto do hereby agree with each other, for themselves and for their successors and assigns as follows:

#### **ARTICLE 1: DEFINITIONS**

†  
 }The {ISO Filing Definitions Document, as it exists on the date filed with FERC, is }[definitions contained in Article 1 of the Independent System Operator Agreement (the "ISO Agreement") as they existed on the date this Agreement is signed by the Parties are] hereby incorporated by reference in {its entirety into this ISO/NYSRC Agreement.ARTICLE} [their entirety into this Agreement. Modification to such definitions under the ISO Agreement shall apply to this Agreement only if the Parties to this Agreement agree in writing pursuant to Section 12.6 below.

#### **ARTICLE] 2: RELATIONSHIP OF THE ISO AND THE NYSRC**

- 2.1 Pursuant to the NYSRC Agreement, the NYSRC shall develop Reliability Rules which shall be complied with by the ISO and all entities engaged in transactions on the NYS Power System.
- 2.2 The ISO shall exercise Operational Control over Transmission Facilities Under ISO Operational Control and maintain the safety and short-term reliability of the NYS Power System in accordance with the {ISO/TP} [ISO/TO] Agreement, ISO

Agreement, this Agreement, and the Reliability Rules.

**2.3** The NYSRC shall have the authority to audit the ~~{ISO's}~~ [ISO's] implementation of the Reliability Rules and to assess the ~~{ISO's}~~ [ISO's] compliance with the Reliability Rules and this Agreement.

**2.4** NYSRC and the ISO will function as two separate and distinct entities. However, the NYSRC and the ISO shall work cooperatively in accordance with the terms of this Agreement.

### **ARTICLE 3: DUTIES OF THE ISO**

**3.1** The ISO shall comply with all Reliability Rules, including the Local Reliability Rules.

**3.2** The ISO shall maintain the safety and short-term reliability of the NYS Power System and administer the ISO [OATT and the ISO Services] Tariff in accordance with the Reliability Rules ~~{and the terms of}~~ [,] this Agreement, the ISO Agreement and the ~~{ISO/TP}~~ [ISO/TO] Agreement.

**3.3** The ISO shall not have a financial interest in any commercial ~~{transactions}~~ [transaction].

**3.4** The ISO shall require ~~{Load Serving Entities}~~ [LSEs within the NYCA] to maintain appropriate levels of Installed Capacity ~~{and Operating Reserve}~~ consistent with the Reliability Rules ~~{and the terms of}~~ [,] this Agreement, the ~~{ISO/TP}~~ [ISO/TO] Agreement, and the ISO Agreement.

**3.5** The ISO shall ensure that sufficient ~~{operating capacity}~~ [Operating Capacity] is committed on a Day-Ahead basis and remains available to assure the reliable operation of the NYS Power System during the next day.

- 3.6** The ISO shall provide the NYSRC with such information, data, reports, and assistance as the NYSRC requires in carrying out its responsibilities.
- 3.7** The ISO shall prepare reports to the NYSRC at least annually describing the performance of the NYS Power System and the ~~{ISO's}~~ [ISO's] compliance with the Reliability Rules.
- 3.8** The ISO shall assign a member of its staff to serve as liaison to the NYSRC. The ISO representative may attend and participate in meetings of the NYSRC, on a non-voting basis.
- 3.9** The ISO shall perform studies that may be requested by the NYSRC.

#### **ARTICLE 4: DUTIES OF THE NYSRC**

- 4.1** The NYSRC shall be responsible for developing Reliability Rules pursuant to which the ISO shall maintain the safety and short-term reliability of the NYS Power System. The NYSRC shall develop Reliability Rules in accordance with NERC, NPCC, FERC, PSC, and NRC standards, criteria, rules, regulations, the Local Reliability Rules [that have been adopted as Reliability Rules] and other criteria, as provided for in Article 3 of the NYSRC Agreement.
- 4.2** The NYSRC, using the information, data, reports and assistance provided by the ISO, shall monitor and assess the ~~{ISO's}~~ [ISO's] compliance with the Reliability Rules. If the NYSRC determines that the operation of the NYS Power System by the ISO has not been in compliance with the Reliability Rules or the ISO has improperly implemented the Reliability Rules, the NYSRC shall discuss such non-compliance or improper implementation with the ISO. If a satisfactory resolution of the matter



cannot be reached within thirty (30) days, the issue may be referred by either Party to dispute resolution in accordance with the provisions of this Agreement.

- 4.3** The NYSRC shall represent New York State at NPCC and NERC. NPCC triennial reviews and similar reliability reports required by NPCC and NERC shall be prepared by the ISO for review and approval by the NYSRC prior to submittal to NPCC and NERC. [The ISO also shall actively participate in NPCC and NERC activities as the New York Control Area operator.]
- 4.4** The NYSRC shall develop Reliability Rules for implementation by the ISO to ensure that sufficient Operating Capacity is committed on a Day-Ahead basis to ensure the reliable operation of the NYS Power System during the next day.
- 4.5** The NYSRC shall determine the ~~{statewide}~~ [state-wide annual] Installed Capacity requirement ~~{on an annual basis.}~~[. Such requirement will be subject to periodic review and revision by the NYSRC.] For periods beyond one (1) year the NYSRC may perform or direct the ISO or another entity to perform studies required to identify future operating conditions.

## **ARTICLE 5: DISPUTE RESOLUTION**

### **~~5.1~~{ This Article does not apply to Local Reliability Rules.}**

~~5.2}~~ The Parties hereby establish a dispute resolution process for the resolution of disputes under this Agreement wherein the PSC conducts the arbitration of the dispute. [The dispute resolution process shall apply to all Reliability Rules including Local Reliability Rules.] If the NYSRC determines that the ISO has not complied with or effectively implemented a Reliability Rule, or if the ISO determines that a Reliability Rule is unnecessary or should be modified, representatives of the

NYSRC and the ISO shall upon request of either Party, meet within thirty (30) days to discuss and attempt to resolve the matter.

~~{5.3}~~ **[5.2]** If the Parties are unable to resolve a dispute described in Section ~~{5.2}~~ **[5.1]** herein within thirty (30) days by mutual agreement (unless extended by mutual consent of the Parties), such dispute may be submitted to the PSC by either Party in a written statement describing the nature of the dispute and the issues to be resolved. If the enactment of a new Reliability Rule or a modification of an existing **[Reliability]** Rule leads to a dispute, the ISO Board of Directors may request that the effectiveness of the new Reliability Rule or the modification **[of an existing Reliability Rule]** be suspended pending the outcome of the dispute resolution process. Upon such a request by the ISO Board, the NYSRC shall suspend implementation of the new Reliability Rule or the enactment of the modification pending resolution of the dispute by the PSC. Notwithstanding the foregoing, the PSC may direct that the new Reliability Rule or modification **[of an existing Reliability Rule]** go into effect immediately upon a finding that suspension of the ~~{rule}~~ **[Reliability Rule]** could put the reliability of the NYS Power System at risk.

**[5.3]** Any dispute between the ISO and the NYSRC concerning a Reliability Rule that affects not only reliability but also matters subject to the Commission's jurisdiction under the Federal Power Act (such as a transmission line loading relief rule that affects the curtailment provisions of an ISO Tariff) must be resolved directly by the Commission, and not submitted first to the PSC. Other matters may be resolved in the first instance by the PSC, as provided for in this Article.]

**5.4** The PSC shall, on an expedited basis, (as permitted by PSC regulations) ~~then~~ evaluate and determine whether the dispute should be: (1) dismissed; or (2) accepted for arbitration. The PSC may dismiss a dispute if:

- a. the complaining Party failed to negotiate in good-faith;
- b. the dispute does not reasonably relate to the Reliability Rules or their application; †

†or

- c. the claim is de minimis.

**5.5** If the PSC accepts the dispute for arbitration, the following procedure shall be followed:

- a. The PSC shall have the authority to make a determination with respect to any contention by the ISO that a Reliability Rule is unnecessary or should be modified, or by the NYSRC that a Reliability Rule has not been effectively implemented by the ISO. The PSC shall have no power to modify or change any Agreement or ~~the~~ [a provision of any] ISO Tariff, or otherwise create any additional rights or obligations for any Party. The scope of the PSC's decision under this Agreement shall be limited to the issues presented for arbitration.
- b. The PSC ~~Staff will~~ [staff shall] have the ability to review Reliability Rules and their implementation by the ISO. If the PSC staff determines that a Reliability Rule is unwarranted or should be modified or that a Reliability Rule is not being effectively implemented by the ISO, PSC staff may raise that issue

with the NYSRC and the ISO. If the issue is not resolved among the PSC staff, the NYSRC and ISO, the PSC staff may initiate an arbitration proceeding before the PSC with respect to the issue. The PSC shall conduct a proceeding brought by the [PSC] staff under the same procedures applicable to a proceeding initiated by the NYSRC or the ISO under this Agreement.

- c. The PSC shall determine discovery procedures, intervention rights, evidentiary rules, procedures for submission of written materials, and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution. Each Party to the dispute shall produce all evidence determined by the PSC to be relevant to the issues presented. To the extent such evidence involves proprietary or Confidential Information, the PSC may issue an appropriate protective order which shall be complied with by all disputing Parties. The PSC may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.
- d. The PSC shall consider all issues underlying the dispute and the PSC shall take evidence submitted by the disputing Parties in accordance with procedures established by the PSC and may request additional information including the opinion of recognized technical bodies or experts. Disputing Parties shall be afforded a reasonable opportunity to rebut any such additional information.
- e. The PSC may permit intervention by an interested third party provided that

a request to intervene is timely and the PSC finds that such intervention will enhance the arbitration process and will not cause undue delay. All intervenors shall be required to comply with all applicable procedural rules established by the PSC pursuant to Section ~~{5.5}~~ [5.4] (c) herein.

- f. After conclusion of the discovery process and after providing the Parties with an opportunity to be heard, the PSC shall render a written decision, including findings of fact and the basis for the decision. The PSC shall make a specific finding that its decision will adequately protect the reliability of the NYS Power System and state the reasons for such finding.

**~~5.6~~ Any arbitration decision that affects matters subject to the jurisdiction of FERC under the Federal Power Act shall be subject to review by FERC.**

~~5.7~~ The order of the PSC may be entered on the ~~{Award}~~ [award] by any court in New York [State] having jurisdiction. Within one (1) year of the ~~{arbitral}~~ [arbitration] decision, a Party may request that the ~~{FERC}~~ [Commission] vacate, modify, or take such other action as may be appropriate with respect to any arbitration decision that is:

- a. based upon an error of law;
- b. contrary to the statutes, rules, or regulations of any appropriate regulatory entity having jurisdiction;
- c. violative of the Federal Arbitration Act or Administrative Dispute Resolution Act; or
- d. involves a dispute in excess of \$500,000.

~~{5.8}~~ [5.7] Nothing in this Article shall restrict the rights of any Party to file a complaint

or a rate or tariff change with {FERC} [the Commission] under the relevant provisions of the Federal Power Act.

#### **ARTICLE 6{~~: REVIEW OF LOCAL RELIABILITY RULES~~**

~~Local Reliability Rules cannot be modified or eliminated without the consent of the Transmission Provider promulgating such Local Reliability Rule unless so ordered by the PSC or FERC. The ISO Board or the NYSRC may protest a new Local Reliability with the PSC or request that the PSC review an existing Local Reliability Rule. The ISO Board or the NYSRC may also request that FERC review a Local Reliability Rule. Upon such review, the PSC or FERC may determine that a specific Local Reliability Rule should be modified or eliminated. Upon the issuance of an order by the PSC or FERC such Local Reliability Rule will then be modified or eliminated.~~

~~Local Reliability Rules cannot be suspended pending PSC or FERC review of such rule unless so ordered by FERC or the PSC.~~

#### **ARTICLE 7): EFFECTIVE DATE AND TERMINATION**

This Agreement, once executed by the Parties, shall become effective on the date the {FERC} [Commission], the PSC, and any other regulatory agencies having jurisdiction, to the extent applicable, grant all necessary approvals and the NYSRC is formed. This Agreement shall continue in full force and effect unless {~~altered, amended or~~} terminated by the written consent of all of the Parties {~~hereto.~~ARTICLE 8: REGULATORY JURISDICTION} [hereto.]

#### **{Nothing} [ARTICLE 7: REGULATORY JURISDICTION**

Subject to Section 12.6, nothing] in this Agreement shall restrict the right of the Parties to file a complaint with or submit any action to FERC or any other appropriate regulatory authority under

relevant provisions of the Federal Power Act, nor shall anything in this Agreement affect the jurisdiction over matters arising under this Agreement.

#### **ARTICLE ~~{9}~~ [8]: ASSIGNMENT**

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties. This Agreement cannot be assigned without the consent of the other Parties which consent shall not be unreasonably withheld.

#### **ARTICLE ~~{10}~~ [9]: LIMITATION OF LIABILITY**

The NYSRC shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO or any Market Participant or any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive[, exemplary] or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct, in which case the NYSRC shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages.

#### **ARTICLE ~~{11}~~ [10]: FORCE MAJEURE**

A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other Party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause

or causes beyond such ~~{Party's}~~ [Party's] reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any Party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any Party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected Party.

#### **ARTICLE ~~{12}~~ [11]: INDEMNIFICATION**

~~{12.1}~~ [11.1] For the purpose of this Article ~~{12}~~ [11], the term Market Participant shall not include a Transmission ~~{Provider}~~ [Owner] either in its role as a Transmission ~~{Provider}~~ [Owner] or in its role as a Market Participant.

~~{12.2}~~ [11.2] The ISO shall indemnify, save harmless and defend the NYSRC, including its directors, officers, employees, trustees, and agents, or each of them from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, [exemplary or] punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the NYSRC in any actions or proceedings between the NYSRC and a third party, Market Participant, the ISO, or any other party) arising out of or related to the NYSRC or the ~~{ISO's}~~ [ISO's] acts or omissions related in any way to performance under ~~{the}~~ [an] ISO Tariff, the ISO Agreement, the ~~{ISO/TP}~~ [ISO/TO]



Agreement, NYSRC Agreement, or this Agreement, except to the extent the NYSRC is found liable for gross negligence or intentional misconduct.

~~{12.3}~~ [11.3] Survival. The provisions of this Article ~~{12, "Indemnification,"}~~ [11, "Indemnification,"] shall survive the termination or expiration of this Agreement.

#### **ARTICLE ~~{13: OTHER PROVISIONS 13.1}~~ [12: OTHER PROVISIONS]**

**12.1** Governing Law; Jurisdiction. The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York [State]. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

~~{13.2}~~ [12.2] Headings. The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.

~~{13.3}~~ [12.3] No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

~~{13.4}~~ [12.4] Not Partners. Nothing contained in this Agreement shall be construed to make the Parties partners or joint ~~{venturers}~~ [ventures] or to render any Party liable

for the debts or obligations of any other Party.

~~{13.5}~~ **[12.5]** Waiver. Any ~~{Waiver}~~ [waiver] at any time of the rights of any Party as to any default or failure to require strict adherence to any of the terms herein, on the part of any other Party or Parties to this Agreement or as to any other matter arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

~~{13.6}~~ **[12.6]** No Modification. This Agreement ~~{may not be modified, altered or amended, unless such modification, alteration or amendment is in writing and signed by the Parties hereto.}~~ [is not subject to change under Sections 205 and 206 of the FPA, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section 12.6 that, to the maximum extent permitted by law, the terms and conditions of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of a Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner.]

~~{13.7}~~ **[12.7]** Contract Supremacy. In the case of a conflict between the terms of this Agreement and the terms of the ~~{ISO/TP}~~ [ISO/TO] Agreement, the terms of the ~~{ISO/TP}~~ [ISO/TO] Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the ISO Agreement, the terms of this Agreement shall prevail. In the case of a conflict between the terms of this Agreement and the terms of the NYSRC Agreement, the terms of the NYSRC Agreement shall prevail.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

New York Independent System Operator

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

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

Date: \_\_\_\_\_}f

Title:}

New York State Reliability Council

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

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

Date: \_\_\_\_\_}f

Title:}