

the ISO\*s obligation to indemnify the Transmission Owners pursuant to the ISO/TO Agreement or any other agreement.

Nothing in the ISO Services Tariff, or any Service Agreement pursuant to the ISO Services Tariff, express or implied, is intended to confer on any person, other than the parties to a Service Agreement, any rights or remedies under or by reason of the ISO Services Tariff.

#### **12.4 Indemnification**

For the purpose of this Section, the terms Market Participant(s) and Customer(s) shall not include a Transmission Owner with respect to 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 this Tariff.

Subject to the ISO\*s obligations to the Transmission Owners under the ISO/TO Agreement and the ISO Agreement, each Customer and Market Participant shall indemnify, save harmless and defend the ISO, the Transmission Owners and the NYSRC including their directors, members, managers, officers, employees, trustees, committee members and agents, or each of them (individually the "Indemnitee" or collectively the "Indemnitees") from and against all claims, demands, losses, liabilities, judgments, damages, and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the Indemnitees in any actions or proceedings between the Indemnitees and a third party, the Customer or Market Participant or any other party) arising out of or related to the Indemnitee\*s or the Customer\*s acts or omissions related in any way to performance under the ISO Services

Tariff, a Service Agreement or an ISO Related Agreement, except to the extent that the Indemnitees are found liable for gross negligence or intentional misconduct.

The ISO will procure insurance or other alternative risk financing arrangements sufficient to cover the risks associated with the carrying out of its responsibilities under this Tariff. The proceeds from such insurance shall be used prior to the invocation by the ISO of its right to indemnification under this Section through the Rate Schedule 1 charge. Except to the extent that indemnification of the ISO is required from a particular Market Participant or Customer because of the acts or omissions of that Market Participant or Customer, indemnification of or by the ISO shall be effected through the Rate Schedule 1 charge of the ISO OATT.

### **3. Computation of Rate**

The Market Administration and Control Area Services charge shall be computed on a monthly basis based on information available from the prior month. The charge shall equal the quotient of the ISO's monthly costs and expenses that are charged to the ISO Services Tariff divided by the total amount of Actual Energy Withdrawals to supply Load in the NYCA and all other purchases from the LBMP Markets to supply Load outside the NYCA, adjusted for revenues related to Installed Capacity deficiency penalties.

### **4. ISO Costs**

ISO costs to be recovered through this charge shall include costs incurred by the ISO that are directly assignable to the services provided by the ISO under the Tariff and are not recoverable under Rate Schedule 1 of the ISO OATT. Costs recoverable under this charge shall include costs related to: the ISO's administration of the LBMP Markets; the ISO's administration of Installed Capacity requirements and an Installed Capacity Market; the ISO's administration of Control Area Services, other than Ancillary Services provided under the ISO OATT; the ISO's administration of the Market Power Monitoring Program; other activities related to the maintenance of reliability in the NYCA; and costs related to any indemnification of or by the ISO pursuant to Section 12.4 of this Tariff.

Where costs or expenses or receipts are incurred on a basis other than a monthly basis, the ISO shall use reasonable judgment consistent with commonly accepted accounting practices to develop the monthly components.