

**AGREEMENT BETWEEN THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
AND
THE NEW YORK TRANSMISSION OWNERS
ON THE
COMPREHENSIVE PLANNING PROCESS FOR RELIABILITY NEEDS**

This Agreement is made as of the _____ day of _____, 2004, by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (“Con Edison”), New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, LIPA (a subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York), Orange and Rockland Utilities, Inc., the Power Authority of the State of New York (“NYPA”), a corporate municipal instrumentality of the State of New York, and Rochester Gas and Electric Corporation, (herein referred to collectively as the “Transmission Owners”) and the New York Independent System Operator, Inc. (“NYISO”), a not-for-profit corporation. The Transmission Owners and the NYISO are herein referred to collectively as the Parties.

WITNESSETH:

WHEREAS, the NYISO and the Transmission Owners executed an Agreement between New York Independent System Operator and Transmission Owners dated as of the 2nd day of December, 1999 (“ISO/TO Agreement”); and

WHEREAS, the NYISO is the independent body responsible for providing open-access transmission service, maintaining reliability, and administering competitive markets in New York State; and

WHEREAS, the NYISO controls the operations of the transmission facilities of the Transmission Owners, as provided in the ISO/TO Agreement, the ISO Agreement and in the ISO Tariffs; and

WHEREAS, the Transmission Owners will continue to own, physically operate, modify, and maintain the transmission facilities; and

WHEREAS, the NYISO is undertaking a Comprehensive Planning Process for Reliability Needs (“Planning Process”) that will result in a Reliability Needs Assessment Report and a Comprehensive Reliability Plan, as described in the Planning Process; and

WHEREAS, each Transmission Owner will participate in the Planning Process as described in the NYISO OATT;

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

1.01 The definitions contained in Article 1 of the Independent System Operator Agreement (“ISO Agreement”), as it existed on the date of this Agreement, are hereby incorporated by reference in 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 5.03 below.

ARTICLE 2.0: OBLIGATIONS OF THE TRANSMISSION OWNERS

The Transmission Owners agree to assume the obligations described in Sections 2.01, 2.02 and 2.03 below, subject to the conditions and reservations of rights set forth in Articles 3.0 and 4.0 of this Agreement.

2.01 Each Transmission Owner agrees that the appropriate Transmission Owner will prepare regulated proposals in accordance with the provisions of the Planning Process and to assist the NYISO in the NYISO's evaluation of such proposals.

2.02 Each Transmission Owner agrees to develop and construct (or cause to be developed and/or constructed) projects necessary to meet reliability needs on the bulk power facilities identified in the Comprehensive Reliability Plan and which the NYISO has determined will address the identified reliability needs. The NYISO shall make a determination that a regulated reliability project will be implemented by a Transmission Owner only after it has determined that no viable market-based response will adequately address the identified reliability need. For purposes of this Agreement, the "bulk power facilities" shall be those facilities identified as the New York State Bulk Power Transmission Facilities in the annual Area Transmission Review submitted to the Northeast Power Coordinating Council ("NPCC") by the NYISO pursuant to NPCC requirements.

2.03 The Transmission Owners agree to proceed with the development and construction of a project to meet a specific reliability need, pursuant to the provisions of Section 2.02, in parallel with one or more market-based projects to meet the reliability need if the NYISO in the Comprehensive Reliability Plan concludes that such a parallel effort is necessary to ensure that reliability needs will be met in a timely manner.

ARTICLE 3.0: CONDITIONS OF THE TRANSMISSION OWNER OBLIGATIONS

The Transmission Owners' obligations described in Sections 2.02 and 2.03 hereof shall be subject to the following conditions:

3.01 Full recovery in rates by the Transmission Owner of all reasonably incurred costs related to the preparation of proposals for, and the development, construction, operation and

maintenance of regulated projects undertaken, or caused to be undertaken, by the Transmission Owner to meet a reliability need included in the Comprehensive Reliability Plan, regardless of whether the regulated project was proposed by the Transmission Owner or was in response to a request by the NYISO, including a reasonable return on investment and any applicable regulatory incentives; provided that the costs of the specific project identified in the Comprehensive Reliability Plan had not been included in a prior rate filing by the Transmission Owner and are not included in the Transmission Owner's current rates.

3.02 Full recovery by the Transmission Owner, as provided for in Section 3.01, of all reasonably incurred costs related to projects undertaken, or caused to be undertaken, by the Transmission Owner pursuant to Sections 2.01, 2.02 and 2.03 above to meet a reliability need included in the Comprehensive Reliability Plan that is subsequently determined by the NYISO not to be necessary to meet a reliability need, or that cannot be completed because of the failure to obtain necessary Federal, state or local authorizations or for any other circumstance beyond the Transmission Owner's reasonable control.

3.03 Approval by the Federal Energy Regulatory Commission ("FERC") of a rate mechanism separate from the Transmission Service Charge ("TSC") and the NYPA Transmission Adjustment Charge ("NTAC") that shall be designed to be limited to the recovery of transmission related costs incurred to meet a reliability need included in the Comprehensive Reliability Plan. The separate rate mechanism will allow any Transmission Owner to make a filing under Section 205 of the Federal Power Act ("FPA") or at LIPA's or NYPA's request to have the NYISO make a filing on behalf of LIPA and/or NYPA (as the case may be), limited to a request for recovery of any reasonable costs incurred pursuant to the Comprehensive Reliability Plan, as provided for in Section 3.01, including a reasonable return on investment and any

applicable regulatory incentives. The separate rate mechanism will provide for any increased rates to become effective subject to refund pending FERC approval as part of an expedited approval process.

3.04 The recovery of transmission related costs in the separate rate mechanism provided for above will include but not be limited to all reasonable costs related to: (1) obtaining or attempting to obtain all Federal, state and local authorizations necessary for completion of the project included in the Comprehensive Reliability Plan and (2) acquiring or attempting to acquire all necessary real property rights for such project.

3.05 Receipt by the Transmission Owner of all Federal, state and local authorizations necessary for completion of the project and acquisition by the Transmission Owner of all necessary property rights.

3.06 The right of each Transmission Owner to request any incentives available under regulatory policies related to investments in transmission projects as part of any filing under the separate rate mechanism applicable to transmission related investments provided for in Sections 3.03 and 3.04 above.

3.07 Nothing herein shall limit the right of one or more Transmission Owners to protest, comment on, or engage in litigation before FERC, the New York Public Service Commission or any court with respect to proposed changes to the NYISO's Planning Process.

3.08 Nothing herein shall obligate Con Edison, NYPA or LIPA to construct, or cause to construct, a transmission facility if bond counsel to Con Edison, NYPA or LIPA makes a finding that such new facility would violate the tax-exempt status of Con Edison's, NYPA's or LIPA's local furnishing and tax-exempt bonds or impair their ability to secure future tax-exempt financing.

3.09 LIPA's and NYPA's participation in this Agreement shall in no way be considered to be a waiver of their non-jurisdictional status pursuant to Section 201(f) of the FPA including with respect to the FERC's exercise of the FPA's general ratemaking authority.

ARTICLE 4.0: TRANSMISSION OWNER RESERVATION OF RIGHTS

4.01 Execution of the Agreement by a Transmission Owner shall not constitute a waiver of any existing rights under the FPA or other governing law, including, but not limited to, the right of each Transmission Owner to make unilateral filings under Section 205 of the FPA.

4.02 Notwithstanding the obligations voluntarily assumed herein by the Transmission Owners, each Transmission Owner expressly reserves all of its existing rights under the ISO/TO Agreement, including, but not limited to, the rights incident to ownership of its assets, including without limitation, the right to expand its transmission facilities on its own initiative or in response to an order of an appropriate regulatory authority, and the rights contained in Sections 3.10(a) and 3.10(g) of the ISO/TO Agreement. Costs related to transmission projects other than those undertaken pursuant to Sections 2.01, 2.02 or 2.03 will be recoverable under applicable federal and state cost recovery mechanisms other than the rate mechanism established pursuant to Section 3.03.

4.03 The appropriate Transmission Owner(s) shall have the right to construct (or cause to be constructed), invest in and own any regulated transmission facilities that the NYISO determines are required to meet a reliability need identified in the Comprehensive Reliability Plan, subject to regulatory approval. The costs associated with any such transmission facilities shall be covered in rates as provided for in Article 3 herein.

ARTICLE 5.0: OTHER PROVISIONS

5.01 This Agreement shall become effective on the later of: (1) the date on which FERC accepts it for filing, and (b) the effective date of the Planning Process. This Agreement shall be terminated as of the termination date of the ISO/TO Agreement. Any Transmission Owner may withdraw from this Agreement upon 90 days' notice to the other parties and to FERC. Termination or withdrawal under this paragraph shall not relieve any Transmission Owner of any specific obligation to meet a reliability need it may have already incurred under this Agreement or the Planning Process.

5.02 The provisions of Sections 6.03, 6.06, 6.07, 6.08, 6.11, 6.12, 6.13 and 6.16 of the ISO/TO Agreement are incorporated herein by reference.

5.03 This Agreement is subject to change under Section 205 of the FPA upon the mutual written agreement of the Parties. Absent mutual agreement of the Parties, it is the intent of the Parties that, to the maximum extent permitted by law, 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, subject only to an express finding by FERC that such change is required under the public interest standard under the Mobile-Sierra doctrine.

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