

Transmission Owner and each Transmission Customer will not be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

10.1A Limitation on Liability: The ISO and the Transmission Owners shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to any Transmission Customer, Market Participant, or any third party or other party for any damages whatsoever including, without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages resulting from any act or omission in any way associated with a Service Agreement or the ISO OATT, except to the extent that the ISO or a Transmission Owner is found liable for negligence or intentional misconduct, in which case the ISO or Transmission Owner will not be liable for any incidental, consequential, punitive, special, exemplary or indirect damages.

10.2 Indemnification: The Transmission Customer shall at all times indemnify, defend, and save the ISO and each Transmission Owner harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties,

arising out of or resulting from the ISO*s or the Transmission Owner*s performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the ISO or the Transmission Owner. 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 Transmission Customer because of the acts or omissions of the Transmission Customer, indemnification of or by the ISO shall be effected through the Rate Schedule 1 charge.

10A.0 Back-up Operation

10A.1 Back-up Operation Procedures: The ISO shall develop Back-up Operation procedures that will carry out the intent and purposes of this Tariff to the extent practical, taking into consideration circumstances under which the normal communications or computer systems of the ISO are not fully functional. Such procedures shall include testing requirements and training for the ISO staff, Transmission Owner staff, and Market Participants. If communication or computer

- ! NYS Transmission System studies, when the costs of the studies are not recoverable from a Transmission Customer;
- ! Engineering services and operations planning;
- ! Data and voice communications network service coordination;
- ! Metering maintenance and calibration scheduling;
- ! Dispute resolution;
- ! Record keeping and auditing;
- ! Training of ISO personnel;
- ! Development of new information, communication and control systems;
- ! Professional services;
- ! Carrying costs on ISO assets, capital requirements and debts;
- ! Tax expenses, if any;
- ! Administrative and general expenses;
- ! Insurance expenses;
- ! Any indemnification of or by the ISO pursuant to Section 10.2 of this Tariff;
- ! Costs that the ISO incurs as a result of bad debt, including finance charges; and
- ! The costs associated with differences between the amounts bid by generating facilities that have been committed and scheduled by the ISO to provide Energy and certain Ancillary Services, and the actual revenues received by these generating facilities for providing such Energy and Ancillary Services. Where the costs are incurred to compensate generating facilities for satisfying Local Reliability Rules, the associated charge shall apply only to Transmission Customers serving Load in the Load Zone(s) where the rule is applied.

B. Costs associated with the start-up and formation of the ISO, including without limitation, the following:

- ! the transfer of any property, including real, personal, and intellectual property, other assets and other rights and obligations;
- ! items such as computer software development and licensing costs and computer hardware costs; and
- ! costs related to regulatory filings.

These costs will be amortized over a five-year period, and Rate Schedule 1 will include an amortized amount of the costs, inclusive of financing costs.

Subject to the above, 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. The sum of the costs identified above shall be adjusted by the Residual Adjustment.

5. Residual Adjustment

The ISO's payments from Transmission Customers will not equal the ISO's payments to Suppliers. Part of the difference consists of Congestion Rent. The remainder comprises the Residual Adjustment, which will be an adjustment to the costs in Section 4. The most significant components of the Residual Adjustment, which is calculated below, include:

- ! The greater revenue the ISO collects for Marginal Losses from Transmission Customers, in contrast to payments for losses remitted to generation facilities;
- ! Costs or savings associated with the ISO redispatch of Generators resulting from a change in Transfer Capability between the Day-Ahead schedule and the real-time dispatch;
- ! The cost resulting from inadvertent interchange (if unscheduled Energy

