

## **31.2.8 Determination of Necessity**

### **31.2.8.1 Determination of Necessity of a Regulated Solution**

31.2.8.1.1 The ISO shall review proposals for market-based solutions pursuant to Sections 31.2.5, 31.2.8.3, and 31.2.13.1 of this Attachment Y. The ISO will not trigger a regulated solution if, based on this review, it determines prior to or at the Trigger Date for a regulated solution: (i) that sufficient market-based solutions are timely progressing to meet the Reliability Need by the need date or (ii) that, based upon circumstances at the time of the review, there is no longer a Reliability Need. If the ISO decides not to trigger a regulated backstop solution or selected alternative regulated transmission solution, the Responsible Transmission Owner, Other Developer, or Transmission Owner will be eligible to recover its costs incurred up to that point in the same manner it may recover the costs of a halted project in accordance with Section 31.2.8.2.1 for the Responsible Transmission Owner and Section 31.2.8.2.2 for the Other Developer or Transmission Owner.

31.2.8.1.2 If: (i) the ISO determines that there are not sufficient market-based solutions to meet the identified Reliability Need by the need date and that there continues to be a Reliability Need, (ii) the regulated backstop solution proposed by the Responsible Transmission Owner is the only proposed viable and sufficient regulated solution or is selected by the ISO as the more efficient or cost effective transmission solution to meet the identified Reliability Need, and (iii) the Trigger Date for the regulated backstop solution has or will occur within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG, the ISO will trigger the regulated backstop solution at its Trigger

Date. The ISO will inform the Designated Entity(ies) of the Designated Backstop Transmission Project(s) that it should submit or the Responsible Transmission Owner that it should submit the regulated backstop solution containing non-transmission components, as applicable, to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process to site, construct, and operate the solution. In response to the ISO's request, the Designated Entity(ies) and/or Responsible Transmission Owner shall make such a submission to the appropriate governmental agency(ies) and/or authority(ies).

31.2.8.1.3 If: (i) the ISO determines that there are not sufficient market-based solutions to meet the identified Reliability Need by the need date and that there continues to be a Reliability Need; (ii) the ISO selects an alternative regulated transmission solution as the more efficient or cost-effective transmission solution to meet the identified Reliability Need; (iii) the Trigger Date for the regulated backstop solution is later than the Trigger Date for the selected alternative regulated transmission solution; and (iv) the Trigger Date for the selected alternative regulated transmission solution has or will occur within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG, the ISO shall trigger the selected alternative regulated transmission solution at its Trigger Date. The ISO will inform the Designated Entity(ies) of the Designated Alternative Transmission Project(s) that it should submit the Designated Alternative Transmission Project(s) to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process to site, construct, and operate the solution. In response to the ISO's

request, the Designated Entity(ies) shall make such a submission to the appropriate governmental agency(ies) and/or authority(ies). Prior to the Trigger Date for the regulated backstop solution, the ISO will review the status of the development by the Designated Entity(ies) of the Designated Alternative Transmission Project(s), including, but not limited to, reviewing: (i) whether the Designated Entity(ies) has executed a Development Agreement or requested that it be filed unexecuted with the Commission pursuant to Section 31.2.8.1.6; (ii) whether the Designated Entity(ies) is timely progressing against the milestones set forth in the Development Agreement; and (iii) the status of the required permits or authorizations, including whether the Designated Entity(ies) has received its Article VII or Article VIII certification or other applicable siting permits or authorizations under New York State law. If, based on its review, the ISO determines prior to or at the Trigger Date for the regulated backstop solution that it is necessary for the Designated Entity(ies) of the Designated Backstop Transmission Project(s) or the Responsible Transmission Owner of the regulated backstop solution containing non-transmission components, as applicable, to proceed with the regulated backstop solution in parallel with the selected alternative regulated transmission solution to ensure the identified Reliability Need is satisfied by the need date, the ISO will trigger the regulated backstop solution and report to stakeholders the reasons for its determination. The Designated Entity(ies) of the Designated Backstop Transmission Project(s) or the Responsible Transmission Owner of the regulated backstop solution containing non-transmission components, as applicable, shall proceed with due diligence to

develop its project in accordance with Good Utility Practice and to submit its proposed project to the appropriate governmental agency(ies) and/or authority(ies), unless or until notified by the ISO that it has determined that the regulated backstop solution is no longer needed as described in Section 31.2.8.2.1 below. If, based on its review, the ISO decides not to trigger the regulated backstop solution, the ISO will notify the Designated Entity(ies) of the Designated Backstop Transmission Projects or the Responsible Transmission Owner of the regulated backstop solution containing non-transmission components, as applicable, that its regulated backstop solution is no longer needed and will not be triggered. In such case, the Designated Entity(ies) or Responsible Transmission Owner shall be eligible to recover its costs incurred up to that point in the same manner as it may recover the costs of a halted project in accordance with Section 31.2.8.2.1.

31.2.8.1.4 If: (i) the ISO determines that there are not sufficient market-based solutions to meet the identified Reliability Need by the need date and that there continues to be a Reliability Need; (ii) the ISO selects an alternative regulated transmission solution as the more efficient or cost-effective transmission solution to meet the identified Reliability Need; (iii) the Trigger Date for the regulated backstop solution is earlier than the Trigger Date for the selected alternative regulated transmission solution; and (iv) the Trigger Date for the regulated backstop solution has or will occur within thirty-six months of the date of the ISO's presentation of the Viability and Sufficiency Assessment to the ESPWG, the ISO shall trigger both the selected alternative regulated transmission solution

and the regulated backstop solution at the Trigger Date for the regulated backstop solution. The ISO will inform the Designated Entity(ies) of the Designated Reliability Transmission Project(s) or Responsible Transmission Owner that proposed the regulated backstop solution containing non-transmission components, as applicable, and the Designated Entity(ies) of the Designated Reliability Transmission Project(s) that they should submit the proposed projects to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process to site, construct, and operate the projects. In response to the ISO's request, the Designated Entity(ies) and/or the Responsible Transmission Owner shall make such a submission to the appropriate governmental agency(ies) and/or authority(ies).

31.2.8.1.5 The ISO may make its determination regarding the triggering of a regulated solution pursuant to Sections 31.2.8.1.1 through 31.2.8.1.4 in the CRP or at any time before the approval of the next CRP.

31.2.8.1.6 A Designated Entity(ies) must enter into a Development Agreement with the ISO for its Designated Reliability Transmission Project, which project may include all or a portion of: (i) a regulated transmission solution selected by the ISO as the more efficient or cost-effective transmission solution to the Reliability Need, (ii) a regulated backstop transmission solution triggered by the NYISO pursuant to Sections 31.2.8.1.2, 31.2.8.1.3, or 31.2.8.1.4, or (iii) a selected alternative regulated transmission solution for which the Responsible Transmission Owner has agreed to become the Designated Entity to complete pursuant to Section 31.2.10.1.4. The ISO shall tender the Designated Entity(ies) a

draft Development Agreement with draft appendices as soon as reasonably practicable considering the project's Trigger Date following, as applicable: (i) the ISO's selection of the proposed regulated transmission solution, (ii) the ISO's triggering of a regulated backstop transmission solution pursuant to Sections 31.2.8.1.2, 31.2.8.1.3, or 31.2.8.1.4, or (iii) the Responsible Transmission Owner's agreement to complete an alternative regulated transmission solution pursuant to Section 31.2.10.1.4. The draft will be completed by the ISO to the extent practicable for review and completion by the Developer. The draft Development Agreement shall be in the form of the ISO's Commission-approved Development Agreement, which is in Appendix C in Section 31.7 of this Attachment Y. Each Designated Entity will receive a separate Development Agreement for its Designated Reliability Transmission Project. Each Designated Entity shall coordinate with any other Designated Entity for a Designated Reliability Transmission Project(s) that is a portion of the regulated transmission solution, to the extent feasible. The ISO and each Designated Entity shall finalize the Development Agreement and appendices and negotiate concerning any disputed provisions. For purposes of finalizing the Development Agreement, the ISO and Designated Entity shall develop the description and dates for the milestones necessary to develop and construct the selected project by the required in-service date identified in the CRP or updated CRP, as applicable, including the milestones for obtaining all necessary authorizations. Any milestone that requires action by another Designated Entity or a Connecting Transmission Owner or Affected System Operator identified pursuant to Attachment P of the ISO OATT

to complete must be included as an Advisory Milestone, as that term is defined in the Development Agreement.

Unless otherwise agreed by the ISO and the Designated Entity, the Designated Entity must execute the Development Agreement within three (3) months of the ISO's tendering of the draft Development Agreement; *provided, however*, if, during the negotiation period, the ISO or the Designated Entity determines that negotiations are at an impasse, the ISO may file the Development Agreement in unexecuted form with the Commission on its own or following the Designated Entity's request in writing that the agreement be filed unexecuted. If the Development Agreement resulting from the negotiation between the ISO and the Designated Entity does not conform with the Commission-approved standard form in Appendix C in Section 31.7 of this Attachment Y, the ISO shall file the agreement with the Commission for its acceptance within thirty (30) Business Days after the execution of the Development Agreement by both parties. If the Designated Entity requests that the Development Agreement be filed unexecuted, the ISO shall file the agreement at the Commission within thirty (30) Business Days of receipt of the request from the Designated Entity. The ISO will draft to the extent practicable the portions of the Development Agreement and appendices that are in dispute and will provide an explanation to the Commission of any matters as to which the parties disagree. The Designated Entity will provide in a separate filing any comments that it has on the unexecuted agreement, including any alternative positions it may have with respect to the disputed provisions.

31.2.8.1.7      Upon the ISO's and Designated Entity's execution of the Development Agreement or the ISO's filing of an unexecuted Development Agreement with the Commission pursuant to Section 31.2.8.1.6, the ISO and Designated Entity shall perform their respective obligations in accordance with the terms of the Development Agreement that are not in dispute, subject to modifications by the Commission.

31.2.8.1.8      Other Developers and Transmission Owners proposing alternative regulated solutions that consist of non-transmission elements and that the ISO has determined are viable and sufficient and will resolve the identified Reliability Need may submit these proposals to the appropriate governmental agency(ies) and/or authority(ies) for review. The ISO does not determine the solution that will be permitted by the appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over siting or whether the regulated backstop solution or an alternative regulated solution will be constructed to address the identified Reliability Need. If the appropriate governmental agency(ies) and/or authority(ies) makes a final determination that an alternative regulated solution should be permitted and constructed to satisfy a Reliability Need and that the regulated backstop solution should not proceed, implementation of the alternative regulated solution will be the responsibility of the Transmission Owner or Other Developer that proposed the alternative regulated solution, and the Responsible Transmission Owner will not be responsible for addressing the Reliability Need through the implementation of its regulated backstop solution. Should a regulated



solution not be implemented, the ISO may request a Gap Solution pursuant to Section 31.2.11 of this Attachment Y.

### **31.2.8.2 Halting and Related Cost Recovery Requirements**

31.2.8.2.1 If the ISO has triggered a regulated backstop solution under Sections 31.2.8.1.2, 31.2.8.1.3, 31.2.8.1.4, or 31.2.8.1.5, the ISO will immediately notify the Designated Entity(ies) of the Designated Backstop Transmission Project(s) or the Responsible Transmission Owner of the regulated backstop solution containing non-transmission components, as applicable; post such notice on its website; and will state in the next CRP if it determines that the regulated backstop solution is no longer needed and should be halted because either: (i) the ISO has determined that there are sufficient market-based solutions to ensure that the identified Reliability Need is met by the need date or that there is no longer a Reliability Need, or (ii) the ISO: (A) has triggered an alternative regulated transmission solution that the ISO selected in the CRP as the more efficient or cost effective transmission solution and (B) has determined that it is no longer necessary for the regulated backstop solution to proceed in parallel with the selected alternative regulated transmission solution to ensure the identified Reliability Need is satisfied by the need date. In making its determination under Section 31.2.8.2.1(ii), the ISO will review the status of the development by the Designated Entity(ies) of the Designated Alternative Transmission Project(s), including, but not limited to, reviewing: (i) whether the Designated Entity(ies) has executed a Development Agreement or requested that it be filed unexecuted with the Commission for the Designated Alternative Transmission Project(s) pursuant

to Section 31.2.8.1.6; (ii) whether the Designated Entity(ies) is timely progressing against the milestones set forth in the Development Agreement; and (iii) the status of the Designated Entity(ies)'s obtaining required permits or authorizations, including whether the Designated Entity(ies) has received its Article VII or Article VIII certification or other applicable siting permits or authorizations under New York State law.

If a regulated backstop solution is halted by the ISO, all of the costs incurred and commitments made by the Designated Entity(ies) or Responsible Transmission Owner for the regulated backstop solution up to that point, including reasonable and necessary expenses incurred to implement an orderly termination of the project, to the extent permitted by the Commission in accordance with its regulations, will be recoverable by the Designated Entity(ies) or Responsible Transmission Owner under the cost recovery mechanism in Rate Schedule 10 of this tariff regardless of the nature of the solution.

31.2.8.2.2 If the ISO has triggered an alternative regulated transmission project under Sections 31.2.8.1.3 or 31.2.8.1.4 that the ISO has selected as the more efficient or cost effective solution, the ISO will immediately notify the Designated Entity(ies) of the Designated Alternative Transmission Project(s); post such notice on its website; and state in the next CRP if it determines that the alternative regulated transmission solution is no longer needed and should be halted because the ISO has determined that there are sufficient market-based solutions to ensure that the identified Reliability Need is met by the need date or that there is no longer a Reliability Need.

If a selected alternative regulated transmission solution is halted by the ISO, all of the costs incurred and commitments made by the Designated Entity(ies) up to that point, including reasonable and necessary expenses incurred to implement an orderly termination of the project, to the extent permitted by the Commission in accordance with its regulations, will be recoverable by the Designated Entity(ies) under the cost recovery mechanism in Rate Schedule 10 of ISO OATT.

31.2.8.2.3 Once the Designated Entity(ies) or Responsible Transmission Owner receives state regulatory approval of its Designated Backstop Transmission Project(s) or the regulated backstop solution containing non-transmission components, respectively, or, if state regulatory approval is not required, once the Designated Entity(ies) or Responsible Transmission Owner receives necessary regulatory approval, the entry of a market-based solution or a Designated Alternative Transmission Project will not result in the halting by the ISO of the regulated backstop solution pursuant to Section 31.2.8.2.1. Similarly, once the Designated Entity(ies) of Designated Alternative Transmission Project(s) receives its state regulatory approval or any other necessary regulatory approval of its Designated Alternative Transmission Project that is, or a part of, the triggered alternative regulated transmission solution, the entry of a market-based solution will not result in the halting by the ISO of the Designated Alternative Transmission Project(s) pursuant to Section 31.2.8.2.2.

31.2.8.2.4 The ISO is not required to review market-based solutions to determine whether they will meet the identified Reliability Need by the need date after the

triggered alternative regulated transmission solution or regulated backstop solution has received federal and state regulatory approval, unless a federal or state regulatory agency requests the ISO to conduct such a review. The ISO will report the results of its review to the federal or state regulatory agency, with copies to the Responsible Transmission Owner, Other Developer, or Transmission Owner.

31.2.8.2.5 If the appropriate federal, state or local agency(ies) does not approve a necessary authorization for the triggered regulated backstop solution or alternative regulated transmission solution, all of the necessary and reasonable costs incurred and commitments made up to the final federal, state or local regulatory decision, including reasonable and necessary expenses incurred to implement an orderly termination of the project, to the extent permitted by the Commission in accordance with its regulations, will be recoverable by the Designated Entity or Responsible Transmission Owner, as applicable, under the ISO cost recovery mechanism in Rate Schedule 10 of the ISO OATT regardless of the nature of the solution.

31.2.8.2.6 If a necessary federal, state or local authorization for a triggered alternative regulated transmission solution or regulated backstop solution is withdrawn, all expenditures and commitments made up to that point including reasonable and necessary expenses incurred to implement an orderly termination of the project, to the extent permitted by the Commission in accordance with its regulations, will be recoverable under the ISO cost recovery mechanism in Rate

Schedule 10 of the ISO OATT by the Designated Entity or Responsible

Transmission Owner, as applicable, regardless of the nature of the solution.

31.2.8.2.7 If a material modification to a Designated Reliability Transmission Project is proposed by any federal, state or local agency, the Designated Entity shall address any proposed modification in accordance with the requirements of the Development Agreement entered into pursuant to Section 31.2.8.1.6 of the ISO OATT. If a material modification to a regulated solution containing non-transmission components is proposed by any federal, state or local agency, the Responsible Transmission Owner, Other Developer, or Transmission Owner will request the ISO to conduct a supplemental reliability review. If the ISO identifies any reliability deficiency in the modified solution, the ISO will so advise the Responsible Transmission Owner, Other Developer, or Transmission Owner and/or the appropriate federal, state or local regulatory agency(ies).

### **31.2.8.3 Criteria for Cutoff Date of Market-Based Solution**

31.2.8.3.1 The ISO will apply the criteria in this Section 31.2.8.3 for determining the cutoff date for a determination that a market-based solution will not be available to meet a Reliability Need by the need date.

31.2.8.3.2 In the first instance, the ISO shall employ its procedures for monitoring the viability of a market-based solution to determine when it may no longer be viable. Under the conditions where a market-based solution is proceeding after the Trigger Date for the relevant regulated solution, it becomes even more critical for the ISO to conduct a continued analysis of the viability of such market-based solutions.

31.2.8.3.3 The Developer of such a market-based solution shall submit updated information to the ISO twice during each Reliability Planning Process cycle, first during the input phase of the RNA, and again during the solutions phase during the period allowed for the solicitation for market-based and regulated solutions. If no solutions are requested in a particular year, then the second update will be provided during the ISO's analysis of whether existing solutions continue to meet identified Reliability Needs. The updated information of the project status shall include: status of final permits, status of major equipment, current status of construction schedule, estimated in-service date, any potential impediments to completion by the Target Year, and any other information requested by the ISO.

31.2.8.3.4 The Developer shall immediately report to the ISO when it has any indication of a material change in the project status or that the project in-service date may slip beyond the Target Year. A material change shall include, but not be limited to, a change in the financial viability of the Developer, a change in siting status, or a change in a major element of the project development.

31.2.8.3.5 Based upon the above information, the ISO will perform an independent review of the development status of the market-based solution to determine whether it remains viable to meet the identified Reliability Need by the need date. If the ISO, at any time, learns of a material change in the project status of a market-based solution, it may, at that time, make a determination as to the continued viability of such project.

31.2.8.3.6 The ISO, prior to making a determination about the viability of a specific proposed solution, will communicate its intended determination to the project

Developer along with the basis for its intended determination. The ISO shall provide the Developer a reasonable period (not more than 2 weeks) to respond to the ISO's intended determination, including an opportunity to provide additional information to the ISO to support the continued viability of the proposed solution.

31.2.8.3.7 If the ISO determines that a market-based solution that is needed to meet an identified Reliability Need is no longer viable, it will request that a regulated solution proceed or seek other measures including, but not limited to, a Gap Solution, to ensure the reliability of the system.

31.2.8.3.8 If the ISO determines that the market-based solution is still viable, but that its in-service date is likely to slip beyond the Target Year, the ISO may, if needed, request the Responsible Transmission Owner to prepare a Gap Solution in accordance with the provisions of Section 31.2.11 of this Attachment Y.

### **31.2.9 Process for Consideration of Regulated Backstop Solution and Alternative Regulated Solutions**

Upon a determination by the ISO under Section 31.2.8 that a regulated solution should proceed, the Designated Entity(ies) or Responsible Transmission Owner, as applicable, will make a presentation to the ESPWG that will provide a description of the regulated solution. The presentation will include a non-binding preliminary cost estimate of that regulated solution; provided, however, that the Designated Entity of a Designated Reliability Transmission Project or the Responsible Transmission Owner of a regulated backstop solution containing non-transmission components shall be entitled to full recovery of all reasonably incurred costs as described in Rate Schedule 10 of the ISO OATT. The ISO and stakeholders through this process will have the opportunity to review and discuss the scope of the projects and their associated non-binding preliminary cost estimates prior to implementation.

### **31.2.10 Process for Addressing Inability to Complete Triggered Regulated Solution**

31.2.10.1 The ISO may take the actions described in Sections 31.2.10.1.1 through 31.2.10.1.4 as soon as practicable if: (i) a Designated Entity of a Designated Reliability Transmission Project is required to enter into a Development Agreement pursuant to Section 31.2.8.1.6, and (ii) one of the following events occur: (A) the Designated Entity responsible for the Designated Reliability Transmission Project does not execute the Development Agreement, or does not request that it be filed unexecuted with the Commission, within the timeframes set forth in Section 31.2.8.1.6, or (B) the ISO determines that an effective Development Agreement may be terminated or terminates the Development Agreement under the terms of the agreement prior to the completion of the term of the agreement.

31.2.10.1.1 If the Development Agreement has been filed with and accepted by the Commission and is terminated under the terms of the agreement, the ISO shall, upon terminating the Development Agreement, file a notice of termination with the Commission.

31.2.10.1.2 The ISO may revoke its inclusion of the Designated Reliability Transmission Project in the CRP and the eligibility of the Designated Entity to recover its costs pursuant to the ISO's regional cost allocation mechanism; *provided, however*, the Designated Entity may recover its costs to the extent provided in Sections 31.2.8.1.1, 31.2.8.2.1, 31.2.8.2.2, 31.2.8.2.5, and 31.2.8.2.6 or as otherwise determined by the Commission.



31.2.10.1.3 The ISO may take one or more of the following actions to address the Reliability Need based on the particular circumstances: (i) address the Reliability Need in the CRP for the next planning cycle; (ii) address the Reliability Need in the next Short-Term Reliability Process; (iii) direct the Designated Entity(ies) to continue with the development of its Designated Reliability Transmission Project for completion beyond the in-service date required to address the Reliability Need; (iv) direct the Designated Entity(ies) or Responsible Transmission Owner to proceed with the regulated backstop solution if it has not yet been halted by the ISO pursuant to Section 31.2.8.2.1; (v) offer the Transmission Owner or Other Developer that originally submitted the selected alternative regulated transmission solution the opportunity to be the Designated Entity of a Designated Alternative Transmission Project in accordance with Section 31.2.10.2; (vi) request that the Responsible Transmission Owner complete a Designated Alternative Transmission Project; (vii) commence the Gap Solution process under Section 31.2.11; and/or (viii) adopt new ISO or Transmission Owner operating procedures. If a Transmission Owner or Other Developer is alternatively designated to complete a Designated Reliability Transmission Project or a Responsible Transmission Owner agrees to complete a Designated Alternative Reliability Project, it shall enter into a Development Agreement, or amend an existing Development Agreement related to fulfillment of the same Reliability Need, with the ISO in accordance with Sections 31.2.8.1.6 and 31.2.8.1.7.

31.2.10.1.4 If the Responsible Transmission Owner agrees to complete a Designated Alternative Transmission Project, the Responsible Transmission Owner shall

become the Designated Entity, and the Responsible Transmission Owner and the entity that was responsible for that Designated Alternative Transmission Project shall work cooperatively with each other to implement the transition, including negotiating in good faith with each other to transfer the project; *provided*, *however*, that the transfer is subject to: (i) any required approvals by the appropriate governmental agency(ies) and/or authority(ies), (ii) any requirements or restrictions on the transfer of the Designated Entity's rights-of-way under federal or state law, regulation, or contract (including mortgage trust indentures or debt instruments), and (iii), if the Designated Entity is a New York public authority, any requirements or restrictions on the transfer under the New York Public Authorities Law; *provided, further*, that the Responsible Transmission Owner and the Designated Entity will address any disputes regarding the transfer of the project in accordance with the dispute resolution provisions in Article 11 of the ISO Services Tariff.

31.2.10.2 If the ISO determines in accordance with Section 31.2.10.1.3 that an alternative Developer should be designated to complete a Designated Reliability Transmission Project that was initially designated to the owner of the impacted transmission facility, the ISO shall first offer the Transmission Owner or Other Developer that originally proposed the regulated transmission solution the opportunity to be the Designated Entity of that Designated Reliability Transmission Project to finance and complete the development and construction of the project to bring it into service. The alternative Designated Entity shall have 30 Calendar Days from the ISO tendering its offer to accept the Designated

Reliability Transmission Project. Thereupon, the alternative Designated Entity must enter into a Development Agreement, or amend an existing Development Agreement related to fulfillment of the same Reliability Need, with the ISO in accordance with the requirements in Section 31.2.8.1.6. The alternative Designated Entity will be eligible for cost allocation and cost recovery under the ISO OATT for its development and construction of the Designated Reliability Transmission Project. The alternative Designated Entity and the original Designated Entity of the transferred Designated Reliability Transmission Project shall work cooperatively with each other to implement the transition, including negotiating in good faith with each other to transfer the project; *provided, however,* that the transfer is subject to: (i) any required approvals by the appropriate governmental agency(ies) and/or authority(ies), (ii) any requirements or restrictions on the transfer of rights-of-way under federal or state law, regulation, or contract (including mortgage trust indentures or debt instruments), and (iii) if the original Designated Entity of the Designated Reliability Transmission Project is a New York public authority, any requirements or restrictions on the transfer under the New York Public Authorities Law; *provided, further,* that the alternative Designated Entity and the original Designated Entity of the Designated Reliability Transmission Project may address any disputes regarding such transfer of the project using dispute resolution procedures that are the same as those available to Transmission Customers under Section 11 of the ISO Market Administration and Control Area Services Tariff.

31.2.10.3 If (i) another Designated Entity defaulted on the development of a separate Designated Reliability Transmission Project that is a component of the same regulated transmission solution to address a Reliability Need and (ii) the ISO determined to (a) address the Reliability Need in the next planning cycle for the CRP, (b) address the Reliability Need in the next Short-Term Reliability Process, (c) commence the Gap Solution process under Section 31.2.11, or (d) adopt new ISO or Transmission Owner operating procedures to address the Reliability Need pursuant to Section 31.2.10.1.3 of the ISO OATT, the ISO may elect to terminate the Development Agreement for a Designated Entity's Designated Reliability Transmission Project and Designated Network Upgrade Facilities identified for the interconnection of such Designated Reliability Transmission Project in accordance with Attachment P (as applicable) and halt the development of the Designated Reliability Transmission Project and associated Designated Network Upgrade Facilities (as applicable).

31.2.10.4 If: (i) the Responsible Transmission Owner's non-transmission or partial transmission regulated backstop solution has been triggered by the ISO under Sections 31.2.8.1.2, 31.2.8.1.3, or 31.2.8.1.4, and the regulated backstop solution has not been halted by the ISO under Section 31.2.8.2.1, and (ii) the ISO determines that the Responsible Transmission Owner: (A) has not submitted its proposed regulated backstop solution for necessary regulatory action within a reasonable period of time, (B) is unable to or fails to obtain the approvals or property rights necessary to construct the project, or (C) is otherwise not taking the actions necessary to construct the project to satisfy the Reliability Need by the

need date, the ISO shall: (i) submit a report to the Commission for its consideration and determination of whether action is appropriate under federal law and (ii) take such action as it reasonably considers is appropriate to ensure that the Reliability Need is satisfied by the need date.

### **31.2.11 Gap Solutions**

31.2.11.1 If the ISO determines that neither market-based proposals nor regulated proposals can satisfy the Reliability Needs by the need date, the ISO will set forth its determination that a Gap Solution is necessary in the CRP. The ISO will also request the Responsible Transmission Owner to seek a Gap Solution. Gap Solutions may include generation, transmission, or demand side resources.

31.2.11.2 If there is an imminent threat to the reliability of the New York State Power System, the ISO Board, after consultation with the NYDPS, may request the appropriate Transmission Owner or Transmission Owners to propose a Gap Solution outside of the normal planning cycle.

31.2.11.3 Notwithstanding Sections 31.2.11.1 and 31.2.11.2, if a Market Participant notifies the ISO of its intent for its Generator to be Retired or to enter into a Mothball Outage pursuant to Section 38.3.1 of Attachment FF of the ISO OATT or if a Market Participant's Generator enters into an ICAP Ineligible Forced Outage pursuant to Section 5.18.2.1 of the ISO Services Tariff, the ISO will evaluate whether a Short-Term Reliability Process Need or an immediate reliability need will result from the Generator's deactivation and will address any resulting Short-Term Reliability Process Need or immediate reliability need in

accordance with the Short-Term Reliability Process set forth in Attachment FF of the ISO OATT.

31.2.11.4 Upon the ISO's determination of the need for a Gap Solution, pursuant to Sections 31.2.11.1 or 31.2.11.2 above, the Responsible Transmission Owner will propose such a solution as soon as reasonably possible, for consideration by the ISO and NYDPS. The Responsible Transmission Owner shall be eligible to recover its costs for developing its Gap Solution proposal and seeking necessary approvals pursuant to the cost recovery requirements in Section 31.5.76 of this Attachment Y and Rate Schedule 10 of the ISO OATT.

31.2.11.5 Any party may submit an alternative Gap Solution proposal to the ISO and the NYDPS for their consideration. The ISO shall evaluate all Gap Solution proposals to determine whether they will meet the Reliability Need or imminent threat. The ISO will also evaluate, as an alternative Gap Solution proposal, any Generator in a Mothball Outage or an ICAP Ineligible Forced Outage to determine whether its return to service would meet the Reliability Need or imminent threat; provided, however, that the Mothball Outage began on or after May 1, 2015 and the ICAP Ineligible Forced Outage followed a Forced Outage that began after May 1, 2015. The ISO will report the results of its evaluation to the party making the proposal, or to the Generator when evaluating its return to service, as well as to the NYDPS and/ or other appropriate governmental agency(ies) and/or authority(ies) for consideration in their review of the proposals. The appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over the implementation or siting of Gap Solutions will determine

whether the Gap Solution or an alternative Gap Solution will be implemented to address the identified Reliability Need. When the return to service of a Generator in a Mothball Outage or an ICAP Ineligible Forced Outage has been selected as either the Gap Solution or to resolve a reliability issue arising on a non-New York State Bulk Power Transmission Facility during its outage, the compensation and return to service procedures set forth in Section 5.18.4 of the Services Tariff shall apply.

31.2.11.6 A Responsible Transmission Owner, Other Developer, or Transmission Owner may recover its costs with respect to a transmission Gap Solution that is implemented pursuant to Section 31.2.11.5 in accordance with the cost recovery requirements in Section 31.5.76 of this Attachment Y and Rate Schedule 10 of the ISO OATT.

31.2.11.7 Gap Solution proposals submitted under Sections 31.2.11.4 and 31.2.11.5 shall be designed to be temporary solutions and to strive to be compatible with permanent market-based proposals.

31.2.11.8 A permanent regulated solution, if appropriate, may proceed in parallel with a Gap Solution.

### **31.2.12 Confidentiality of Solutions**

31.2.12.1 The ISO shall treat Confidential Information, as defined in this Section 31.2.12, that is submitted to the ISO by the Developer of a market-based solution, regulated backstop solution, or alternative regulated solution to a Reliability Need in accordance with the requirements for the treatment of Confidential Information in Section 12.4 of its Code of Conduct in Attachment F of the ISO OATT. The

ISO shall treat Critical Energy Infrastructure Information submitted to the ISO by the Developer of a proposed solution to a Reliability Need in accordance with ISO Procedures.

31.2.12.2 For purposes of this Section 31.2, except as provided in Sections 31.2.12.3 through 31.2.12.6, the ISO shall treat all types of solutions to Reliability Needs that are submitted to the ISO as a response to Reliability Needs identified in any RNA issued by the ISO as part of the Reliability Planning Process if the Developer of that solution designates such reliability solutions as confidential; *provided, however*, that the term “Confidential Information” shall at all times include the following non-public information submitted by a Developer and labeled as Confidential Information: (i) any part of its Developer qualification requirements pursuant to Section 31.2.4.1 or (ii) any part of its submission of the project information requirements for its market-based solution, regulated backstop solution, or alternative regulated solution to satisfy its project information requirements pursuant to Sections 31.2.4.4, 31.2.4.6, and 31.2.4.8 that includes: (a) preliminary project cost information; (b) all details of the Developer’s financing arrangements; (c) any non-public financial qualification information submitted; and (d) any contracts provided under Sections 31.2.4.4.2.3, 31.2.4.6, and 31.2.4.8.2.3. Notwithstanding the requirements in this Section 31.2.12 or the Developer’s designation of project information as “Confidential Information,” the ISO may publicly disclose information regarding the proposed facility that the ISO is required to disclose under its interconnection or transmission expansion



processes pursuant to Sections 3.7 or 4.5 of the ISO OATT or Attachments P, X, or HH of the ISO OATT.

31.2.12.3 For regulated transmission solutions submitted by the Responsible Transmission Owner, Transmission Owner, or Other Developer in response to the findings of the RNA, the ISO shall maintain the confidentiality of the proposed solution until the ISO has determined that (i) the regulated transmission solution is viable and sufficient to meet the Reliability Need(s) and (ii) that one or more regulated solution has a Trigger Date within 36 months of the ISO's presentation of the viability and sufficiency assessment, however, the ISO shall not disclose any Confidential Information, as defined in Section 31.2.10.1, that the Responsible Transmission Owner, Transmission Owner, or Other Developer has labeled as Confidential Information. Following submission of the required information pursuant to Section 31.2.4.4.2 and Section 31.2.4.8.2 of the ISO OATT and at least 30 Calendar Days prior to the ISO's posting of the initial facility characterization list pursuant to Section 31.2.6.5.2 of the ISO OATT, the ISO shall make available upon request the submission of (i) a description of the proposed transmission solution, including type, size, and geographic and electrical location, as well as planning and engineering specifications and drawings, and (ii) the Responsible Transmission Owner's, Transmission Owner's, or Other Developer's identification of any Reliability Transmission Upgrade(s) included as part of its proposed transmission solution, subject to a requestor's compliance with the ISO's requirements concerning the disclosure of Critical Energy Infrastructure Information.

31.2.12.4 For a regulated backstop non-transmission solution or an alternative regulated non-transmission solution, the ISO shall maintain the confidentiality of such proposed solution until the ISO has determined, after consulting with the Responsible Transmission Owner, Transmission Owner, or Other Developer thereof, that the proposed solution would meet a Reliability Need identified in an RNA, whether the response is viable and sufficient to meet all or part of the Reliability Need, and the Developer consents to the ISO's inclusion of the proposed solution in the CRP or the Developer makes the information publicly available. Thereafter, the ISO shall disclose the regulated backstop non-transmission solution or an alternative regulated non-transmission solution response to the Market Participants and other interested parties; however, the ISO shall not disclose any Confidential Information, as defined in Section 31.2.12.2, that the Responsible Transmission Owner, Transmission Owner, or Other Developer has labeled as Confidential Information.

31.2.12.5 For a market-based response, the ISO shall maintain the confidentiality of the same during the Reliability Planning Process and in the CRP, except for the following information which may be disclosed by the ISO: (i) the type of resource proposed (e.g., generation, transmission, demand side); (ii) the size of the resource expressed in megawatts of equivalent load that would be served by that resource; (iii) the subzone in which the resource would interconnect or otherwise be located; and (iv) the proposed in-service date of the resource. The ISO shall not disclose any Confidential Information, as defined in Section

31.2.12.2, that the Developer of the market-based solution has labeled as Confidential Information.

31.2.12.6 In the event that the Developer of a market-based response has made a public announcement of its project or has submitted a proposal for interconnection with the ISO, the ISO shall disclose the identity of the market-based Developer and the specific project during the Reliability Planning Process and in the CRP.

### **31.2.13 Monitoring of Reliability Project Status**

31.2.13.1 The ISO will monitor and report on the status of market-based solutions to ensure their continued viability to meet Reliability Needs by the need date in the CRP. The ISO shall assess the continued viability of such projects using the following criteria:

31.2.13.1.1 Between three and five years before the Trigger Date for a regulated solution, the ISO will use a screening analysis to verify the feasibility of the proposed market-based solution (this analysis will not require final permit approvals or final contract documents).

31.2.13.1.2 Between one and two years before the Trigger Date for a regulated solution, the ISO will perform a more extensive review of the proposed market-based solution, including such elements as: status of the required interconnection studies, contract negotiations, permit applications, financing, and Site Control.

31.2.13.1.3 Less than one year before the Trigger Date of a regulated solution, the ISO will perform a detailed review of the market-based solution's status and schedule, including the status of: (1) final permits; (2) required interconnection studies; (3)

the status of an interconnection agreement; (4) financing; (5) equipment; and (6) the implementation of construction schedules.

31.2.13.1.4 If the ISO, following its analysis, determines that a proposed market-based solution is no longer viable to meet the Reliability Need, the proposed market-based solution will be removed from the list of potential market-based solutions.

31.2.13.2 The ISO will monitor and report on the status of regulated solutions to ensure their continued viability to meet Reliability Needs by the need date in the CRP. The ISO will undertake this monitoring and reporting in accordance with this Attachment Y, ISO Procedures, and the terms of the Development Agreement (if applicable) until the project has been completed and is in-service or has been halted in accordance with this Attachment Y or the terms of the Development Agreement (if applicable). Prior to the Trigger Date for the regulated solution, the ISO shall assess the continued viability of regulated solutions using the following criteria:

31.2.13.2.1 Between three and five years before the Trigger Date for the regulated solution, the ISO will use a screening analysis to verify the feasibility of the regulated solution.

31.2.13.2.2 Between one and two years before the Trigger Date for the regulated solution, the ISO will perform a more extensive review of the proposed regulated solution, including such elements as: the status of the required interconnection studies, contract negotiations, permit applications, financing, and Site Control.

31.2.13.2.3 Less than one year before the Trigger Date for the regulated solution, the ISO will perform a detailed review of the regulated solution's status, including the

status of: (1) final permits; (2) required interconnection studies; (3) the status of an interconnection agreement; (4) financing; (5) equipment; and (6) the implementation of construction schedules.

31.2.13.2.4 Prior to making a determination about the viability of a regulated solution, the ISO will communicate its intended determination to the project sponsor along with the basis for its intended determination, and will provide the sponsor a reasonable period (not more than two weeks) to respond to the ISO's intended determination, including an opportunity to provide additional information to the ISO to support the continued viability of the proposed regulated solution. If the ISO, following its analysis, determines that a proposed regulated solution is no longer viable to meet the Reliability Need, the proposed regulated solution will be removed from the list of potential regulated solutions.