

Attachment I

Matrix Describing Differences Between Cedar Rapids Engineering, Procurement, Construction, Operation, and Maintenance Agreement (“EPC Agreement”) (Service Agreement No. 2476) and Pro Forma LGIA

EPC Agreement	Pro Forma LGIA	Modifications Reflected in EPC Agreement
Preamble	Preamble	Modified to provide that the EPC Agreement is an Engineering, Procurement, Construction, Operating, and Maintenance Agreement and that Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or “Connecting Transmission Owner”) is not a Party as defined in the EPC Agreement.
Recitals	Recitals	Modified to describe the purpose of the EPC Agreement, including providing: (i) the description of the Transmission Project; (ii) that Connecting Transmission Owner has entered into an interconnection agreement to construct, own, and operate certain facilities of the Transmission Project and related Network Upgrade Facilities; (iii) that the Facilities Study identified certain portions of the Transmission Project and Network Upgrade Facilities (collectively, the “Affected System Upgrade Facilities”) to be constructed on the transmission system of Alcoa Power Generating Inc.’s Long Sault Division (“APGI” or “Affected System Operator”) and owned and operated by APGI, ¹ (iv) that APGI will perform the engineering, procurement, and construction (“EPC Services”) of the Affected System Upgrade Facilities and will own and operate them; (v) that Transmission Developer will be responsible for the costs of the Affected System Upgrade Facilities; and (v) that the Connecting Transmission Owner has executed the Agreement solely for the limited purposes of acknowledging that its representatives have read and are fully apprised of the terms of the EPC Agreement.
Article 1	Article 1	Definitions
		Modified to: (i) remove defined terms included in the Pro Forma LGIA that are unnecessary in the EPC Agreement and that could create confusion if retained, ² (ii) revise

¹ To make clear that APGI is only responsible for certain portions of the Transmission Developer’s Transmission Project and related Network Upgrade Facilities, the Parties established the terms “Transmission Project 1.A” and “Network Upgrade Facilities 1.B” for the Agreement, which reference the portions of the Transmission Project and Network Upgrade Facilities that APGI is responsible for, as detailed in Sections 1.A and 1.B of Appendix A of the Agreement.

² The removed defined terms are: Affected Transmission Owner, Ancillary Services, Applicable Reliability Standards, Attachment Facilities, Base Case, Byway, Capacity Region, Capacity Resource Interconnection Service, Class Year Deliverability Study, Commercial

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		definitions of certain defined terms for consistency with the modified purpose and scope of the EPC Agreement, ³ and (iii) insert certain new defined terms required for the EPC Agreement. ⁴
Article 2	Article 2	Effective Date, Term and Termination
Article 2.1	Article 2.1	Modified to provide that the NYISO would be the sole filer of the EPC Agreement at the Commission and to incorporate from Article 3.1 of the Pro Forma LGIA that the other Parties would cooperate with filing the EPC Agreement.
Article 2.2	Article 2.2	Modified to provide that the EPC Agreement will remain in effect until the later of: (i) the completion of EPC Services or (ii) the final payment of all invoices and the release or refund of any remaining Security.
Article 2.3.1		Inserted to clarify that the EPC Agreement will be terminated upon the completion of the term of the EPC Agreement.
Article 2.3.2	Article 2.3.1	Modified to replace termination based upon a Large Generator Facility's retirement with termination following receipt of notice from the Transmission Developer indicating that

Operation, Commercial Operation Date, Connecting Transmission Owner's Attachment Facilities, Control Area, Developer, Developer's Attachment Facilities, Distribution System, Distribution Upgrades, Emergency State, Energy Resource Interconnection Service, Generating Facility, Generating Facility Capacity, Highway, Initial Synchronization Date, Interconnection Facilities Study, Interconnection Facilities Study Agreement, Interconnection Request, Interconnection Study, Interconnection System Reliability Impact Study, Large Generating Facility, Loss, Material Modification, Metering Equipment, NYISO Deliverability Interconnection Standard, NYISO Minimum Interconnection Standard, Other Interfaces, Point of Change of Ownership, Point of Interconnection, Retired, Stand Alone System Upgrade Facilities, Standard Large Facility Interconnection Procedures, Standard Large Generator Interconnection Agreement, System Deliverability Upgrades, System Upgrade Facilities, and Trial Operation.

³ The revised defined terms are: Affected System, Affected System Operator, Connecting Transmission Owner, Governmental Authority, In-Service Date, NERC, Party, and System Protection Facilities.

⁴ The Parties inserted the following new defined terms: Affected System Upgrade Facilities, ASO Estimated Total Costs, Cedar Expansion Interconnection Agreement, EPC Services, Facilities Study, Milestones, Network Upgrade Facilities, Network Upgrade Facilities 1.B, NYISO Transmission Interconnection Standard, Operating Agreement, Security, System Impact Study, Transmission Developer, Transmission Interconnection Application, Transmission Interconnection Procedures, Transmission Interconnection Study, Transmission Project, and Transmission Project 1.A.

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		its interconnection agreement for Transmission Project (“Interconnection Agreement”) has been terminated and the notice of termination has been accepted by the Commission.
Article 2.3.3	Article 2.3.2	Modified to clarify termination based on Default.
Article 2.3.4	Article 2.3.2	Modified filing requirements for termination to include reference to termination based on completion of term of EPC Agreement.
Article 2.4	Article 2.4	Modified: (i) to align with grounds for termination in Article 2.3.2, (ii) to replace references and requirements for Attachment Facilities and System Upgrade Facilities for requirements concerning the Transmission Project and Network Upgrade Facilities, including relocating requirements from Article 2.4.2 to 2.4.1, and (iii) to detail Transmission Developer’s cost responsibility for Network Upgrade Facilities pursuant to the forfeiture of Security requirements in Article 6.3 of the EPC Agreement in the event the agreement is terminated.
	Article 2.5	Not included in the EPC Agreement, as the provision concerns the disconnection of a Large Generator Facility.
Article 2.5	Article 2.6	Modified: (i) to provide for the survival of each Party’s rights and obligations under Article 3.11 (Taxes), Article 4.4 (Right to Inspect), and Article 5 (Operations and Maintenance), which provide for certain limited operation and maintenance requirements to continue after the completion of the EPC Services, and (ii) to remove land access requirements from the survival provisions, as neither the Affected System Operator nor the Transmission Developer will be placing facilities or equipment on the other’s property.
	Article 3	Relocated requirements concerning Parties’ cooperation in filing EPC Agreement to Article 2.1.
	Article 4	Not included in EPC Agreement, as the “Scope of Interconnection Services” provisions concerning the scope of interconnection service provided by the NYISO to the Transmission Developer is addressed in the Interconnection Agreement.
Article 3	Article 5	EPC Services (Replacing “Interconnection Facilities, Engineering Procurement, and Construction”)

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Article 3.1	Article 5.1	Modified to provide that Affected System Operator will perform the EPC Services and to clarify that the NYISO does not have responsibility or liability for performance of this work.
	Articles 5.1.1-5.4	Not included in EPC Agreement, as the provisions concern: (i) options for performance of the construction work, which Affected System Operator will perform, and (ii) power system stabilizers for generating facilities.
Article 3.2	Article 5.5	Modified to provide that Affected System Operator will perform the design and engineering work, to remove reference to procurement of equipment, which will occur at a later stage for the Affected System Upgrade Facilities, to remove references to actions that will be performed under the Interconnection Agreement or are not applicable to this EPC Agreement, and to remove references to the provision of the required Security, which will be provided per Article 6.2 in its entirety within 30 days of the effective date of the EPC Agreement.
Article 3.3	Article 5.6	Modified to provide that Affected System Operator will perform the equipment procurement and construction work, to clarify the stage at which the equipment procurement will occur, to accommodate approvals of discrete aspects of the Affected System Upgrade Facilities, to permit the Affected System Operator and Transmission Developer to mutually agree to modifications to the date to proceed with procurement and construction, and to remove references to the provision of the required Security, which will be provided per Article 6.2 in its entirety within 30 days of the effective date of the EPC Agreement.
Article 3.4	Article 5.7	Modified to be consistent with Affected System Operator performing the work under the EPC Agreement and to remove requirements for Attachment Facilities.
Article 3.5	Article 5.8	Modified to remove requirements for Attachment Facilities.
	Articles 5.9-5.11	Not included in the EPC Agreement, as the provisions concern limited operation of a Large Generating Facility and requirements for Attachment Facilities.
Article 3.6		Inserted provision to specify that Affected System Operator will own the Affected System Upgrade Facilities.

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Article 3.7	Article 5.12	Modified to remove references to facility types that are not subject to the EPC Agreement and to remove references to disconnecting facilities on another party's facilities, as APGI and HQUS will not be performing work on the other's property.
Article 3.8	Article 5.13	Modified to remove references to facility types that are not subject to the EPC Agreement and to align requirements with transmission facilities.
Article 3.9	Article 5.14	Modified to align requirements with transmission facilities.
	Article 5.15	Not included in the EPC Agreement, as the provision concerns base case facilities not applicable to the agreement.
Article 3.10	Article 5.16	Modified to remove references to facility types that are not subject to the EPC Agreement and to reference the cost determinations in the Facilities Study report applicable to Transmission Projects in place of Attachment S of the OATT.
Article 3.11	Article 5.17	Modified to: (i) remove the statement of intent that payments will be non-taxable, related representations and covenants, and other provisions that apply to payments and property transfers qualifying for the safe harbor provided by IRS Notices 88-129, 2001-82 and 2016-36, ⁵ (ii) clarify the scope of Transmission Developer's income tax indemnification and gross-up obligations, and (iii) reflect defined terms consistent with Transmission Project-related defined terms.
Article 3.12	Article 5.18	Modified to remove references to the tax-exempt status of certain New York Transmission Owners not parties to the EPC Agreement.
Article 3.13	Article 5.19	Modified to reflect the requirements of Attachment P to the NYISO OATT regarding modifications to a Transmission Project or Network Upgrade Facilities, and to remove references to requirements for Attachment Facilities.
Article 4	Article 6	Testing and Inspection
Article 4.1	Article 6.1	Modified to provide that Affected System Operator will perform any required testing, to provide for coordination of testing with Connecting Transmission Owner, to remove testing requirements for a Large Generating Facility, Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades, to align with transmission, rather than generator, requirements, and to conform to revised defined terms.

⁵ IRS Notice 2016-36, which is not included in the Pro Forma LGIA, modifies and supersedes IRS Notices 2001-82 and 88-129.

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Article 4.2	Article 6.2	Modified to clarify that Affected System Operator will perform any post-In-Service Date testing, to remove references to the Large Generating Facility, and to remove references for additional testing of Affected System Operator’s facilities.
Article 4.3	Article 6.3	Modified to clarify that Affected System Operator will perform any testing and to provide that the Transmission Developer may observe any pre-In-Service Date testing.
Article 4.4	Article 6.4	Modified to clarify the facilities for which the NYISO may observe testing.
	Article 7	Not included in the EPC Agreement, as any metering requirements concerning the Transmission Project are addressed in the Interconnection Agreement.
	Article 8	Not included in the EPC Agreement, as any communication requirements concerning the Transmission Project are addressed in the Interconnection Agreement.
Article 5	Article 9	Operations and Maintenance (Replacing “Operations”)
Article 5.1	Article 9.1	Conforming.
Article 5.2	Article 9.2	Modified to provide that APGI must satisfy operating requirements in Operating Agreement with National Grid, to provide that the NYISO is not a party to and is not responsible or liable for the performance of obligations under the Operating Agreement, and to remove requirements concerning a Developer’s operation of a Large Generating Facility.
	Articles 9.3-9.10, 10.1-10.4	Not included in the EPC Agreement, as the provisions concern the operation and maintenance requirements for the Large Generating Facility and Attachment Facilities.
Article 5.3	Article 10.5	Modified to provide that the Affected System Operator will be responsible for all reasonable expenses, including overheads, concerning the Affected System Upgrade Facilities.
Article 6	Article 11	Performance Obligation
Article 6.1		Inserted provision provides that Affected System Operator will perform the EPC Services per terms of EPC Agreement and at Transmission Developer’s expense.
	Articles 11.1-11.4	Not included in the EPC Agreement, as the provisions concern the performance of obligations for Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades.

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Article 6.2	Article 11.5	Modified to provide for the Transmission Developer's provision of Security within 30 days of the Effective Date of the EPC Agreement based on the Security amount determined in the Facilities Study and to clarify how Security may be used by Affected System Operator. The details concerning the applicable Security types have been included in the definition of Security.
	Article 11.6	Not included in the EPC Agreement, as the provision concerns compensation of Large Generating Facility for emergency services.
	Article 11.7	Not included in the EPC Agreement, as the provision concerns line outage costs that Affected System Operator has elected not to recover.
Article 6.3		Inserted requirements concerning the forfeiture of Security consistent with the upgrade requirements in Section 25.8.5 of Attachment S of the OATT.
Article 6.4		Inserted requirements agreed upon by the Parties concerning the allocation of cost responsibility for the costs of the Affected System Upgrade Facilities, when the actual costs are greater than or less than the amount determined in the Facilities Study.
Article 7	Article 12	Invoice
Article 7.1	Articles 12.1-12.2	Modified to provide provision is only applicable to the extent any amounts are due under the EPC Agreement and to incorporate the final invoice requirements for EPC Services.
Article 7.2		Inserted requirements for Affected System Operator's refund of any remaining Security.
Article 7.3	Article 12.3	Conforming.
Article 7.4	Article 12.4	Modified to reflect that any Party could own money to another Party.
	Article 13.1-13.6	Not included in the EPC Agreement, as the Emergency requirements concern the operation of the Large Generating Facility and Attachment Facilities.
Article 8	Article 14	Regulatory Requirements and Governing Law
Articles 8.1-8.2	Articles 14.1-14.2	Conforming, with updated defined terms.
Article 9	Article 15	Notices
Articles 9.1-9.4	Articles 15.1-15.4	Conforming, with updated defined terms and internal cross-references.
Article 10	Article 16	Force Majeure

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Article 10.1	Article 16.1	Conforming.
Article 10.2	Article 16.2	Conforming, except for removal of reference to obligations under Article 4 of the Pro Forma LGIA, which were not include in the EPC Agreement.
Article 11	Article 17	Default
Articles 11.1-11.2	Articles 17.1-17.2	Conforming, except updated internal cross-reference.
Article 12	Article 18	Indemnity, Consequential Damages, and Insurance
Article 12.1	Article 18.1	Modified: (i) to clarify that provision applies to third-party claims, (ii) to provide that a Party’s indemnity obligation only applies “to the extent” the damages arise out of the Indemnified Party’s performance of its obligations under this Agreement on behalf of the Indemnifying Party, “as applicable,” (iii) to define the term Loss in the context of the Indemnity provision, in place of the duplicative definition in the Definitions provision, and (iv) to correct in Articles 12.1.1 and 12.1.2 the defined terms for Indemnifying Party and Indemnified Party. ⁶
Article 12.2	Article 18.2	Modified: (i) to remove reference to liquidated damages, as the liquidated damages related requirements in Article 5 of the Pro Forma Agreement were not included in the Agreement, and (ii) to provide that Connecting Transmission Owner is not liable for claims arising under this EPC Agreement and is only executing the Agreement for the limited purpose of acknowledging that a representative of National Grid has read the terms of the EPC Agreement.
Article 12.3	Article 18.3	Modified: (i) to reflect that only Affected System Operator must procure insurance as it is the Party that will perform all of the work under the EPC Agreement and the work will be performed on its own facilities, (ii) to provide that Affected System Operator may self-insure to meet the minimum insurance requirements without having a set senior debt rating, (iii) to remove the requirement that the Affected System Operator’s subcontractor

⁶ The Commission has previously accepted the change in Section 18.1.2 (here Section 12.1.2) to correct an inadvertent revision to the Pro Forma LGIA. *See, e.g., New York Independent System Operator, Inc. and Consolidated Edison Co. of New York, Inc.*, Letter Order, Docket No. ER18-1161-000 (May 17, 2018).

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		must maintain the same minimum insurance requirements, and (iv) to correct certain internal cross references. ⁷
Article 13	Article 19	Assignment
Article 13	Article 19	Removed reference to Attachment Facilities and updated defined terms.
Article 14	Article 20	Severability
Article 14	Article 20	Modified to remove reference to Pro Forma LGIA provisions concerning construction options that were not included in the EPC Agreement.
Article 15	Article 21	Comparability
Article 15	Article 21	Conforming.
Article 16	Article 22	Confidentiality
Articles 16.1, 16.3, 16.5-16.13.	Articles 22.1, 22.3, 22.5-22.13.	Conforming, except for updated internal cross-references and defined terms.
Article 16.2	Article 22.2	Modified period for retaining Confidential Information from three to five years after termination of EPC Agreement due to survival of certain operation and maintenance requirements.
Article 16.4	Article 22.4	Modified to correct internal cross-reference. ⁸
Article 17	Article 23	Transmission Developer and Connecting Transmission Owner Notices of Environmental Releases (Replacing “Developer and Connecting Transmission Owner Notices of Environmental Releases)
Article 17	Article 23	Modified to reflect that Affected System Operator is performing all work under the EPC Agreement and to remove references to Attachment Facilities and Large Generating Facility.
	Articles 24.1-24.4	Not included in the EPC Agreement, as the provisions concern the submission of information among parties regarding a Large Generating Facility and Attachment Facilities.

⁷ The Commission has previously accepted the changes to correct these cross references. *Id.*

⁸ The Commission has previously accepted the changes to correct the cross reference. *Id.*

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Article 18	Article 25	Information Access and Audit Rights
Articles 18.1, 18.2, 18.5	Articles 25.1, 25.2, 25.5	Conforming.
Article 18.3	Article 18.3	Modified to remove reference to Party's action in Emergency State, which requirements in the Pro Forma Agreement were not included in the EPC Agreement.
Article 18.4	Article 25.4	Modified: (i) to remove references to Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades, and (ii) to provide that either the Affected System Operator or Transmission Developer can issue an invoice.
Article 19	Article 26	Subcontractors
Articles 19.1, 19.3	Articles 26.1, 26.3	Conforming.
Article 19.2	Article 26.2	Conforming, with updated defined terms.
Article 20	Article 27	Disputes
Articles 20.1-20.2, 20.4-20.5	Articles 27.1-27.2, 27.4-27.5	Conforming.
Article 20.3	Article 20.3	Modified defined terms to remove references to Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades.
Article 21	Article 28	Representations, Warranties and Covenants
Articles 21.1, 21.1.2-21.1.4	Articles 28.1, 28.1.2-28.1.4	Conforming.
Article 21.1.1	Article 28.1.1	Replaced reference of location of Large Generating Facility, Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades with State of New York.
Article 22	Article 29	Miscellaneous
Articles 22.1-22.2, 22.4, 22.6-22.7, 22.9-22.12, 22.14	Articles 29.1-29.2, 29.4, 29.6-29.7, 29.9-29.12, 29.14	Conforming.
Article 22.3	Article 29.3	Modified to replace reference to Standard Large Facility Interconnection Procedures with Transmission Interconnection Procedures.

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Articles 22.5, 22.13, 22.15	Articles 29.5, 29.13, 29.15	Modified to update defined terms and remove reference to System Upgrade Facilities and System Deliverability Upgrades.
Article 22.8	Article 29.8	Modified to remove reference to interconnection service, which is not provided under the EPC Agreement.
Signature Block	Signature Block	Modified to replace reference to “LGIA” with reference to the EPC Agreement and to insert signature block for National Grid acknowledgment.
Appendices	Appendices	
Appendix A	Appendix A	Modified to provide details of Transmission Project and Network Upgrade Facilities instead of Attachment Facilities and System Upgrade Facilities, and to insert details concerning performance of EPC Services, cost estimates, and milestones.
Appendices B, C, D, and E	Appendices B, C, D, and E	Not included in the EPC Agreement, as the provisions are already addressed in Appendix A or are not applicable to this agreement.
Appendix F	Appendix B	Conforming, with updated defined terms.

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