

SERVICE AGREEMENT NO. 1311

**AMENDED AND RESTATED
INTERCONNECTION AGREEMENT
AMONG THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
AND
NEW YORK POWER AUTHORITY
AND
NOBLE CLINTON WINDPARK I, LLC**

Dated as of June 20, 2011

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AMENDED AND RESTATED INTERCONNECTION AGREEMENT

THIS AMENDED AND RESTATED INTERCONNECTION AGREEMENT

("Agreement") is made and entered into this 20th day of June, 2011, by and among Noble Clinton Windpark I, LLC, a limited liability corporation organized and existing under the laws of the State of Delaware ("Developer" with a Large Generating Facility), 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"), and the New York Power Authority, a corporate municipal instrumentality organized and existing under the laws of the State of New York ("Transmission Owner"). Developer, the NYISO, or Transmission Owner each may be referred to as a "Party" or collectively referred to as the "Parties."

RECITALS

WHEREAS, NYISO operates the Transmission System and Transmission Owner owns certain facilities included in the Transmission System; and

WHEREAS, Developer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

WHEREAS, Developer, NYISO, and Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the New York State Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1.0 or Attachment S of the NYISO OATT.

Affected System shall mean an electric system other than the transmission system owned, controlled or operated by the NYISO or the Transmission Owner that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term "control" shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

Ancillary Services shall mean those services that are necessary to support the transmission of Capacity and Energy from resources to Loads while maintaining reliable operation of the New York State Transmission System in accordance with Good Utility Practice.

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Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, including but not limited to Environmental Law.

Applicable Reliability Councils shall mean the NERC, the NPCC and the NYSRC.

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Developer's Large Generating Facility is directly interconnected, as those requirements and guidelines are amended and modified and in effect from time to time; provided that no Party shall waive its right to challenge the applicability or validity of any requirement or guideline as applied to it in the context of this Agreement.

Attachment Facilities shall mean the Transmission Owner's Attachment Facilities and the Developer's Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Large Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Large Generating Facility to the New York State Transmission System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities or System Upgrade Facilities.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by NYISO, Transmission Owner or Developer; described in Section 2.3 of the Large Facility Interconnection Procedures.

Breach shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

Business Day shall mean Monday through Friday, excluding federal holidays.

Calendar Day shall mean any day including Saturday, Sunday or a federal holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Reliability Impact Study.

Commercial Operation shall mean the status of a Large Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shall mean the date on which the Large Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to this Agreement.

Confidential Information shall mean any information that is defined as confidential by Article 22 of this Agreement.

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Control Area shall mean an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the Generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the Load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A Control Area must be certified by the NPCC.

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 17 of this Agreement.

Developer shall mean an Eligible Customer developing a Large Generating Facility, proposing to connect to the New York State Transmission System, in compliance with the NYISO Minimum Interconnection Standard.

Developer's Attachment Facilities shall mean all facilities and equipment, as identified in Appendix A of this Agreement, that are located between the Large Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Large Generating Facility to the New York State Transmission System. Developer's Attachment Facilities are sole use facilities.

Dispute Resolution shall mean the procedure described in Article 27 of this Agreement for resolution of a dispute between the Parties.

Effective Date shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency State shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.* ("FPA").

FERC shall mean the Federal Energy Regulatory Commission ("Commission") or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or

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equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Developer's device for the production of electricity identified in the Interconnection Request, but shall not include the Developer's Attachment Facilities.

Generating Facility Capacity shall mean the net seasonal capacity of the Generating Facility and the aggregate net seasonal capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Developer, NYISO Transmission Owner, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Large Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Developer reasonably expects it will be ready to begin use of the Transmission Owner's Attachment Facilities to obtain back feed power.

Interconnection Facilities Study shall mean a study conducted by NYISO or a third party consultant for the Developer to determine a list of facilities (including Transmission Owner's Attachment Facilities and System Upgrade Facilities as identified in the Interconnection System Reliability Impact Study), the cost of those facilities, and the time required to interconnect the Large Generating Facility with the New York State Transmission System. The scope of the study is defined in Section 8 of the Standard Large Facility Interconnection Procedures.

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Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Large Generating Facility to the New York State Transmission System, the scope of which is described in Section 6 of the Standard Large Facility Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean a Developer's request, in the form of Appendix 1 to the Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to interconnect a new Large Generating Facility to the New York State Transmission System, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing Large Generating Facility that is interconnected with the New York State Transmission System.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Reliability Impact Study, and the Interconnection Facilities Study described in the Standard Large Facility Interconnection Procedures.

Interconnection System Reliability Impact Study ("SRIS") shall mean an engineering study, conducted in accordance with Section 7 of the Large Facility Interconnection Procedures, that evaluates the impact of the proposed Large Generating Facility on the safety and reliability of the New York State Transmission System and, if applicable, an Affected System, to determine what Attachment Facilities and System Upgrade Facilities are needed for the proposed Large Generation Facility of the Developer to connect reliably to the New York State Transmission System in a manner that meets the NYISO Minimum Interconnection Standard.

Interconnection System Reliability Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection System Reliability Impact Study.

IRS shall mean the Internal Revenue Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, 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 Indemnified Party's performance or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

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Metering Equipment shall mean all metering equipment installed or to be installed at the Large Generating Facility pursuant to this Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

Minimum Interconnection Standard shall mean the reliability standard that must be met by any Large Generating Facility proposing to connect to the New York State Transmission System. The Standard is designed to ensure reliable access by the proposed project to the New York State Transmission System. The Standard does not impose any deliverability test or deliverability requirement on the proposed interconnection.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Access Interconnection Service shall mean the service provided by NYISO to interconnect the Developer's Large Generating Facility to the New York State Transmission System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive electric energy and capacity from the Large Generating Facility at the Point of Interconnection, pursuant to the terms of this Agreement and the NYISO OATT.

New York State Transmission System shall mean the entire New York State electric transmission system, which includes (i) the Transmission Facilities under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with this Agreement or its performance.

NPCC shall mean the Northeast Power Coordinating Council or its successor organization.

NYSRC shall mean the New York State Reliability Council or its successor organization.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Developer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Facility Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean NYISO, Transmission Owner, or Developer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to this Agreement, where the Developer's Attachment Facilities connect to the Transmission Owner's Attachment Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to this Agreement, where the Attachment Facilities connect to the New York State Transmission System.

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Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by NYISO.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Developer, NYISO and Transmission Owner conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Services Tariff shall mean the NYISO Market Administration and Control Area Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff thereto.

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Large Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Developer and the entity having the right to sell, lease or grant Developer the right to possess or occupy a site for such purpose.

Stand Alone System Upgrade Facilities shall mean System Upgrade Facilities that a Developer may construct without affecting day-to-day operations of the New York State Transmission System during their construction. NYISO, the Transmission Owner and the Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to this Agreement.

Standard Large Facility Interconnection Procedures (“LFIP”) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in Attachment X of the NYISO OATT.

Standard Large Generator Interconnection Agreement (“LGIA”) shall mean this Agreement, the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility, that is included in Attachment X of the NYISO OATT.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Large Generating Facility and (2) protect the Large Generating Facility from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

System Upgrade Facilities shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with good utility practice and Applicable Reliability Requirements, to make the modifications to the existing transmission system that are required to maintain system reliability due to: (i) changes in the system, including such changes as load growth and changes in load pattern, to be addressed in the form

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of generic generation or transmission projects; and (ii) proposed interconnections. In the case of proposed interconnection projects, System Upgrade Facilities are the modifications or additions to the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.

Tariff shall mean the NYISO Open Access Transmission Tariff (“OATT”), as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean the public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point of Interconnection, and (iii) is a Party to this Agreement.

Transmission Owner’s Attachment Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to this Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Owner’s Attachment Facilities are sole use facilities and shall not include, Stand Alone System Upgrade Facilities or System Upgrade Facilities.

Trial Operation shall mean the period during which Developer is engaged in on-site test operations and commissioning of the Large Generating Facility prior to Commercial Operation.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date. This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.1.

2.2 Term of Agreement. Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of twenty (20) years from the Effective Date or such other longer period as the Developer may request and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination

2.3.1 Written Notice. This Agreement may be terminated by the Developer after giving the NYISO and Transmission Owner ninety (90) Calendar Days advance written notice, or by the NYISO and Transmission Owner notifying FERC after the Large Generating Facility permanently ceases Commercial Operations.

2.3.2 Default. Any Party may terminate this Agreement in accordance with Article 17.

2.3.3 Compliance. Notwithstanding Articles 2.3.1 and 2.3.2, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the

filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs. If a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the terminating Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as of the date of the other Parties' receipt of such notice of termination, that are the responsibility of the terminating Party under this Agreement. In the event of termination by a Party, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Transmission Owner's Attachment Facilities that have not yet been constructed or installed, the Transmission Owner shall to the extent possible and with Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Developer elects not to authorize such cancellation, Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Developer as soon as practicable, at Developer's expense. To the extent that Developer has already paid Transmission Owner for any or all such costs of materials or equipment not taken by Developer, Transmission Owner shall promptly refund such amounts to Developer, less any costs, including penalties incurred by the Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

If a Developer terminates this Agreement, it shall be responsible for all costs incurred in association with that Developer's interconnection, including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment, and other expenses including any System Upgrade Facilities for which the Transmission Owner has incurred expenses and has not been reimbursed by the Developer.

2.4.2 Transmission Owner may, at its option, retain any portion of such materials, equipment, or facilities that Developer chooses not to accept delivery of, in which case Transmission Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Attachment Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection. Upon termination of this Agreement, Developer and Transmission Owner will take all appropriate steps to disconnect the Developer's Large Generating Facility from the New York State Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination

resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

- 2.6 Survival.** This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer and Transmission Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

ARTICLE 3. REGULATORY FILINGS

- 3.1 Filing.** NYISO and Transmission Owner shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Developer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the NYISO OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer shall reasonably cooperate with NYISO and Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Transmission Owner needed to comply with Applicable Laws and Regulations.

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE

- 4.1 Provision of Service.** NYISO will provide Developer with interconnection service of the following type for the term of this Agreement.
- 4.1.1 Product.** NYISO will provide Network Access Interconnection Service to Developer at the Point of Interconnection.
- 4.1.2 Developer** is responsible for ensuring that its actual Large Generating Facility output matches the scheduled delivery from the Large Generating Facility to the New York State Transmission System, consistent with the scheduling requirements of the NYISO's FERC-approved market structure, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection, consistent with the scheduling requirements of the NYISO OATT and any applicable FERC-approved market structure.
- 4.2 No Transmission Delivery Service.** The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the NYISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain Transmission Service on the New York State Transmission System, then Developer must request such Transmission Service in accordance with the provisions of the NYISO OATT.
- 4.3 No Other Services.** The execution of this Agreement does not constitute a request for, nor agreement to provide energy, any Ancillary Services or Installed Capacity under the

NYISO Market Administration and Control Area Services Tariff (“Services Tariff”). If Developer wishes to supply energy, Installed Capacity or Ancillary Services, then Developer will make application to do so in accordance with the NYISO Services Tariff.

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION

5.1 Options. Unless otherwise mutually agreed to by Developer and Transmission Owner, Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Transmission Owner’s Attachment Facilities and System Upgrade Facilities as set forth in Appendix A hereto, and such dates and selected option shall be set forth in Appendix B hereto.

5.1.1 Standard Option. The Transmission Owner shall design, procure, and construct the Transmission Owner’s Attachment Facilities and System Upgrade Facilities, using Reasonable Efforts to complete the Transmission Owner’s Attachment Facilities and System Upgrade Facilities by the dates set forth in Appendix B hereto. The Transmission Owner shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Owner reasonably expects that it will not be able to complete the Transmission Owner’s Attachment Facilities and System Upgrade Facilities by the specified dates, the Transmission Owner shall promptly provide written notice to the Developer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option. If the dates designated by Developer are acceptable to Transmission Owner, the Transmission Owner shall so notify Developer and NYISO within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Owner’s Attachment Facilities by the designated dates. If Transmission Owner subsequently fails to complete Transmission Owner’s Attachment Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete System Upgrade Facilities by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Developer and Transmission Owner for such Trial Operation; or fails to complete the system Upgrade Facilities by the Commercial Operation Date, as such dates are reflected in Appendix B hereto; Transmission Owner shall pay Developer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Developer shall be extended day for day for each day that NYISO refuses to grant clearances to install equipment.

5.1.3 Option to Build. If the dates designated by Developer are not acceptable to Transmission Owner, the Transmission Owner shall so notify the Developer and NYISO within thirty (30) Calendar Days, and unless the Developer and Transmission Owner agree otherwise, Developer shall have the option to assume

responsibility for the design, procurement and construction of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities on the dates specified in Article 5.1.2; provided that if an Attachment Facility or Stand Alone System Upgrade Facility is needed for more than one Developer's project, Developer's option to build such Facility shall be contingent on the agreement of all other affected Developers. NYISO, Transmission Owner and Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify such Stand Alone System Upgrade Facilities in Appendix A hereto. Except for Stand Alone System Upgrade Facilities, Developer shall have no right to construct System Upgrade Facilities under this option.

5.1.4 Negotiated Option. If the Developer elects not to exercise its option under Article 5.1.3, Option to Build, Developer shall so notify Transmission Owner and NYISO within thirty (30) Calendar Days, and the Developer and Transmission Owner shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities by Developer) pursuant to which Transmission Owner is responsible for the design, procurement and construction of the Transmission Owner's Attachment Facilities and System Upgrade Facilities. If the two Parties are unable to reach agreement on such terms and conditions, Transmission Owner shall assume responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities and System Upgrades Facilities pursuant to 5.1.1, Standard Option.

5.2 General Conditions Applicable to Option to Build. If Developer assumes responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities,

- (1) Developer shall engineer, procure equipment, and construct the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Owner;
- (2) Developer's engineering, procurement and construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities shall comply with all requirements of law to which Transmission Owner would be subject in the engineering, procurement or construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;
- (3) Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;
- (4) Prior to commencement of construction, Developer shall provide to Transmission Owner and NYISO a schedule for construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities, and shall promptly respond to requests for information from Transmission Owner or NYISO;

- (5) At any time during construction, Transmission Owner shall have the right to gain unrestricted access to the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities and to conduct inspections of the same;
- (6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities not meet the standards and specifications provided by Transmission Owner, the Developer shall be obligated to remedy deficiencies in that portion of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;
- (7) Developer shall indemnify Transmission Owner and NYISO for claims arising from the Developer's construction of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;
- (8) Developer shall transfer control of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the Transmission Owner;
- (9) Unless the Developer and Transmission Owner otherwise agree, Developer shall transfer ownership of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to Transmission Owner;
- (10) Transmission Owner shall approve and accept for operation and maintenance the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2; and
- (11) Developer shall deliver to NYISO and Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Transmission Owner to assure that the Attachment Facilities and Stand Alone System Upgrade Facilities are built to the standards and specifications required by Transmission Owner.

5.3 Liquidated Damages. The actual damages to the Developer, in the event the Transmission Owner's Attachment Facilities or System Upgrade Facilities are not completed by the dates designated by the Developer and accepted by the Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Developer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Transmission Owner to the Developer in the event that Transmission Owner does not complete any portion of the Transmission Owner's Attachment Facilities or System Upgrade Facilities by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Transmission Owner's Attachment Facilities and System Upgrade Facilities, in the aggregate, for which Transmission Owner has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Transmission Owner Attachment Facilities and System Upgrade Facilities for which the Transmission Owner has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Transmission Owner to the

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Developer as just compensation for the damages caused to the Developer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement. Liquidated damages, when the Developer and Transmission Owner agree to them, are the exclusive remedy for the Transmission Owner's failure to meet its schedule.

Further, Transmission Owner shall not pay liquidated damages to Developer if: (1) Developer is not ready to commence use of the Transmission Owner's Attachment Facilities or System Upgrade Facilities to take the delivery of power for the Developer's Large Generating Facility's Trial Operation or to export power from the Developer's Large Generating Facility on the specified dates, unless the Developer would have been able to commence use of the Transmission Owner's Attachment Facilities or System Upgrade Facilities to take the delivery of power for Developer's Large Generating Facility's Trial Operation or to export power from the Developer's Large Generating Facility, but for Transmission Owner's delay; (2) the Transmission Owner's failure to meet the specified dates is the result of the action or inaction of the Developer or any other Developer who has entered into a Standard Large Generator Interconnection Agreement with the Transmission Owner and NYISO, or action or inaction by any other Party, or any other cause beyond Transmission Owner's reasonable control or reasonable ability to cure; (3) the Developer has assumed responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities; or (4) the Transmission Owner and Developer have otherwise agreed.

In no event shall NYISO have any liability whatever to Developer for liquidated damages associated with the engineering, procurement or construction of Attachment Facilities or System Upgrade Facilities.

5.4 Power System Stabilizers. The Developer shall procure, install, maintain and operate Power System Stabilizers in accordance with the requirements identified in the Interconnection Studies conducted for Developer's Large Generating Facility. NYISO and Transmission Owner reserve the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, the Developer shall immediately notify the Transmission Owner and NYISO. The requirements of this paragraph shall not apply to wind generators.

5.5 Equipment Procurement. If responsibility for construction of the Transmission Owner's Attachment Facilities or System Upgrade Facilities is to be borne by the Transmission Owner, then the Transmission Owner shall commence design of the Transmission Owner's Attachment Facilities or System Upgrade Facilities and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Developer and Transmission Owner otherwise agree in writing:

5.5.1 NYISO and Transmission Owner have completed the Interconnection Facilities Study pursuant to the Interconnection Facilities Study Agreement;

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- 5.5.2** The NYISO has completed the required cost allocation analyses, and Developer has accepted his share of the costs for necessary System Upgrade Facilities in accordance with the provisions of Attachment S of the NYISO OATT;
- 5.5.3** The Transmission Owner has received written authorization to proceed with design and procurement from the Developer by the date specified in Appendix B hereto; and
- 5.5.4** The Developer has provided security to the Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.
- 5.6 Construction Commencement.** The Transmission Owner shall commence construction of the Transmission Owner's Attachment Facilities and System Upgrade Facilities for which it is responsible as soon as practicable after the following additional conditions are satisfied:
- 5.6.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;
- 5.6.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Owner's Attachment Facilities and System Upgrade Facilities;
- 5.6.3** The Transmission Owner has received written authorization to proceed with construction from the Developer by the date specified in Appendix B hereto; and
- 5.6.4** The Developer has provided security to the Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.
- 5.7 Work Progress.** The Developer and Transmission Owner will keep each other, and NYISO, advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from the Developer or Transmission Owner. If, at any time, the Developer determines that the completion of the Transmission Owner's Attachment Facilities will not be required until after the specified In-Service Date, the Developer will provide written notice to the Transmission Owner and NYISO of such later date upon which the completion of the Transmission Owner's Attachment Facilities will be required.
- 5.8 Information Exchange.** As soon as reasonably practicable after the Effective Date, the Developer and Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of their respective Attachment Facilities and compatibility of the Attachment Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.
- 5.9 Limited Operation.** If any of the Transmission Owner's Attachment Facilities or System Upgrade Facilities are not reasonably expected to be completed prior to the Commercial Operation Date of the Developer's Large Generating Facility, NYISO shall, upon the request and at the expense of Developer, in conjunction with the Transmission Owner, perform operating studies on a timely basis to determine the extent to which the

Developer's Large Generating Facility and the Developer's Attachment Facilities may operate prior to the completion of the Transmission Owner's Attachment Facilities or System Upgrade Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this Agreement. Transmission Owner and NYISO shall permit Developer to operate the Developer's Large Generating Facility and the Developer's Attachment Facilities in accordance with the results of such studies.

5.10 Developer's Attachment Facilities ("DAF"). Developer shall, at its expense, design, procure, construct, own and install the DAF, as set forth in Appendix A hereto.

5.10.1 DAF Specifications. Developer shall submit initial specifications for the DAF, including System Protection Facilities, to Transmission Owner and NYISO at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Owner and NYISO shall review such specifications to ensure that the DAF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Owner and NYISO and comment on such specifications within thirty (30) Calendar Days of Developer's submission. All specifications provided hereunder shall be deemed to be Confidential Information.

5.10.2 No Warranty. The review of Developer's final specifications by Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the DAF. Developer shall make such changes to the DAF as may reasonably be required by Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the DAF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Owner and NYISO.

5.10.3 DAF Construction. The DAF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Developer and Transmission Owner agree on another mutually acceptable deadline, the Developer shall deliver to the Transmission Owner and NYISO "as-built" drawings, information and documents for the DAF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the DAF, plan and elevation drawings showing the layout of the DAF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Developer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the DAF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. The Developer shall provide to, and coordinate with, Transmission Owner and NYISO with respect to proposed specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

5.11 Transmission Owner's Attachment Facilities Construction. The Transmission Owner's Attachment Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days

after the Commercial Operation Date, unless the Transmission Owner and Developer agree on another mutually acceptable deadline, the Transmission Owner shall deliver to the Developer “as-built” drawings, information and documents for the Transmission Owner’s Attachment Facilities as set forth in the Appendices.

The Transmission Owner shall transfer operational control of the Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities to the NYISO upon completion of such facilities.

- 5.12 Access Rights.** Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the Transmission Owner or Developer (“Granting Party”) shall furnish to the other of those two Parties (“Access Party”) at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the New York State Transmission System; (ii) operate and maintain the Large Generating Facility, the Attachment Facilities and the New York State Transmission System; and (iii) disconnect or remove the Access Party’s facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.
- 5.13 Lands of Other Property Owners.** If any part of the Transmission Owner’s Attachment Facilities and/or System Upgrade Facilities is to be installed on property owned by persons other than Developer or Transmission Owner, the Transmission Owner agrees , to the extent consistent with applicable law, at Developer’s expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner’s Attachment Facilities and/or System Upgrade Facilities upon such property. Notwithstanding the previous sentence, the Transmission Owner's exercise of powers and rights to acquire real property or any rights in real property, pursuant to this section 5.13, is subject to the provisions of the Power Authority Act (or any amendments thereto).
- 5.14 Permits.** NYISO, Transmission Owner and the Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Transmission Owner shall provide permitting assistance to the Developer comparable to that provided to the Transmission Owner’s own, or an Affiliate’s generation, if any.

5.15 Early Construction of Base Case Facilities. Developer may request Transmission Owner to construct, and Transmission Owner shall construct, subject to a binding cost allocation agreement reached in accordance with Attachment S to the NYISO OATT, including Section IV.F.12 thereof, using Reasonable Efforts to accommodate Developer's In-Service Date, all or any portion of any System Upgrade Facilities required for Developer to be interconnected to the New York State Transmission System which are included in the Base Case of the Facilities Study for the Developer, and which also are required to be constructed for another Developer, but where such construction is not scheduled to be completed in time to achieve Developer's In-Service Date.

5.16 Suspension. Developer reserves the right, upon written notice to Transmission Owner and NYISO, to suspend at any time all work by Transmission Owner associated with the construction and installation of Transmission Owner's Attachment Facilities and/or System Upgrade Facilities required for only that Developer under this Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Transmission Owner and NYISO. In such event, Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S to the NYISO OATT including those which Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Owner shall obtain Developer's authorization to do so.

Transmission Owner shall invoice Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends work by Transmission Owner required under this Agreement pursuant to this Article 5.16, and has not requested Transmission Owner to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Transmission Owner and NYISO, if no effective date is specified.

5.17 Taxes. 5.17.1 Developer Payments Not Taxable. The Developer and Transmission Owner intend that all payments or property transfers made by Developer to Transmission Owner for the installation of the Transmission Owner's Attachment Facilities and the System Upgrade Facilities shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 Representations and Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Developer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the New York State Transmission

System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Transmission Owner for the Transmission Owner's Attachment Facilities will be capitalized by Developer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Transmission Owner's Attachment Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Owner's request, Developer shall provide Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Owner represents and covenants that the cost of the Transmission Owner's Attachment Facilities paid for by Developer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Owner. Notwithstanding Article 5.17.1, Developer shall protect, indemnify and hold harmless Transmission Owner from the cost consequences of any current tax liability imposed against Transmission Owner as the result of payments or property transfers made by Developer to Transmission Owner under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Owner.

Transmission Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Developer under this Agreement unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Developer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Developer to provide security, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Developer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount. Developer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Transmission Owner, in addition to the amount paid for the Attachment Facilities and System Upgrade Facilities, an amount equal to (1) the current taxes imposed on Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Transmission Owner as a result of payments or property transfers made by Developer to Transmission Owner under this Agreement (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Developer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$.

Developer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Attachment Facilities and System Upgrade Facilities.

5.17.5 Private Letter Ruling or Change or Clarification of Law. At Developer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Developer to Transmission Owner under this Agreement are subject to federal income taxation. Developer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Developer's knowledge. Transmission Owner and Developer shall cooperate in good faith with respect to the submission of such request.

Transmission Owner shall keep Developer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Developer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Owner shall allow Developer to attend all meetings with IRS officials about the request and shall permit Developer to prepare the initial drafts of any follow-up letters in connection with the request.

5.17.6 Subsequent Taxable Events. If, within 10 years from the date on which the relevant Transmission Owner Attachment Facilities are placed in service, (i) Developer Breaches the covenants contained in Article 5.17.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Transmission Owner retains ownership of the Attachment Facilities and System Upgrade Facilities, the Developer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Owner, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

5.17.7 Contests. In the event any Governmental Authority determines that Transmission Owner’s receipt of payments or property constitutes income that is subject to taxation, Transmission Owner shall notify Developer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Developer and at Developer’s sole expense, Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Developer’s written request and sole expense, Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Owner shall keep Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or an Developer representative to attend contest proceedings.

Developer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner’s documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Owner may agree to a settlement either with Developer’s consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Owner, but reasonably acceptable to Developer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Developer’s obligation shall be based on the amount of the settlement agreed to by Developer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Developer’s consent or such written advice will relieve Developer from any obligation to indemnify Transmission Owner for the tax at issue in the contest.

5.17.8 Refund. In the event that (a) a private letter ruling is issued to Transmission Owner which holds that any amount paid or the value of any property transferred by Developer to Transmission Owner under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Owner in good faith that any amount paid or the value of any property transferred by Developer to Transmission Owner under the terms of this

Agreement is not taxable to Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Developer to Transmission Owner are not subject to federal income tax, or (d) if Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Developer to Transmission Owner pursuant to this Agreement, Transmission Owner shall promptly refund to Developer the following:

(i) Any payment made by Developer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) Interest on any amounts paid by Developer to Transmission Owner for such taxes which Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by Developer to the date Transmission Owner refunds such payment to Developer, and

(iii) With respect to any such taxes paid by Transmission Owner, any refund or credit Transmission Owner receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Transmission Owner for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Owner to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Owner will remit such amount promptly to Developer only after and to the extent that Transmission Owner has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Transmission Owner's Attachment Facilities.

The intent of this provision is to leave both the Developer and Transmission Owner, to the extent practicable, in the event that no taxes are due with respect to any payment for Attachment Facilities and System Upgrade Facilities hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 Taxes Other Than Income Taxes. Upon the timely request by Developer, and at Developer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Developer may be required to reimburse Transmission Owner under the terms of this Agreement. Developer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Developer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Developer to Transmission Owner for such taxes until they are assessed by a final, non-

appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner.

5.18 Tax Status; Non-Jurisdictional Entities.

5.18.1 Tax Status. Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of any Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. shall not be required to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

5.18.2 Non-Jurisdictional Entities. LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

5.19 Modification.

5.19.1 General. Either the Developer or Transmission Owner may undertake modifications to its facilities covered by this Agreement. If either the Developer or Transmission Owner plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party, and to NYISO, sufficient information regarding such modification so that the other Party and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Developer to submit an Interconnection Request, Transmission Owner shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the New York State Transmission System, Transmission Owner's Attachment Facilities or System Upgrade Facilities necessitated by such Developer modification and a good faith estimate of the costs thereof.

5.19.2 Standards. Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

5.19.3 Modification Costs. Developer shall not be assigned the costs of any additions, modifications, or replacements that Transmission Owner makes to the Transmission Owner's Attachment Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Transmission Owner's Attachment Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the NYISO OATT, except in accordance with the cost allocation procedures in Attachment S of the NYISO OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Developer Attachment Facilities that may be necessary to maintain or upgrade such Developer Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

ARTICLE 6. TESTING AND INSPECTION

- 6.1 Pre-Commercial Operation Date Testing and Modifications.** Prior to the Commercial Operation Date, the Transmission Owner shall test the Transmission Owner's Attachment Facilities and System Upgrade Facilities and Developer shall test the Large Generating Facility and the Developer Attachment Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Developer and Transmission Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Developer shall bear the cost of all such testing and modifications. Developer shall generate test energy at the Large Generating Facility only if it has arranged for the injection of such test energy in accordance with NYISO procedures.
- 6.2 Post-Commercial Operation Date Testing and Modifications.** Developer and Transmission Owner shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the Large Generating Facility with the New York State Transmission System in a safe and reliable manner. Developer and Transmission Owner shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.
- 6.3 Right to Observe Testing.** Developer and Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of its Attachment Facilities. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.
- 6.4 Right to Inspect.** Developer and Transmission Owner shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and

other protective equipment; and (iii) review the other Party's maintenance records relative to the Attachment Facilities, the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Developer and Transmission Owner. A Party may exercise these rights

from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Attachment Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the NYISO OATT.

ARTICLE 7. METERING

- 7.1 General.** Developer and Transmission Owner shall each comply with applicable requirements of NYISO and the New York Public Service Commission when exercising its rights and fulfilling its responsibilities under this Article 7. Unless otherwise agreed by the Transmission Owner and NYISO approved meter service provider and Developer, the Transmission Owner shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Net power flows including MW and MVAR, MWHR and loss profile data to and from the Large Generating Facility shall be measured at the Point of Interconnection. Transmission Owner shall provide metering quantities, in analog and/or digital form, as required, to Developer or NYISO upon request. Where the Point of Interconnection for the Large Generating Facility is other than the generator terminal, the Developer shall also provide gross MW and MVAR quantities at the generator terminal. Developer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.
- 7.2 Check Meters.** Developer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Owner's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Owner or its designee. The installation, operation and maintenance thereof shall be performed entirely by Developer in accordance with Good Utility Practice.
- 7.3 Standards.** Transmission Owner shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with applicable ANSI and PSC standards as detailed in the NYISO Control Center Communications Manual.
- 7.4 Testing of Metering Equipment.** Transmission Owner shall inspect and test all of its Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by NYISO or Developer, Transmission Owner shall, at Developer's expense, inspect or test Metering Equipment more frequently than every two (2) years.

Transmission Owner shall give reasonable notice of the time when any inspection or test shall take place, and Developer and NYISO may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Developer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Owner's failure to maintain, then Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Owner shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Developer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right to review all associated metering equipment installation on the Developer's or Transmission Owner's property at any time.

- 7.5 Metering Data.** At Developer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Owner, Developer and NYISO. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

ARTICLE 8. COMMUNICATIONS

- 8.1 Developer Obligations.** In accordance with applicable NYISO requirements, Developer shall maintain satisfactory operating communications with Transmission Owner and NYISO. Developer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Developer shall also provide the dedicated data circuit(s) necessary to provide Developer data to Transmission Owner and NYISO as set forth in Appendix D hereto. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Developer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.
- 8.2 Remote Terminal Unit.** Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Developer, or by Transmission Owner at Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Owner and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

ARTICLE 9. OPERATIONS

9.1 General. Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 NYISO and Transmission Owner Obligations. Transmission Owner and NYISO shall cause the New York State Transmission System and the Transmission Owner's Attachment Facilities to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs. Transmission Owner and NYISO may provide operating instructions to Developer consistent with this Agreement, NYISO procedures and Transmission Owner's operating protocols and procedures as they may change from time to time. Transmission Owner and NYISO will consider changes to their respective operating protocols and procedures proposed by Developer.

9.3 Developer Obligations. Developer shall at its own expense operate, maintain and control the Large Generating Facility and the Developer Attachment Facilities in a safe and reliable manner and in accordance with this Agreement. Developer shall operate the Large Generating Facility and the Developer Attachment Facilities in accordance with NYISO and Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

9.4 Start-Up and Synchronization. Consistent with the mutually acceptable procedures of the Developer and Transmission Owner, the Developer is responsible for the proper synchronization of the Large Generating Facility to the New York State Transmission System in accordance with NYISO and Transmission Owner procedures and requirements.

9.5 Reactive Power.

9.5.1 Power Factor Design Criteria. Developer shall design the Large Generating Facility to maintain an effective power delivery at demonstrated maximum net capability at the Point of Interconnection at a power factor within the range established by the Transmission Owner on a comparable basis, until NYISO has established different requirements that apply to all generators in the New York Control Area on a comparable basis.

The Developer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

The Transmission Owner shall not unreasonably restrict or condition the reactive power production or absorption of the Large Generating Facility in accordance with Good Utility Practice.

9.5.2 Voltage Schedules. Once the Developer has synchronized the Large Generating Facility with the New York State Transmission System, NYISO shall require Developer to operate the Large Generating Facility to produce or absorb reactive power within the design capability of the Large Generating Facility set forth in Article 9.5.1 (Power Factor Design Criteria). NYISO's voltage schedules shall treat all sources of reactive power in the New York Control Area in an equitable and not unduly discriminatory manner. NYISO shall exercise Reasonable Efforts to provide Developer with such schedules in accordance with NYISO procedures, and may make changes to such schedules as necessary to maintain the reliability of the New York State Transmission System. Developer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design capability of the Large Generating Facility set forth in Article 9.5.1 (Power Factor Design Criteria) as directed by the Transmission Owner's System Operator or the NYISO. If Developer is unable to maintain the specified voltage or power factor, it shall promptly notify NYISO.

9.5.2.1 Governors and Regulators. Whenever the Large Generating Facility is operated in parallel with the New York State Transmission System, the turbine speed governors and automatic voltage regulators shall be in automatic operation at all times. If the Large Generating Facility's speed governors or automatic voltage regulators are not capable of such automatic operation, the Developer shall immediately notify NYISO, or its designated representative, and ensure that such Large Generating Facility's real and reactive power are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits and NYISO system operating (thermal, voltage and transient stability) limits. Developer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the New York State Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the New York Control Area on a comparable basis.

9.5.3 Payment for Reactive Power. NYISO shall pay Developer for reactive power or voltage support service that Developer provides from the Large Generating Facility in accordance with the provisions of Rate Schedule 2 of the NYISO Services Tariff.

9.6 Outages and Interruptions.

9.6.1 Outages.

9.6.1.1 Outage Authority and Coordination. Developer and Transmission Owner may each, in accordance with NYISO procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Attachment Facilities or System Upgrade Facilities that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both the Developer and the Transmission Owner. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.6.1.2 Outage Schedules. The Transmission Owner shall post scheduled outages of its transmission facilities on the NYISO OASIS. Developer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Owner and NYISO for a minimum of a rolling thirty-six month period. Developer shall update its planned maintenance schedules as necessary. NYISO may direct, or the Transmission Owner may request, Developer to reschedule its maintenance as necessary to maintain the reliability of the New York State Transmission System. Compensation to Developer for any additional direct costs that the Developer incurs as a result of rescheduling maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Developer would have incurred absent the request to reschedule maintenance, shall be in accordance with the NYISO OATT. Developer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Developer had modified its schedule of maintenance activities other than at the direction of the NYISO or request of the Transmission Owner.

9.6.1.3 Outage Restoration. If an outage on the Attachment Facilities or System Upgrade Facilities of the Transmission Owner or Developer adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.6.2 Interruption of Service. If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO or Transmission Owner may require Developer to interrupt or reduce production of electricity if such production of electricity could adversely affect the ability of NYISO and Transmission Owner to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.6.2:

- 9.6.2.1** The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;
- 9.6.2.2** Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the New York State Transmission System;
- 9.6.2.3** When the interruption or reduction must be made under circumstances which do not allow for advance notice, NYISO or Transmission Owner shall notify Developer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;
- 9.6.2.4** Except during the existence of an Emergency State, when the interruption or reduction can be scheduled without advance notice, NYISO or Transmission Owner shall notify Developer in advance regarding the timing of such scheduling and further notify Developer of the expected duration. NYISO or Transmission Owner shall coordinate with each other and the Developer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Developer, the Transmission Owner and the New York State Transmission System;
- 9.6.2.5** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.6.3 Under-Frequency and Over Frequency Conditions. The New York State Transmission System is designed to automatically activate a load-shed program as required by the NPCC in the event of an under-frequency system disturbance. Developer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the NPCC to ensure “ride through” capability of the New York State Transmission System. Large Generating Facility response to frequency deviations of predetermined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the NYISO and Transmission Owner in accordance with Good Utility Practice. The term “ride through” as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the New York State Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice and with NPCC criteria A-3.

9.6.4 System Protection and Other Control Requirements.

- 9.6.4.1 System Protection Facilities.** Developer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Developer Attachment Facilities. Transmission Owner shall install at Developer’s expense any System Protection Facilities that may be required on the Transmission Owner

Attachment Facilities or the New York State Transmission System as a result of the interconnection of the Large Generating Facility and Developer Attachment Facilities.

- 9.6.4.2** The protection facilities of both the Developer and Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.
- 9.6.4.3** The Developer and Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.
- 9.6.4.4** The protective relay design of the Developer and Transmission Owner shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Developer's Large Generating Facility.
- 9.6.4.5** The Developer and Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice and NPCC criteria.
- 9.6.4.6** Prior to the In-Service Date, and again prior to the Commercial Operation Date, the Developer and Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, the Developer and Transmission Owner shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.6.5 Requirements for Protection. In compliance with NPCC requirements and Good Utility Practice, Developer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the New York State Transmission System not otherwise isolated by Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the New York State Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Developer and Transmission Owner. Developer shall be responsible for protection of the Large Generating Facility and Developer's other

equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Developer shall be solely responsible to disconnect the Large Generating Facility and Developer's other equipment if conditions on the New York State Transmission System could adversely affect the Large Generating Facility.

- 9.6.6 Power Quality.** Neither the facilities of Developer nor the facilities of Transmission Owner shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.
- 9.7 Switching and Tagging Rules.** The Developer and Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.
- 9.8 Use of Attachment Facilities by Third Parties.**
- 9.8.1 Purpose of Attachment Facilities.** Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the New York State Transmission System and shall be used for no other purpose.
- 9.8.2 Third Party Users.** If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Owner's Attachment Facilities, or any part thereof, Developer will be entitled to compensation for the capital expenses it incurred in connection with the Attachment Facilities based upon the pro rata use of the Attachment Facilities by Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Attachment Facilities, will be allocated between Developer and any third party users based upon the pro rata use of the Attachment Facilities by Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.
- 9.9 Disturbance Analysis Data Exchange.** The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Large Generating Facility or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording

equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

ARTICLE 10. MAINTENANCE

10.1 Transmission Owner Obligations. Transmission Owner shall maintain its transmission facilities and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

10.2 Developer Obligations. Developer shall maintain its Large Generating Facility and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

10.3 Coordination. The Developer and Transmission Owner shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Attachment Facilities. The Developer and Transmission Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO procedures.

10.4 Secondary Systems. The Interconnection Customer and Transmission Owner shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of Developer or Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. The Developer and Transmission Owner shall each provide advance notice to the other Party, and to NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Developer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Developer Attachment Facilities; and (2) operation, maintenance, repair and replacement of Transmission Owner's Attachment Facilities. The Transmission Owner shall be entitled to the recovery of incremental operating and maintenance expenses that it incurs associated with System Upgrade Facilities if and to the extent provided for under Attachment S to the NYISO OATT.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Developer Attachment Facilities. Developer shall design, procure, construct, install, own and/or control the Developer Attachment Facilities described in Appendix A hereto, at its sole expense.

- 11.2 Transmission Owner's Attachment Facilities.** Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Owner's Attachment Facilities described in Appendix A hereto, at the sole expense of the Developer.
- 11.3 System Upgrade Facilities.** Transmission Owner shall design, procure, construct, install, and own the System Upgrade Facilities described in Appendix A hereto. The responsibility of the Developer for costs related to System Upgrade Facilities shall be determined in accordance with the provisions of Attachment S to the NYISO OATT.
- 11.4 Special Provisions for Affected Systems.** For the re-payment of amounts advanced to Affected System Operator for System Upgrade Facilities, the Developer and Affected System Operator shall enter into an agreement that provides for such re-payment, but only if responsibility for the cost of such System Upgrade Facilities is not to be allocated in accordance with Attachment S to the NYISO OATT. The agreement shall specify the terms governing payments to be made by the Developer to the Affected System Operator as well as the re-payment by the Affected System Operator.
- 11.5 Provision of Security.** At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Owner's Attachment Facilities, Developer shall provide Transmission Owner, at Developer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement. Such security for payment shall be in an amount sufficient to cover the cost for the Developer's share of constructing, procuring and installing the applicable portion of Transmission Owner's Attachment Facilities, and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes.

In addition:

- 11.5.1** The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of Transmission Owner, and contains terms and conditions that guarantee payment of any amount that may be due from Developer, up to an agreed-to maximum amount.
- 11.5.2** The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Owner and must specify a reasonable expiration date.
- 11.5.3** The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner and must specify a reasonable expiration date.
- 11.5.4** Attachment S to the NYISO OATT shall govern the Security that Developer provides for System Upgrade Facilities.
- 11.6 Developer Compensation for Emergency Services.** If, during an Emergency State, the Developer provides services at the request or direction of the NYISO or Transmission Owner, the Developer will be compensated for such services in accordance with the NYISO Services Tariff.

- 11.7 Line Outage Costs.** Notwithstanding anything in the NYISO OATT to the contrary, the Transmission Owner may propose to recover line outage costs associated with the installation of Transmission Owner's Attachment Facilities or System Upgrade Facilities on a case-by-case basis.

ARTICLE 12. INVOICE

- 12.1 General.** The Developer and Transmission Owner shall each submit and pay invoices consistent with the procedures set forth in Appendix H attached hereto.
- 12.2 Reserved.12.3Reserved.12.4Disputes.** In the event of a billing dispute between Transmission Owner and Developer, Transmission Owner shall continue to perform under this Agreement as long as Developer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Developer fails to meet these two requirements for continuation of service, then Transmission Owner may provide notice to Developer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(ii).

ARTICLE 13. EMERGENCIES

- 13.1 Obligations.** Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee.
- 13.2 Notice.** NYISO or, as applicable, Transmission Owner shall notify Developer promptly when it becomes aware of an Emergency State that affects the Transmission Owner's Attachment Facilities or the New York State Transmission System that may reasonably be expected to affect Developer's operation of the Large Generating Facility or the Developer's Attachment Facilities. Developer shall notify NYISO and Transmission Owner promptly when it becomes aware of an Emergency State that affects the Large Generating Facility or the Developer Attachment Facilities that may reasonably be expected to affect the New York State Transmission System or the Transmission Owner's Attachment Facilities. To the extent information is known, the notification shall describe the Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Developer's or Transmission Owner's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.
- 13.3 Immediate Action.** Unless, in Developer's reasonable judgment, immediate action is required, Developer shall obtain the consent of Transmission Owner, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or the Developer Attachment Facilities in response to an Emergency State either declared by NYISO, Transmission Owner or otherwise regarding New York State Transmission System.

13.4 NYISO and Transmission Owner Authority.

13.4.1 General. NYISO or Transmission Owner may take whatever actions with regard to the New York State Transmission System or the Transmission Owner's Attachment Facilities it deems necessary during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System or the Transmission Owner's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. NYISO and Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or the Developer Attachment Facilities.

NYISO or Transmission Owner may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency State by taking actions necessary and limited in scope to remedy the Emergency State, including, but not limited to, directing Developer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing the Developer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and the Developer Attachment Facilities. Developer shall comply with all of the NYISO and Transmission Owner's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.4.2 Reduction and Disconnection. NYISO or Transmission Owner may reduce Network Access Interconnection Service or disconnect the Large Generating Facility or the Developer Attachment Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to an Emergency State. These rights are separate and distinct from any right of Curtailment of NYISO pursuant to the NYISO OATT. When NYISO or Transmission Owner can schedule the reduction or disconnection in advance, NYISO or Transmission Owner shall notify Developer of the reasons, timing and expected duration of the reduction or disconnection. NYISO or Transmission Owner shall coordinate with the Developer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Developer and the New York State Transmission System. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Attachment Facilities, and the New York State Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.5 Developer Authority. Consistent with Good Utility Practice and this Agreement, the Developer may take whatever actions or inactions with regard to the Large Generating Facility or the Developer Attachment Facilities during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or the Developer Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Developer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the New York State Transmission System and the

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Transmission Owner's Attachment Facilities. NYISO and Transmission Owner shall use Reasonable Efforts to assist Developer in such actions.

- 13.6 Limited Liability.** Except as otherwise provided in Article 11.6 of this Agreement, no Party shall be liable to another Party for any action it takes in responding to an Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW

- 14.1 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935 or the Public Utility Regulatory Policies Act of 1978, as amended.

14.2 Governing Law.

14.2.1 The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of New York, without regard to its conflicts of law principles.

14.2.2 This Agreement is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

ARTICLE 15. NOTICES

- 15.1 General.** Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F hereto.

A Party may change the notice information in this Agreement by giving five (5) Business Days written notice prior to the effective date of the change.

- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses set out in Appendix F hereto.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to the other Parties and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F hereto.

15.4 Operations and Maintenance Notice. Developer and Transmission Owner shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

ARTICLE 16. FORCE MAJEURE

16.1 Force Majeure.

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, (including obligations under Article 4 of this Agreement) , other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 17. DEFAULT

17.1 Default.

17.1.1 General. No Breach shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

17.1.2 Right to Terminate. If a Breach is not cured as provided in this Article 17, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

18.1 Indemnity. Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, the alleged violation of any Environmental Law, or the release or threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from (i) the Indemnified Party’s performance of its obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any Hazardous Substance.

18.1.1 Indemnified Party. If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

18.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

18.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if

the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

18.2 No Consequential Damages. Other than the Liquidated Damages heretofore described and the indemnity obligations set forth in Article 18.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 Insurance. Developer and Transmission Owner shall each, at its own expense, maintain in force throughout the period of this Agreement, and until released by the other Parties, the following minimum insurance coverages, with insurers authorized to do business in the state of New York:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate

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combined single limit for personal injury, bodily injury, including death and property damage.

- 18.3.3** Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- 18.3.4** Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/Twenty Million Dollars (\$20,000,000) aggregate.
- 18.3.5** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies of Developer and Transmission Owner shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.
- 18.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Developer and Transmission Owner shall each be responsible for its respective deductibles or retentions.
- 18.3.7** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Developer and Transmission Owner.
- 18.3.8** The requirements contained herein as to the types and limits of all insurance to be maintained by the Developer and Transmission Owner are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.
- 18.3.9** Within ten (10) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Developer and

Transmission Owner shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, Developer and Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 Developer and Transmission Owner agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

ARTICLE 19. ASSIGNMENT

19.1 Assignment. This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, including the Attachment Facilities it owns, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Developer shall have the right to assign this Agreement, without the consent of the NYISO or Transmission Owner, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that the Developer will promptly notify the NYISO and Transmission Owner of any such assignment. Any financing arrangement entered into by the Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Transmission Owner with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 20. SEVERABILITY

- 20.1 Severability.** If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement; provided that if the Developer (or any third party, but only if such third party is not acting at the direction of the Transmission Owner) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the rights and obligations of Developer and Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

ARTICLE 21. COMPARABILITY

- 21.1 Comparability.** The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

ARTICLE 22. CONFIDENTIALITY

- 22.1 Confidentiality.** Certain information exchanged by the Parties during the term of this Agreement shall constitute confidential information (“Confidential Information”) and shall be subject to this Article 22.

If requested by a Party receiving information, the Party supplying the information shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

- 22.1.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

- 22.1.2 Confidential Information.** The following shall constitute Confidential Information: (1) any non-public information that is treated as confidential by the disclosing Party and which the disclosing Party identifies as Confidential Information in writing at the time, or promptly after the time, of disclosure; or (2) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F to the NYISO OATT.

- 22.1.3 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential;

(4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 22.1.8 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

- 22.1.4 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.
- 22.1.5 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Parties of Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 22.1.6 No Warranties.** By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.
- 22.1.7 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements, including the NYISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the NYISO OATT.
- 22.1.8 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of

such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.9 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Parties, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties pursuant to this Agreement.

22.1.10 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.11 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the NYISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party

divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

22.1.12 Except as otherwise expressly provided herein, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement, the NYISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 23. ENVIRONMENTAL RELEASES

23.1 Developer and Transmission Owner Notice. Developer and Transmission Owner shall each notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Attachment Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

ARTICLE 24. INFORMATION REQUIREMENT

24.1 Information Acquisition. Transmission Owner and Developer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability Standards.

24.2 Information Submission by Transmission Owner. The initial information submission by Transmission Owner shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include New York State Transmission System information necessary to allow the Developer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Developer and Transmission Owner. On a monthly basis Transmission Owner shall provide Developer and NYISO a status report on the construction and installation of Transmission Owner's Attachment Facilities and System Upgrade Facilities, including, but not limited to, the following information: (1) progress to date; (2) a description of the

activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Developer. The updated information submission by the Developer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Developer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the Large Facility Interconnection Procedures. It shall also include any additional information provided to Transmission Owner for the Interconnection Feasibility Study and Interconnection Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Developer's data is materially different from what was originally provided to Transmission Owner and NYISO pursuant to an Interconnection Study Agreement among Transmission Owner, NYISO and Developer, then NYISO will conduct appropriate studies to determine the impact on the New York State Transmission System based on the actual data submitted pursuant to this Article 24.3. The Developer shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation. Prior to the Commercial Operation Date, the Developer and Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all "as-built" Large Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Developer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Developer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to the Transmission Owner and NYISO for each individual generating unit in a station.

Subsequent to the Commercial Operation Date, the Developer shall provide Transmission Owner and NYISO any information changes due to equipment replacement, repair, or adjustment. Transmission Owner shall provide the Developer and NYISO any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Owner substation that may affect the Developer Attachment Facilities equipment ratings, protection or operating requirements.

The Developer and Transmission Owner shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS

25.1 Information Access. Each Party (“Disclosing Party”) shall make available to another Party (“Requesting Party”) information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 of this Agreement and to enforce their rights under this Agreement.

25.2 Reporting of Non-Force Majeure Events. Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

25.3 Audit Rights. Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party’s accounts and records pertaining to the other Party’s performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party’s costs, calculation of invoiced amounts, and each Party’s actions in an Emergency State. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Party’s performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4 of this Agreement.

25.4 Audit Rights Periods.

25.4.1 Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of Transmission Owner’s Attachment Facilities and System Upgrade Facilities shall be subject to audit for a period of twenty-four months following Transmission Owner’s issuance of a final invoice in accordance with Article 12.2 of this Agreement.

25.4.2 Audit Rights Period for All Other Accounts and Records. Accounts and records related to a Party’s performance or satisfaction of its obligations under this Agreement other than those described in Article 25.4.1 of this Agreement shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing

Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

- 25.5 Audit Results.** If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

ARTICLE 26. SUBCONTRACTORS

- 26.1 General.** Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.
- 26.2 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Transmission Owner be liable for the actions or inactions of the Developer or its subcontractors with respect to obligations of the Developer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.
- 26.3 No Limitation by Insurance.** The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 27. DISPUTES

- 27.1 Submission.** In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance (a "Dispute"), such Party shall provide the other Parties with written notice of the Dispute ("Notice of Dispute"). Such Dispute shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated representatives are unable to resolve the Dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Parties' receipt of the Notice of Dispute, such Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.
- 27.2 External Arbitration Procedures.** Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail

to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Attachment Facilities, or System Upgrade Facilities.

27.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by the Parties.

27.5 Termination. Notwithstanding the provisions of this Article 27, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS

28.1 General. Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing. Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Attachment Facilities and System Upgrade Facilities owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

28.1.2 Authority. Such Party has the right, power and authority to enter into this Agreement, to become a Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 No Conflict. The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 29. MISCELLANEOUS

29.1 Binding Effect. This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

29.2 Conflicts. If there is a discrepancy or conflict between or among the terms and conditions of this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement shall be given precedence over the Appendices, except as otherwise expressly agreed to in writing by the Parties.

29.3 Rules of Interpretation. This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement or such Appendix to this Agreement, or such Section to the Large Facility Interconnection Procedures or such Appendix to the Large Facility Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein",

“hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7)

“including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”.

- 29.4 Compliance.** Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, the NYISO OATT and Good Utility Practice. To the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement for its compliance therewith. When any Party becomes aware of such a situation, it shall notify the other Parties promptly so that the Parties can discuss the amendment to this Agreement that is appropriate under the circumstances.
- 29.5 Joint and Several Obligations.** Except as otherwise stated herein, the obligations of NYISO, Developer and Transmission Owner are several, and are neither joint nor joint and several.
- 29.6 Entire Agreement.** This Agreement, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party’s compliance with its obligations under this Agreement.
- 29.7 No Third Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.
- 29.8 Waiver.** The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default of this Agreement for any reason by the Developer shall not constitute a waiver of the Developer’s legal rights to obtain Network Access Interconnection Service from the NYISO and Transmission Owner in accordance with the provisions of the NYISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.
- 29.9 Headings.** The descriptive headings of the various Articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

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- 29.10 Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.
- 29.11 Amendment.** The Parties may by mutual agreement amend this Agreement, by a written instrument duly executed by all three of the Parties.
- 29.12 Modification by the Parties.** The Parties may by mutual agreement amend the Appendices to this Agreement, by a written instrument duly executed by all three of the Parties. Such an amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.
- 29.13 Reservation of Rights.** NYISO and Transmission Owner shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Developer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 29.14 No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership among the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.
- 29.15 Other Transmission Rights.** Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, or transmission congestion rights that the Developer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the System Upgrade Facilities.

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IN WITNESS WHEREOF, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

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

1 | 1

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

By: *Allyson*

Title: VP, System & Resource Planning

Date: June 17, 2011

Noble Clinton Windpark I, LLC

mip By: *Clayton*

Title: President

Date: June 17, 2011

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APPENDICES

Appendix A

Attachment Facilities and System Upgrade Facilities

Appendix B

Milestones

Appendix C

Interconnection Details

Appendix D

Security Arrangements Details

Appendix E

Commercial Operation Date

Appendix F

Addresses for Delivery of Notices and Billings

Appendix G

Interconnection Requirements for a Wind Generating Plant

Appendix H

Invoicing and Payment

Appendix A

Attachment Facilities and System Upgrade Facilities

The following facilities are required pursuant to this LGIA:

I. ATTACHMENT FACILITIES

A. Developer's Attachment Facilities

The Large Generating Facility is connected via three 34.5kV collector lines from the turbine fields to the Ryan substation ("Ryan Substation"), each line consists of a combination of underground and overhead 34.5 kV circuits.

Underground circuits are solid dielectric 34.5 kV power cables direct buried in cable trenches 4 feet deep along newly created turbine access roads. Overhead circuits are jacketed Hendrix type cable of compact design supported from wood structures and mounted on insulated brackets suspended from messenger wire. The overhead circuits are located along established county roads. Fiber optic cables are routed along power with certain physical separation.

The Ryan Substation is an outdoor air insulated low profile design, single bus configuration. The Ryan Substation will include Developer's Attachment Facilities, Transmission Owner's Attachment Facilities, and, ultimately, some System Upgrade Facilities. The Transmission Owner's Attachment Facilities and System Upgrade Facilities are described in Sections I.B. and II, respectively, of this Appendix A. The Developer's Attachment Facilities in the Ryan Substation consist of three 1200A circuit breakers for the collector lines and one 3000A main breaker for connecting the 34.5 kV collector bus to the 34.5/230kV step-up transformer. This breaker is SF6 type, rated 72 kV, 40 kA. The substation circuit breakers, disconnect switches, PTs, CTs, and surge arresters are interconnected together by a combination of strain buses and rigid buses mounted on porcelain insulators, supported on steel structures.

The Ryan Substation 34.5kV system includes circuit breaker current transformers and bus connected voltage transformers for metering and relaying. A 34.5 kV-120/208V station service transformer will supply power for the station service. All equipment, including fences, is grounded to a sub-grade grounding system designed to IEEE 80 requirements.

The switchyard area shall be covered with a 6 inch layer of 0.75" crushed stone and will extend for a distance equal to 5 feet beyond the fence line.

Grounding Transformer – Each collector line is connected with a grounding transformer at the substation end of the line to prevent line voltage rise between the time when the breaker is tripped and the turbines coast down.

The Main Step-up Transformer is an outdoor mineral oil filled, forced air cooled, two winding 34.5/230 kV three phase transformer, rated at 75/92/120 MVA OA/FA/FAA. The transformer shall be connected grounded wye on the 34.5 kV side, and delta on the 230 kV side with a no-load tap changer. The transformer is equipped with surge arresters, current transformers, ANSI standard accessories and a continuous on-line gas monitor.

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Foundations – Special attention is given to the foundation for the main power transformer. The transformer foundation design includes an oil containment system with a water drainage system. In this area, an oil containment system sized to hold 110% of the transformer contents is provided.

Control Building – A stand alone control building is provided for the 34.5kV system. The building is hardened pre-cast concrete to house the relay panel, control panels, SCADA, DC Battery system, monitoring devices plus all of the support equipment, *i.e.*, AC/DC distribution, HVAC, etc. Station service for the 34.5 kV control building is established from one of the two transformers described in Section I.B, Phase I, Paragraph f. of this Appendix A.

Protective Relaying

Main Step-up Transformer Protection: The primary protective device is a high speed transformer differential relay with backup phase and neutral ground overcurrent protection. The secondary protective device provides high speed directional overcurrent protection. Both the primary and secondary relays, which are Developer's Attachment Facilities, are located in the 230 kV Control Building, which is a Transmission Owner's Attachment Facility, described in Section I.B., Phase I, Paragraph i. of this Appendix A.

Each transformer is equipped with sudden pressure protection, liquid low level protection, high oil temperature, and high winding temperature protection.

34.5kV Collector Lines Feeder Protection: The protective device provides directional phase and ground overcurrent protection, including breaker failure protection.

34.5kV Collector Bus and Backup Feeder Protection: The protective device is a directional phase and ground overcurrent relay providing overall 34.5kV bus and feeder backup protection, including over/under-frequency and overvoltage protection.

SCADA – Supervisory Control and Data Acquisition (SCADA): The SCADA system will provide full monitoring of the substation via a remote terminal unit (RTU) and a dedicated T1 line. The SCADA panel is located in the 230 kV Control Building described in Section I.B., Paragraph i. of this Appendix A.

B. Transmission Owner's Attachment Facilities

This Section I.B. describes the work associated with the Transmission Owner's Attachment Facilities for the Large Generating Facility. Except to the extent set forth in this Section I.B., the Transmission Owner's Attachment Facilities will be constructed by Developer.

1. Description

The Large Generating Facility will, in its final configuration, connect to the Transmission Owner's 230 kV line MWP-2 via a ring bus at the Ryan Substation. In order to allow the Large Generating Facility to connect and operate prior to the completion of the full ring bus, certain facilities are being installed as part of a Phase I configuration. During the Phase I configuration, the Large Generating Facility will connect to the 230 kV line via a single tap of the WP-2

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transmission line. The tapped transmission line will be segmented and the ring bus configuration will be completed at the end of Phase II.

In Phase I, the facilities installed will be Transmission Owner's Attachment Facilities and are described below in this Section I.B. The Phase I Transmission Owner's Attachment Facilities include facilities, such as two circuit breakers, that will ultimately be utilized as part of the ring bus configuration. In Phase II, the facilities installed and utilized for the ring bus will be System Upgrade Facilities and are described below in Section II.C. of this Appendix A.

Phase I

- a. In Phase I, the project will be connected as a tap to the Transmission Owner's 230kV transmission line MWP-2 via one 230kV circuit breaker in series with one of two ring bus breakers for stuck breaker protection (one in each direction) and a tie-line breaker, as shown on the one-line diagram labeled CL-E-IA-01 attached to this Appendix A as Figure 1. The changes to the existing MWP-2 line protection for this arrangement are described in Phase I System Upgrades in Section II of this Appendix A.
- b. Civil/Site work: The Developer will provide site civil work including drainage, finish grade and stone the site. Drainage from the switchyard will be promoted by sloping the base layer below the crushed stone at the site with a minimum slope of 0.5 percent to provide adequate drainage and prevent the accumulation of standing water. The switchyard area shall be covered with a 6 inch layer of 0.75 inch crushed stone and will extend for a distance equal to 5 feet beyond the fence line. Disturbed areas which will not receive stone will be mulched and seeded. Site work, grading, fencing and drainage will be mostly completed during Phase I construction, since the foundations and site work associated with Phase II are completed during Phase I construction.
- c. Foundations: Foundations will be designed in accordance with generally accepted practices of soil mechanics. Foundation works will be completed during Phase I, including Phase II equipment foundations for the second incoming A-Frame structure and two additional breakers.
- d. Grounding: The substation yard is L-shaped with the outer leg dimensions of the ground grid of 338 feet by 507 feet which includes the area 5 feet outside the perimeter fence. Substation grounding grid resistance shall be designed to be less than 5 ohms per IEEE-80, measured without external ground and without the grounding grid of the Large Generating Facility connected. In addition, the 230 kV Control Building shall be furnished with a special high frequency grounding system for the protection of electronic equipment from transient electrical noises as recommended by IEEE 1100.

The below grade grounding system installed in Phase I includes the ground grid and ground wire tails for the Phase II work. The grounding work associated with Phase II is the above grade connections to Phase II equipment.

- e. Transmission Line Tap: Transmission Owner has installed an in-line dead end structure in MWP-2 to tap the line into the substation. One line tap will be brought into the substation during Phase I by Developer. The fly taps will consist of one 795 ACSR conductor per phase and a static wire to be installed by Transmission Owner. The static

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wires will be extended overhead into the substation by Developer. Another ground connection will be made from the substation ground grid to the static wire ground rod at the foot of the two overhead lines before and after the tap by Developer.

- f. Station Service: Station service is established from two transformers, each three-phase 225kVA pad is mounted with 34500/19200V primary and 208/120V secondary. One is connected to the 34.5kV side of the Ellenburg 230/34.5kV transformer, another is connected to the Clinton 230/34.5kV transformer. The Clinton 34.5kV/208V transformer is dedicated to the 230 kV Control Building, the other will serve the Developer Attachment Facility Control Building described in Section I.A. of this Appendix A. A single phase, 600 ampere, 120/240 volt service from the local utility will be used as a backup source for the substation station service. This provides separately metered local utility service to the Transmission Owner 230 kV Control Building and the Developer Attachment Facility Control Building described in Section I.A. of this Appendix A.
- g. Protective Relaying:
 - Primary Line Protection: Distance relaying protection shall be provided via a numerical distance relay. This relaying system shall be set selective within the prescribed zones of protection based on the system protection analysis. The relay will directly trip and block the closure of the breaker(s). The relay shall be of utility grade and meet Transmission Owner's standards.
 - Secondary Line Protection: Distance relaying protection will be provided via a high speed microprocessor based distance relay. This relay shall be set to be selective within the prescribed zones of protection based on system protection analysis. The relay will directly trip and block the closure of the breaker(s). The relay shall be of utility grade and meet Transmission Owner's standards.
 - Breaker Failure: Two independent primary and secondary breaker failure relaying systems provide redundant breaker failure protection. After a circuit breaker trip is initiated the breaker failure relay will begin a countdown timer. If the circuit breaker fails to open within a specified period, then the breaker failure relay will trip its associated lockout relay to trip and block closure of the adjacent and series line circuit breakers. The breaker failure relaying at the Ryan Substation does not send direct transfer trip to the remote terminal substation. The series line breaker is provided to isolate stuck breakers from the 230kV system. The relay shall be of utility grade and meet Transmission Owner's standards.
 - Transfer Trip: During Phase I, the Ryan Substation is connected via a tap to the MWP-2 line. The line will be tripped by MWP-2 line relay and breaker failure operations at Transmission Owner terminals. Breaker failure conditions at Transmission Owner terminals will be programmed to remotely trip the Ryan Substation incoming breaker upon receiving direct transfer trip (DTT) signals from Willis Substation. Two independent communication channels will be provided for the DTT.

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- Synch Check Relay: A synch check relay for each breaker will be used to compare voltages across circuit breakers to prevent the substation breakers from closing out of phase. The relay shall be of utility grade and meet Transmission Owner's standards.
 - Remote Control: Transmission Owner will have the ability to remotely open any and all 230 kV circuit breakers and motorized line disconnect switch from Transmission Owner's control center via SCADA.
- h. Supervisory Control and Data Acquisition (SCADA): The SCADA system will provide full functionality of the 230kV portion of the substation to Transmission Owner through a Transmission Owner specified remote terminal unit (RTU). Developer in turn, will be provided with read only information about the 230kV substation through the RTU.
- i. Building: A Control Building is provided for the 230kV system. The Control Building is constructed of hardened pre-cast concrete. The Control Building houses the relay, control, and monitoring devices plus all of the support equipment, *i.e.*, station battery systems, AC/DC distribution, HVAC, etc. The primary and secondary protection and controls are each located in separate rooms. The Control Building has been designed with ample space to allow the installation of relays and fault recording equipment required for Phase II.
- A 10 by 10 foot concrete pad with 240v/120v power 60 ampere power connection and pre-fabricated lavatory facility shall be provided by Developer near the Control Building.
- j. Steel: The 230kV portion of the substation will be a low profile (non-lattice), rigid bus, and air-insulated arrangement with flexible connections to all equipment. Equipment support structures will be designed by working stress method in accordance with AISC (American Institute of Steel Construction) guidelines for specification, engineering, design, and construction.
- k. Microwave Radio System: The Microwave Radio System will be constructed as part of the System Upgrade Facilities (SUFs). An interface to the Microwave Radio System installed as SUFs will be installed as part of this Attachment Facility. The SUFs Microwave Radio System must be a functional complete circuit to Transmission Owner's control center at the St. Lawrence/FDR Power Plant prior to energization of the Phase I Attachment Facilities.

Phase II

Upon completion of Phase II, the Transmission Owner's Attachment Facilities will only include those facilities between the Point of Interconnection and the Point of Change of Ownership, as depicted on Figure 2 to this Appendix A. The Transmission Owner's Attachment Facilities include the section of the interconnecting line from the Point of Change of Ownership to the Point of Interconnection, which includes the bus work, associated project meter, potential and current transformers, metering cabinets in the 230 kV Control Building and line disconnect switch.

Section II.C of this Appendix A describes the Phase II configuration, including the ring bus at the Ryan Substation.

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2. Cost Estimates

Transmission Owner's Attachment Facilities and Ring Bus SUF Cost Estimate*

Ryan Substation

Description	Installation Cost
Primary Substation Equipment	\$3,250,000
Protective relays, controls, RTU and SCADA	\$960,000
Revenue Meters	\$195,000
Control Buildings	\$195,000
230 kV Line Tap	\$540,000
Cable Trenches and Conduits	\$620,000
Site work	\$600,000
Foundations	\$640,000
Structural Steel	\$450,000
Lighting, Security	\$220,000
Spare Parts	\$280,000
Microwave Communication Attachment	\$160,000
Sequence of Events Recorder	\$140,000
Digital Fault Recorder	\$80,000
Demolition and protective rework	\$220,000
Land Acquisition	\$80,000
Access Roads, Survey & Site Clearing	\$200,000
Licensing and Permitting	\$120,000
Engineering	\$480,000
Construction Management	\$360,000
Noble Development Cost	\$133,000
Testing and Commissioning	\$230,000
Other Equipment Cost (15% of install man-hours)	\$26,000
Other Engineering, QA/QC, Project Mgt.	\$525,000
Subtotal	\$10,704,000
Contingency 20%	\$2,140,800
Other Indirects 15%	\$157,680
Total Transmission Owner Attachment Facilities and Ring Bus SUF Cost	\$13,002,480

* Note that this cost estimate includes the cost estimate for the Ryan Substation Ring Bus System Upgrade Facilities described in Section II.C. of this Appendix A. The cost of the Ryan Substation ring bus System Upgrade Facilities will be shared between the Ellenburg Windfield and the Clinton Windfield projects.

II. SYSTEM UPGRADE FACILITIES

This section identifies the System Upgrade Facilities ("SUFs") jointly required for the following Class Year 2006 projects: Altona Windfield, Ellenburg Windfield, Clinton Windfield, Marble

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River Wind Farm and Marble River Wind Farm II. The SUFs required by all of the identified projects will be referred to as the “Common SUFs.” In addition to Common SUFs, other limited SUFs required for the Altona Windfield,¹ Ellenburg Windfield, and the Clinton Windfield are described below.

The SUFs will be constructed in two phases: Phase I and Phase II. The Phase I work will include the Phase I microwave communications SUFs described in Section II.A., below, and the Willis and Plattsburgh Substation upgrades described in the Phase I sections of Section II.B., below.

The Common SUFs include only the following:

- Microwave Communications SUFs
 - a. Moses (St. Lawrence/FDR Power Plant)
 - b. Massena Substation
 - c. Willis Substation
 - d. Ryan Substation
 - e. Big Hill
 - f. Plattsburgh Substation
- Willis and Plattsburgh SUFs, Phase II Only

A. Microwave Communications System Upgrade Facilities

Additions and modifications to the existing Transmission Owner microwave communications system will be made to support the operations of new substations for the Noble Altona (“Duley Substation”), Noble Clinton, Noble Ellenburg (together, “Ryan Substation”) and Marble River (“Patnode Substation”) wind fields.

The system will be comprised of a new digital microwave (backbone) system operating in the 6.7 GHz frequency band with two spur links operating in the 18.7 GHz frequency band. The system will interconnect with the existing Transmission Owner digital microwave system at the Willis Substation on the west and terminating at the existing Plattsburgh Substation on the east. This project will comprise the backbone system.

The backbone system will utilize existing towers at Willis and Plattsburgh substations, and require a new 275 ft tower located in Altona at a site called Big Hill and a new 195 ft tower in the new Ryan Substation. The backbone link runs from Willis to Ryan to Big Hill to Plattsburgh. As part of Developer Attachment Facilities, spur links will run from Ryan Substation to Patnode Substation and from Big Hill to Duley Substation.

The Transmission Owner’s existing analog microwave link between Massena Substation and the St. Lawrence/FDR Moses Dam Site will also be upgraded by adding a digital link to accomplish data communication from Developer’s facilities to Transmission Owner’s operations center at St. Lawrence.

¹ SUFs required solely for the Altona Windfield are not included here but will be identified in the Altona Windfield Interconnection Agreement.

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The scope of work at each site will include the following:

Phase I

Willis Substation:

The new communications equipment will be housed in the existing building and the new antenna mounted on the existing tower. The scope of work will include the following:

Grounding: The grounding of the existing substation shall be inspected for adequacy, expanded to cover new installations, and the existing Control Building upgraded accordingly for a high frequency grounding system to safeguard electronic and telecommunication equipment from transient overvoltage as recommended by IEEE 1100 and Motorola grounding and Bonding Manual, R56.

Tower Evaluation: A structural evaluation of the existing tower and foundation for the new equipment has been performed and the tower was confirmed compliant with Transmission Owner's and ANSI/TIA 222-G-2005 Class III standards. The tower was originally designed for future additions.

Antennas: A 6 foot diameter antenna pointing to Ryan Substation and a working platform will be installed on the existing tower at the 180 ft and 176 ft levels respectively in accordance with the design specifications.

Radio Equipment: Radio and associated equipment will be provided in accordance with Transmission Owner's standards.

Ryan Substation:

Civil/site work: The microwave tower and equipment shelter will be located within the new substation and no additional site work will be required.

Foundation: Reinforced concrete mat foundation with piers.

Grounding: Tower will be provided with a lightning protection system in accordance with EIA requirements and will be connected to the substation grounding system. Communications shelter will be grounded to the below grade grounding system according to the Motorola Grounding and Bonding Manual, R56.

Station Service: Power will be supplied from the substation service supply. Power to the DC equipment will be through a UPS battery/charger system, which will have a 12 hour capacity.

Tower: 195 ft high free standing galvanized steel lattice tower. Tower to be designed to ANSI/TIA 222-G-2005 Class III standards.

Antennas: A 12 ft diameter antenna pointing to Big Hill will be installed 185 ft above ground. A 6 ft diameter antenna pointing to Willis Substation will be installed 160 ft above ground. Provisions will be made in the design for the installation of a 2 ft diameter antenna to the Patnode Substation in accordance with the design specifications.

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Building: The communications equipment will be installed in a 10 ft x 13 ft x 9 ft high pre-cast concrete building. Building will be designed to meet New York State Building Code requirements.

Radio Equipment: Radio and associated equipment will be provided in accordance with Transmission Owner standards.

Massena to Moses:

Also included in this System Upgrade Facilities project is the upgrade of the existing analog microwave link between the Massena Substation and the St. Lawrence/FDR Moses Dam site Communications Room with a new digital link. This upgrade link will utilize existing antennas. The waveguide will be replaced in Massena Substation. Equipment and installation will meet Transmission Owner standards.

Phase II

Big Hill

Civil/site work: The microwave tower will be located off a wind farm access road which will be constructed by Developer. A gravel road will be constructed to the tower site. The tower site and the tower guy wire anchor locations will be cleared, graded level and covered with a 6" layer of crushed stone. Each area will be enclosed with a chain link security fence.

Foundation: Reinforced concrete pier foundation for the tower base and communication shelter and reinforced concrete anchor blocks for the guy wires.

Grounding: Tower and guy wires will be provided with a lightning protection system connected to a below grade grounding system. Fence and communications shelter will be grounded to the below grade grounding system. Lightning protection and grounding systems will be in accordance with EIA and NEC requirements and the Motorola Grounding and Bonding Manual, R56.

Station Service: Power will be supplied from the local utility. A back-up propane fueled emergency generator will be provided. The DC equipment power will be supplied through a UPS battery/charger system, which will have a 12 hour capacity.

Tower: 275 foot high guyed mast. Tower is designed to ANSI/TIA 222-G-2005 Class III and Transmission Owner standards.

Antennas: A 12 ft diameter antenna pointing to Ryan Substation will be installed 265 ft above ground. A 6 ft diameter antenna pointing to Plattsburgh Substation will be installed 250 ft above ground in accordance with the design specifications.

Building: The communications equipment will be installed in a 12 ft x 22 ft x 9 ft high pre-cast concrete building. Building will be designed to meet New York State Building Code requirements.

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Radio Equipment: Radio and associated equipment will be provided in accordance with Transmission Owner standards.

Plattsburgh Substation:

The new communications equipment will be housed in the existing building and the new antenna mounted on the existing tower. The scope of work will include the following:

Tower Evaluation: A structural evaluation of the existing tower and foundation for the new equipment has been performed. The tower was confirmed compliant with Transmission Owner's and ANSI/TIA 222-G-2005 Class III standards.

Antennas: A 6 ft diameter antenna pointing to Big Hill will be installed on the existing tower 150 ft above ground in accordance with the design specifications.

Radio Equipment: Radio and associated equipment will be provided in accordance with Transmission Owner specifications.

B. Willis and Plattsburgh Substation System Upgrade Facilities

The Willis Substation and Plattsburgh Substation SUFs will be constructed as described in this Section II.B. and with respect to the Willis Substation, as shown on drawings 070506-EE-1 and 070506-PL-1 attached to this Appendix A as Figures 3 and 4, respectively.

Phase I

Protection System Changes at Transmission Owner's Willis Substation for the MWP-2 Line

The existing MWP-2 line primary protection is a permissive overreaching transfer trip (POTT) system with unblock logic, using a numerical relay in conjunction with audio tone equipment over single side band power line carrier channels.

The existing MWP-2 line secondary protection utilizes electromechanical relays to provide backup distance protection.

The primary and secondary protection will not essentially change, however the existing breaker failure protection at Willis will be modified to trip the Ryan Substation line breakers remotely. To accomplish this scheme two Direct Transfer Trips (DTTs) will be required. The first DTT-1/MWP-2 equipment required at Willis will include:

- One FSK PLC Transmitter
- One phase C wave Trap
- One Phase C Coupling Capacitor Voltage Transformer (CCVT)
- One phase C Line Tuner

The second DTT-2/MWP-2 equipment will utilize audiotone equipment over the Ryan/Willis microwave communication link described in the Microwave System description.

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Phase II

Willis Substation

The Willis Substation WP-1 and WP-2 tap configurations will be each be converted to breaker and a half configuration. The conversion will require the addition of three circuit breakers, modifications to the existing structures, station connections, line terminations, and protection system.

The existing 230kV 2100 bay will be modified by the addition of a third breaker to create separate terminals for the MW-2 and WRY-2 segments of the existing MWP-2 transmission line. PT's and CVT's will be added in conjunction with the line relaying modifications.

A new 2300 bay will be added north of the existing 2200 bay in an area previously designated by Transmission Owner for expansion. The new 2300 bay will include two new 230kV circuit breakers, SF6 type, 2000A continuous circuit, rated 900kV, 63 kA circuit breakers, associated disconnect switches, and line terminal equipment to accommodate the relocated WP-1 transmission line. The WP-1 transmission line will be re-designated WPN-1. New PT's and CCVT's will be added in conjunction with the new line and relaying systems will be installed for the WPN-1 line.

The MW-1 line will terminate in the 2200 bay. The existing MWP-1 line primary protection is a blocking carrier scheme using electromechanical relays with ON-OFF carrier equipment. The existing MWP-1 line secondary protection utilizes electromechanical relays to provide backup distance protection. New CCVT's will be added in the 2200 bay.

The existing Direct Transfer Trip is accomplished via audio tone equipment over single side band power line carrier channels. The existing primary and secondary MWP-1 line protection will remain and be re-designated as MW-1 line protection.

The new equipment will include:

- 230kV Circuit Breakers
- 230kV Disconnect Switches
- Potential Transformers
- Capacitive Voltage Transformers
- Primary Protection Panels
- Secondary Protection Panels
- Communication Racks
- Termination Panels
- Wave Traps and Line Tuners

WRY-2 Line

The primary line relaying will include:

- Pilot Scheme; directional comparison unblocking (DCU) and primary direct transfer trip (DTTP) over power line carrier
- New numerical multifunction relay for phase and ground fault protection

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- New FSK PLC equipment for DCU
- Reconfigure existing FSK PLC equipment for DTTP
- New hybrids
- Additional auxiliary devices, test switches, lockout relays, etc.

The secondary line relaying will include:

- Pilot Scheme; current differential with secondary DTT (DTTS) over digital microwave.
- New current differential relay
- New Digital multiplexer and/or fiber optic interface unit
- Additional auxiliary devices, test switches, lockout relays, etc.

WPN-1 Line

The primary line relaying will include:

- Pilot Scheme; directional comparison unblocking (DCU) and primary direct transfer trip (DTTP) over power line carrier
- New numerical multifunction relay for phase and ground fault protection
- New FSK PLC equipment for DCU
- New FSK PLC equipment for DTTP
- New hybrids
- Additional auxiliary devices, test switches, lockout relays, etc.

The secondary line relaying will include:

- Pilot Scheme; current differential with secondary DTT (DTTS) over digital microwave
- New current differential relay
- New Digital multiplexer and/or fiber optic interface unit
- Additional auxiliary devices, test switches, lockout relays, etc.

New 230kV Circuit Breakers

New primary and secondary breaker failure relays and their associated lockout relays and test switches are added for each new breaker.

Various switches associated for breaker control are added for each new breaker.

Plattsburgh Substation

The Plattsburgh Substation WP-1 and WP-2 lines will be re-designated DP-1 and RYP-2 respectively. The existing primary and secondary line relaying systems will be replaced with numerical relay systems as shown below.

The new equipment will include:

- Phase C Line Tuners
- Phase C Wave Trap
- Primary Protection Panels

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- Secondary Protection Panels
- Communication Racks
- Termination Panels

DP-1 and RYP-2 Lines

The primary line relaying will include:

- Pilot Scheme; directional comparison unblocking (DCU) and primary direct transfer trip (DTTP) over power line carrier
- New numerical multifunction relay for phase and ground fault protection
- New Digital multiplexer and/or fiber optic interface unit
- Additional auxiliary devices, tests switches, lockout relays, etc.

The secondary line relaying will include:

- Pilot Scheme; current differential with secondary DTT (DTTS) over digital microwave
- New current differential relay
- New Digital multiplexer and/or fiber optic interface unit
- Additional auxiliary devices, test switches, lockout relays, etc.

C. Ryan Substation Ring Bus System Upgrade Facilities

As discussed above in Section I.B. of this Appendix A, the Large Generating Facility will, in its final configuration, connect to the Transmission Owner's 230 kV line MWP-2 via a ring bus at the Ryan Substation. During the Phase I configuration, the Large Generating Facility will connect to the 230 kV line via a single tap. The final ring bus configuration completed as part of Phase II is described below.

The following is the identification and description of the equipment, engineering, procurement, and construction work required to build the System Upgrade Facilities at the 230kV Ryan Substation. This work essentially converts the Phase I configuration, described in Section I.B. to this Appendix A, to the final ring bus configuration.

Phase I

See Section I.B. of this Appendix A.

Phase II

- a. In Phase II, one additional 230kV breaker and associated disconnect switch will be installed to convert the tap configuration into the station ring bus configuration. The Phase I tap configuration line series breaker will be removed and a direct connection will be made from the existing tap point to the station ring bus breakers. A second connection to the WP-2 line will be brought into a new position in the expanded ring, as shown on the one-line diagram labeled CL-E-IA-03 attached to this Appendix A as Figure 2. Upon completion of this Phase II, the Willis – Plattsburgh WP-2 line will be segmented into two new 230kV line segments, Willis-Ryan (WRY-2) and Ryan-Plattsburgh (RYP-2).

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The line protection for this arrangement must be completed as part of the Phase II System Upgrade Facilities described in Section II of this Appendix A.

- b. Civil/Site work: The Developer will complete civil/site work during Phase I as described above.
- c. Foundations: The Developer will complete foundation work during Phase I as described above.
- d. Grounding: The Developer will complete grounding work during Phase I as described above. The work associated with Phase II is the above grade connections to Phase II equipment.
- e. Transmission Line Tap: Transmission Owner installed an in-line dead end structure in WP-2 to tap the line into the substation. During Phase II, a second connection to the WP-2 line will be brought into the substation by Developer. The line will be segmented and looped into and out of the substation by Transmission Owner. The fly taps will consist of one 795 ACSR conductor per phase and a static wire to be installed by Transmission Owner. The static wires will be extended overhead into the substation by Developer. Another ground connection will be made from the substation ground grid to the static wire ground rod at the foot of the two overhead lines before and after the tap by Developer.
- f. Station Service: The Developer will install the station service during Phase I as described above. The system is designed with capacity and circuit breakers to supply power to the Phase II equipment requiring such service.
- g. Protective Relaying:
 - Primary Line Protection: Directional Comparison Unblocking Pilot Relaying over Power Line Carrier shall be provided via the existing numerical distance relay. This relaying system shall be set selective within the prescribed zones of protection based on system protection analysis. The relay will directly trip and block the closure of the breaker(s). The relay shall be of utility grade and meet Transmission Owner's standards. Identical primary line protection will be installed for the second line connection.
 - Secondary Line Protection: Line Current Differential Relaying over Digital Microwave channels will be provided via a microprocessor based current differential relay. This relay will be set to provide backup distance protection if the communications channels are lost and be selective within the prescribed zones of protection based on system protection analysis. The relay will directly trip and block the closure of the breaker(s). Identical secondary line protection will be installed for the second line connection.
 - Breaker Failure: Two independent primary and secondary breaker failure relaying systems provide redundant breaker failure protection. After a circuit breaker trip is initiated, the breaker failure relay will begin a countdown timer. If the circuit breaker fails to open within a specified period, then the breaker failure relay and its associated

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- lockout relay will trip and block closure of an adjacent circuit breaker(s) and send direct transfer trip to the remote terminal station to isolate the stuck breaker. The relay shall be of utility grade and meet Transmission Owner's standards.
- Transfer Trip: The breaker failure conditions at Transmission Owner terminals will be remotely tripped at the Ryan Substation upon receiving direct transfer trip (DTT) signals from Willis and/or Plattsburgh substations. The breaker failure conditions at the Ryan Substation will be remotely tripped at the Transmission Owner's Terminal upon receiving DTT signals from the Ryan Substation. The Phase II protection will be coordinated with the Willis Substation and the Plattsburgh Substation remote line relays.
 - Synch Check Relay: A synch check relay for each breaker will be used to compare voltages across circuit breakers to prevent the substation breakers from closing out of phase. The relay shall be of utility grade and meet Transmission Owner's standards.
 - Remote Control: Transmission Owner will have the ability to remotely open any and all circuit breakers and motorized line disconnect switches from Transmission Owner's control center via SCADA.
- h. Fault Recording and Monitoring Equipment: Specified by Transmission Owner and procured by Developer, this equipment will be part of the Phase II installation of this project. This equipment includes a Sequence of Events Recorder cabinet and a Digital Fault Recorder cabinet.
- i. Supervisory Control and Data Acquisition (SCADA): The SCADA system work will be expanded to provide full functionality of the 230kV substation including the Phase II equipment. Phase II equipment status will also be wired to the RTU.
- j. Building: A Control Building will be completed during Phase I as described above. The Control Building has been designed with ample space to allow the installation of Phase II relays and fault recording equipment. The entrance road will be paved to the Control Building and paved parking area(s) shall be provided. A key access motorized entrance gate and manual man-gate shall be provided.
- k. Steel: The 230kV portion of the substation will be low profile (non-lattice), rigid bus, and air-insulated arrangement with flexible connections to all equipment. Equipment support structures will be designed by working stress method in accordance with AISC (American Institute of Steel Construction) guidelines for specification, engineering, design, and construction. The second line tap take off structure will be installed in Phase II. Support steel structures will also be added under Phase II for the new breaker disconnect switches.

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D. Cost Estimates

System Upgrade Facilities Cost Estimate*

Description	Installation Cost
Microwave Communication System	\$3,619,260
Willis Substation	\$5,873,200
Plattsburgh Substation	\$2,408,200
Total System Upgrade Facilities Cost	\$11,900,660**

* Note that this cost estimate does not include the cost estimate for the Ryan Substation Ring Bus System Upgrade Facilities, which is included in the cost estimate set forth in Section I.B.2. of this Appendix A.

** The Class Year 2006 Facilities Study allocated \$250,000 of this total System Upgrade Facilities cost among only the Altona Windfield, Ellenburg Windfield, and Clinton Windfield Large Generating Facilities. The remaining \$11,650,660 was allocated equally among Altona Windfield, Ellenburg Windfield, Clinton Windfield, Marble River Wind Farm and Marble River Wind Farm II.

System Upgrade Facilities Cost Estimate - Microwave Communication System

Description	Installation Cost
Willis Tower Evaluation	\$10,400
Willis Communication Equipment	\$305,000
Plattsburgh Tower Evaluation	\$10,400
Plattsburgh Communication Equipment	\$305,000
Clinton 195 ft. Tower	\$214,000
Clinton Communication Equipment	\$126,000
Clinton Building Battery & Accessories	\$72,000
Big Hill 275 ft. Tower	\$255,000
Big Hill Communication Equipment	\$250,000
Big Hill Building, Battery, Gen-Set & Accessories	\$170,000
Massena/STL Microwave System Upgrade	\$300,000
Spare Parts	\$68,000
Big Hill Land Acquisition	\$65,000

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Big Hill Access Roads, Survey & Site Clearing	\$135,000
Licensing and Permitting	\$30,000
Engineering	\$120,000
Construction Management	\$140,000
Noble Development Cost	\$60,000
Testing and Commissioning	\$60,000
Other - Equipment Cost (15% of install man-hours)	\$42,000
Other - Engineering, QA / QC, Project Mgt.	\$150,000
Subtotal	\$2,887,800
Contingency 20%	\$577,560
Other Indirects 15%	\$153,900
Total Microwave System Upgrade	\$3,619,260

System Upgrade Facilities Cost Estimate - Willis Substation

Description	Installation Cost
230 kV Circuit Breakers	\$330,000
230 kV Disconnects	\$100,000
Six Current Transformers	\$48,000
Six Voltage Transformers	\$64,000
Primary Protection Panels	\$150,000
Secondary Protection Panels	\$150,000
Communication Panels	\$56,000
Control Panels	\$120,000
Installation of Equipment	\$700,000
Install Relay and Control Equipment	\$300,000
Overhead Line Rework	\$240,000
Site work	\$40,000
Rework and rewire existing panels	\$160,000
Structural Steel	\$150,000
Demolition	\$40,000
Foundation	\$220,000
Special Line Protection	\$100,000
Willis 230 kV Bus Connector Upgrade	\$30,000
Wave Trap (2) - Single Phase	\$56,000
Transmitter	\$24,000
Receiver	\$24,000
Materials	\$32,000
Wave Trap Installation w/foundation, steel	\$80,000
Land Acquisition / Site Work	\$150,000
Construction Management	\$230,000
Engineering	\$292,000

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Testing and Commissioning	\$165,000
Other - Engineering, QA / QC, Project Mgt.	\$500,000
Other - Equipment Cost (15% of install man-hours)	\$110,000
Subtotal	\$4,661,000
Contingency 20%	\$932,200
Others Indirects 15%	\$280,000
Total Willis Station System Upgrades	\$5,873,200

System Upgrade Facilities Cost Estimate - Plattsburgh Substation

Description	Installation Cost
Primary protection panels	\$108,000
FSK Plc panels	\$72,000
Secondary Panels	\$108,000
Digital Multiplexer	\$28,000
Three current transformers	\$24,000
Digital Multiplexer	\$28,000
Three current transformers	\$18,000
Three voltage transformers	\$24,000
Installation of panels	\$100,000
Conduit, cable and wiring	\$200,000
Rework and rewire existing panels	\$60,000
Other - Relay & Control Installation	\$200,000
Special Line Protection	\$100,000
Engineering	\$220,000
Construction Management	\$105,000
Noble Development Cost	\$100,000
Other - Equipment Cost (15% of install man-hours)	\$36,000
Testing and Commissioning	\$80,000
Other - Engineering, QA / QC, Project Mgt.	\$300,000
Subtotal	\$1,911,000
Contingency 20%	\$382,200
Others Indirects 15%	\$115,000
Total Plattsburgh System Upgrades	\$2,408,200

III. ALLOCATION OF SYSTEM UPGRADE FACILITY WORK BETWEEN DEVELOPER AND TRANSMISSION OWNER

The following System Upgrade Facility (“SUF”) work will be performed by Noble Clinton Windpark I, LLC (“Noble Clinton”) and Noble Ellenburg Windpark, LLC (“Noble Ellenburg”), and Transmission Owner in accordance with the *System Upgrade Facilities Study – Study Work Agreement Report* (revised April 6, 2007) (the “SUF Report”). Noble Clinton and Noble Ellenburg shall be referred to collectively herein as “Clinton and Ellenburg.” The SUFs are set forth in detail in Section II of this Appendix A.

A. Microwave Communications System Upgrade Facilities Scoping

A small portion of the work for the microwave system will be performed by Transmission Owner, and the remainder will be performed by Clinton and Ellenburg.

Clinton and Ellenburg will provide the design, procurement and installation/construction services based on the technical specifications prepared and issued by Transmission Owner, titled “Technical Specifications for the Communications Systems Supporting the North Country Wind Farm Substations” and “Technical Specifications for the Digital Microwave System between the St. Lawrence Power Project and the Massena Substation.” Clinton and Ellenburg will provide all communications, site and facility engineering required, except for engineering relating specifically to the interface to Transmission Owners existing communications circuits and facilities. In addition, Clinton and Ellenburg will complete the land procurement for the tower locations and will prepare and submit all required permit modifications and permit applications for the tower sites, except for the Federal Aviation Administration and Federal Communications Commission applications that have been prepared and submitted by Transmission Owner.

The civil design for the roads and the electrical design for the primary power feed will be designed and installed by Clinton and Ellenburg. The design, procurement and construction of the site access, site improvements, towers, foundations, communications equipment and site facilities at the Ryan and Big Hill sites will be completed by Clinton and Ellenburg. Clinton and Ellenburg will furnish and install the communication equipment at St. Lawrence/Moses, Massena, Willis, Ryan, Big Hill and Plattsburgh. The equipment at Transmission Owner’s Willis, Massena and Plattsburgh Substations and at Transmission Owner’s St. Lawrence/Moses Power Project will be installed under safety and coordination clearances from Transmission Owner (*i.e.*, Transmission Owner’s Clearance and Protection Procedure – Lockout/Tagout Program (“CPP-1”) on existing towers or structures, as applicable.

In coordination with Clinton and Ellenburg and in accordance with Appendix B, Transmission Owner will terminate wiring and participate in the commissioning by Clinton and Ellenburg of the microwave equipment located inside the St. Lawrence/Moses, Massena, Willis and Plattsburgh Substations. Clinton and Ellenburg will furnish and install this equipment for Transmission Owner, so that Transmission Owner can undertake the final wiring terminations and commissioning work as a complete circuit to complete the communications from the Plattsburgh Substation to Big Hill, Ryan Substation, Willis Substation, Massena Substation to Moses. Transmission Owner will develop the communications protocols and data flow over the circuits.

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B. Willis Substation System Upgrade Facilities Scoping

Phase I

A small portion of the work for the Phase I modifications to the Willis Substation will be performed by Transmission Owner, and the remainder will be performed by Clinton and Ellenburg. The full scope includes the installation of a wave trap, a CCVT and modifications/additions to relaying on the MWP-2 line.

Clinton and Ellenburg will design and procure the materials based on the outline specifications that were prepared and issued by Transmission Owner. The scope of the Clinton and Ellenburg effort will include both the materials for the exterior installations by Clinton and Ellenburg and interior installation items for Transmission Owner installation inside the Control Building in new communication racks. In addition, Clinton and Ellenburg will be responsible for the exterior and interior construction work and provide construction management services in coordination with Transmission Owner.

The civil design for the foundations and the electrical design for the cable runs into the Control Building will be designed by Clinton and Ellenburg. The equipment has been selected and procured to meet Transmission Owner requirements and where possible, match similar equipment being installed by Clinton and Ellenburg as part of the Ryan and Duley substations. The construction of the foundations, structures, wave traps, CCTV and cable runs into the Control Building at the Willis Substation will be completed by Clinton and Ellenburg. The equipment will be installed by Clinton and Ellenburg under Safety and Clearances procedures from Transmission Owner, using Transmission Owner's CPP-1. Security background checks will be performed, per Transmission Owner's procedures, on all personnel working in or on Transmission Owner facilities.

Transmission Owner will terminate and participate in the commissioning by Clinton and Ellenburg of the equipment located inside the Control Building of the Willis Substation. Clinton and Ellenburg will install the equipment so that Transmission Owner can undertake the termination and commissioning work as a complete circuit to complete the tie from the Willis Substation to the new windpark substation. Transmission Owner will develop the communications protocols and data flow over the circuits.

Phase II

A small portion of the work for the Phase II modifications to the Willis Substation will be performed by Transmission Owner, and the remainder will be performed by Clinton and Ellenburg. The detailed scope for Transmission Owner and Clinton and Ellenburg including interface points shall be defined during the detailed engineering phase and, as such documents become available, copies will be delivered by Clinton and Ellenburg to the NYISO, Transmission Owner, Noble Altona Windpark, LLC and Marble River, LLC. The full scope includes the installation of a third two-breaker bay and disconnect switches at the Willis Substation, the 2300 bay (to accommodate a realignment of the tie-in point for the WP-1 Willis to Plattsburgh transmission line) and the addition of a breaker to the 2100 bay for the WP-2 line, all to allow for the lines to be better able to respond to certain contingent operating conditions and faults on the system. Clinton and Ellenburg shall provide detailed information as soon as it is available.

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Clinton and Ellenburg will design the upgrades and purchase the materials based on a Transmission Owner approved design. Clinton and Ellenburg will procure both the materials for the exterior and interior installations as well as the items to be used inside the Control Building in new and existing relay panels and communication racks, some of which will be installed by Transmission Owner. In addition, Clinton and Ellenburg will be responsible for the exterior and interior construction work and provide construction management services in coordination with Transmission Owner.

The civil design for the foundations and the electrical design for the cable runs into the termination cabinets in the control building basement will be designed and installed by Clinton and Ellenburg. The equipment will be selected and procured in accordance with the specifications developed during the detailed engineering phase, copies of which shall be furnished to the NYISO, Transmission Owner, Noble Altona Windpark, LLC and Marble River, LLC. The construction of the foundations, structures, breakers, switches, bus work and cable runs into the Control Building to the location of the termination cabinets, including terminations at the yard and termination panel end will be completed by Clinton and Ellenburg. All high voltage 230kV connections to new work and modifications of existing transmission lines will be performed by Transmission Owner. The equipment and work at the Willis Substation will be installed under Transmission Owner's CPP-1.

Clinton and Ellenburg will furnish and install, and Transmission Owner will terminate and participate in commissioning by Clinton and Ellenburg of the equipment located at the Willis Substation. Transmission Owner will provide Protection & Controls Engineering, terminate the wires to the termination cabinets from the new control panels and new relays in existing control panels, install wiring from the termination cabinets to the control panels and relays, install relays and equipment in the existing panels, and Transmission Owner will commission such work. Transmission Owner will develop the communications protocols and data flow over the circuits.

C. Plattsburgh Substation System Upgrade Facilities Scoping

Phase I

Transmission Owner will design and install the modifications required for the Phase I work at Plattsburgh Substation.

Phase II

A small portion of the work for the Phase II modifications to the Plattsburgh Substation will be performed by Transmission Owner, and the remainder will be performed by Clinton and Ellenburg. A detailed definition of the specific scope for Transmission Owner and Clinton and Ellenburg including interface points shall be defined during the design phase and, as such documents become available, copies will be delivered to the NYISO, Transmission Owner, Noble Altona Windpark, LLC and Marble River, LLC. The full scope includes the installation of wave traps, CCVT's and modifications and/or additions to relaying on the MWP-1 and MWP-2 lines. These lines will be reconfigured at the completion of Phase II to connect to Duley and Patnode Substations on MWP-1 and the Ryan Substation on MWP-2.

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Clinton and Ellenburg will design the upgrades and purchase the materials based on the outline specification that was prepared and issued by Transmission Owner. The work to be performed by Clinton and Ellenburg will include both the materials for the exterior and interior installations and items for Transmission Owner installation inside the control building in existing relay panels and communication racks. In addition, Clinton and Ellenburg will be responsible for the exterior and interior construction work and will provide construction management services in coordination with Transmission Owner.

The civil design for the foundations and the electrical design for the cable runs to the control room will be designed by, as approved by Transmission Owner, and installed under the supervision and control of Clinton and Ellenburg. The equipment will be selected and procured in accordance with the specifications developed during the detailed engineering phase, copies of which shall be furnished to the NYISO, Transmission Owner, Noble Altona Windpark, LLC and Marble River, LLC. The construction of the foundations, structures, wave traps, CCTV and cable runs into the control building to the termination cabinets will be completed by Clinton and Ellenburg. The work at the Plattsburgh Substation will be installed under Transmission Owner's CPP-1.

Transmission Owner will provide Protection and Controls Engineering, install and terminate wiring from the termination cabinets to the control panels and relays, install relays and equipment in the existing panels, and will commission such work inside the 230kV control building. Transmission Owner will develop the communications protocols and data flow over the circuits.

IV. POWER SYSTEM STABILIZERS PURSUANT TO LGIA SECTION 5.4.

N/A

V. DEVELOPER'S ESTIMATED TAX LIABILITY, LGIA SECTION 5.14.4.

\$0.00

VI. TRIAL AND COMMERCIAL OPERATIONS

The Large Generating Facility may commence Trial Operations and achieve Commercial Operation upon completion of Phase I of the Attachment Facilities and System Upgrade Facilities as described in Sections I and II of this Appendix A.

The Large Generating Facility will be comprised of two separately-queued projects (*i.e.*, a 79.5 MW capacity project at queue position no. 172 ("Clinton I") and a 21 MW capacity project at queue position no. 211 ("Clinton II")). The Large Generating Facility, including Clinton II, will commence Commercial Operation before the final settlement of the Class Year 2007 Facilities Study that includes Clinton II. The Developer shall accept the cost allocation for any System Upgrade Facilities for Clinton II from the Class Year 2007 Facilities Study and shall post any Security as required pursuant to Attachment S of the NYISO OATT. The Developer shall also make any Headroom payments required by the Class Year 2007 Facilities Study pursuant to Attachment S. If the Attachment Facilities or System Upgrade Facilities for Clinton II identified in the Class Year 2007 Facilities Study differ in any material way from the Attachment Facilities and System Upgrade Facilities identified in this Agreement, the Parties shall amend this

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Agreement, pursuant to its sections 29.11 and 29.12, to reflect the Attachment Facilities and System Upgrade Facilities identified in the Class Year 2007 Facilities Study.

VII. TRANSFER OF PROPERTY

Upon completion of construction, testing and acceptance of the Big Hill site by Transmission Owner, Developer will convey the fee interest of the property (depicted in DHL Survey Map Drawing No. 07034, attached to this Appendix A as Figure 5) to Transmission Owner by warranty deed and will transfer to Transmission Owner title to the facilities constructed thereon, free and clear of any liens or encumbrances. A permanent 30 foot wide easement for Transmission Owner to access, operate and maintain the Big Hill facility will be provided by Developer.

Upon completion of construction, testing and acceptance of the Ryan Substation (Phase I and Phase II), Developer will convey the fee interest of the property (depicted in Survey Map No. 07-1135, attached to this Appendix A as Figure 6) to Transmission Owner by warranty deed and will transfer to Transmission Owner title to the Transmission Owner's Attachment Facilities and System Upgrade Facilities (including the ring bus SUF) constructed thereon, free and clear of any liens or encumbrances.

VIII. OPERATIONS AND MAINTENANCE

Pursuant to Section 10.5 of this Agreement, Developer shall pay the reasonable expenses (including overheads) for the operation, maintenance, repair and replacement of Transmission Owner's Attachment Facilities and incremental operating and maintenance expenses incurred in association with System Upgrade Facilities, if and to the extent provided for under Attachment S. For Transmission Owner's Attachment Facilities, such expenses are calculated as follows:

- a. Contractor expenses for labor, equipment and materials. These expenses shall be invoiced as the actual amount of the Contractors' invoices, plus, Transmission Owner shall also be entitled to a fee of 5 % of such amount(s).
- b. Transmission Owner's labor, craft and salaried personnel directly working on the operation, maintenance or repair of the Transmission Owner Attachment Facilities. These expenses shall be invoiced on the basis of Transmission Owner's standard labor rate times the number of hours worked (including adjustment for overtime hours, if applicable). Such standard rate is subject to change in accordance with Transmission Owner's normal budgeting practices.
- c. Equipment and materials purchased by the Transmission Owner (other than those covered under subsection (a), above). These expenses shall be invoiced on the basis of the actual cost of such material. Transmission Owner shall also be entitled to a fee of 15% of such amount(s).
- d. Use of vehicles and construction equipment. These expenses shall be invoiced at Transmission Owner's cost. Transmission Owner shall also be entitled to a fee of 10% of such amount(s).

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- e. Miscellaneous expenses (e.g. local utility charges for power; local telephone/communication fees; other fees such as FAA licenses). These expenses shall be invoiced at Transmission Owner's cost. Transmission Owner shall also be entitled to a fee of 5% of such amount(s).

FIGURE 1

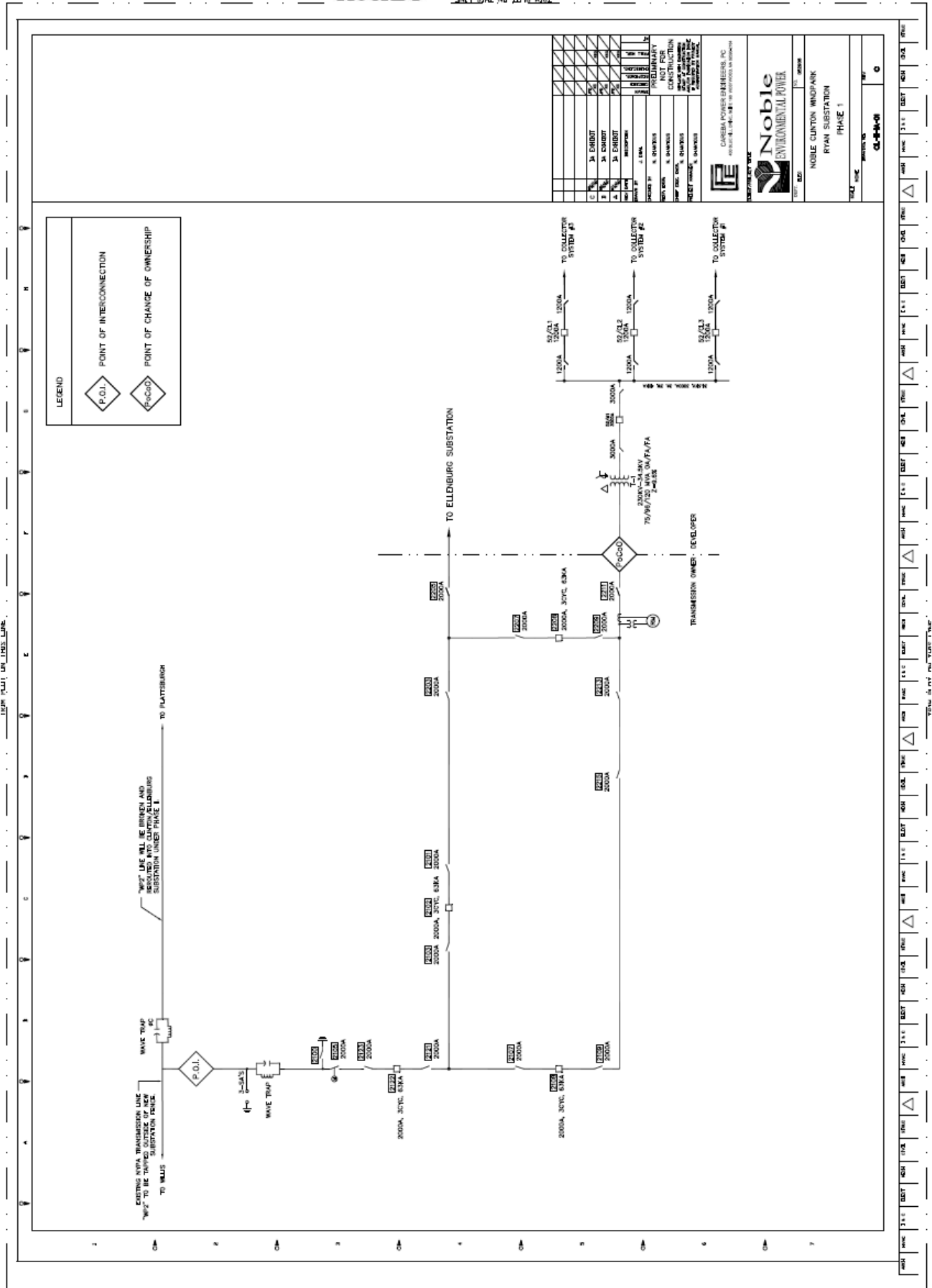


FIGURE 2

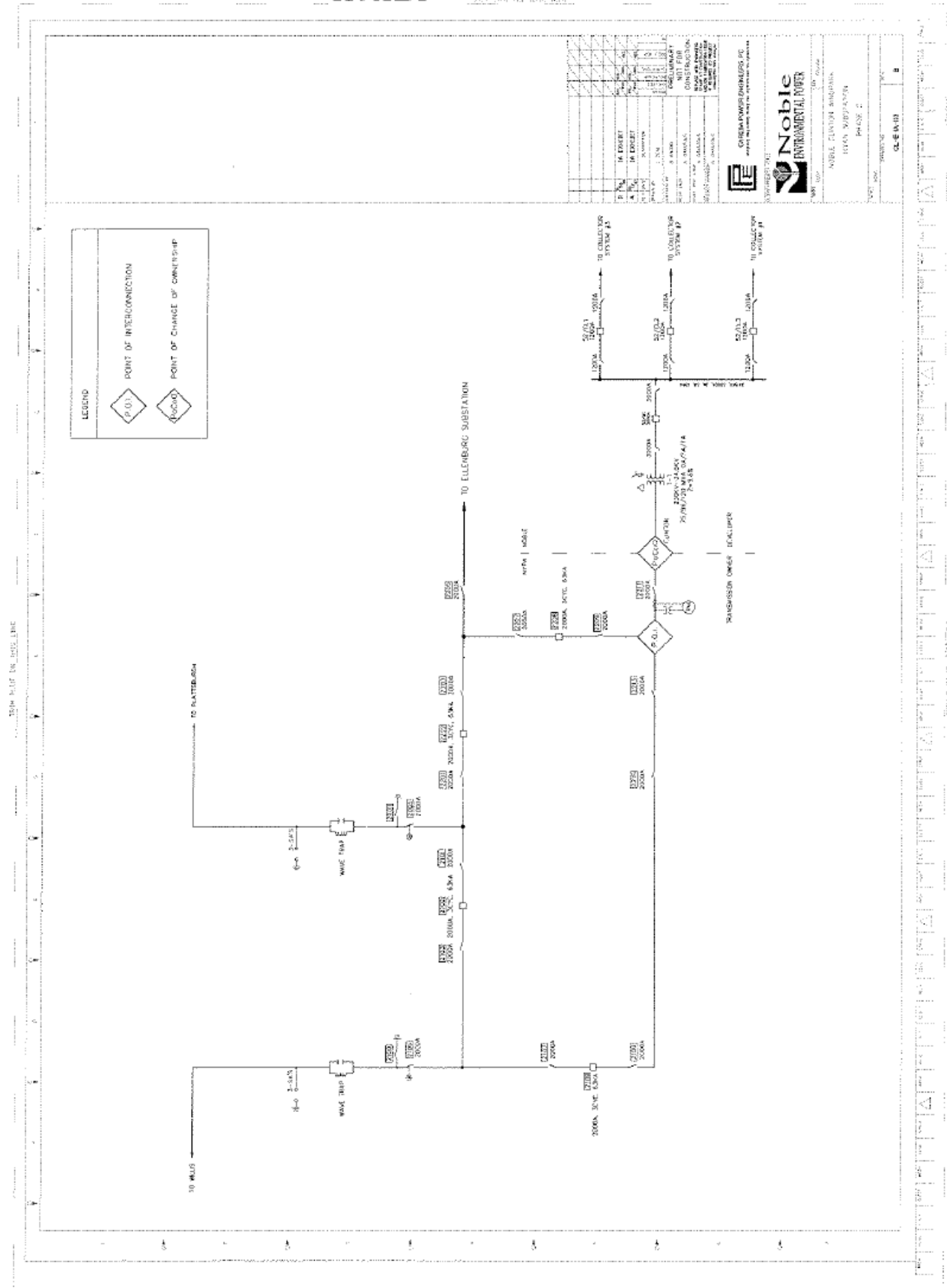
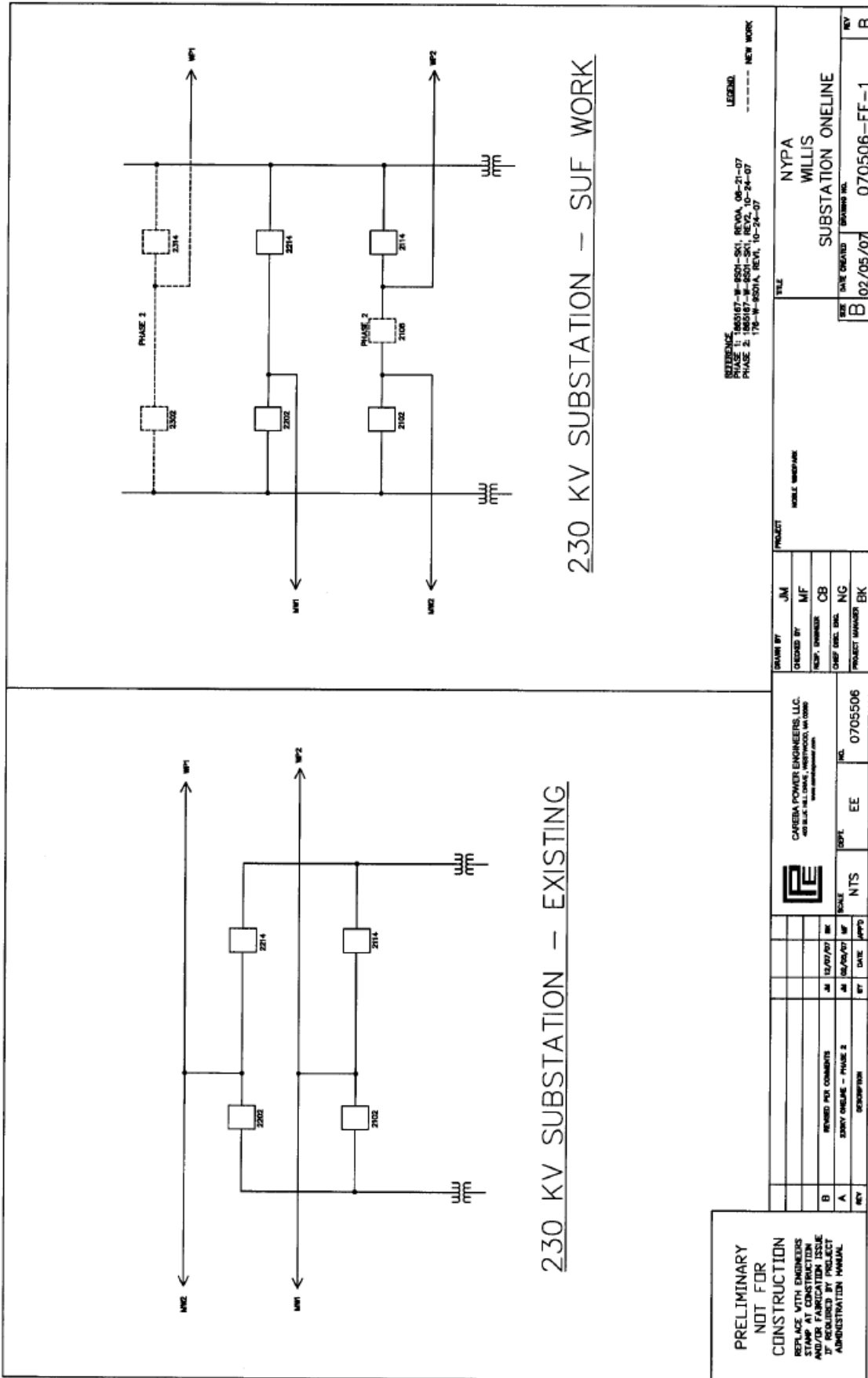


FIGURE 3



230 KV SUBSTATION - EXISTING

230 KV SUBSTATION - SUF WORK

<p>PRELIMINARY NOT FOR CONSTRUCTION</p> <p>REPLACE WITH ENGINEERS STAMP AT CONSTRUCTION AND/OR FABRICATION ISSUE UNLESS OTHERWISE NOTED ADMINISTRATION MANUAL</p>		<p>DATE: 02/05/07</p> <p>BY: JM</p> <p>APP'D: MF</p>		<p>SCALE: NTS</p> <p>DATE: 02/05/07</p> <p>BY: JM</p> <p>APP'D: MF</p>		<p>PROJECT: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506</p>		<p>DATE CREATED: 02/05/07</p> <p>REVISION: B</p>		<p>FILE: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506-EE-1</p>		
<p>DESIGN BY: JM</p> <p>CHECKED BY: MF</p> <p>REP. ENGINEER: CB</p> <p>CHIEF ENGR. IN CH. NG</p> <p>PROJECT NUMBER: BK</p>	<p>PROJECT: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506</p>	<p>DATE: 02/05/07</p> <p>BY: B</p>	<p>SCALE: NTS</p> <p>DATE: 02/05/07</p> <p>BY: JM</p>	<p>PROJECT: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506</p>	<p>DATE CREATED: 02/05/07</p> <p>REVISION: B</p>	<p>FILE: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506-EE-1</p>	<p>DATE: 02/05/07</p> <p>BY: B</p>	<p>SCALE: NTS</p> <p>DATE: 02/05/07</p> <p>BY: JM</p>	<p>PROJECT: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506</p>	<p>DATE CREATED: 02/05/07</p> <p>REVISION: B</p>	<p>FILE: NYPA WILLIS SUBSTATION ONELINE</p> <p>ENGINEER NO.: 0705506-EE-1</p>	<p>DATE: 02/05/07</p> <p>BY: B</p>

REFERENCE:
 PHASE 1: 1865167-W-8501-SK1, REV04, 06-21-07
 PHASE 2: 1865167-W-8501-SK1, REV02, 10-24-07
 176-W-8501A, REV1, 10-24-07

LEGEND:
 - - - - - NEW WORK

FIGURE 4

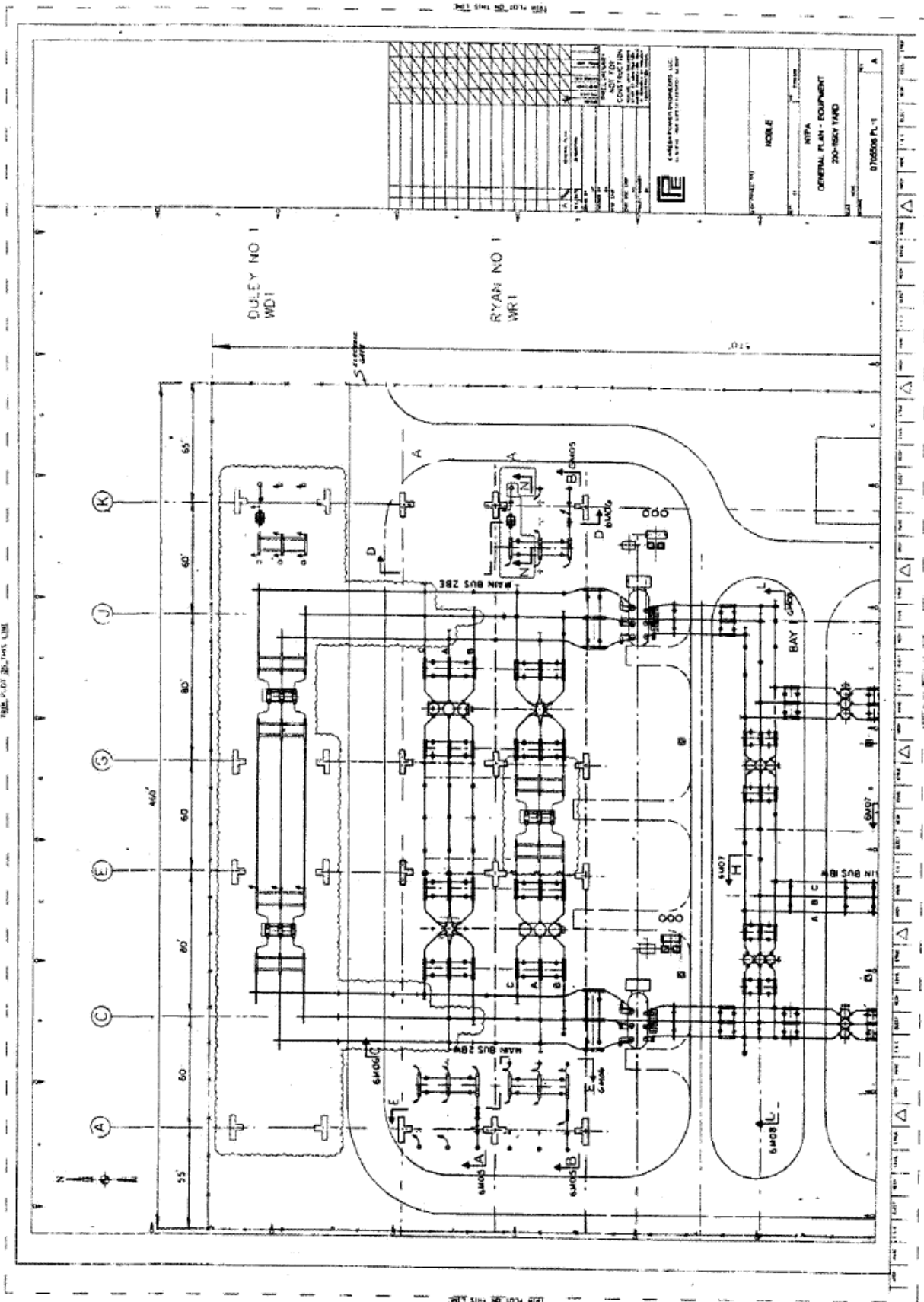
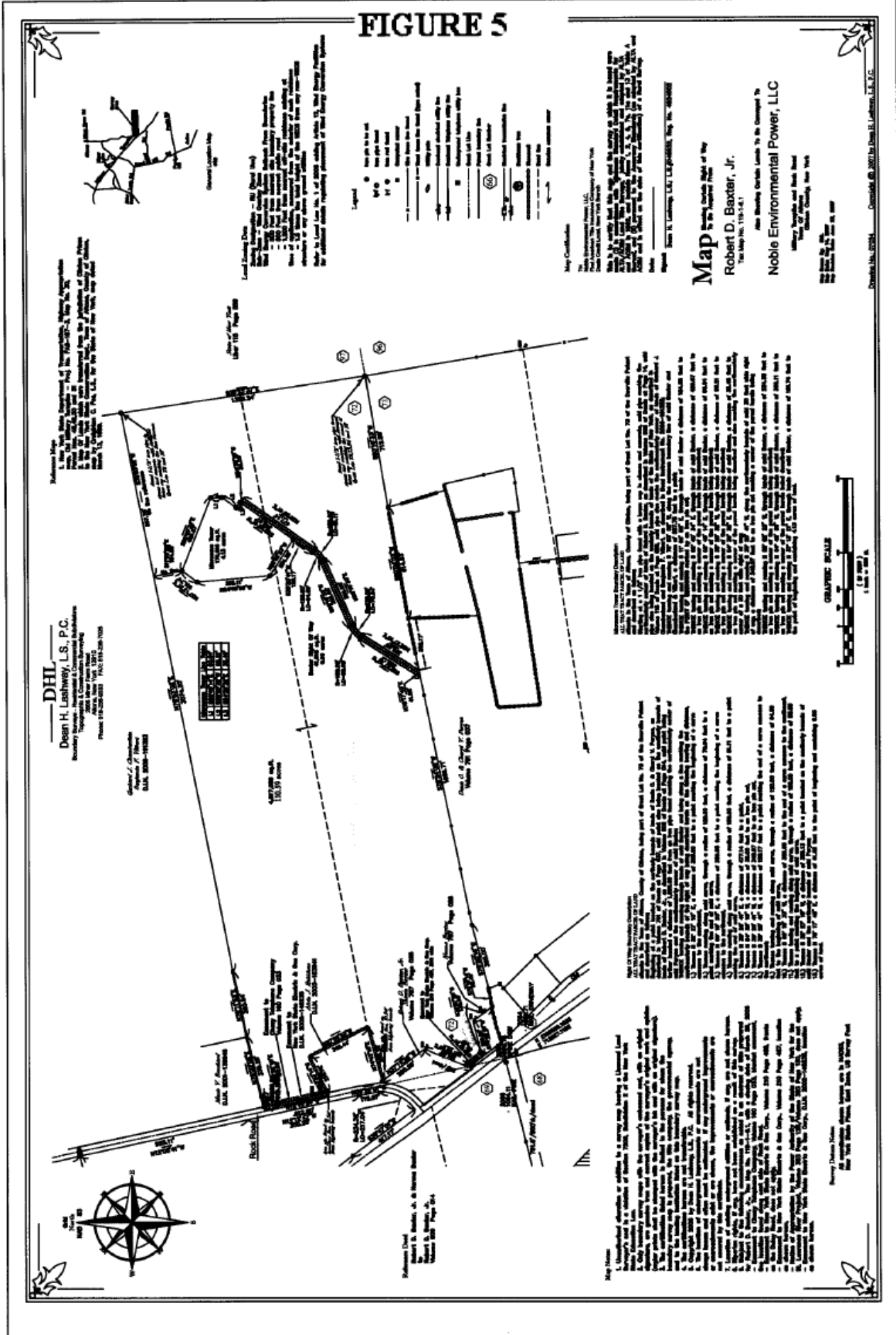


FIGURE 5



DHL
 Dean H. Lashway, L.S., P.C.
 Boundary Survey, Precise & Comprehensive
 2004 Maple Drive, Suite 100
 Metairie, Louisiana 70002
 Phone: 504-885-0000 FAX: 504-885-7000

Adrian J. Gaudin
 Surveyor
 L.S. No. 2004-10000

100.00'±
 100.00'±

Reference to:
 Robert D. Baxter, Jr. & Associates
 L.S. No. 2004-10000

Reference to:
 Noble Environmental Power, LLC
 L.S. No. 2004-10000

Legend:
 - - - - - Easement
 - - - - - Boundary
 - - - - - Survey Line
 - - - - - Other

Map Qualification:
 This map was prepared by Noble Environmental Power, LLC, a Louisiana Limited Liability Company, under the supervision of Robert D. Baxter, Jr., a Licensed Professional Surveyor in the State of Louisiana.

Map
 Robert D. Baxter, Jr.
 Noble Environmental Power, LLC

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Graphic Scale:
 1" = 100'

Appendix B

Milestones

I. SELECTED OPTION PURSUANT TO ARTICLE 5.1

The selected option under Article 5.1 of this Interconnection Agreement is the “Option to Build” except for Transmission Owner’s engineering, procurement and construction obligations which shall be performed in accordance with the “Standard Option.” The Parties have agreed to the division of responsibility and scope as described in Section III of Appendix A.

II. MILESTONES

	RESPONSIBLE	START	MILESTONE
Phase I			
Dev. provide security to Transmission Owner (“TO”) per Article 11.5	Dev.		12 Jul 2007
❖ Willis Substation			
▪ Engineering / Procurement Completed	Dev.		2 Apr 2007A
▪ Dev. Mobilizes and Starts	Dev.		5 Nov 2007A
▪ Dev. completes WP-2 installation	Dev.		21 Nov 2007A
▪ Dev. deliver Trn Ovr Package for WP-2	Dev.		19 Nov 2007A
▪ TO Review of Trn Ovr Package	TO	19 Nov 2007A	28 Nov 2007A
▪ Line outage WP-2 NYPA H Connections		28 Nov 2007A	30 Nov 2007A
▪ Ready for Ryan (PLC communications only)	TO		26 Jan 2008
❖ Ryan Substation			
▪ Engineering & Procurement Completed	Dev.		5 July 2007A
▪ Installation Start	Dev.		1 May 2007A
▪ Dev. Installation Complete	Dev.		23 Jan 2008
▪ Fly Tap Outage Ph 1		29 Nov 2007A	30 Nov 2007A
▪ Dev deliver final Trn Ovr Package	Dev.	22 Feb 2008	
▪ TO review of Trn Ovr Package (delivered in progress)	TO	22 Feb 2008	7 Mar 2008
▪ TO Concurrent activities (post-Dev. delivery of Trn Ovr Package)			
• RTU configurations	TO	15 Dec 2007A	12 Jan 2008A
• Metering Testing	TO	16 Jan 2008	19 Feb 2008
• Operations and P+C Final Walk Through	TO	4 Feb 2008	22 Feb 2008
❖ Ryan Microwave Communications			
▪ Engineering Completed	Dev.		27 Aug 2007A
▪ Dev. completes MW installation	Dev.		15 Jan 2008A
▪ Dev. deliver Trn Ovr Package for MW	Dev.		13 Feb 2008
▪ TO Review of Trn Ovr Package	TO	14 Feb 2008	27 Feb 2008
▪ Ready for Ryan Tap–Ryan MW Communications			22 Feb 2008
❖ Willis Microwave Link (to Ryan)			
▪ Engineering Completed	Dev.		14 Sep 2007A
▪ Contractor Mobilizes on Site	Dev.		27 Dec 2007A
▪ Dev. Trn Ovr Package delivered to TO	Dev.		12 Feb 2008
▪ TO Review of Trn Ovr Package	TO	13 Feb 2008	26 Feb 2008
▪ Burn in	Dev.	4 Jan 2008	9 Jan 2008A
▪ New circuit terminations (final plug-ins only)	TO		19 Feb 2008A

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▪ W MW ready			26 Feb 2008
❖ Massena Microwave Link (to Moses)			
▪ Engineering Spec. by TO	TO	10 Jun 2007A	23 Jun 2007A
▪ Installation	Dev.	3 Jan 2008	8 Jan 2008A
▪ Dev. Trn Ovr Package delivered to TO	Dev.		8 Feb 2008
▪ TO review of Trn Ovr Package	TO	9 Feb 2008	22 Feb 2008
▪ Conduct TO Approved Acceptance Testing	Dev.		26 Feb 2008
▪ Burn in	Dev.	22 Jan 2008	27 Jan 2008A
▪ MS-MW ready			26 Feb 2008
❖ Moses Microwave Link (to Massena)			
▪ Engineering Spec. by TO	TO	10 Jun 2007A	23 Jun 2007A
▪ Installation	Dev.	4 Jan 2008	8 Jan 2008A
▪ Dev. Trn Ovr Package delivered to TO	Dev.		11 Feb 2008
▪ TO review of Trn Ovr Package	TO	12 Feb 2008	25 Feb 2008
▪ Conduct TO Approved Acceptance Testing	Dev.		26 Feb 2008
▪ Burn in	Dev.	21 Jan 2008	27 Jan 2008A
▪ M MW ready			26 Feb 2008
❖ Microwave Communications – Backbone: M/MS/W/Ryan (Summary item)			
▪ Acceptance testing M/MS/W/Ry	TO/Dev.	25 Jan 2008	26 Feb 2008
▪ Termination communication circuits (final plug-ins) M/MS/W	TO		19 Feb 2008A
▪ MW backbone ready (M/MS/W/Ry) for Ryan energization			26 Feb 2008
❖ In Service Date	Dev./TO witness		7 Mar 2008
❖ Initial Synchronization Date	Dev.		12 Mar 2008
❖ Commercial Operation Date	Dev.		20 Mar 2008
	RESPONSIBLE	START	FINISH
Phase II			
❖ Big Hill Microwave Communication			
▪ Physical Engineering Completed	Dev.		15 Aug 2007A
▪ Installation/commissioning Complete	Dev.		15 May 2008
▪ Dev. Trn Ovr Package delivered to TO	Dev.		17 May 2008
▪ TO review of Trn Ovr Package	TO	17 May 2008	31 May 2008
▪ Burn in		19 May 2008	27 May 2008
▪ Big Hill MW ready			2 Jun 2008
❖ Plattsburgh Microwave Upgrade			
▪ Physical Engineering Completed	Dev.		21 Feb 2008
▪ Installation/commissioning complete	Dev.		28 Mar 2008
▪ Dev. Trn Ovr Package delivered to TO	Dev.		30 Mar 2008
▪ TO review of Trn Ovr Package	TO	30 Mar 2008	15 Apr 2008
▪ Burn in		30 Mar 2008	7 Apr 2008
▪ P MW ready			10 Apr 2008
❖ Willis Substation			
▪ Engineering Completed	Dev.		28 Feb 2008
▪ Procurement Completed	Dev.		14 Apr 2008
Bay 2100 (WP-2)			
▪ Relays delivered, Relay Panels installed	Dev.	5 Mar 2008	19 Apr 2008
▪ 2100 Outage (drop/cut/tap)	TO	3 Mar 2008	7 Mar 2008
▪ Center bkr install	Dev	29 Apr 2008	1 May 2008

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▪ TO wiring / testing of relay panels	TO	22 Apr 2008	27 May 2008
▪ Bay 2100 Complete	Dev		2 Jun 2008
▪ Dev. deliver Trn Ovr Package	Dev.		11 Jun 2008
▪ TO Trn Ovr Package Review	TO	11 Jun 2008	22 Jun 2008
▪ TO testing 2100 Bay	TO	3 Jun 2008	5 Jul 2008
▪ 2100 Outage M/W/P Center Bkr connection	Dev./TO	15 Sep 2008	21 Sep 2008
Bay 2300 (WP-1)			
▪ Bay 2300 Construction Completed	Dev.		30 May 2008
▪ Dev. deliver Trn Ovr Package	Dev.		3 Jun 2008
▪ TO Trn Ovr Package Review	TO	3 Jun 2008	28 Jun 2008
▪ Bay 2300 commissioning	Dev.	3 Jun 2008	24 Jun 2008
▪ Dev. Completes Functional Items* on Punchlist	Dev.	17 Jun 2008	28 Jul 2008
▪ Outage 2300 Bay to 2BW (West Bus)	TO	16 Aug 2008	17 Aug 2008
▪ Outage 2300 Bay to 2BE (East Bus)	TO	23 Aug 2008	24 Aug 2008
▪ TO Energized Testing of Bay 2300	TO	18 Aug 2008	19 Sep 2008
▪ Bay 2200/2300 outage – Cut over and segment line WP-1	TO	22 Sep 2008	26 Sep 2008
❖ Plattsburgh			
▪ Engineering Completed	Dev.		18 Jan 2008A
▪ Procurement Completed – Long lead	Dev.		24 Apr 2008
▪ TO approved Design Completed	TO		27 Nov 2007A
▪ Dev. Completes WP-1,WP-2 installation of P&C	Dev.	9 Apr 2008	29 Apr 2008
▪ TO review of Trn Ovr Package	TO	6 May 2008	15 May 2008
▪ TO Testing	TO	6 May 2008	19 May 2008
▪ Dev. Completes Functional Items* on Punchlist	Dev.	15 May 2008	15 Jun 2008
❖ Ryan			
▪ Engineering	Dev.		15 Apr 2008
▪ Procurement	Dev.		16 May 2008
▪ Construction complete	Dev.		8 Aug 2008
▪ Dev. deliver Trn Ovr Package	Dev.		11 Aug 2008
▪ TO review of Trn Ovr package	TO	11 Aug 2008	22 Aug 2008
▪ Commissioning	Dev.	11 Aug 2008	30 Aug 2008
▪ TO Operations, P&C Final Walkthrough	TO	30 Aug 2008	14 Sep 2008
▪ Willis / Ryan line segmentation (Predecessors: Big Hill/Platts MW and Plattsburgh Phase II complete)	TO	15 Sep 2008	21 Sep 2008

* The term “Functional Items” refers to all work comprising the relevant scope, including all materials and components, but excluding minor or non-functional punchlist items (*i.e.*, the list of items of Work remaining to be completed which are generally cosmetic in nature and/or not required for the safe and lawful operation of the Facility), have been installed, erected, aligned, and adjusted at the site in a non-operating condition, substantially in accordance with the technical specifications and as acceptable to Transmission Owner.

The following notes apply to all work performed on SUFs and TO Attachment Facilities:

- A. Developer shall submit to Transmission Owner copies of all required permits including all supporting documentation such as calculations, applications and drawings within 5 business of the execution of this Interconnection Agreement.
- B. Transmission Owner work durations do not include holiday work; if a holiday is in the calendar during an event, then extend day-for-day.
- C. All Transmission Owner outage durations based upon good weather – inclement weather will extend outages.
- D. Transmission System emergencies take precedence over all work and could significantly impact the schedule and durations.
- E. Transmission Owner schedules its resources months in advance, and its ability to reschedule manpower is limited by resource allocation to other Transmission Owner projects and tasks. Missing a scheduled Milestone may result in some delay before Transmission Owner can reschedule its manpower to work on the assigned task.

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- F. Developer will work diligently with Transmission Owner to reconfigure the Ryan Substation “tap configuration” to a “ring bus” by September 21, 2008. Transmission Owner has advised Developer that in order to assure system reliability, the Common SUFs must be completed and ready for operational use as determined by the Transmission Owner (which may occur prior to NYPA’s formal acceptance of the Common SUFs) before Transmission Owner will connect Developer’s Duley Substation or any other Developer connections to Transmission Owner’s WP-1 and WP-2 transmission lines.
- G. The turnover package (“Trn Ovr Package”) consists of the following documentation: Punchlist, Record Drawings, all equipment, QA/QC, installation, commissioning, Engineer of Record Professional Engineer certification, color markup of design drawings, warranties.
- H. Developer understands and agrees that in parallel to Bay 2100 completion, the Ryan Substation ring bus must be completed. Developer’s obligation to reconfigure the Ryan Substation tap configuration to a ring bus is a material obligation of this Interconnection Agreement.
- I. Developer will be responsible for all fines and penalties imposed on Transmission Owner by a Governmental Authority or Applicable Reliability Councils due to any Developer action or inaction relating to the Attachment Facilities or SUFs.

III. TRIGGER DATES FOR COMMON SUFS

The Common SUFs will be installed in accordance with the Trigger Dates for completion of the Common SUFs, set forth on Schedule A to this Appendix B, attached hereto, and consistent with the Milestone Schedule set forth in Section II of this Appendix B. Under certain circumstances described below, if Developer is unable to meet a Trigger Date, the Transmission Owner and NYISO may require Developer to cease all existing efforts to construct or develop the Common SUFs and to transfer any such rights to Transmission Owner or Transmission Owner’s designee.

Notwithstanding the foregoing, it is understood and agreed that an occurrence of an “Uncontrollable Timing Event” shall excuse Developer’s obligation to meet affected Trigger Dates until applicable replacement Trigger Dates have been agreed upon pursuant to Section III(b)(i) below. An “Uncontrollable Timing Event” shall mean an event that causes delays in meeting the Trigger Date(s) as a result of (a) an event of Force Majeure and/or (b) actions by the Transmission Owner, NYISO, NPCC, federal governmental authorities and/or state governmental authorities, and where: (x) such event(s) are beyond Developer’s control; (y) alter(s) Developer’s scope of work as set forth in Appendix A; and (z) there would not have been a delay that causes Developer to be unable to meet the Trigger Date(s) but for such event(s). Nothing herein shall: (i) alter or abrogate Parties’ excuse from performance for events of Force Majeure (as defined in this Interconnection Agreement); or (ii) impose any increased obligation, liability or responsibility on Transmission Owner or the NYISO to perform its obligations pursuant to this Interconnection Agreement.

Except to the extent discussed above, Developer and Transmission Owner agree that neither the Milestone Schedule set forth in Section II of this Appendix B, nor the Trigger Date Schedule set forth on Schedule A to this Appendix B shall be modified in any way that will change or will likely change a Trigger Date without the prior written consent of Noble Altona Windpark, LLC (“Altona”) and Marble River, LLC (“Marble River”) (as applicable).

- (a) If Developer determines it will be unable to meet one or more Trigger Date(s), Developer shall notify Transmission Owner, NYISO, Ellenburg, Altona and Marble River in writing within five (5) Business Days of such determination. In its notice, Developer shall specify (i) whether it is claiming that its inability to meet any such Trigger Date(s) is/are attributable to Uncontrollable Timing Event(s), (ii) the reasons supporting such claim and, if known, the anticipated date the Uncontrollable Timing Event(s) will end, and (iii) its revised timeframe for meeting the Trigger Date(s).

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- (b) Transmission Owner and NYISO shall promptly review Developer's notice and promptly notify Ellenburg, Altona and Marble River of Transmission Owner's and NYISO's determination.
- (i) If Transmission Owner and NYISO jointly have a reasonable basis for determining, and in fact determine, that Developer's failure to meet the Trigger Date(s) is due to an Uncontrollable Timing Event(s), then (A) Developer shall be relieved of its obligation to meet the Trigger Date(s) in question until the Uncontrollable Timing Event ends, and (B) Developer, Transmission Owner, NYISO, Marble River and Altona shall cooperate in good faith to negotiate reasonable replacement Trigger Date(s).
- (ii) If Transmission Owner and NYISO jointly have a reasonable basis for determining, and in fact determine, that Developer's failure to meet the Trigger Date(s) is not due to an Uncontrollable Timing Event, then Developer shall be given a right to cure its failure to meet the Trigger Date within twenty (20) calendar days after receipt of Transmission Owner's and NYISO's determination.
- (c) If, absent notification from Developer pursuant to Section III(a) above, NYISO and/or Transmission Owner reasonably believe that Developer will be unable to, or has failed to, meet a Trigger Date, NYISO and Transmission Owner shall notify Developer in writing with copies to Ellenburg, Altona and Marble River, requesting Developer to provide responses to the following: (i) whether or not Developer believes it will be unable to or has failed to meet any such Trigger Date; (ii) whether Developer believes any inability to meet a Trigger Date is attributable to an Uncontrollable Timing Event(s); (iii) the reasons supporting any such claim and the anticipated date the Uncontrollable Timing Event will end; and (iv) its estimate for completing the task associated with the missed Trigger Date(s). Within (5) Business Days after Developer's receipt of the NYISO and/or Transmission Owner notice in this Section III(c), Developer shall respond in writing to NYISO, Transmission Owner, Ellenburg, Altona and Marble River. NYISO and Transmission Owner shall promptly review Developer's response. The provisions of Section III(b) above shall apply following such review.
- (d) If Developer does not meet a Trigger Date for any reason other than the occurrence of an Uncontrollable Timing Event, and has failed to cure such failure of performance within the period set forth in Section III(b)(ii) above, then Transmission Owner and NYISO have the right (but not the obligation) to demand that Developer cease all existing efforts to construct or develop the Common SUFs, and to transfer any such rights to Transmission Owner or Transmission Owner's designee (which may include Marble River). (Transmission Owner's designee shall be the "Transferee"). A decision regarding such demand will take into account Marble River's scheduled in-service date (which shall be no earlier than October 1, 2008), among other considerations. As part of any transfer to Transmission Owner or Transferee, Transmission Owner and NYISO may demand that Developer transfer or convey to the Transmission Owner or Transferee (as applicable) title to, possession of and control of any and all equipment and services procured for the purpose of constructing the Common SUFs, and Developer shall immediately transfer such equipment and services free and clear of any liens or other encumbrances to the Transmission Owner or Transferee (as applicable) accordingly. The terms and conditions with respect to the transfer of such equipment and services shall be customary for transactions of this type in the electric power industry, as reasonably determined by Developer and Transmission Owner jointly.

IV. COST ALLOCATION

Developer will be fully responsible for costs in excess of \$11.65 million incurred to complete the Common SUFs, except to the extent that the excess cost is incurred as a result of an “Uncontrollable Cost Event.” An “Uncontrollable Cost Event” shall mean an event that causes costs increases as a result of (i) an event of Force Majeure, (ii) the implementation of the results of the special protection scheme study being conducted as referenced in Appendix 4 (NYPA Phase 2 Protection Design Criteria Document), Paragraph 3.9 of the SUF Report (as such term is defined in Appendix A of this LGIA), (iii) additional channels on the Transwave Communications Systems for the Willis to Plattsburgh circuit requested by NYPA (as described in the August 8, 2007, letter from Noble Constructors, LLC to Marble River as Change Order 1 with a cost impact of \$210,954.00), (iv) after transfer pursuant to Section III(d) above, negligence or willful misconduct on the part of the Transmission Owner or Transferee, as applicable, and/or (v) after transfer pursuant to Section III(d), failure of the Transmission Owner or Transferee, as applicable, to take steps reasonably necessary to complete the Common SUFs in a timely manner.

In the event that excess cost is incurred to complete the Common SUFs as a result of an Uncontrollable Cost Event as set forth in subsections (i), (ii) or (iii) above, then such costs will be allocated among the Developer, Ellenburg, Altona and Marble River pursuant to the allocation percentages determined pursuant to Attachment S of the NYISO OATT, and in no event shall such excess costs be the responsibility of Transmission Owner.

In the event that excess cost is incurred to complete the Common SUFs as a result of an Uncontrollable Cost Event as set forth in subsections (iv) or (v) above, then: (A) to the extent that Transmission Owner is responsible for such costs pursuant to the procedures set forth in Attachment S of the NYISO OATT, as such responsibility is determined in accordance with the next paragraph, such costs will be allocated to Transmission Owner; (B) to the extent that Transmission Owner is not responsible for such costs pursuant to the procedures set forth in Attachment S of the NYISO OATT and Marble River is the Transferee, such costs will be allocated among the Developer, Ellenburg, Altona and Marble River pursuant to the allocation percentages determined pursuant to Attachment S of the NYISO OATT; and (C) to the extent that Transmission Owner is not responsible for such costs pursuant to the procedures set forth in Attachment S of the NYISO OATT and neither Transmission Owner nor Marble River is the Transferee, such costs will be allocated equally among the Developer, Ellenburg and Altona.

The Parties agree that in determining the extent of Transmission Owner’s responsibility (if any) for costs pursuant to the procedures set forth in Attachment S of the NYISO OATT, only the Transmission Owner’s actions (or inaction) shall be considered; Transmission Owner shall not be responsible for the actions (or inaction) of any Transferee.

Schedule A to Appendix B

Trigger Date Schedule

Task Descriptions	Status	Trigger Date
Willis – Phase II		
Design Complete – Submitted to Transmission Owner		7-Mar-08
Circuit Breakers/CCVT Ordered	Complete	20-Jul-07
Circuit Breakers Delivered	Complete	11-Nov-07
CCVT Delivered		15-Feb-08
Developer Construction Started	Complete	15-Nov-07
Developer Bay 2300 Construction Complete		6-Jun-08
Transmission Owner Completes Review of Trn Ovr Package and Issues Punchlist		7-Jul-08
Developer Completes Functional Items* on Punchlist		8-Aug-08
Plattsburgh – Phase II		
Design Complete- Submitted to Transmission Owner**	Complete	19-Nov-07
Long Lead Equipment Ordered	Complete	4-Sep-07
Long Lead Equipment Delivered		3-Mar-08
Developer Construction Started		15-Mar-08
Developer Completes WP-2 installation – [Outdoors]		20-May-08
Transmission Owner Completes Review of Trn Ovr Package and Issues Punchlist		15-Jun-08
Developer Completes Functional Items* on Punchlist		15-Jul-08
Microwave:		
Design Complete- Submitted to Transmission Owner	Complete	20-Jul-07
Long Lead Equipment Ordered	Complete	20-Jul-07
Long Lead Equipment Delivered	Complete	1-Oct-07
Developer Construction Started	Complete	10-Sep-07
Developer Construction Completed		30-May-08

* The term “Functional Items” refers to all work comprising the relevant scope, including all materials and components, but excluding minor or non-functional punchlist items (*i.e.*, the list of items of Work remaining to be completed which are generally cosmetic in nature and/or not required for the safe and lawful operation of the Facility), have been installed, erected, aligned, and adjusted at the site in a non-operating condition, substantially in accordance with the technical specifications and as acceptable to Transmission Owner.

** Such design submission shall be reasonably complete and allow the work to move forward.

Appendix C

Interconnection Details

Description of Large Generating Facility including Point of Interconnection

The Large Generating Facility is a 100.5 MW wind power plant that will consist of 67, 1.5 MW GE doubly fed induction generators with wound rotor and slip rings. Each of the 67 units has a reactive capability to operate from a lagging power factor of 0.90 to a leading power factor of 0.90 (at each generator terminal) resulting in providing an operating range from +48.60 MVAR to -48.60 MVAR for the entire generating facility (sum of unit capabilities). The Large Generating Facility will be located near Transmission Owner's 230 kV line #WP2 between the Willis and Plattsburg substations. The Point of Interconnection is identified on the one-line diagrams attached to Appendix A. The Large Generating Facility will be comprised of two separately-queued projects, Clinton I and Clinton II. The Attachment Facilities and System Upgrade Facilities required for both Clinton I and Clinton II are described in Appendix A.

Developer Operating Requirements

The Developer must comply with the Transmission Owner's operating instructions and requirements including but not limited to Transmission Owner's Operation Coordination Agreement, as it may change from time to time. The Developer must comply with all applicable NYISO tariffs and procedures, as amended from time to time.

Whether or not the Large Generating Facility is eligible for the Transition Period LVRT Standard set forth in Appendix G will be determined by the Commission. The Large Generating Facility will comply with the Transition Period LVRT Standard pending issuance of an order by the Commission determining the appropriate LVRT standard.

For purposes of compliance with Appendix G, the Transmission Owner has determined that the Developer shall maintain the Large Generating Facility in service during a three-phase fault for 7 cycles.

Appendix D

Security Arrangements Details

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all Developers and all other Market Participants to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

All personnel working in Transmission Owner's facilities will require security background checks prior to entering and working in such facilities.

Appendix E

Commercial Operation Date

[Date]

New York Independent System Operator, Inc.
Attn: Vice President, Operations
3890 Carman Road
Schenectady, NY 12303

Senior Vice President of Transmission
New York Power Authority
123 Main St.
White Plains, NY 10601-3170

Re: _____ Large Generating Facility

Dear _____:

On **[Date]** **[Developer]** has completed Trial Operation of Unit No. _____. This letter confirms that **[Developer]** commenced Commercial Operation of Unit No. ____ at the Large Generating Facility, effective as of **[Date plus one day]**.

Thank you.

[Signature]

[Developer Representative]

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Appendix F

Addresses for Delivery of Notices and Billings

Notices:

NYISO:

- (i) Before commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc.
Attention: Vice President of System and Resource Planning
10 Krey Boulevard
Rensselaer, NY 12144
Phone: (518) 356-6000
Fax: (518) 356-6118

- (ii) After commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc.
Attn: Vice President, Operations
3890 Carman Road
Schenectady, NY 12303
Phone: (518) 356-6000
Fax: (518) 356-6118

Transmission Owner:

Senior Vice President of Transmission
New York Power Authority
123 Main St.
White Plains, NY 10601-3170

Developer:

Asset Manager
Noble Environmental Power, LLC
8 Railroad Avenue
Second Floor, Suite 8
Essex, CT 06426

Billings and Payments:

Transmission Owner:

New York Power Authority
Operating Fund c/o
J.P. Morgan Chase, N.A.
ABA No.: 021000021

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Account No.: 573-804206

Developer:

Accounts Payable
Noble Environmental Power, LLC
8 Railroad Avenue
Second Floor, Suite 8
Essex, CT 06426

Alternative Forms of Delivery of Notices (telephone, facsimile or email):

NYISO:

- (i) Before commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc.
Attention: Vice President of System and Resource Planning
10 Krey Boulevard
Rensselaer, NY 12144
Phone: (518) 356-6000
Fax: (518) 356-6118

- (ii) After commercial operation of the Large Generating Facility:

New York Independent System Operator, Inc.
Attn: Vice President, Operations
3890 Carman Road
Schenectady, NY 12303
Phone: (518) 356-6000
Fax: (518) 356-6118

Transmission Owner:

Project Manager-Generation/Facility Improvement
New York Power Authority
123 Main St.
White Plains, NY 10601-3170

Developer:

Telephone: 860-581-5070
Fax: 860-767-7041
Email: nugentd@noblepower.com

APPENDIX G

Interconnection Requirements for a Wind Generating Plant

Appendix G sets forth requirements and provisions specific to a wind generating plant. All other requirements of this LGIA continue to apply to wind generating plant interconnections.

A. Technical Standards Applicable to a Wind Generating Plant

i. Low Voltage Ride-Through (LVRT) Capability

A wind generating plant shall be able to remain online during voltage disturbances up to the time periods and associated voltage levels set forth in the standard below. The LVRT standard provides for a transition period standard and a post-transition period standard.

Transition Period LVRT Standard

The transition period standard applies to wind generating plants subject to FERC Order 661 that have either: (i) interconnection agreements signed and filed with the Commission, filed with the Commission in unexecuted form, finally executed as conforming agreements, or filed with the Commission as non-conforming agreements between January 1, 2006 and December 31, 2006, with a scheduled in-service date no later than December 31, 2007, or (ii) wind generating turbines subject to a wind turbine procurement contract executed prior to December 31, 2005, for delivery through 2007.

1. Wind generating plants are required to remain in-service during three-phase faults with normal clearing (which is a time period of approximately 4 – 9 cycles) and single line to ground faults with delayed clearing, and subsequent post-fault voltage recovery to pre-fault voltage unless clearing the fault effectively disconnects the generator from the system. The clearing time requirement for a three-phase fault will be specific to the wind generating plant substation location, as determined by and documented by the

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Transmission Owner for the Transmission District to which the wind generating plant will be interconnected. The maximum clearing time the wind generating plant shall be required to withstand for a three-phase fault shall be 9 cycles at a voltage as low as 0.15 p.u., as measured at the high side of the wind generating plant step-up transformer (i.e. the transformer that steps the voltage up to the transmission interconnection voltage or “GSU”), after which, if the fault remains following the location-specific normal clearing time for three-phase faults, the wind generating plant may disconnect from the transmission system.

2. This requirement does not apply to faults that would occur between the wind generator terminals and the high side of the GSU or to faults that would result in a voltage lower than 0.15 per unit on the high side of the GSU serving the facility.
3. Wind generating plants may be tripped after the fault period if this action is intended as part of a special protection system.
4. Wind generating plants may meet the LVRT requirements of this standard by the performance of the generators or by installing additional equipment (e.g., Static VAR Compensator, etc.) within the wind generating plant or by a combination of generator performance and additional equipment.
5. Existing individual generator units that are, or have been, interconnected to the network at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

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Post-transition Period LVRT Standard

All wind generating plants subject to FERC Order No. 661 and not covered by the transition period described above must meet the following requirements:

1. Wind generating plants are required to remain in-service during three-phase faults with normal clearing (which is a time period of approximately 4 – 9 cycles) and single line to ground faults with delayed clearing, and subsequent post-fault voltage recovery to pre-fault voltage unless clearing the fault effectively disconnects the generator from the system. The clearing time requirement for a three-phase fault will be specific to the wind generating plant substation location, as determined by and documented by the Transmission Owner for the Transmission District to which the wind generating plant will be interconnected. The maximum clearing time the wind generating plant shall be required to withstand for a three-phase fault shall be 9 cycles after which, if the fault remains following the location-specific normal clearing time for three-phase faults, the wind generating plant may disconnect from the transmission system. A wind generating plant shall remain interconnected during such a fault on the transmission system for a voltage level as low as zero volts, as measured at the high voltage side of the wind GSU.
2. This requirement does not apply to faults that would occur between the wind generator terminals and the high side of the GSU.
3. Wind generating plants may be tripped after the fault period if this action is intended as part of a special protection system.
4. Wind generating plants may meet the LVRT requirements of this standard by the performance of the generators or by installing additional equipment (e.g., Static VAR Compensator) within the wind generating plant or by a combination of generator performance and additional equipment.

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5. Existing individual generator units that are, or have been, interconnected to the network at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

ii. Power Factor Design Criteria (Reactive Power)

A wind generating plant shall maintain a power factor within the range of 0.95 leading to 0.95 lagging, measured at the Point of Interconnection as defined in this LGIA, if the ISO's System Reliability Impact Study shows that such a requirement is necessary to ensure safety or reliability.

The power factor range standard can be met using, for example without limitation, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors if agreed to by the Transmission Owner for the Transmission District to which the wind generating plant will be interconnected, or a combination of the two. The Developer shall not disable power factor equipment while the wind plant is in operation. Wind plants shall also be able to provide sufficient dynamic voltage support in lieu of the power system stabilizer and automatic voltage regulation at the generator excitation system if the System Reliability Impact Study shows this to be required for system safety or reliability.

iii. Supervisory Control and Data Acquisition (SCADA) Capability

The wind plant shall provide SCADA capability to transmit data and receive instructions from the ISO and/or the Transmission Owner for the Transmission District to which the wind generating plant will be interconnected, as applicable, to protect system reliability. The Transmission Owner for the Transmission District to which the wind generating plant will be

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interconnected and the wind plant Developer shall determine what SCADA information is essential for the proposed wind plant, taking into account the size of the plant and its characteristics, location, and importance in maintaining generation resource adequacy and transmission system reliability in its area.

**APPENDIX H
Invoicing and Payment**

A. General

1. Detail Required

All invoices submitted under this Agreement shall state the month to which the invoice applies and fully describe the services and equipment provided. All invoices will indicate if and to what extent costs being invoiced are asserted as having been incurred as a result of an Uncontrollable Cost Event (as such term is defined in Appendix B). All invoices for construction and equipment costs shall be prepared using the AIA G702-1992 form.

2. Payment

Invoices will be due and payable within the period of time specified in each subsection below unless otherwise mutually agreed in writing. All payments shall be made in the form of immediately available funds by wire transfer to the account specified in Appendix F of this Interconnection Agreement or otherwise provided by the parties in writing.

3. Late Payment

All amounts due and not paid within the time period specified following the date of receipt shall be subject to interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(iii).

B. Invoices/Payment for System Upgrade Facilities ("SUFs") and Attachment Facilities

1. Clinton and Ellenburg Monthly Invoice

(a) By the first Calendar Day of each month, Noble Clinton Windpark I, LLC ("Clinton") and Noble Ellenburg Windpark, LLC ("Ellenburg" and together with Clinton, "Clinton and Ellenburg") will provide to NYPA an invoice for all work performed by Clinton and Ellenburg for SUF work for the previous month. Each invoice will separately identify and itemize all work performed in connection with the Common SUFs and any non-Common SUFs (collectively, the "SUFs"). These invoices will be used by NYPA in the calculation of the total SUF costs for the purposes of allocating costs among Clinton and Ellenburg, Noble Altona Windpark, LLC ("Altona") and Marble River, LLC ("Marble River") (each, individually, referred to as a "Project" and all four collectively referred to as the "Projects").

(b) By the first Calendar Day of each month, Clinton and Ellenburg will provide a copy of such invoice to Marble River and Altona.

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2. NYPA Monthly Invoices

- a. Within thirty (30) Calendar Days of its receipt of Clinton and Ellenburg's monthly invoice, NYPA will prepare and send invoices to the Projects which will include:
 - i. Each Project's respective share of NYPA's work performed for Common SUFs.
 - ii. Each Project's respective share of Clinton's and Ellenburg's work performed for Common SUFs.
 - iii. NYPA's work performed for Attachment Facilities and/or non-Common SUFs for each individual Project.
- b. All NYPA invoices are subject to the following cost allocation:
 - i. NYPA's invoices shall allocate costs related to any non-Common SUFs to the appropriate Project. The non-Common SUFs required for both the Clinton Windfield and Ellenburg Windfield shall be allocated as follows: Clinton 50% and Ellenburg 50%.
 - ii. NYPA's invoices shall allocate costs related to the Common SUFs among the Projects using the allocation percentage determined pursuant to Attachment S of the NYISO OATT ("Attachment S"), except as provided in subsection (b)(ii) below. The allocation percentages, as set forth in the Facilities Study for Class 2006: Part 2 - System Upgrade Facilities, are as follows: Clinton 20%; Ellenburg 20%; Altona 20%; and Marble River 40%.
 - iii. In the event that excess cost is incurred to complete the Common SUFs as a result of an Uncontrollable Cost Event (as such term is defined in Appendix B) as set forth in subsections (i), (ii) or (iii) of the definition of Uncontrollable Cost Event, then such costs will be allocated among Ellenburg, Clinton, Altona and Marble River pursuant to the allocation percentages set forth in Section B.2(b)(ii) above, and in no event shall such excess costs be the responsibility of NYPA.

In the event that excess cost is incurred to complete the Common SUFs as a result of an Uncontrollable Cost Event (as such term is defined in Appendix B) as set forth in subsections (iv) or (v) of the definition of Uncontrollable Cost Event, then: (A) to the extent that NYPA is responsible for such costs pursuant to the procedures set forth in Attachment S of the NYISO OATT, as such responsibility is determined in accordance with the next paragraph, such costs will be allocated to NYPA; (B) to the extent that NYPA is not responsible for such costs pursuant to the procedures set forth in Attachment S of the NYISO OATT and Marble River is the Transferee (as such term is defined in Appendix B), such costs will be allocated among Ellenburg, Clinton, Altona and Marble River pursuant to the allocation percentages set forth in Section B.2(b)(i) above; and (C) to the extent that NYPA is not responsible for such costs pursuant to the procedures set forth in Attachment S of the NYISO OATT and neither NYPA nor Marble River is the

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Transferee (as such term is defined in Appendix B), such costs will be allocated equally among Ellenburg, Clinton and Altona.

The Parties agree that in determining the extent of NYPA's responsibility (if any) for costs pursuant to the procedures set forth in Attachment S of the NYISO OATT, only NYPA's actions (or inaction) shall be considered; NYPA shall not be responsible for the actions (or inaction) of any Transferee (as such term is defined in Appendix B).

- c. Each Project is required to pay its respective invoice(s) to NYPA within thirty (30) Calendar Days of receipt of such invoice(s).
 - i. Clinton and Ellenburg will pay to NYPA their respective allocated shares of NYPA's work performed for Common and non-Common SUFs as well as Clinton and Ellenburg Transmission Owner Attachment Facilities; provided, however, that, together with Altona, Clinton and Ellenburg will be required to pay all of NYPA's costs for Phase I Common SUF work.
 - ii. In lieu of payment by Altona, Altona may provide NYPA certification from Clinton and Ellenburg that Altona has paid to Clinton and Ellenburg its share of the Clinton and Ellenburg work performed for the Common SUFs.
 - iii. Altona will be required to pay to NYPA its allocated shares for NYPA's work performed for Common SUFs and Altona Transmission Owner Attachment Facilities; provided, however, that, together with Clinton and Ellenburg, Altona will be required to pay all of NYPA's costs for Phase I Common SUF work.
 - iv. Marble River will be required to pay to NYPA its allocated share for NYPA's work performed for Common SUFs, Clinton's and Ellenburg's work performed for Common SUFs, NYPA's work performed for Marble River Transmission Owner Attachment Facilities and NYPA's work performed for Marble River non-Common SUFs, if any; provided, however, that Marble River shall not be required to pay for NYPA's costs for Phase I SUF work.
- d. NYPA will pay to Clinton and Ellenburg the monies received from Marble River under 2(b)(iv) for Clinton and Ellenburg's Common SUF work within fifteen (15) Calendar Days of receiving payment from Marble River.
 - i. In the event that Clinton and Ellenburg do not receive payment from NYPA within fifteen (15) Calendar Days of the date which such payment is due from Marble River (and, to the extent applicable, Altona), and NYPA has not received such payment from Marble River (and, to the extent applicable, Altona), then Clinton and Ellenburg may request NYPA to pursue payment as set forth in subsection 2(d)(ii) below.
 - ii. NYPA agrees to use reasonable efforts to obtain payment (less any disputed amounts) from Marble River (and, to the extent applicable, Altona), including

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exercising such available rights as NYPA may have against Marble River (and, to the extent applicable, Altona), including drawing on SUF-related letters of credit or other forms of security, in an amount not to exceed Marble River's (and, to the extent applicable, Altona's) share of any undisputed invoice. NYPA must pursue reasonable efforts to resolve any disputes with Marble River in the event that Marble River has withheld any disputed portion of any payment.

- iii. In no event shall NYPA be obligated to pay Clinton and Ellenburg for SUF work owed by Marble River or Altona unless NYPA has (x) received payment for such work from Marble River or Altona, (y) drawn from the applicable letter(s) of credit to pay for such work or (z) failed to use reasonable efforts to obtain payment as described in 2(d)(ii) above.

3. Final Invoices

- a. The procedures set forth above for monthly invoices in Sections B.1 and B.2 of this Appendix H shall apply to the final invoices.
- b. Within six (6) months after NYPA's acceptance and approval of the Common SUFs, Clinton and Ellenburg shall provide to NYPA their final invoice, which shall include all costs of Clinton and Ellenburg's work performed for Common SUFs that have not been invoiced pursuant to a monthly invoice.
- c. Within thirty (30) calendar days of receipt of such invoice from Clinton and Ellenburg, NYPA will send final invoices to Altona and Marble River, reflecting their respective share of the final cost of (1) NYPA's and Clinton and Ellenburg's work performed for Common and non-Common SUFs and (2) NYPA's work for Attachment Facilities.

4. Audit Rights

NYPA may exercise its rights (under Article 25.3 of the Interconnection Agreement) to audit Clinton's and Ellenburg's accounts and records for the benefit of Marble River and/or Altona related to (a) the design engineering, procurement and construction of Common SUFs and (b) the calculation of invoiced amounts. Audit rights granted hereunder are not intended to limit or supercede audit rights NYPA, Marble River and/or Altona may otherwise have elsewhere in this Interconnection Agreement or under other agreements.