

31.4.5.1.8.1 A Developer that elects to submit a Cost Cap for its proposed Public Policy Transmission Project must propose to contain all capital costs incurred by a Developer to plan for and construct a Public Policy Transmission Project, and to make it ready for its intended use (“Included Capital Costs”), except for the Excluded Capital Costs defined in Section 31.4.5.1.8.2. Capital costs include the cost of contract work, labor, materials and supplies, transportation, special machine services, shop services, protection, injuries and damages, privileges and permits, engineering services, expected environmental site remediation and environmental mitigation costs, general administration services, legal services, real estate and land rights, rents, studies, training, asset retirement, debt costs, and taxes. At its option, a Developer may choose to include as Included Capital Costs real estate costs for existing rights-of-way that are part of the proposed Public Policy Transmission Project, but are not owned by the Developer (e.g., existing utility rights-of-way). If any excusing condition identified in Section 6.10.6.2 occurs that causes a Developer to exceed the Included Capital Costs identified in the Developer’s Cost Cap that was voluntarily proposed pursuant to Sections 31.4.5.1.1 and 31.4.5.1.8, nothing in this Section shall be construed to bar a Developer’s recovery of capital costs that are incurred in excess of the Cost Cap due to the occurrence of an excusing condition, nor shall anything in this Section be construed to limit a Developer’s rights under section 205 of the Federal Power Act to file with the Commission for recovery of such capital costs.

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### **31.4.8.3 ISO Selection of More Efficient or Cost Effective Regulated Public Policy Transmission Project to Satisfy a Public Policy Transmission Need**

The ISO shall identify under this Section 31.4.8 the proposed regulated Public Policy Transmission Project, if any, that is the more efficient or cost effective transmission solution proposed in the planning cycle for the Public Policy Transmission Planning Process to satisfy a Public Policy Transmission Need. The ISO shall include the more efficient or cost effective transmission solution in the Public Policy Transmission Planning Report. The Developer of a regulated Public Policy Transmission Project shall be eligible to recover costs for the project only if the project is selected by the ISO, except as otherwise provided in Section 31.4.3.2 or as otherwise determined by the Commission. Costs will be recovered when the project enters into service, is halted, or as otherwise determined by the Commission in accordance with the cost recovery requirements set forth in Section 31.5.6 of this Attachment Y and Rate Schedule 10 of the ISO OATT. Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission, ***provided, however, that the Developer: (i) shall include in the Development Agreement any Cost Cap in accordance with Section 31.4.12.2 and (ii) shall file at the Commission its Cost Cap together with a rate that, includes but is not limited to, all Included Capital Costs, Excluded Capital Costs, and any capital costs that are incurred in excess of the Cost Cap due to the occurrence of one or more excusing conditions.***

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Any selection of a Public Policy Transmission Project by the ISO under Section 31.4.8, including but not limited to the selection of a project that involves the physical modification of

facilities within the Long Island Transmission District, shall not affect the obligation and responsibility of the Developer to apply for, and receive, all necessary authorizations or permits required by federal or state law for such project.

6.10.6.1 The Developer of an Eligible Project that is a Public Policy Transmission Project selected by the ISO pursuant to Sections 31.4.8.2 and 31.4.11 of Attachment Y to the ISO OATT shall file with the Commission as part of its required rate filing for cost recovery under Sections 6.10.4 or 6.10.5, as applicable: (i) any Cost Cap that it proposed for its Public Policy Transmission Project, ~~and identify~~ any excusing conditions described in Section 6.10.6.2 ~~that have caused the Developer to incur capital costs that are in excess of the Cost Cap proposed pursuant to Sections 31.4.5.1.1 and 31.4.5.1.8,~~ and (ii) a rate that, ~~includes but is not limited to, all Included Capital Costs, Excluded Capital Costs, and any capital costs that are incurred in excess of the Cost Cap due to the occurrence of one or more excusing conditions.~~

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### 15.3. Cost Recovery (Appendix D to 31.7)

The Developer may recover the costs of the Transmission Project in accordance with the cost recovery requirements in the ISO Tariffs. ~~If the Developer submitted a Cost Cap for the Included Capital Costs (as defined in Section 31.4.5.1.8.1 of the ISO OATT) of the Transmission Project pursuant to Section 31.4.5.1 of the ISO OATT, the Developer's Cost Cap for the Included Capital Costs shall be detailed in Appendix D of this Agreement, which description shall be consistent with the Cost Cap included in Developer's project proposal. The Developer agrees to file this Cost Cap for Included Capital Costs with the Commission together with a rate that includes but is not limited to, all Included Capital Costs, Excluded Capital Costs, and any capital costs that are incurred in excess of the Cost Cap due to the occurrence of one or more excusing conditions described in this Section, in accordance with the requirements in Rate Schedule 10 of the ISO OATT. The Developer further agrees that it shall not seek to recover through its transmission rates for the Transmission Project or through any other means costs for the Included Capital Cost above its agreed-upon Cost Cap; provided, however, the Developer may recover costs above its agreed-upon Cost Cap resulting from one of the following excusing conditions, but only to the extent the costs arise from, and solely for the duration, of the excusing condition:~~

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- A. Transmission Project changes or delays that are due to the actions or omissions of the ISO, Connecting Transmission Owner, Interconnecting Transmission Owner, or Affected Transmission Owner;
- B. A Force Majeure event as defined in this Agreement, solely for the duration of said event, and subject to the Force Majeure requirements in Section 15.5 below;

**C. Changes in laws or regulations, including but not limited to applicable taxes;**

**D. Material modifications to scope or routing arising from siting processes under Public Service Law Article VII or applicable local laws as determined by the New York State Public Service Commission or local governments respectively; and**

**E. Actions or inactions of regulatory or governmental entities, and court orders.**

Nothing in this Section shall be construed to limit a Developer's rights under section 205 of the Federal Power Act to file with the Commission for recovery of any capital costs that are incurred in excess of the Cost Cap due to the occurrence of one or more excusing conditions described herein.