



Economic Planning Process Manual – Appendices

**Appendix E Economic Transmission Project Evaluation Agreement
Form**

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DRAFT – FOR DISCUSSION PURPOSES ONLY

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- ECONOMIC TRANSMISSION PROJECT EVALUATION AGREEMENT TEMPLATE

THIS ECONOMIC TRANSMISSION PROJECT EVALUATION AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 20__ by and between _____, a _____ organized and existing under the laws of the State of _____, (“Requestor”), and the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”). Requestor and NYISO each may be referred to as a “Party,” or collectively referred to as the “Parties.”

RECITALS

WHEREAS, Requestor has submitted a completed Request for Economic Transmission Project Evaluation of a Regulated Economic Transmission Project, dated _____, the requisite \$25,000 refundable deposit and the Project Conceptual Package (“PCP”), included in Attachment A hereto, to the NYISO for the NYISO to conduct an Economic Transmission Project Evaluation, pursuant to Sections 31.5.4.3, 31.5.4.4, 31.5.4.5, and 31.5.4.6 of Attachment Y to the Open Access Transmission Tariff (“OATT”), of a proposed Regulated Economic Transmission Project that will interconnect with or be integrated into the existing New York State Bulk Power Transmission Facilities; and

WHEREAS, Requestor and the NYISO have met to discuss and determine the nature of the analysis to be conducted, including any customization that the Requestor may desire for its project’s analysis; and

WHEREAS, Requestor desires the NYISO to proceed to conduct the Economic Transmission Project Evaluation in accordance with this Agreement, and with applicable provisions of Attachment Y to the OATT and ISO Procedures;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

- 1.0 Capitalized terms that are not otherwise defined herein shall have the meaning set forth in Section 1 of the OATT or in Attachment Y to the OATT.
- 2.0 Requestor elects, and the NYISO shall perform or cause to be performed, an Economic Transmission Project Evaluation consistent with Sections 31.5.4.3, 31.5.4.4, 31.5.4.5, and 31.5.4.6 of Attachment Y to the OATT. The terms of these OATT provisions, as applicable, are hereby incorporated herein by reference.
- 3.0 The scope of the Economic Transmission Project Evaluation shall be specified in Attachment A to this Agreement. The Economic Transmission Project Evaluation shall use the most recently approved System & Resource Outlook database and base case assumptions, as the NYISO may update in accordance with the OATT and ISO Procedures.

- 4.0 The Economic Transmission Project Evaluation will be based upon the information described in Attachment A to this Agreement, including the information provided by Requestor in its request for an Economic Transmission Project Evaluation of a Regulated Economic Transmission Project dated _____ (“Request For Analysis”). The Requestor shall promptly provide to the NYISO additional information as the NYISO in its judgment determines is reasonably necessary to complete the Economic Transmission Project Evaluation.
- 5.0 The NYISO shall make reasonable efforts to complete the Economic Transmission Project Evaluation by [calendar date/date point on Economic Planning Process cycle time line]. If the NYISO determines that this target date will not be met, the NYISO will promptly inform Requestor and provide Requestor with an updated estimate of the date by which the Economic Transmission Project Evaluation will be completed. If Requestor modifies the technical information provided in the Request For Analysis, the NYISO may reasonably extend the time to complete the Economic Transmission Project Evaluation.
- 6.0 Contents of Economic Transmission Project Evaluation
- 6.1 **[TBD at PCP Review and Scoping Meeting]**
- 7.0 Analysis Costs
- 7.1 The NYISO shall charge, and Requestor shall pay, all reasonable costs actually incurred by the NYISO to perform, or cause to be performed, the Economic Transmission Project Evaluation. Such costs may include the cost of consultants and contractors retained by the NYISO and the cost incurred by Transmission Owner(s) to supply analysis-related data, if any, when requested to do so by the NYISO. Costs shall be computed on a time and materials basis in accordance with the rates set forth in Attachment B to this Agreement.
- 7.2 The initial deposit of \$25,000 submitted by Requestor with its Request For Analysis shall be applied to the cost of the Economic Transmission Project Evaluation. The NYISO’s good faith estimate of the total cost of the Economic Transmission Project Evaluation is \$[_____]. The Parties acknowledge and agree that the actual total cost of the Economic Transmission Project Evaluation may differ from this estimate. Upon execution of this Agreement, Requestor shall submit an additional deposit of \$[_____] which the NYISO shall also apply to the actual cost of the Economic Transmission Project Evaluation. If Requestor subsequently modifies the scope of the Economic Transmission Project Evaluation as specified in Attachment A, and does so in such a way as to increase the estimated total cost of the Economic Transmission Project Evaluation, the NYISO may request, and the Requestor shall pay, an additional deposit to reflect that cost increase which the NYISO shall apply to the actual cost of the Economic Transmission Project Evaluation.

- 7.3 Upon completion of the Economic Transmission Project Evaluation, NYISO shall provide to the Requestor the Economic Transmission Project Evaluation results.
 - 7.4 The Requestor shall be responsible for all reasonable and actual costs incurred by the NYISO that result from any meeting to review the Economic Transmission Project Evaluation or from any requested modifications to the Economic Transmission Project Evaluation.
 - 7.5 The NYISO will provide the “Final Invoice” to the Requestor to cover all reasonable costs the NYISO incurred in the performance of the Economic Transmission Project Evaluation that have not yet been paid by the Requestor.
- 8.0 Analysis Results
- 8.1 In accordance with Section 7.3 herein, the NYISO will provide the results of the benefit/cost Analysis in a written report to the Requestor.
 - 8.2 Upon request, the NYISO will schedule a meeting to review the results of the Benefit/Cost Analysis with the Requestor. Upon completion of the benefit/cost Analysis, the NYISO shall confirm that the Requestor is in possession of the final version of the benefit/cost Analysis results.
 - 8.3 The Requestor acknowledges and agrees that the NYISO will post the final results of this benefit/cost Analysis if the Requestor seeks regulated cost recovery under the OATT based upon the results of this benefit/cost Analysis.
 - 8.4 In the event that the Requestor either (1) withdraws its Request For Analysis or (2) decides not to seek cost recovery for its Regulated Economic Transmission Project, then the results of the Economic Transmission Project Evaluation shall not be disclosed or posted on the NYISO website.
- 9.0 Requestor may withdraw its Request For Analysis at any time by terminating this Agreement in accordance with Section 10.5 of this Agreement. Upon receipt of such termination notice, the NYISO will cease work on the Economic Transmission Project Evaluation. Requestor shall reimburse the NYISO for all reasonable costs incurred for the Economic Transmission Project Evaluation through the effective date of termination. The NYISO will promptly forward to Requestor either (i) an invoice for unpaid analysis work, payable within thirty (30) days, or (ii) a refund of that portion of Requestor’s deposited funds not required to cover unpaid analysis work. The NYISO will forward completed results, if any, to Requestor with the refund, if one is due, or upon receipt of full payment from Requestor for unpaid analysis work.
- 10.0 Miscellaneous.
- 10.1 Accuracy of Information. Except as Requestor may otherwise specify in writing when it provides information to the NYISO under this Agreement, Requestor

represents and warrants that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Requestor shall promptly provide NYISO with any additional information needed to update information previously provided. The Requestor may subsequently update information provided; however, it is within the NYISO's sole discretion whether such updated information is reasonable and whether it will be accepted for purposes of the Economic Transmission Project Evaluation.

- 10.2 **Disclaimer of Warranty.** In preparing the Economic Transmission Project Evaluation, the NYISO and any subcontractors or consultants employed by it and any Transmission Owner that provides study-related data shall have to rely on information provided by the Requestor, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither the NYISO nor any subcontractor or consultant employed by the NYISO makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Economic Transmission Project Evaluation. Requestor acknowledges that it has not relied on any representations or warranties not specifically set forth herein.
- 10.3 **Limitation of Liability.** In no event shall either Party or its subcontractors or consultants or any Transmission Owner that provides study-related data be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with this Agreement or the Economic Transmission Project Evaluation or any reliance on the Economic Transmission Project Evaluation by either Party or third parties, even if one of the Parties or its subcontractors or consultants have been advised of the possibility of such damages.
- 10.4 **Third-Party Beneficiaries.** Without limitation of Sections 10.2 and 10.3 of this Agreement, Requestor further agrees that subcontractors and consultants hired by NYISO with respect to the Economic Transmission Project Evaluation and any Transmission Owner that provides study-related data shall be deemed third party beneficiaries of these Sections 10.2 and 10.3.
- 10.5 **Term and Termination.** This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 10.5, shall continue in effect for a term of [] or until the Economic Transmission Project Evaluation is completed, whichever event occurs first. Requestor may by ten (10) days written notice terminate this Agreement and thereby withdraw Requestor's Request For Analysis.
- 10.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.

- 10.7 Severability. In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.
- 10.8 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 10.9 Amendment. No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 10.10 Survival. All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 10.11 Independent Contractor. NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors or consultants shall be considered to be employees of Requestor as a result of this Agreement.
- 10.12 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to insist or rely on any such provision, rights and remedies in that or any other instances; rather, the same shall be and remain in full force and effect.
- 10.13 Successors and Assigns. This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

**The New York Independent
System Operator, Inc.**

[Insert name of Requestor]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**ATTACHMENT A
PROJECT CONCEPTUAL PACKAGE AND
SCOPE OF WORK FOR THE ECONOMIC TRANSMISSION PROJECT EVALUATION**

I. [PCP to be provided.]

II. [Scope, based upon Sections 31.5.4.3, 31.5.4.4, 31.5.4.5, and 31.5.4.6 of Attachment Y of the OATT, to be provided.]

ATTACHMENT B

**HOURLY RATES FOR PERSONNEL WORKING ON THE ECONOMIC
TRANSMISSION PROJECT EVALUATION**

<u>Position</u>	<u>Hourly Rate</u>