

40.25.8 APPENDIX 8 TO ATTACHMENT HH

EXPEDITED DELIVERABILITY STUDY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and among _____, a _____ organized and existing under the laws of the State of _____ (“Interconnection Customer”), 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 _____ a _____ organized and existing under the laws of the State of New York (“Connecting Transmission Owner“). Interconnection Customer, NYISO and Connecting Transmission Owner each may be referred to as a “Party,” or collectively as the “Parties.”

RECITALS

WHEREAS, Interconnection Customer is proposing to develop or owns an existing or facility requesting Capacity Resource Interconnection Service (“CRIS”); and

WHEREAS, the NYISO has confirmed that the Interconnection Customer has satisfied the eligibility requirements for entering an Expedited Deliverability Study; and

WHEREAS, Interconnection Customer has elected to enter an Expedited Deliverability Study in order to obtain or increase CRIS pursuant to Attachment HH to the NYISO’s Open Access Transmission Tariff (“OATT”), as applicable.

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

- 1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Section 40.1 of Attachment HH to the ISO OATT.
- 2.0 Interconnection Customer elects to be evaluated for CRIS and NYISO shall cause to be performed an Expedited Deliverability Study consistent with Attachment HH to the ISO OATT. The terms of Attachment HH of the OATT are hereby incorporated by reference herein.
- 3.0 The scope of the Expedited Deliverability Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.
- 4.0 The Expedited Deliverability Study report (i) shall identify whether the facility is fully deliverable at its requested level of CRIS; and (ii) if not fully deliverable, shall determine the facility’s deliverable MW.
- 5.0 The Interconnection Customer shall provide a deposit of \$30,000 for the performance of the Expedited Deliverability Study. The time for completion of the Expedited Deliverability Study is specified in Attachment A.
- 6.0 Interconnection Customer shall be responsible for the actual cost incurred by NYISO and

the Connecting Transmission Owner on the Expedited Deliverability Study, as computed on a time and materials basis in accordance with the rates attached hereto. The ISO shall invoice the Interconnection Customer, and Interconnection Customer shall pay the invoiced amounts, in accordance with the requirements in Section 40.24.3 of Attachment HH to the ISO OATT. NYISO shall continue to hold the amounts on deposit until settlement of the final invoice in accordance with the requirements in Section 40.24.3.

7.0 Miscellaneous.

- 7.1 Accuracy of Information. Except as Interconnection Customer or Connecting Transmission Owner may otherwise specify in writing when they provide information to NYISO under this Agreement, Interconnection Customer and Connecting Transmission Owner each represent and warrant that the information it provides to NYISO shall be accurate and complete as of the date the information is provided. Interconnection Customer and Connecting Transmission Owner shall each promptly provide NYISO with any additional information needed to update information previously provided to the extent permitted by Attachment HH to the NYISO OATT.
- 7.2 Disclaimer of Warranty. In preparing the Expedited Deliverability Study, the Party preparing such study and any subcontractor consultants employed by it shall have to rely on information provided by the other Parties, and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, neither the Party preparing the Expedited Deliverability Study nor any subcontractor consultant employed by that Party makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Expedited Deliverability Study. Interconnection Customer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 7.3 Limitation of Liability. The NYISO or any subcontractor consultants engaged by the NYISO shall not be liable for direct damages, including money damages or other compensation, for actions or omissions by the NYISO or a subcontractor consultant in performing its obligations under this Agreement, except to the extent such act or omission by the NYISO or a subcontractor consultant is found to result from its gross negligence or willful misconduct. In no event shall any Party or its subcontractor consultants be liable for indirect, special, incidental, punitive, or consequential damages of any kind including loss of profits, arising under or in connection with this Agreement or the Expedited Deliverability Study or any reliance on the Expedited Deliverability Study by any Party or third parties, even if one or more of the Parties or its subcontractor consultants have been advised of the possibility of such damages. Nor shall any Party or its subcontractor consultants be liable for any delay in delivery or for the non-performance or delay

in performance of its obligations under this Agreement, except as otherwise set forth in Attachment HH to the ISO OATT.

- 7.4 **Third-Party Beneficiaries.** Without limitation of Sections 7.2 and 7.3 of this Agreement, Interconnection Customer and Connecting Transmission Owner further agree that subcontractor consultants employed by NYISO to conduct or review, or to assist in the conducting or reviewing, an Expedited Deliverability Study shall be deemed third party beneficiaries of these Sections 7.2 and 7.3.
- 7.5 **Term and Termination.** This Agreement shall be effective from the date hereof and unless earlier terminated in accordance with this Section 7.5, shall continue in effect until the Expedited Deliverability Study is completed and approved by the NYISO Operating Committee. Interconnection Customer or NYISO may terminate this Agreement upon the later of (i) the withdrawal of the Interconnection Customer's Interconnection Request from the NYISO Queue, as applicable, or upon the Interconnection Customer's withdrawal of its request to be evaluated in the Expedited Deliverability Study, and (ii) the final reconciliation of any payments and deposits concerning the Expedited Deliverability Study in accordance with the requirements in Attachment HH to the ISO OATT.
- 7.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of laws provisions.
- 7.7 **Severability.** In the event that any part of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void part shall be deemed severable from this Agreement and the Agreement shall continue in full force and effect as if each part was not contained herein.
- 7.8 **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original instrument.
- 7.9 **Amendment.** No amendment, modification or waiver of any term hereof shall be effective unless set forth in writing signed by the Parties hereto.
- 7.10 **Survival.** All warranties, limitations of liability and confidentiality provisions provided herein shall survive the expiration or termination hereof.
- 7.11 **Independent Contractor.** NYISO shall at all times be deemed to be an independent contractor and none of its employees or the employees of its subcontractors shall be considered to be employees of Interconnection Customer or Connecting Transmission Owner as a result of this Agreement.
- 7.12 **No Implied Waivers.** The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to insist or rely on any such provision, rights and remedies in that or any other instances; rather, the

same shall be and remain in full force and effect.

7.13 Successors and Assigns. This Agreement, and each and every term and condition hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

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

New York Independent System Operator, Inc.

By: _____

Title: _____

Date: _____

[Insert name of Connecting Transmission Owner]

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

ATTACHMENT A

SCHEDULE FOR CONDUCTING THE EXPEDITED DELIVERABILITY STUDY

The NYISO and Connecting Transmission Owner shall use Reasonable Efforts to complete the study and issue an Expedited Deliverability Study report to the Interconnection Customer within the four months after of receipt of an executed copy of this Expedited Deliverability Study Agreement:

- Study work (other than data provision and study review) that may be requested of the Transmission Owner by the NYISO is currently not specified, but will be specified in a Study Work Agreement to be developed between the NYISO and Transmission Owner.
- Pursuant to Article 6.0 of this Agreement, the rates for the study work are attached as Exhibit 1.

ATTACHMENT B

DATA FORM TO BE PROVIDED BY INTERCONNECTION CUSTOMER WITH THE EXPEDITED DELIVERABILITY STUDY AGREEMENT

1. Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.
2. Specify the MW level of Capacity Resource Interconnection Service (“CRIS”) requested; provided however, that CRIS requests are subject to the limits specified in Section 40.5.6.5 of Attachment HH to the ISO OATT.

Evaluation election (MW of requested CRIS) at POI: _____

If the Facility will consist of multiple units, specify the requested allocation of the above MW level of requested CRIS:

- If requesting CRIS for a multi-unit Facility, specify the requested CRIS for each Generator: _____

For a Resource with Energy Duration Limitations that is requesting CRIS, indicate the maximum injection capability over the selected duration (*e.g.*, 10 MWh over 4 hours): _____

3. Proposed Schedule:

Begin Construction Date: _____

Initial Backfeed Date Date: _____

Synchronization Date Date: _____

Generation Testing Date: _____

Commercial Operation Date Date: _____

4. **Additional Information Required as Part of this Data Form:**

Nameplate MW: _____

Nameplate MVA: _____

Auxiliary Load: _____

For temperature sensitive units, provide MW vs. temp curves and indicate maximum summer and winter net capability below:

- Maximum summer net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 90 degrees F: _____
- Maximum winter net (net MW = gross MW minus auxiliary loads total MW) which can be achieved at 10 degrees F: _____

5. Describe any injection-limiting equipment if the facility's existing or requested ERIS is below its full output:

6. In addition to the above information, as applicable, for BTM:NG Resources, please also provide the following information:

Interconnection Customer or Customer-Site Load: _____ kW (if none, so state)

Existing load? Yes ___ No ___

If existing load with metered load data, provide coincident Summer peak load: _____

If new load or existing load without metered load data, provide estimated coincident Summer peak load: _____

Is the *new or existing load* in the Transmission Owner's service area?

_____ Yes _____ No Local provider: _____