

ISO AGREEMENT

AGREEMENT made as of the day of , 1999, by and among CENTRAL HUDSON GAS & ELECTRIC CORPORATION (“Central Hudson”), CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (“Con Edison”), NEW YORK STATE ELECTRIC & GAS CORPORATION (“NYSEG”), NIAGARA MOHAWK POWER CORPORATION (“NMPC”), ORANGE AND ROCKLAND UTILITIES, INC. (“O&R”) and ROCHESTER GAS AND ELECTRIC CORPORATION (“RG&E”), all corporations organized under the laws of the State of New York, and POWER AUTHORITY OF THE STATE OF NEW YORK (“NYPA”) and LIPA¹, corporate municipal instrumentalities of the State of New York (collectively the “Incorporating Parties”) and all subsequent signatories to this Agreement;

WITNESSETH:

WHEREAS, the Incorporating Parties, other than NYPA, established the New York Power Pool (“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

WHEREAS, on December 30, 1996, the Incorporating Parties filed a proposed amendment to the NYPP Agreement with the 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

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

with each other, for themselves and for their successors and assigns, to create and operate the ISO in accordance herewith.

ARTICLE 1: DEFINITIONS

Terms used in this Agreement will have the meaning set forth in this Article.

1.11.01 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.

1.21.02 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.

1.31.03 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.

1.41.04 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.

1.51.05 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.

1.61.06 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.

1.71.07 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.

1.81.08 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.

1.91.09 Capacity.

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

1.10 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.

1.28 Dispute Resolution Administrator (“DRA”).

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

1.29 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.

1.30 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.

1.31 End-Use Consumer.

A Party that is (i) a Large Consumer, (ii) a Small Consumer, (iii) ~~a not for profit~~an organization that represents Small Consumers, (iv) a governmental agency that advocates on behalf of Small Consumers, or (v) a governmental agency that acts as a retail Load aggregator primarily for Small Consumers; or (vi) a Large Energy Using Governmental Agency; provided, however that an End-Use Consumer may not be an Affiliate of a Transmission Owner, Generator, Other Supplier, Public Power Party or Environmental Party regardless of where located.

1.32 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.

1.33 Energy Service Company (“ESCO”).

A Load Serving Entity (other than an entity supplying its own Load), a retail load aggregator or a provider of comprehensive energy services, serving customers in New York State.

1.34 Environmental Party.

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

1.35 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.

1.36 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).

1.37 Federal Power Act (“FPA”).

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

1.38 Generator.

A facility that:

- (a-) is located in the NYCA, or
- (b-) is supplying capacity to the NYCA, or
- (c-) for the purposes of ISO governance, has filed an application for siting approval pursuant to Article X of the New York State Public Service Law, or other applicable law, which is deemed complete by the Article X Board or other such agency. An entity that qualifies under subsection (c) will retain its status until the entity’s application is denied or withdrawn.

1.39 Generator Owner.

A Party that owns, or leases with rights equivalent to ownership, a Generator. Purchasing all or a portion of the output of a Generator shall not be sufficient to qualify a Party for participation in the Generation Owner sector for purposes of ISO governance.

1.40 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

1.53 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.

1.54 ISO Related Agreements.

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

1.55 ISO Services Tariff.

The ISO Market Administration and Control Area Services Tariff.

1.56 ISO Tariffs.

The ISO OATT and the ISO Services Tariff, collectively.

1.57 Large Consumer.

An Industrial Consumer or a Commercial Consumer, not under the Control of any federal, state or municipal government or government-owned agency, authority, corporation, or other similar entity, whose peak load in any month within the previous twelve months was two megawatts or more. **Industrial and Commercial Consumers with common ownership of fifty percent or more may aggregate their usage in order to qualify to participate in ISO governance as Large Consumers.**

1.57A Large Energy Using Governmental Agency.

A federal, state, or municipal government or government-owned agency, authority, corporation or other similar entity whose peak consumption for self use (*i.e.*, not as retail Load aggregators or for further sale) in any month within the previous twelve months was two megawatts or more.

1.82 NPCC.

The Northeast Power Coordinating Council.

1.83 NRC.

The Nuclear Regulatory Commission, or any successor thereto.

1.84 NYPA.

The Power Authority of the State of New York.

1.85 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.

1.86 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.

1.87 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.

1.87A Non-Voting Entity.

An individual or organization that meets the requirements to participate in the ISO’s governance on a non-voting basis as set forth in Section 2.02 of this Agreement.

Transmission Owner that acquired the TCC through the ISO's allocation of residual TCCs, in accordance with the provisions of the ISO OATT.

1.106 PSC.

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

1.107 Public Power Party.

A State Public Power Authority, a Municipal Electric System or Cooperatively-Owned Electric System.

1.108 Real-Time Market.

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

1.109 Reliability Rules.

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

1.110 Residential Consumer.

An End-Use Consumer that (i) takes service under a Transmission Owner's residential rate classification or (ii) takes service at its residence but whose service is not submetered.

1.111 Safe Operations.

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

1.112 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.

1.113 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.

1.114 Settlement.

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

1.115 Small Consumer.

A Residential Consumer, or an Industrial or Commercial Consumer whose peak Load did not equal or exceed two megawatts in any month within the previous twelve months. ~~Industrial and Commercial~~ **For purposes of this definition, the Load of a Residential Consumer whose service is not submetered shall be determined by dividing the Load of the building in which the Residential Consumer takes service by the number of residential units in the building.** **Small Consumers with common ownership of fifty percent or more may aggregate their usage in order to qualify to participate in ISO governance as Large Consumers** **the Small Consumer subsector if they meet the requirements set out in Section 7.04 of this Agreement.**

1.136 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.

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 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 Related Agreements.

The ISO will have Operational Control over those facilities listed in Appendix A-1 of the ISO/TO Agreement, in accordance with the terms of the ISO/TO Agreement. The Facilities Requiring ISO Notification are listed in Appendix A-2 of the ISO/TO Agreement.

2.02 Parties to the ISO Agreement.

All Incorporating Parties and any person or entity that meets the requirements for participation in any sector or subsector described in Sections 7.04 and 7.06 may become a Party to the ISO Agreement by (i) certifying, to the satisfaction of the ISO Board, that such person

or entity satisfies the requirements for participation in the sector (and subsector, if applicable) in which such person or entity wishes to participate and (ii) signing the Agreement. Upon receipt of such certification, the ISO shall notify all Parties of the receipt of the certification and the contents thereof. A Party to this Agreement may participate in the governance of the ISO. There will be a \$5,000 annual fee for each Party, except that: Small Consumers shall be subject to a reasonable fee established by the ISO Board; and not-for-profit organizations that are Environmental Parties and not-for-profit organizations that represent Small Consumers shall pay a \$100 annual fee. The annual fees for Parties may be revised by the ISO Board with the concurrence of the Management Committee. Non-Market Participants also may become Parties to this Agreement and participate in the governance of the ISO. The ISO Board shall permit the following types of organizations or groups to participate in the governance of the ISO as Non-Market Participants:

- (a) Organizations that represent Small Consumers, including governmental agencies, with experience in electric utility regulatory or electricity-related matters in New York State, that in whole or in part advocate on behalf of Small Consumers in New York State, and governmental agencies that act as retail Load aggregators primarily for Small Consumers; provided that no such organization or agency may be an Affiliate of a Transmission Owner, a Generator, Other Supplier, Public Power Party or Environmental Party, regardless of where located.
- (b) Environmental ~~Organizations~~organizations that are non-profit corporations, partnerships, associations or other non-profit entities having the primary purpose of protecting the environment, with experience in electric utility regulatory or electricity-related matters in New York State; provided that no such entity may be

an Affiliate of a Transmission Owner, Generator Owner, Other Supplier or Public Power Party, regardless of where located. An organization meeting the foregoing requirements shall not be excluded from the definition of an Environmental ~~Organization~~Party if it also has a purpose of promoting energy conservation or the generation of electricity from renewable resources.

The ISO Board shall certify that a Non-Market Participant organization or agency is eligible to be a Party to the ISO Agreement and participate in the ISO's governance.

Upon the filing of an application with the ISO and payment of a \$100 fee per annum, individuals and organizations that either (i) have a significant interest in a sector but do not qualify for membership in that sector or (ii) qualify for membership in a sector but choose not to join that sector (collectively, "Non-Voting Entities"), may participate on a non-voting basis in meetings of the Management Committee, the Operating Committee, the Business Issues Committee, and subcommittees and working groups thereof. Non-Voting Entities will: (i) be Parties to the Agreement; (ii) receive notice of, and agendas and other meeting materials for, meetings of the Management Committee, the Operating Committee and the Business Issues Committee; (iii) be allowed to attend meetings of the Management Committee, the Operating Committee, the Business Issues Committee, and subcommittees and working groups thereof, including meetings in executive session; (iv) be allowed to participate in discussions during these meetings; and (v) be allowed to present positions on issues during these meetings, including the right to make motions. Non-Voting Entities will not be allowed (i) to vote on matters brought for action before the Management Committee, the Operating Committee, the Business Issues Committee or any subcommittee

or (ii) to serve as the Chairperson or the Vice-Chairperson of the Management Committee, the Business Issues Committee, the Operating Committee or any subcommittee.

Maintaining the integrity of the sectors and subsectors is important to the proper governance of the ISO. Therefore, any Party may challenge at any time the right of a person, entity or Party to participate in a sector or subsector, by filing a petition with the ISO Board, or by the ISO Board raising the issue on its own motion. Before acting on the petition or its own motion, the ISO Board will provide the person, entity or Party whose status is challenged an opportunity to respond and all interested parties shall be given an opportunity to comment. The ISO Board may request from any interested party, additional information that it considers relevant to its determination. The President of the ISO or the ISO Board may, at their discretion, prohibit the person, entity or Party whose status is challenged from voting on matters before the ISO Committees or subcommittees, pending the decision on the petition by the ISO Board. The ISO Board shall make a decision on the petition and such decision will be within the discretion of the ISO Board.

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 date(s) the Commission approves, without condition or material modification: (a) this ISO Agreement; (b) the NYSRC Agreement; (c) the ISO/NYSRC Agreement; (d) the ISO/TO Agreement; (e) the ISO OATT; and (f) the ISO Services Tariff; (ii) the date on which both the Commission and the PSC grant all necessary approvals to the Transmission Owners to transfer operational control of any facilities to the ISO or otherwise dispose of any of their property including, without limitation, any approvals

ARTICLE 5: ISO BOARD OF DIRECTORS AND VOTING

5.01 Composition Of The ISO Board And Voting.

The ISO Board shall be comprised of ten (10) members (or “ Directors”), none of 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 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 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 person is an officer, director, partner or employee of a Market Participant or any of its Affiliates;
- (d-) 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, except to the extent permitted under the ISO Code of Conduct; or
- (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 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 of the NYPP.
- (b-) Eight (8) members shall be selected from among interested 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-2) Two (2) members will be staff members of the New York State Department of Public Service selected by the 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 ISO Board shall designate an ISO representative to each ISO Committee that shall serve as a non-voting ~~Member~~member of such Committee. Two years after the ISO commences operations, the ISO Board shall review the operations of the ISO ~~committees~~Committees, in consultation with the ~~committees~~Committees, and report its findings.

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 and real-time dispatch, the administration of centrally coordinated markets for Energy, Capacity and Ancillary Services and the administration of Installed Capacity requirements for LSEs. The ISO 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.

shall be staggered, as determined by the Selection Committee. Except for the 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' 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 an ISO Board meeting by 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/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 provide~~ **shall 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.

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 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 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 or Director's duties. 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 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 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 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~~ **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:

- (a-) Supervision and review of the work of the other ISO ~~committees~~ Committees;
- (b-) Review and determination of appeals from actions of the other ~~committees~~ Committees, and the ability to suspend an action by another ~~committee~~ Committee pending appeal if the Management Committee determines that such suspension is warranted;
- (c-) Development of procedures for the consideration and determination of requests for the stay of an action by another ~~committee~~ Committee;
- (d-) Development of positions on ISO operations, policies, rules and procedures and provision of recommendations to the other ~~committees~~ Committees and the Board;

- (e-) Preparation of the ISO capital and operating budgets for review and approval by the ISO Board; and
- (f-) Subject to Article 19, proposing changes to the ISO OATT, the ISO Services Tariff and this Agreement, reviewing and making recommendations with respect to tariff changes proposed by the ISO Board;
- (g-) Adoption of by-laws for the Management Committee and the review and approval of the by-laws of the other ISO ~~committees~~ Committees and amendments thereto;
- (h-) Development of procedures and policies for all ISO Committees for the handling of confidential information; and
- (i-) Such other responsibilities and powers conferred on it by the ISO Board.

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~~ ISO staff member may participate in ~~committee~~ Committee proceedings on a non-

voting basis. The Management Committee also shall make provisions for attendance at Committee meetings by representatives of the Commission and the PSC. Such representatives may participate fully in ~~committee~~Committee proceedings on a non-voting basis. Any Party on the Management Committee and the ISO representative may appeal a Committee action to the ISO Board. 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 fifty-eight (58) percent of the total votes cast.

7.04 Sectors.

Voting on the Management Committee shall be by sector. The Management Committee shall be comprised of five sectors: Generator Owners; Other Suppliers; Transmission Owners; End-Use Consumers; and Public Power/Environmental Parties. A Party must, within thirty (30) days of the commencement of ISO operations or within thirty (30) days of becoming a Party and thereafter not later than the thirtieth day of November of each year, advise the President of the ISO, in writing, of the sector in which the Party is qualified to participate. If a Party is qualified to participate in more than one sector, it shall advise the ISO President, in writing, of the sector in which it chooses to vote; provided, however, that an Investor-Owned Transmission Owner must participate in the Transmission Owners sector, and a State Public Power Authority qualified to participate in the Public Power/Environmental Party sector must participate in that sector; and *provided further*, that a Party qualified to participate in the Large Energy Using Governmental Agency subsector of the End Use ~~Customer~~Consumer sector or in the government agency subsector of the End Use Consumer ~~Sector~~sector may not participate in the Large Consumer subsector of the End Use Consumer ~~Sector~~sector. **An ESCO, Municipal Electric System,**

Cooperatively Owned Electric System, Generator Owner, State Public Power Authority or Environmental Party may not participate in the End-Use Consumer sector.

A Party may participate in the Small Consumer subsector of the End-Use Consumer sector if it is either:

- (a) a single Small Consumer that (i) had a peak Load in any month within the previous twelve months that was 500 kW or more, (ii) is not under the employ or the control of the federal, state or municipal government or any government-owned or operated agency, authority, corporation or other similar entity that is actively involved in ISO matters, (iii) is not an officer, director, employee, owner, operator, partner, agent or affiliate of, or an entity with Control of, a Transmission Owner, Generator, Other Supplier, Public Power Party or Environmental Party, (iv) is not an officer, director, employee, owner, operator, partner, agent or affiliate of, or an entity with Control of, any person, entity or organization having an interest in becoming an Other Supplier or in developing generation or transmission facilities in New York State which would be subject to the administration of the ISO, and (v) does not have any significant interest in any aspect of the ISO markets or operations other than that of a Small Consumer; or
- (b) an organization that represents the interests of at least ten (10) Small Consumers or, at the discretion of the ISO Board, fewer than ten (10) Small Consumers but with an aggregate Load of 500 kW or more in any month within the previous twelve months; provided that no such organization representing this interest, or any of the Small Consumers it represents, may

be an owner, operator, partner, agent or affiliate of, or an entity with Control of, a Transmission Owner, a Generator, Other Supplier, Public Power Party or Environmental Party; and provided that such organization and the Small Consumers it represents do not have any significant interest in any aspect of the ISO markets or operations other than that of Small Consumers.

7.05 Affiliated Parties.

A Party, together with any Affiliate or Affiliates, may vote in only one sector and may cast only one (1) vote. If a Party and its Affiliate or Affiliates qualify to participate in more than one sector, the affiliated Parties must advise the ISO President in which sector their vote will be cast. A Party may split its vote within its chosen sector at its discretion. A Party and its Affiliates may participate in different sectors, provided they vote in only one sector.

7.06 Voting.

(a) The total votes on the Management Committee shall be allocated as follows: the Generator Owners sector shall be allocated twenty-one and one half (21.5) percent of the total votes; the Other Suppliers sector shall be allocated twenty one and one half (21.5) percent of the total votes; the Transmission Owners sector shall be allocated twenty (20) percent of the total votes; the End-Use Consumer sector shall be allocated twenty (20) percent of the total votes; and the Public Power/Environmental Parties sector shall be allocated seventeen (17) percent of the total votes.

(b) The voting by Parties within each sector shall be as ~~described below.~~ follows:

- a(i)** Generator Owners Sector: Each Party participating in the Generator Owners sector shall be entitled to cast one (1) vote. The 21.5 percent of the votes on the Management Committee allocated to the Generator Owners sector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- b(ii)** Other Suppliers Sector: Each Party participating in the Other Suppliers sector shall be entitled to cast one (1) vote. The 21.5 percent of the votes on the Management Committee allocated to the Other Suppliers sector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- c(iii)** Transmission Owners Sector: Each Party participating in the Transmission Owners sector shall be entitled to cast one (1) vote. The 20 percent of the votes on the Management Committee allocated to the Transmission Owners sector shall be split into an affirmation component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- d(iv)** End-Use Consumer Sector: The twenty (20) percent of the votes on the Management Committee allocated to the End-Use Consumer sector shall

be divided among the following four (4) subsectors: (1) the Large Consumers subsector; (2) the Small ~~Consumers~~ Consumer subsector, ~~which shall include Small Consumers and not for profit organizations representing Small Consumers; and~~ (3) the governmental agency subsector, which shall include governmental agencies that advocate primarily on behalf of Small Consumers and governmental agencies that act as retail Load aggregators primarily for Small Consumers; ~~and~~ (4) the Large Energy Using Governmental Agency subsector. ~~An ESCO, Municipal Electric System, Cooperatively Owned Electric System, Generator Owner, State Public Power Authority or Environmental Party may not participate in the End Use Consumer sector. 2~~

(c) The allocation of voting shares among the subsectors shall be as follows:

- (i) Nine (9) percent of the total votes on the Management Committee shall be allocated to the Large Consumer subsector; and shall be allocated among Large Consumers using the following formula: seventy-five (75) percent of the subsector's voting share shall be allocated based on a Party's annual Energy usage for the preceding full calendar year; and twenty-five (25) percent of the subsector's voting share shall be allocated on a per capita basis. The votes of Parties in the Large Consumers subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.

- (ii) Four and five-tenths (4.5) percent of the total votes on the Management Committee shall be allocated to the Small Consumer subsector ~~which shall include Small Consumers and not for profit organizations representing Small Consumers.~~ Organizations that participate in this subsector must be certified by the ISO Board under Section 2.02. Each Party that is a member of the Small Consumer ~~or a not for profit organization representing Small Consumers~~ subsector shall be entitled to cast one (1) vote. The four and five-tenths (4.5) percent of the votes on the Management Committee allocated to the Small Consumers ~~and not for profit organizations representing Small Consumers~~ Consumer subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- (iii) Four and five-tenths (4.5) percent of the total votes on the Management Committee shall be allocated to the governmental agency subsector, which shall include governmental agencies that advocate primarily on behalf of Small Consumers and governmental agencies that act as retail Load aggregators primarily for Small Consumers. Governmental agencies that participate in this subsector must be certified by the ISO Board under Section 2.02. Within the governmental agency subsector, two and seven-tenths (2.7) percent of the total votes on the Management Committee shall

be exercised by the State-Wide Consumer Advocate selected by the ISO Board from among the governmental agencies that qualify as organizations that advocate primarily on behalf of Small Consumers. The ISO Board will select as the State-Wide Consumer Advocate the agency that it believes will best represent the interests of all classes of Small Consumers (including farms) throughout the State, giving due consideration to the demonstrated ability of the candidate agencies to provide sufficient resources to identify and to represent the interests of such consumers before federal, state and local governmental agencies, and to coordinate with other groups having similar interests. The remaining one and eight-tenths (1.8) percent of the total votes on the Management Committee allocated to the governmental agency subsector shall be exercised by governmental agencies that advocate on behalf of Small Consumers, other than the agency selected as the State-Wide Consumer Advocate, and governmental agencies that act as retail Load aggregators primarily for Small Consumers.

- (iv) Two (2) percent of the total votes on the Management Committee shall be allocated to the Large Energy Using Governmental Agency subsector; and shall be allocated among Large Energy Using Governmental Agencies using the following formula: seventy-five (75) percent of the subsector's voting share shall be allocated based on a Party's annual Energy usage for the preceding full calendar year; and ~~twenty-five~~ five (25) percent of the subsector's voting share shall be allocated on a per capita basis. The votes

of Parties in the Large Energy Using Governmental Agency subsector shall be split into an affirmative ~~component~~component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.

- (e) Public Power/Environmental Parties Sector: The seventeen (17) percent of the votes on the Management Committee allocated to the Public Power/Environmental Parties sector shall be divided among the following three (3) subsectors: (1) the State Public Power Authorities subsector; (2) the Municipal Electric Systems and Cooperatively Owned Electric Systems subsector; and (3) the Environmental Parties subsector.

The allocation of voting shares among the subsectors shall be as follows:

- (i) Eight (8) percent of the total votes on the Management Committee shall be allocated to the State Public Power Authorities subsector. Each Party in the State Public Power Authorities subsector shall be entitled to cast one (1) vote. The eight (8) percent of the votes on the Management Committee allocated to the State Public Power Authorities subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.
- (ii) Seven (7) percent of the total votes on the Management Committee shall be allocated to the Municipal Electric Systems and Cooperatively Owned

Electric Systems subsector. Each Party in the Municipal Electric Systems and Cooperatively Owned Electric Systems subsector shall be entitled to cast one (1) vote. The seven percent of the votes on the Management Committee allocated to Municipal Electric Systems and Cooperatively Owned Electric Systems subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.

- (iii) Two (2) percent of the total votes on the Management Committee shall be allocated to the Environmental Parties subsector. Parties in this subsector must be environmental organizations that have been certified by the ISO Board under Section 2.02. Each Party in the Environmental Parties subsector shall be entitled to cast one (1) vote. The two percent of the votes on the Management Committee allocated to the Environmental Parties subsector shall be split into an affirmative component based on the votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast for and against the motion, rounded to two decimal places.

7.07 Activation of Sectors and Subsectors.

In order for certain sectors and subsectors to exercise their right to vote on measures before the Management Committee they must be activated. The requirements with respect to the activation of a sector or subsector apply to each sector and subsector, except the following: the

Transmission Owners sector, the State Public Power Authorities subsector of the Public Power/Environmental Parties sector, and the governmental agency subsector of the End-Use Consumer sector. The Transmission Owners sector, the State Public Power Authorities subsector and the governmental agency subsector shall always be active.

Each sector and subsector that is subject to the activation criteria shall have a minimum of five (5) ~~parties~~Parties, excluding ~~affiliates~~Affiliates, to be activated and to vote on matters before the Management Committee, except the Large Energy Using Governmental Agency subsector, which shall have a minimum of one (1) ~~party~~Party to be activated and to vote on matters before the Management Committee.

The voting share allocated to a sector that has not been activated shall be assigned in equal proportions to all active sectors and subsectors until the inactive sector is activated. Upon activation of an inactive sector, the activated sector shall be allocated a voting share pursuant to Section 7.06 of this Agreement. The voting share allocated to a subsector that has not been activated shall be allocated within the sector in which the subsector resides in accordance with the determination of the then members of the sector in which the subsector resides; provided, however, that the governmental agency subsector shall never exercise more than five (5) percent of the total votes on the Management Committee and the Environmental Parties subsector shall never exercise more than two (2) percent of the total votes on the Management Committee. Upon activation of an inactive subsector the activated subsector shall be allocated the vote percentage pursuant to Section 7.06 of this Agreement.

7.08 Quorum.

(a) The attendance, as provided for in Section 7.03, by a quorum of at least three (3) sectors shall constitute a quorum for action by the Management Committee.

(b) A quorum of a sector shall be five (5) members of a sector or fifty (50) percent of the Parties in a sector, whichever is less. Parties in a sector that has achieved a quorum, shall be entitled to cast the entire vote allocated to their sector. ~~In~~

(c) **Except as provided in Section 7.08(d) for the Small Consumer subsector, in a** sector that is divided into subsectors, if there is a quorum for the sector the Parties in each subsector shall exercise the full voting share allocated to their subsector. If none of the Parties in a subsector vote, the voting share of the subsector in which no Parties vote shall be reallocated to the other subsectors of that sector on a proportional basis according to the relative voting weight of the subsectors; provided, however, that (i) the governmental agency subsector shall never exercise more than four and five-tenths (4.5) percent of the total votes on the Management Committee, (ii) the Large Energy Using Governmental Agency subsector shall never exercise more than two (2) percent of the total votes on the Management Committee, and (iii) the Environmental Parties subsector shall never exercise more than two (2) percent of the total votes on the Management Committee.

(d) **Notwithstanding the provisions of Section 7.08(c), the provisions of this Section 7.08(d) shall apply to the Small Consumer subsector. A quorum of the Small Consumer subsector shall be five (5) members of the subsector. If there is a quorum for the End-Use Consumer sector and a quorum for the Small Consumer subsector, the Parties in the Small Consumer subsector shall exercise the full voting share allocated to that subsector. If there is a**

quorum for the End-Use Consumer sector but there is not a quorum for the Small Consumer subsector, the Parties in the Small Consumer subsector who are present and eligible to vote shall be entitled to cast individual Party votes in accordance with the provisions of Section 7.09, and the remaining voting share of the Small Consumer subsector shall be reallocated to the other subsectors of the End-Use Consumer sector on a proportional basis according to the relative voting weight of the subsectors.

(e) Parties in a sector that have not achieved a quorum shall be entitled to cast individual Party votes in accordance with the provisions of Section 7.09. No action may be taken by a sector unless a quorum of that sector is present, and no action may be taken by the Management Committee unless a quorum of the Management Committee is present. If a quorum of the Management Committee is not present, the Parties in attendance shall have the power to adjourn the meeting from time to time until a quorum is present.

7.09 Voting in the Absence of a Quorum or When a Sector or Subsector is Inactive,

A Party may vote on a matter before the Management Committee in the absence of a quorum of the sector to which the Party belongs. A Party also may vote on a matter if the sector or subsector to which the Party belongs has not been activated as provided in Section 7.07. In the absence of a quorum in a Party's sector, the Party's vote shall be counted and shall have a weight equal to the fraction $1/N$ times the voting share allocated to the Party's sector or subsector where N is the number of Parties in the sector or subsector. In the event a Party's sector or subsector is inactive, the Party's vote shall be counted and shall have a weight equal to the

fraction $1/N_m$ times the voting share allocated to the Party's sector or subsector voting percentage where N_m is the number of Parties to the ISO Agreement.

7.10 Committee Action

- (a) All matters to be acted on by the Management Committee shall be brought up for a vote or approval in the form of a motion, which must be seconded. Only one motion may be pending at one time.
- (b) The sum of affirmative votes necessary to pass the pending motion shall be fifty-eight (58) percent of the total votes cast by the Parties pursuant to the rules set forth in Section 7.06, including all votes cast by individual Parties in sectors or subsectors that have not become active or that have failed to achieve a quorum, as provided for in Section 7.09;
- (c) Parties not in attendance at a meeting, as provided for in Section 7.03, or abstaining shall not have their unexercised votes counted as affirmative or negative votes.

7.11 Committee Procedures

The following procedures shall apply to the Management Committee:

- (a-) The Committee shall have a chairperson, vice-chairperson and secretary, each elected by the ~~committee~~ Committee for a one-year term. The chairperson and the vice-chairperson shall be from different sectors. Upon expiration of the one year term of the chairperson, the vice-chairperson shall become chairperson of the Committee for the next succeeding one year term;

- (b-) Regular meetings of the Committee shall be held monthly, unless the Committee determines that it should meet more frequently or less frequently. Special meetings may be called at the discretion of the chairperson, and shall be called by the chairperson at the request of the ISO Board or at the request of Parties representing a quorum of three (3) of the sectors listed in Section 7.04;
- (c-) Written notice of each meeting of the Committee shall be provided not less than five (5) business days prior to the date of the meeting to each Party by facsimile transmission or electronic mail directed to the number or address designated by such Party. Each such notice shall include a full and complete agenda for the scheduled meeting. For purposes of calculating the notice period required in this paragraph, the day on which the relevant meeting is to be held shall be included, but the day on which notice is given shall not be included. Intermediate Saturdays and Sundays, legal holidays, and weekdays on which the ISO is closed to business shall be excluded from the computation. As used in this paragraph, “legal holiday” includes New Year’s Day, the Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by New York State;
- (d-) The agenda for each scheduled meeting of the ~~committee~~ Committee shall include a specific list of items to be considered at the meeting, together with all relevant supporting documentation prepared or furnished by the officers of the Committee

or the other proponents of a particular agenda item. No final ~~committee~~**Committee** action may be taken on a matter that was not specifically listed on the agenda;

(e-) Any member of the Committee may request that additional or supplemental information or documentation be disseminated by ISO personnel and/or through ISO communications media, including, but not limited to, the ISO site on the world wide web. The ISO shall cooperate with the Committee regarding dissemination of information prior to any meeting; and

(f) Any action taken by the Committee at any meeting shall not become effective until thirty (30) days after the Committee has acted; **provided, however, that with respect to a particular action of the Committee, if no appeal has been timely filed with the ISO Board, then that action shall become effective one (1) business day after the time for a timely appeal has passed.** Prompt notice of Committee actions shall be provided to each Party to this Agreement by facsimile transmission or electronic mail directed to the number or address designated by such Party.

7.12 Committee By-Laws,

The Management Committee shall adopt by-laws, which shall contain items (a) through (f) of Section 7.11 hereof. The by-laws of the Committee shall not be amended, modified, revised, revoked or repealed except by action of the Management Committee.

7.13 Appeals to Management Committee; Stay Review Subcommittee.

- (a) The Management Committee shall review and determine appeals taken from actions of the Operating Committee, the Business Issues Committee and any other committee or subcommittee subject to supervision by the Management Committee. Any party may appeal an action of such a committee or subcommittee to the Management Committee by filing a written notice of appeal with the chairman of the Management Committee within ten (10) business days following the provision of notice to the Parties of the action appealed from. The written notice shall set forth in concise detail the name of the Party or Parties appealing the action, a description of the action appealed from and the grounds for the appeal. The Management Committee shall review and determine any such appeal at the next regular or special meeting of the Management Committee, to the extent practicable, or as soon thereafter as possible. The Party appealing shall be available to appear at such meeting and shall be prepared to support its appeal. The foregoing appeals procedures shall be subject to review and revision by the Management Committee.
- (b) There shall be a subcommittee of the Management Committee empowered to review and determine requests for the stay of an action taken by the Operating Committee, the Business Issues Committee or any other committee or subcommittee subject to supervision by the Management Committee (the “Stay Review Subcommittee”). The Stay Review Subcommittee shall consist of five (5) members, each designated by a different voting sector of the Management Committee and each of whom shall serve a one year term, subject to reelection.

The members of the Stay Review Subcommittee shall elect a chairperson. The chair shall rotate among all five sectors on an annual basis. The Stay Review Subcommittee shall review and determine each request for a stay as soon as possible, but in no event later than ten (10) business days following the filing of such request. Each request for a stay shall be filed in writing with ~~the chairperson~~ the chairperson of the Stay Review Subcommittee, the chairperson of the committee from which the appeal is taken, the ISO Board and ISO staff. Any three (3) or more members of the Stay Review Subcommittee may grant a stay which would remain in effect until the appeal is determined, unless vacated by the Management Committee or ISO Board. The Stay Review Subcommittee shall grant a stay if it finds that (i) the requesting party would be irreparably harmed by the action appealed from, and (ii) the grant of such request would not irreparably harm any other Party. The Stay Review Subcommittee shall issue a written decision stating its determination and the grounds therefor, which decision shall be sent to all Parties.

- (c) In taking an appeal to the Management Committee, the appealing Party shall:
- (i) File the appeal in writing with the Management Committee within ten (10) business days of the provision of notice to the Party of the action appealed from pursuant to Section 7.11(f);
 - (ii) Set forth in concise terms the action appealed from and the grounds for appeal; and

- (iii) Be available (whether personally or through a designated representative) at the meeting of the Management Committee at which the appeal is to be heard and be prepared to present the appeal and respond to comments or questions by the Management Committee.

ARTICLE 8: OPERATING COMMITTEE

8.01 Scope of Responsibilities.

The responsibilities of the Operating Committee shall be the following:

- (a-) Establishment of procedures related to the coordination of the operations of the NYS Power System;
- (b-) Establishment of procedures related to the safe and reliable operation of the NYS Power System;
- (c-) Ensuring that all ISO rules, procedures and practices are consistent with the Reliability Rules, and serving as liaison to the NYSRC;
- (d-) Oversight and coordination of operating and performance studies;
- (e-) Review and approval of operating limits;
- (f-) Establishment of procedures for coordinating the maintenance schedules for the NYS Power System in order to maintain system reliability;
- (g-) Determination of the minimum system Operating 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 Reserve requirements, the committee shall take into consideration the locational capacity needs of New York State;

- (h-) Establishment of procedures for determining Operating Reserve requirements and, if experience or the results of studies indicate the desirability of change, recommending changes thereto to the Management Committee;
- (i-) Development of Locational Installed Capacity Requirements, consistent with the Reliability Rules, Local Reliability Rules, the ISO/TO Agreement and the ISO Agreement; and
- (j-) Establishment of by-laws, subject to approval by the Management Committee; and
- (k-) 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.

The responsibilities of the Operating Committee, and any subcommittee thereof, are subject to revision by the Management Committee. The Operating Committee shall adopt by-laws, subject to approval by the Management Committee. The ~~committee~~Committee by-laws shall include provisions for notice to all Parties of ~~committee~~Committee meetings, including an agenda, at least five (5) business days prior to a meeting and a requirement that no final ~~committee~~Committee action be taken on a matter that is not listed on the ~~committee~~Committee

same as those applicable to the Management Committee under Sections 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12 and 7.13.

ARTICLE 9: BUSINESS ISSUES COMMITTEE

9.01 Scope of Responsibilities.

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

- (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;
- (b-) Development of procedures related to the implementation of the commercial aspects associated with the procedures developed by the Operating Committee;
- (c-) Development of procedures related to the commercial aspects of the ISO's operations;
- (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 Tariffs, the ISO/NYSRC Agreement, the ISO/TO Agreement, and this ISO Agreement;
- (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;

(f) Establishment of by-laws, subject to approval by the Management Committee;
and

(g) 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.

The responsibilities of the Business Issues Committee are subject to revision by the Management Committee. The Business Issues Committee shall adopt by-laws, subject to approval by the Management Committee. The ~~committee~~Committee by-laws shall include provisions for notice to all Parties of ~~committee~~Committee meetings, including an agenda, at least five (5) business days prior to a meeting and a requirement that no final ~~committee~~Committee action be taken on a matter that is not listed on the ~~committee~~Committee agenda. For purposes of calculating the notice period required in this paragraph, the day on which the relevant meeting is to be held shall be included, but the day on which notice is given shall not be included. Intermediate Saturdays and Sundays, legal holidays, and weekdays on which the ISO is closed to business shall be excluded from the computation. As used in this paragraph, “legal holiday” includes New Year’s Day, the Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by New York State.

9.02 Representation, Sectors, Affiliated Parties, Voting, Quorum, Committee Action, Procedures By-Laws and Appeals.

The rules with respect to sectors, Affiliated Parties, voting, quorum, committee action, procedures, by-laws and appeals for the Business Issues Committee shall be the same as those applicable to the Management Committee under Sections 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12 and 7.13.

ARTICLE 10: DISPUTE RESOLUTION

10.01 Overview.

The ISO Board shall establish a Dispute Resolution Process (“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 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 Customer, and/or the ISO involving transmission or other services under the ISO 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, 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 ten (10) days, the DRA shall decide whether the dispute should be referred to: (1) non-binding mediation; or (2) arbitration, and shall make such a referral.

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 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 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~~ enter into non-discriminatory Service Agreements with all Customers, Market Participants and Transmission Customers seeking to obtain Eligible Service or other ISO services on the NYS Power System.

11.02 Scheduling Transactions and Invoicing.

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

into question the ability of such Transmission 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 Owner determines that the provision of Transmission Service to be provided under the ISO OATT would jeopardize the tax-exempt status of any Local Furnishing Bonds, the Transmission 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 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 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 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 Owner shall be required to provide the requested Transmission Service in accordance with the terms and conditions of the ISO Tariff.

15.03 Section 211 Order.

The provision of Transmission Service under the ISO OATT shall also constitute the provision of Transmission Service pursuant to an Order by the Commission under Section 211 of

the FPA with respect to the transmission of electricity on Con Edison's and LIPA's transmission systems.

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 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.

15.05 Responsibility of Costs Associated With Loss of Tax-Exempt Status.

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 a Transmission Owner's Local Furnishing Bonds or any other tax-exempt debt obligations, then the Market Participant receiving such Transmission Service will compensate the Transmission 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~~ 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 Owner, Generator, marketer, or LSE should perform, or fail to perform, or fail to follow the 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 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 Tariffs and/or relevant contracts.

16.03 Commission Filings.

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

ARTICLE 18: TRANSMISSION SYSTEM EXPANSION

18.01 Transmission System Expansion₂

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 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 Owner support and participation, for Operating Committee review and approval.
- (d-) 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 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 ISOs, Control Areas, and Canadian systems.
- (c-) The Plan shall conform with applicable NYSRC standards, in accordance with ISO Procedures detailed in ISO manuals.
- (d-) The Plan will be compiled by the ISO staff, with Transmission 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 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 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.

ARTICLE 19: AMENDMENT OF THIS AGREEMENT AND THE ISO TARIFFS

19.01 Modifications.

Without waiving or limiting any rights of the Incorporating Parties under this Agreement, the ISO/TO Agreement or the ISO/NYSRC Agreement, the Parties agree that this Agreement, the ISO OATT, and the ISO Services Tariff may be modified only as follows:

any proposed amendment to the ISO OATT, the ISO Services Tariff or the ISO Agreement must be submitted to both the ISO Management Committee and the ISO Board; if both the ISO Board and the ISO Management Committee agree to the proposed amendment, the ISO shall file the proposed amendment with the Commission pursuant to Section 205 of the FPA; provided however, that the foregoing provisions do not apply to any proposed amendment to the

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 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 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 Owner in any actions or proceedings between a Transmission Owner and another Transmission Owner, a third party, Market Participant, the ISO, or any other party) arising out of or related to the Transmission Owner's or the ISO's acts or omissions related in any way to the Transmission Owner's ownership or operation of its transmission facilities when such acts or omissions are either (1) pursuant to or consistent with ISO Procedures or direction; or (2) in any way related to the Transmission Owner's or the ISO's performance under the ISO OATT, except to the extent that a Transmission Owner is found liable for negligence or intentional misconduct, and under the ISO Services Tariff, the ISO/TO Agreement, the NYSRC Agreement, the ISO/NYSRC Agreement, or this Agreement, except to the extent a Transmission Owner is found liable for gross negligence or intentional misconduct.